[COMMITTEE PRINT]

TAX ASPECTS OF

S. 2266

(BANKRUPTCY REFORM ACT OF 1978)

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

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I. INTRODUCTION

This pamphlet has been prepared by the staff of the Joint Committee on Taxation for the use of the Committee on Finance in its consideration of tax-related provisions of S. 2266, the Bankruptcy Reform Act of 1978. The Committee on Finance has scheduled a public hearing on these provisions for July 28, 1978.

S. 2266 was reported by the Committee on the Judiciary on July 14, 1978, and, by prior agreement, has been referred to the Committee on Finance for a period not to exceed 30 days for consideration and recommendations concerning tax-related provisions of the bill. The referral specifically covers sections 346, 505, 507, 523, 728, 1146 and 1331 of the bill. These provisions deal with determining tax liabilities in bankruptcy, clarifying the jurisdiction of different courts to rule on these issues, and defining the priority and dischargeability of tax claims against the debtor's estate.

This pamphlet provides an overview of S. 2266, including basic bankruptcy concepts and a background of the proposed bankruptcy reform. It also summarizes the tax-related provisions which have been referred to the Committee on Finance. In addition, this pamphlet describes proposed amendments to the tax-related provisions which Senator Byrd inserted in the Congressional Record for July 25, 1978.

II. OVERVIEW OF S. 2266 (NON-TAX ASPECTS)

S. 2266 and H.R. 8200 (see Appendix to this pamphlet), although differing on several important subjects, would modernize bankruptcy law for the first time in 40 years, in light of major changes in debtor-creditor relations during this period. (The last major revision of the Bankruptcy Act occurred in 1938.) Both bills seek to reflect the widespread adoption of the Uniform Commercial Code, the spread of consumer credit and the resulting increase in the number of bankruptcies in the economy, and the increased complexity of business reorganizations. The bills also deal with a variety of special problems such as bankruptcies of railroads, stock brokerage firms, and commodity futures brokers. S. 2266 also gives specific attention to the protection of investors when a public company is reorganized in bankruptcy, and to the role of the Securities and Exchange Commission in such cases.

S. 2266 reduces the number of different bankruptcy "chapters" under which a debtor can have his affairs administered in court (such as present chapters 10, 11 and 12 for business reorganizations and a separate section 77 for railroads). For the bulk of cases, S. 2266 substitutes a single chapter 7 for "liquidations" of debts, chapter 11 for business reorganizations of corporations, partnerships and sole proprietorships, and chapter 13 for "workouts" of debts of an individual or sole proprietor whose income consists chiefly of wages, self-employment income, or similar kinds of regular income.

In broader terms the overall objectives of S. 2266 and H.R. 8200 are to make bankruptcy procedures more efficient, to balance more equitably the interests of different creditors, to give greater recognition to the interests of general unsecured creditors who enjoy no priority in the distribution of the assets of the debtor's estate, and to give the debtor a less encumbered "fresh start" after bankruptcy.

S. 2266 preserves the basic principle of present law giving priority in the distribution of assets of the debtor's estate to certain claims with special social importance. In general, the priority rules affect claims of unsecured creditors. Among this group, priority in payment from the estate's assets is given (in a defined order) to wages and fees earned while the bankruptcy case is pending, employee wages earned but not paid during a three-month period just before the case began, contributions to employee benefit plans, certain customer deposits, and taxes (Federal, State and local). In addition, the bill preserves the basic concept of coordinating priority and discharge of debts. This means that debts which are not discharged in bankruptcy are generally given priority in distribution of the debtor's assets so that as much as possible of the debt which would otherwise continue to burden the debtor after bankruptcy can be paid out of his current assets being administered by the court.

S. 2266 would also change the existing structure of the bankruptcy courts. The bill would retain the present status of the bankruptcy court as an adjunct of the U.S. district court, but would upgrade the status of bankruptcy judges in a variety of ways. S. 2266 would also remove certain jurisdictional limitations on the bankruptcy courts which have led to administrative delays, unnecessary expense and duplicate litigation. By comparison, H.R. 8200 would establish a separate bankruptcy court under Article III of the Constitution, as well as federally appointed U.S. Trustees to take over many supervisory duties now being performed by bankruptcy judges.

The general effective date of the bill is October 1, 1979.

III. SUMMARY OF TAX ASPECTS OF S. 2266

In broad terms, S. 2266 balances the goals of rehabilitating debtors and giving equal treatment to private voluntary creditors with the interests of governmental tax authorities who, if unpaid taxes exist, are also creditors in the proceeding. The tax law places numerous restrictions on the collection of taxes. These limitations, which do not encumber private creditors, often complicate the collection of prepetition taxes.

S. 2266 also recognizes that tax collection rules for bankruptcy cases have a direct impact on the integrity of Federal, State and local tax systems. To the extent that debtors in bankruptcy are freed from paying their tax liabilities, the burden of making up the lost revenues must be shifted to other taxpayers.

A three-way tension thus exists among (1) general creditors, who should not have the funds available for payment of debts exhausted by an excessive accumulation of taxes for past years; (2) the debtor, whose "fresh start" should likewise not be burdened with such an accumulation; and (3) the tax collector, who should not lose taxes which he has not had reasonable time to collect or which the law has restrained him from collecting.

In balancing these interests, S. 2266 gives governmental units a priority claim on assets of a debtor's estate for certain taxes which have not grown so "stale" as to constitute an unjustifiable burden on general unsecured creditors (who may have extended new credit to the debtor since the tax liability arose). To avoid unduly burdening the debtor's fresh start, the bill, with some exceptions, continues the basic coordination of priority and discharge provisions in the case of taxes (see the Overview in II, above).

In general, the bill retains two important priority rules of present law: first, for tax claims for which the tax return was due not more than three years before the bankruptcy petition was filed, and, second, for withheld income taxes and the employees' share of social security taxes (the "trust fund" taxes), regardless of the due date of the return.

S. 2266 contains a longer list of tax priorities than is found in present law, in part to cover a number of complex situations in which tax collection issues arise. The new categories deal with some uncertainties and ambiguities in present bankruptcy law, as well as with certain defects in the law under which some debtors have been able to exploit the administrative processes of a governmental unit in order to escape taxes unfairly.

The bill contains several provisions designed to minimize the administrative problems that governmental tax authorities may face in collecting taxes in bankruptcy proceedings, and also contains safeguards to assure normal administrative procedures and to prevent tax avoidance.

Other tax-related provisions of S. 2266 continue several rules of present law, such as that the tax authority may collect dischargeable prepetition tax liabilities of a debtor from his exempt property (other than property exempted from levy under the Internal Revenue Code). Also, tax liens on personal property would continue to be subordinated to payment of higher priority claims (in contrast to H.R. 8200, which would subordinate tax liens on both real and personal property).

S. 2266 also protects sovereign immunity for tax authorities by excepting government tax claims from the preference rules under which creditors who receive payments from the debtor under certain conditions shortly before a bankruptcy petition must return the payments for orderly administration of the estate. The bill also modifies the effective veto which the Secretary of the Treasury presently holds over business reorganization plans not providing for full payment of taxes.

IV. SECTION-BY-SECTION DESCRIPTION OF TAX PROVISIONS OF S. 2266 AND PROPOSED AMENDMENTS

A. Special Tax Provisions (Sec. 346 of the Bill)*

S. 2266

This section of the bill provides special tax provisions dealing with the treatment, under State or local tax law (but not Federal tax law),

* Technically, the provisions referred to the Finance Committee are sections of a proposed new title 11 of the United States Code. The whole of proposed title 11 is contained in section 101 of S. 2266. Since only the title 11 rules are of principal interest to the Finance Committee, section references in this pamphlet are, for convenience, described as sections of the bill.

of the method of taxing bankruptcy estates of individuals, partnerships, and corporations; survival and allocation of tax attributes between the bankrupt and the estate; return filing requirements; and the tax treatment of income from discharge of indebtedness.

In addition, the bill provides that, for Federal, State and local law purposes, the trustee is required to comply with the normal withholding rules applicable to the payment of wages and other payments.

Proposed amendments

State and local rules

Federal tax rules dealing with the subject matter of this section of the bill will be the subject of legislation expected early in the next Congress. There is general agreement that rules for State and local tax law should be as similar as possible to the comparable Federal rules. In order to prevent the enactment of rules governing State and local taxes which would then have to be amended when Congress considers the Federal tax rules, the proposed amendment deletes these State and local rules.

However, the rule in S. 2266 concerning tax withholdings by the trustee from wages and other payments would be retained.

When taxes considered "incurred"

The proposed amendments add several new rules to this section of the bill. First, the proposed amendments add a general definition of when a tax is "incurred" for purposes of the various tax collection rules affecting the debtor and the estate. The substance of these definitions appear in various places in S. 2266 and would be consolidated in one place. Under the amendment, a tax on income of a particular period is "incurred" on the last day of that period. A tax on or measured by some event, such as the payment of wages or a transfer by gift, death or sale, is "incurred" on the date of that event.

Penalty for failure to pay tax

Another proposed amendment would relieve the debtor and the trustee from a penalty for failure to make timely payment of a tax to the extent that the bankruptcy rules prevent the trustee or the debtor from paying the tax on time.

B. Determinations of Tax Liability (Sec. 505 of the Bill)

S. 2266

Authority of bankruptcy court to rule on merits

This section follows present law in authorizing the bankruptcy court to rule on the merits of tax claims involving an unpaid tax of the debtor, provided that no court has previously ruled on the debtor's liability for the tax.

Audit of trustee's returns

S. 2266 also provides a procedure for obtaining a mandatory audit of tax returns filed by the trustee in a liquidation or reorganization case. Under the procedure, the trustee can obtain a discharge from personal liability for these administrative period taxes for himself and for the debtor (but not for the debtor or the debtor's successor in a reorganization) by following certain administrative procedures. In all cases the trustee would be required to request a prompt tax audit by the local, State or Federal tax authority. The taxing authority would have to notify the trustee and the bankruptcy court within 60 days whether it accepts the return or desires to audit the return more fully. If an audit is conducted, the taxing authority would have to notify the trustee of any tax deficiency within 4 months (subject to extension of time if the bankruptcy court approves). These procedures would apply only to tax years for which the trustee has filed a tax return. If the trustee did not agree with the results of the audit, the trustee could ask the bankruptcy court to resolve the dispute.

In a reorganization case in which the debtor (or a successor to the debtor) continues in existence, the trustee could obtain a discharge from personal liability through the prompt audit procedure, but the Treasury could still claim a deficiency against the debtor (or his successor) for additional taxes due on returns filed during the proceeding.

Proposed amendments

Authority of bankruptcy court to rule on merits

A proposed amendment would authorize the bankruptcy court to rule on a refund claim by the trustee (in addition to an unpaid tax of the debtor), as well as on a tax penalty asserted against the debtor's estate.

Another proposed amendment would also provide expressly (rather than only by implication, as in S. 2266) for continuing a rule of present law under which an individual debtor can intervene personally before the bankruptcy court in order to ask that court to rule on the extent of his personal liability after the case for nondischargeable taxes.

Another proposed amendment also would change certain rules under present law concerning the jurisdiction of courts to deal with tax issues affecting an individual debtor personally. The proposed amendment would remove a rule of present law which denies the debtor the right to contest his personal liability for taxes in the Tax Court. Under present law, this right is denied by section 6871 of the Internal Revenue Code, which permits the Service to make an immediate assessment of taxes against a debtor who files a petition in bankruptcy. The proposed amendment would also remove another rule of the Code (sec. 6871(b)) which prevents a debtor from filing a petition in the Tax Court after he has begun a bankruptcy case. These amendments will assure an individual debtor a right to have his personal liability for a nondischargeable tax determined in the Tax Court (or in a refund suit), following normal receipt of a deficiency notice from the Service.

Another proposed amendment would prevent potential unfairness to the tax authority by giving it the same opportunity as the debtor would have to contest, in a court other than the bankruptcy court, the debtor's personal liability for a nondischargeable tax.

Audit of trustee's returns

A proposed amendment would modify the bill slightly by making the prompt audit mandatory only if the trustee determines that a surplus is reasonably likely to be returned to an individual debtor. Where application for a prompt audit procedure is mandatory, both the personal liability of the trustee and the liability of the debtor as a transferee would be decided conclusively by the bankruptcy court.

If the debtor is a corporation, or if a surplus is not likely to be returned to an individual debtor, the trustee would be permitted, but not required, to make application for a prompt audit. If he requests the prompt audit, only the trustee would be discharged from liability for the administrative period tax.

C. Priorities (Sec. 507 of the Bill)

S. 2266

Section 507 of the bill specifies the kinds of claims that are entitled to priority in the distribution of assets from debtor's estate. Under the priority schedule, taxes receive priority under the following rules:

1. *Administrative expenses.*—Taxes incurred during the administration of the estate share the first priority given to administrative expenses generally.

2. *Certain taxes on prepetition wages.*—Employment taxes on or withheld from certain wages earned by employees of the debtor before the bankruptcy case, but which are paid by the trustee, receive third priority if the wages themselves meet the special requirements to be paid in the third priority.

3. *Prepetition tax liabilities of the debtor.*—Taxes which the tax authority can claim against the estate as sixth priority items cover the following unsecured claims:

a. Income taxes for a taxable year that ended on or before the date of the filing of the petition, if the last due date of the return for that year was not more than 3 years before the date on which the petition was filed.

b. Transaction taxes (including gift, estate, sales, use or other excise taxes) and the employer's share of employment taxes not covered by the third priority, if the transaction or event which gave rise to the tax occurred within 3 years before the petition was filed.

c. Taxes older than 3 years if assessed within 3 years after the last due date of the return and within 240 days before the bankruptcy petition was filed.

d. Taxes which the tax authority was barred by law from assessing or collecting at any time during the 300 days before the bankruptcy petition was filed (such as situations where the debtor and the Internal Revenue Service were negotiating over an audit of the debtor's returns or were engaged in litigation in the Tax Court).

e. Taxes for which an offer in compromise was withdrawn by the debtor, or rejected by a governmental unit, within 240 days before the petition date.

f. Certain taxes for which no return or report is required if the taxable transaction occurred within 3 years before the bankruptcy petition was filed.

g. Taxes (not covered by the third priority) which the debtor was required by law to withhold or collect from others and for which he is liable in any capacity, regardless of the age of the tax claims.

h. Property taxes required to be assessed within 3 years before the petition date.

i. Taxes attributable to a "quickie" refund received by the debtor before the petition was filed, if the return for the loss year was last due within 3 years before the bankruptcy case began.

j. Taxes incurred by the trustee resulting from recapture of a tax credit or deduction taken by the debtor before the bankruptcy case began.

k. Taxes owed by the debtor as a transferee of assets from another person who is liable for a tax, within defined limitations.

l. Certain delinquent tax payments required during the one year immediately before the petition was filed, if the debtor had previously entered into a deferred payment agreement with the Service but had become delinquent in one or more installments before the petition was filed.

m. Certain tax-related liabilities which are not collected by regular assessment procedures, such as the liability of a lender under section 3505 of the Internal Revenue Code, or the liability under section 6332 of the Internal Revenue Code of a person who fails to turn over property of a taxpayer in response to a levy.

n. Certain unpaid customs duties.

Proposed amendments

Recapture items

One amendment would delete the category which makes a recapture of a pre-bankruptcy credit or reduction (caused by a sale of property by the trustee) a sixth priority item (see item j, above). As a result of the deletion, recapture taxes incurred by a bankruptcy trustee would receive first priority as normal administrative period taxes incurred by the estate.

Pending offers in compromise

A second proposed rule would deal with taxes for which an offer in compromise is pending as of the filing of the bankruptcy petition. These taxes would also receive sixth priority, but only if the tax would have been entitled to priority if the debtor had filed in bankruptcy on the date of the original offer in compromise.

Deferred payment agreements

Another proposed amendment would conform the treatment of a part payment agreement (item l, above) to the bankruptcy policy of accelerating the principal of all installment obligations and paying them to the extent possible out of assets of the estate. Then, only the unpaid balance of the amounts covered by the agreement would burden the debtor as a nondischargeable liability after the case.

D. Nondischargeable Taxes (Sec. 523 of the Bill)

S. 2266

Under S. 2266, in general, nine kinds of debts, including certain prepetition tax liabilities of the debtor, cannot be discharged in bankruptcy. Taxes that are excepted from discharge include claims against the debtor which receive priority in the distribution of property of the estate. (See the discussion in II, above)

Certain prepetition tax liabilities are not given priority in distribution from property of the estate, but under S. 2266 would survive as liabilities of the debtor after the case. This category includes (1) taxes for which the debtor had not filed a return as of the bankruptcy petition, or for which a return had been filed beyond its due date but within 3 years before the petition, and (2) taxes with respect to which the debtor filed a fraudulent return, or as to which he fraudulently attempted to evade or defeat any tax.

This section of the bill also makes nondischargeable certain tax payments due under an agreement for deferred payment of taxes, which a debtor had entered into with the Internal Revenue Service (or State or local tax authority) before the bankruptcy petition. S. 2266 also makes nondischargeable certain liabilities for penalties, including tax penalties if the underlying tax with respect to which the penalty was imposed is also nondischargeable.

Proposed amendments

Deferred payment agreements

A proposed amendment would delete the rule under the bill dealing with taxes for which a deferred payment agreement had been negotiated between the debtor and the Internal Revenue Service. This change conforms to a related change in the priority rules which would coordinate priority and discharge as to these deferred payment agreements (see the discussion under section 507 of the bill).

Failure to file proof of claim

Another proposed amendment adds a rule that, if the tax authority fails to file a claim for a prepetition tax liability of the debtor, the amount of any nondischargeable tax liability burdening the debtor personally after the case must be reduced by the amount of that debt that could have been paid from property of the debtor's estate if the tax authority had filed a timely claim.

Interest

Another proposed amendment would relieve the debtor of interest which runs during the proceeding on a nondischargeable tax liability.

E. Special Tax Provisions: Liquidations

(Sec. 728 of the Bill)

S. 2266

This section provides special tax provisions concerning the treatment of liquidation cases for purposes of State and local law. These provisions deal with the taxable year of an individual debtor who files in bankruptcy, return filing requirements for a debtor's estate, and allocations of tax liability and refunds between a bankrupt partner and the partnership of which he is a member.

Proposed amendment

A proposed amendment would delete these provisions dealing with State and local tax rules for the reasons set forth in the discussion of section 346 of the bill. One effect would be to defer consideration of the provisions dealing with allocations of tax liability and tax refunds between insolvent partners and an insolvent partnership because these rules, in particular, pose difficult administrative and conceptual problems which warrant further study.

F. Special Tax Provisions: Reorganizations (Sec. 1146 of the Bill)

S. 2266

Subsections (a) and (b) of section 1146 of the bill provide rules on the effect of bankruptcy on the taxable year of the debtor and tax return filing requirements.

Subsection (c) exempts from Federal, State, or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan.

Subsection (d) permits the court to authorize the proponent of a reorganization plan to request from the Internal Revenue Service (or State or local tax authority) an advance ruling on the tax effects of the proposed plan. If a ruling is not obtained within 270 days after the request was made, or if a ruling is obtained but the proponent of the plan disagrees with the ruling, the bankruptcy court may resolve the dispute and "declare" the tax effects of the plan.

Subsection (e) provides that prepetition taxes which are nondischargeable in a reorganization, and all taxes arising during the administration period of the case, may be assessed and collected from the debtor or from the debtor's successor in the reorganization.

Proposed amendments

The proposed amendments would:

1. Delete the rules governing the taxable years and return-filing requirements for the reasons set forth above in the discussion of section 346 of the bill.
2. Modify the rules governing the imposition of taxes on the issuance, etc., of securities by deleting its application to Federal taxes.
3. Delete the provisions permitting the bankruptcy court to declare the tax effects of a reorganization plan following a request for a private ruling from the Service.
4. Transfer the rules dealing with the liability of the debtor or his successor for prepetition taxes, or administrative period taxes, to a different place in the bill (sec. 1130) which deals generally with the effects of confirming of a reorganization plan.
5. Place in this section the substance of a rule contained in section 1130(d) of the bill providing that a plan may not be confirmed if its principal purpose is avoidance of taxes. In addition, the rule would be modified so that a finding by the bankruptcy court on the tax purpose of the plan is not required in all cases, but only if the governmental unit asserts that the principal purpose is tax avoidance.

G. Special Tax Provisions: Wage Earner Plans (Sec. 1331 of the Bill)

S. 2266

This provision permits the taxing authority to assess and collect nondischargeable taxes, as well as administrative period taxes, from the debtor after the bankruptcy case is closed. However, the taxing authority could accept the provisions of the plan in a particular case dealing with the payment of taxes.

Proposed amendment

The proposed amendment would make it clear that a nondischargeable tax may be collected from the debtor after bankruptcy only within the restrictions on assessment and collection of taxes (such as issuance of a statutory notice and the statute of limitations), and that payment of a nondischargeable tax is subject to other general rules for wage earner plans. Thus, a wage earner who continues to owe taxes could ask the bankruptcy court to allow him to pay taxes in deferred installments rather than in a single lump sum.

V. OTHER PROPOSED AMENDMENTS

In reviewing the provisions of S. 2266, the staffs of the Committee on Finance and the Joint Committee on Taxation have found several tax-related matters as to which the Finance Committee may want to suggest further amendments to the bill. These matters deal with tax-related areas which are not included in the sections of the bill referred to the Committee on Finance. These areas are indicated below.

Extensions of the statute of limitations (sec. 108)

S. 2266 provides rules concerning the effect of bankruptcy on the running of the statute of limitations. In the case of Federal tax liabilities, the Internal Revenue Code suspends the statute of limitations on a tax liability of a taxpayer while his assets are in the control or custody of a court and for 6 months thereafter (sec. 6503(b)). The Committee Report of the Judiciary Committee indicates that this Code rule is intended to apply in bankruptcy cases (S. Rept. 95–989, pp. 30–31). However, the bill is unclear on this point.

A proposed rule would make it clear that the Internal Revenue Code rule suspending the statute of limitations (for tax purposes) for the duration of the case and 6 months thereafter applies to bankruptcy cases.

Avoidance of certain liens (sec. 506)

S. 2266 provides that a lien relating to a claim which is not an allowed secured claim is to be automatically void unless certain conditions are satisfied. As applied to liens for tax claims, this means that tax liens are to be automatically voided if the tax authority fails to file a claim and the claim is therefore not allowed (unless the tax authority had no notice or knowledge of the case).

Under a proposed rule, failure of the tax authority to file a claim would not cause a tax lien securing the claim to be void if the tax claim is nondischargeable.

Federal Unemployment Tax (FUTA) credit (sec. 511)

S. 2266 prevents any reduction of the Federal tax credit against the Federal unemployment tax in situations where the trustee makes a late payment of a contribution to a State unemployment compensation fund. The Internal Revenue Code normally requires a reduction in the Federal credit for late contributions to a State fund (sec. 3302). However, it is considered inappropriate to penalize general creditors because the trustee may be barred from making a timely payment of the State contribution (on behalf of the debtor) because the pendency of bankruptcy proceedings.

Under a proposed additional rule, if a FUTA credit available to the debtor (rather than to the trustee) is reduced because of the debtor's late payment of a State unemployment contribution, the Treasury claim attributable to this reduction is to be treated as a claim for a penalty which is punitive in nature. Accordingly, the claim would not be entitled to priority and would be subordinated to the payment of most other claims against the estate.

Collection of taxes from exempt assets (sec. 522)

S. 2266 specifies that debts may not be collected out of exempt property except for taxes owing to a governmental unit and certain other claims. It is not clear whether "taxes owing to a governmental unit" includes taxes secured by a lien which has been avoided by the trustee or the debtor.

A proposed amendment would make it clear that both nondischargeable and dischargeable taxes may be collected out of exempt property subject to a lien, whether or not that lien was avoided by the debtor or the trustee.

Property of the estate (sec. 541)

Section 541 of the bill lists the types of property which are to be included in the estate. However, no mention is made of rights to tax refunds resulting from carrybacks of losses or credits.

A proposed amendment would adopt the position of present case law that property of the estate is to include a refund of any tax arising from the carryback of a loss or credit of the debtor to a taxable year before the first taxable year of the estate.

In addition, the Committee Report on S. 2266 indicates that property held in trust by the debtor for another person is not property of the estate subject to administration for the benefit of creditors. However, the bill does not specifically deal with so-called "trust" fund taxes," which include amounts withheld from the wages of employees or sales taxes collected by a retailer. Another proposed amendment would make clear that property of the estate does not include property which the debtor held as trustee for the benefit of another or any tax withheld from others under applicable Federal, State or local law, whether or not these amounts are placed in a segregated trust account.

Payment of taxes in wage earner plans (sec. 1325(c))

As reported to the Judiciary Committee by the Subcommittee on Improvements in Judicial Machinery, S. 2266 provided that a wage earner plan must provide for the payment of taxes within 120 days of the confirmation of the plan and that the payment must be made in cash. An amendment sponsored by Senator Kennedy deleted this rule in its entirety.

A proposed rule would restore the provision of the Subcommittee bill requiring that tax debts must be paid in cash. The amendment also would make clear that taxes can be paid in deferred cash installments under the general rules applicable to the payment of debts in a wage earner plan. This is consistent with the intent of the Kennedy amendment.

VI. APPENDIX:

BACKGROUND OF PROPOSED BANKRUPTCY LEGISLATION

Judiciary Committee Bills (S. 2266 and H.R. 8200)

S. 2266 and H.R. 8200, the House-passed bill dealing with basic bankruptcy reform, are outgrowths of the work of the Commission on the Bankruptcy Laws of the United States. The Commission was created in 1970 by Public Law 91-354. It was composed of nine members, including bankruptcy practitioners, academicians, District Court judges, two Congressmen (Edwards of California and Wiggins), and two Senators (Burdick and Cook). The Commission filed its report, along with bankruptcy and Federal income tax proposals, on July 30, 1973.[1]

Extensive hearings were held during 1975 and 1976 by the Subcommitee on Civil and Constitutional Rights of the House Judiciary Committee and by the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee.

On February 1, 1978, the House of Representatives passed H.R. 8200, which would revise the Federal bankruptcy laws by codifying and enacting a new Title 11 of the United States Code.[2]

S. 2266 was introduced by Senators DeConcini and Wallop on October 31, 1977. That bill followed H.R. 8200 in several basic respects but differed from the House bill on other important provisions, particularly the nature and status of the revised court system to hear bankruptcy cases. The Subcommittee on Improvements in Judicial Machinery conducted further hearings in late November and early December, 1977. On May 17, 1978, the Subcommittee reported a bill in the nature of a substitute for S. 2266 as introduced. On July 14, 1978, the full Committee on the Judiciary reported the Subcommittee bill, with amendments.[3]

By agreement for a sequential referral, S. 2266 has been referred to the Senate Finance Committee for a period not to exceed thirty days. During this period, the Finance Committee may consider and offer recommendations covering certain tax-related provisions of the bill. These provisions deal generally with determinations of tax liability, the jurisdiction of courts to rule on tax questions arising in bankruptcy, and with the priority and dischargeability of taxes in bankruptcy cases.

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[1] *Report of the Commission on the Bankruptcy Laws of the United States* (July 1973); H. Doc. No. 93-137, 93rd Cong., 1st Sess. (September 6, 1973).

[2] H.R. 8200 was reported by the House Committee on the Judiciary on September 8, 1977. H. Rept. 95-595, 95th Cong., 1st Sess. (1977).

[3] S. Rept. 95-989, 95th Cong.., 2nd Sess. (1978).

H.R. 9973

In the course of considering revisions of the bankruptcy laws, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee proposed a series of tax-related amendments to the Internal Revenue Code. The amendments were designed to modernize the tax treatment of insolvency proceedings and bankruptcy cases, and to conform the tax rules to H.R. 8200. The proposed rules deal generally with cancellation of indebtedness, the method of taxing bankruptcy estates, survival of tax attributes after an insolvency reorganization, and return filing requirements. In order to reflect these tax proposals, H.R. 9973 was introduced on November 3, 1977, by several members of the House Judiciary Committee and was referred to the Committee on Ways and Means.

A hearing was held on H.R. 9973 by the Ways and Means Committee on February 22, 1978. The bill is currently pending in that Committee.

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