

Memorandum



Subject

Proposed Bankruptcy Plan Language
for the Internal Revenue Service (IRS)

Date

July 18, 2012

To

Bankruptcy Bar

From

AUSA Stephanie Bengford and
AUSA Cheryl Dupris

Below are suggestions regarding standard plan language for treatment of the IRS as to a basic IRS secured claim, priority claim, or unsecured claim. This memo is provided for you to consider issues which could arise relating to the treatment of the IRS in your bankruptcy plan. The IRS will evaluate the facts of each case when determining whether to file objections to a bankruptcy plan.

ITEMS TO CONSIDER INCLUDING:

1. General Language acknowledging the claim filed by the Internal Revenue Service

IRS filed a proof of claim showing an allowed claim in the amount of \$ [add amount], consisting of a secured claim in the amount of \$ [add amount], a priority claim in the amount of \$ [add amount], and an unsecured general claim in the amount of \$ [add amount].

2. General Language as to a Secured Claim:

Debtor(s) shall provide for payment of Internal Revenue Service's (IRS) secured claim with interest. Interest on the IRS secured claim begins to accrue as of the date that Debtor(s) are scheduled to make their first monthly payment under the Plan. The applicable interest rate is [see www.smbiz.com and go to the "reference section" and click on "IRS Interest Rates, AFRs" and select the interest rate that applies as of the date the Court orders confirmation].

See Appendix 3A to Local Rules for additional language to be included.

3. General Language as to a Priority Claim:

Payment schedule of IRS priority claim is as follows:

<u>Amount of Claim</u>	<u>Amount of Payment</u>	<u>Months Paid</u>	<u>Total Paid</u>
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[note that priority claim must be paid in full during the term of the Plan]

4. General Language as to an Unsecured Claim:

Payment of the IRS' unsecured claim will be made pursuant to paragraph [add applicable number] of this Plan. Discharge of any portion of the IRS' unsecured claim is determined pursuant to the Bankruptcy Code. See, e.g., 11 U.S.C. § 523(a)(1).

5. Other General Issues for Consideration [by no means an exhaustive list]:

a. See Appendix 3A to Local Rules at paragraph 5 for language to include regarding timely payment and filing of post-petition taxes.

b. When the Trustee objects to a plan because tax refunds should be turned over to the trustee as disposable income, the Trustee normally includes limiting language in his/her objection implying that refunds which the Debtor is entitled to or receives should be turned over. The IRS would object to language limiting its ability to offset prior to a refund being issued. Indicating that Debtor should turn over refunds received by the Debtor to the Trustee, allows for offset prior to the issuance of the tax refund.

c. Counsel should make their clients aware that although generally post-petition items cannot be dealt with in a Plan of reorganization (but see 11 U.S.C. § 1305 allowing for exceptions in regard to post-petition claims) because they are unmatured, the IRS is entitled to post-petition interest and penalty accruals for non-dischargeable taxes even when the underlying tax liabilities are paid in full over the life of the Plan. Payment of the tax liabilities through the Plan simply impacts the amount of such interest and penalties that accrue.

d. In a Chapter 11, the IRS is entitled to interest on its secured and unsecured priority claims in accordance with the provisions of 26 U.S.C. § 6621 (at the current quarterly short term interest rate in affect the calendar month the plan is confirmed) and the claim must be paid within five years of the petition date. See In re Hathaway Coffee House, Inc., 24 B.R. 534 (Bankr. S.D. Ohio 1982); In re Beck, 128 B.R. 571 (Bankr. E.D. Okla. 1991) (interest allowed on IRS' administrative claim in Chapter 7).

e. The IRS will object to confirmation of a plan when all tax returns have not been filed prior to confirmation. When a tax return is filed after a bankruptcy petition has been filed, please contact the US Attorney's Office to find out where to send the original return. If the original return is sent to the IRS bankruptcy specialist handling the bankruptcy matter, the proof of claim can be filed or amended sooner.