

# PROPERTY TAX BULLETIN

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## COLLECTING PROPERTY TAXES IN BANKRUPTCY

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News that a taxpayer is filing for bankruptcy is not welcomed by a local taxing unit owed back taxes. Such a filing effectively interposes a federal court proceeding between the tax collector and the right to secure payment from the debtor's assets. The power of a bankruptcy judge to hold parties in contempt for violating the automatic stay applicable in such proceedings further discourages the unit's efforts to obtain payment. Yet local tax officials who learn that delinquent taxpayers have filed for bankruptcy need not despair. Although bankruptcy may ultimately decrease the revenue received in payment of delinquent taxes, the impact may not be as great as anticipated. Indeed, it is not a foregone conclusion that the taxing unit's claim will not be paid in full. Tax officials can and should take affirmative steps to protect their claims for unpaid taxes in bankruptcy proceedings. Understanding basic bankruptcy procedures and the treatment of claims for ad valorem taxes can help tax officials determine appropriate actions to take within the bankruptcy case itself—and the best ways to position the unit for the debtor's eventual emergence from bankruptcy.

### **The Basics: Who are these debtors? Why are we here?**

First, the obvious. Debtors, at least the honest ones, file bankruptcy because they are in financial distress. Either their liabilities already exceed their assets or they expect that such a condition is imminent. Can and do debtors file bankruptcy for other reasons, such as favorable treatment of certain debts under the bankruptcy code? Yes and yes. However, debtors may not file solely to gain the advantage of favorable

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treatment of their obligations. The courts require that bankruptcy be filed in “good faith” by a debtor suffering genuine financial distress.<sup>1</sup>

If a debtor cannot pay his or her debts, how will a bankruptcy proceeding help? For the debtor, bankruptcy serves two important purposes. First, it immediately halts all efforts by creditors to collect debts outside the bankruptcy proceeding, thereby providing debtors a breathing spell and preventing the liquidation of assets before the bankruptcy court has an opportunity to intervene.<sup>2</sup> Second, by ultimately discharging debtors’ personal liability for certain debts, bankruptcy provides debtors economic hope, the proverbial light at the end of the tunnel. As the Supreme Court noted in *Local Loan Co. v. Hunt*, one of the primary purposes of bankruptcy is “to ‘relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.’”<sup>3</sup> The discharge of debt also serves a public interest, by creating an incentive for the debtor to be economically productive in the years following bankruptcy.<sup>4</sup> Moreover, bankruptcy may make it possible to preserve, rather than liquidate, a going concern, thereby maximizing the value of property available to satisfy creditors.<sup>5</sup>

When it is not possible to reorganize a going concern or implement a workable payment plan, bankruptcy provides a forum for the systematic and equitable liquidation of the debtor’s property under the supervision of the court.<sup>6</sup> A debtor filing for bankruptcy must surrender all nonexempt property to the bankruptcy court. The court then arranges for an orderly liquidation of this property or an orderly and structured repayment of creditors, ensuring that payments to creditors are determined by the initial characteristics of their financial arrangements with the debtor rather than by creditors’ post-insolvency efforts to secure payment.<sup>7</sup> Bankruptcy thus substitutes a system that treats all similarly situated creditors fairly for a recovery process determined by a race to the courthouse.<sup>8</sup>

Three central components of bankruptcy operate to achieve these salutary purposes: the automatic stay, the classification of claims, and the discharge of debtors. We address each of these components in the context of a bankruptcy case filed by a debtor who owes property taxes and discuss their impact on the collection such taxes. The bankruptcy code was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the provisions of which generally apply to bankruptcy cases filed on or after October 17, 2005. This bulletin

notes throughout the ensuing discussion circumstances in which the laws governing the collection of property taxes in bankruptcy differ for pre- and post-BAPCPA cases.<sup>9</sup>

## The debtor has filed for bankruptcy. What now?

A tax collector may learn that a taxpayer responsible for payment of property taxes has filed a petition for bankruptcy either (1) before or after proceedings to collect property taxes are instituted or (2) before or after property taxes are assessed or have become delinquent.<sup>10</sup> Tax collectors find out about bankruptcy filings in one of two ways. First, the taxpayer whose property is the subject of enforced collection measures may tell the tax collector that he or she has filed a petition for bankruptcy. The taxpayer’s oral report that a petition has been filed is sufficient to put the tax collector on notice that collection activities by creditors—including the taxing unit—may be barred by the bankruptcy code.<sup>11</sup> Upon receiving such notice, the tax collector must halt collection activities until the filing is confirmed. A tax collector may also first learn of the bankruptcy filing from the court’s notice that the taxing unit is listed as a creditor on the schedule filed with the debtor’s petition. Obviously, receipt of this formal notice is conclusive proof that a bankruptcy case is pending.

So, why must a tax collector halt efforts to collect sums owed by the debtor upon learning of the filing of a bankruptcy petition? The answer lies in the bankruptcy code provision that creates the automatic stay.

## The Automatic Stay

The filing of a bankruptcy petition operates as a stay, barring creditors from jockeying for advantage by seeking to secure previously unsecured debts or by seizing the debtor’s property.<sup>12</sup> The automatic stay relieves the debtor of the pressure and harassment of creditors and protects property of the estate.<sup>13</sup> If the collection activities of creditors were allowed to continue after filing, it would be virtually impossible for debtors to hold creditors at bay while they developed a plan of reorganization.<sup>14</sup> “[T]he automatic stay provision is designed to forfend against the disorderly, piecemeal dismemberment of the debtor’s estate outside the bankruptcy proceedings.”<sup>15</sup> The automatic stay thus makes it possible for the bankruptcy system to function.<sup>16</sup> Given the

indispensable role of the stay provision, it is not surprising that the bankruptcy code and courts do not look favorably upon those who violate it. The code provides that an individual injured by a “willful” stay violation *shall* recover damages, including costs and attorney fees.<sup>17</sup> A violation of the stay is considered willful when a creditor acts against a debtor knowing that a petition in bankruptcy has been filed.<sup>18</sup> In appropriate circumstances, a debtor injured by a willful stay violation may recover punitive damages.<sup>19</sup> A bankruptcy judge may also punish violators of a stay through contempt proceedings.<sup>20</sup>

### What activities does the automatic stay prohibit?

The automatic stay specifically bars, among other acts, the commencement or continuation of any action against the debtor to recover a claim that arose before the filing of the bankruptcy petition.<sup>21</sup> What does this mean for unpaid property taxes? Claims for payment of property taxes arise on the date taxes are assessed. All property located in North Carolina, other than registered motor vehicles, is assessed for property taxes on January 1 preceding the fiscal year of taxation. Registered motor vehicles are assessed for taxation on the first day of the month in which a new registration is applied for or in which a vehicle’s registration is renewed. Taxes assessed before a bankruptcy petition is filed are referred to as *pre-petition taxes* or *pre-petition claims*.

Clearly, the automatic stay provision cited above bars any action to enforce payment of pre-petition taxes. Thus, a tax collector may not attach bank accounts, seize personal property, file a foreclosure proceeding, or advertise tax liens to secure payment of pre-petition taxes as long as the stay remains in effect. If a foreclosure action is pending at the time the bankruptcy petition is filed, the taxing unit must petition the bankruptcy court to lift the stay before continuing the action.

The collection of property taxes assessed *after* a bankruptcy petition is filed (commonly referred to as *post-petition taxes* or *post-petition claims*) also is affected by the automatic stay. This is so because, in addition to barring acts to recover pre-petition claims, the automatic stay prohibits acts to obtain possession of property of the estate.<sup>22</sup> *Property of the estate* is broadly defined to include all legal or equitable interests in property the debtor holds when the case begins, as well as any interest in property that the estate acquires after commencement of the case.<sup>23</sup> Thus, a tax collector may not attach bank accounts or

seize or foreclose upon property owned by the debtor at the time the bankruptcy petition is filed, regardless of whether these enforced-collection activities are designed to secure payment of property taxes assessed before or after the bankruptcy petition was filed.<sup>24</sup> The automatic stay does not, however, prevent post-petition taxes assessed on real and personal property owned by the same individual from automatically becoming a lien on the property each January 1 as provided by Section 105-355 of the North Carolina General Statutes (hereinafter G.S.). Although the bankruptcy code generally bars any act “to create, perfect, or enforce any lien against property of the estate,”<sup>25</sup> it expressly permits the creation of a statutory lien for an ad valorem property tax imposed by a governmental unit if the tax or assessment becomes due after the petition is filed.<sup>26</sup> Thus, while the stay prohibits a taxing unit from attaching, seizing, or foreclosing upon property of the estate to collect post-petition taxes, a lien for post-petition taxes is not jeopardized by the automatic stay. The bankruptcy code also permits tax collectors to issue a notice and demand for payment of post-petition taxes;<sup>27</sup> they may not, however, threaten enforced collection measures such as garnishment of wages or attachment of bank accounts if the taxes are not paid.<sup>28</sup>

### How long does the automatic stay bar the enforced collection of property taxes?

The stay remains in effect, and thus operates to bar the enforced collection of property taxes, until the earliest of the following events: (1) the closing or dismissal of the bankruptcy case; (2) the granting or denial of discharge for the debtor; or (3) with respect to property of the estate, until such property is no longer part of the estate.<sup>29</sup> In practice, this means that a taxing unit may be barred for several years from efforts to enforce the collection of pre- and post-petition property taxes. This is especially true in a chapter 13 case, in which an individual debtor may enter into a court-approved plan to repay pre-petition debtors over a period of three to five years.<sup>30</sup> The debtor in such a case generally must commit to the plan all of the disposable income he or she is to receive while the plan is in effect.<sup>31</sup> The debtor is not discharged from the chapter 13 case until plan payments are completed; thus, the automatic stay remains in effect until the conclusion of the plan or the dismissal or conversion of the case. The automatic stay clearly bars any actions to recover pre-petition debts during the period of the plan. What

is less clear is whether a tax collector may exercise enforced-collection remedies against the debtor's property to secure the payment of *post-petition taxes* during the time the plan is in effect. As noted above, the automatic stay, which remains in effect for the entire term of the plan, prohibits acts to obtain property of the estate. The definition of "property of the estate" is broadened in chapter 13 cases from property in which the debtor has an interest at the beginning of the case to include property and earnings the debtor receives after the case is filed but before it is closed, dismissed, or converted to a case under another chapter.<sup>32</sup> Yet, another provision of chapter 13 provides that upon confirmation of the plan, all property in the estate "vests in the debtor."<sup>33</sup> Courts have expressed divergent views on whether an estate exists in a chapter 13 case after confirmation, given the provision vesting property in the debtor at that time.<sup>34</sup> At least one bankruptcy court resolves this issue by specifying in its orders confirming chapter 13 plans that all property defined by sections 541 and 1306 as "property of the estate" remains property of the chapter 13 estate until the case is discharged or dismissed or until the court orders otherwise.<sup>35</sup> Courts concluding that an estate does exist after plan confirmation have disagreed about whether the estate includes only such post-confirmation earnings as are necessary to satisfy obligations under the plan or whether the estate necessarily includes *all* post-confirmation earnings.<sup>36</sup> The issue becomes relevant for taxing units when taxes assessed after a bankruptcy case is filed become delinquent while a chapter 13 case is pending. Tax collectors may desire to garnish a debtor's post-confirmation earnings to pay such amounts. The question is whether garnishment of post-confirmation wages constitutes an act to obtain property of the estate and is thus barred by the automatic stay.

As previously noted, several courts have determined that the estate in a chapter 13 case does survive confirmation of a repayment plan.<sup>37</sup> In considering whether the estate included *all* of a debtor's post-petition earnings or only the amounts necessary to meet plan obligations, the Bankruptcy Court for the Eastern District of Virginia, in *In re Reynard*, noted the practical difficulties associated with attempts to distinguish between property necessary for the success of a chapter 13 plan and property that is not necessary.<sup>38</sup> The court in that case noted that chapter 13 plan payments are not the only payments necessary to successfully complete a chapter 13 plan.<sup>39</sup> Such plans frequently require a debtor to make payments directly to a secured creditor. If those payments are not made, a secured creditor may seek to dismiss or convert the case to a

chapter 7 proceeding. In addition to meeting plan obligations and paying secured creditors, a debtor must also be able to pay living expenses from the amount excluded from disposable income committed to the plan. Given that all of a debtor's disposable income is dedicated to plan payments, the amount allocated for living expenses is already limited. Reducing it further may render the debtor unable to meet basic needs while fulfilling plan obligations. The *In re Reynard* court also opined that there was no good reason why a creditor, rather than the court, should determine what sums are necessary for successful completion of the plan.<sup>40</sup> For this reason, instead of resorting to enforced-collection measures under the Machinery Act to collect delinquent post-petition taxes, a taxing unit is better advised to seek payment by (1) moving for dismissal of the chapter 13 plan when the debtor fails to remain current on post-petition obligations and remaining current in such payments is a condition of the plan; (2) submitting the amounts to the court as part of a request for payment of administrative claims (discussed in the next section); or (3) requesting relief from the automatic stay.<sup>41</sup>

### **Effect of Automatic Stay on Remedies to Enforce the Collection of Taxes on Registered Motor Vehicles**

All taxes on registered motor vehicles are collected by county tax collectors. Such taxes become due the first day of the fourth month following the month in which the vehicle's registration expires or a new registration is applied for.<sup>42</sup> Taxes on registered motor vehicles are payable without interest for the remainder of the month in which they become due.<sup>43</sup> County tax collectors send to the Department of Motor Vehicles (DMV) a list of owners and vehicle identification numbers for vehicles on which taxes remain unpaid four months after their due date. DMV then blocks the registration of the license tags for those vehicles, preventing their owners from renewing their registrations until they pay the property taxes.<sup>44</sup> If a debtor files bankruptcy before the tax collector remits this owner and vehicle information to DMV, the tax office may not subsequently submit the information to DMV with a request to block the registration. Such a request would constitute an action to recover a claim against the debtor that arose before the petition was filed and thus would violate the automatic stay.<sup>45</sup>

## Exceptions to the Automatic Stay

Amendments to the bankruptcy code enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) render the automatic stay inapplicable to actions to enforce a lien against real property in certain circumstances and provide for early termination of the stay if the bankruptcy petition was filed on or after October 17, 2005. New 11 U.S.C. § 362(b)(20) provides that there is no automatic stay of an action to enforce a lien against certain real property that was part of an estate in a previous bankruptcy case. If, in the previous bankruptcy case, the court granted relief from the stay as to the particular real property, the order was entered within the last two years, and the order was entered pursuant to 11 U.S.C. § 362(d)(4), which requires a finding that the debtor filed bankruptcy as part of a scheme to defraud creditors by transferring property or filing multiple bankruptcies, then the automatic stay in the second case does not bar an action to enforce the lien against the real property. But what action to enforce a lien against real property would be allowed under this exception? For purposes of enforcing tax liens, foreclosure is the only such action. A taxing unit may not use this exception to attach bank accounts, garnish wages, or seize other personal property of the debtor. In addition, a debtor may move for relief from the order that lifted the stay in the earlier case based upon changed circumstances or other good cause.

A local tax official may also institute or continue foreclosure proceedings, notwithstanding the existence of a bankruptcy proceeding, when certain real property was part of the estate in a previous bankruptcy case filed by an individual debtor within 180 days of the current case.<sup>46</sup> If the earlier case was dismissed because of the debtor's failure to appear or to follow the court's orders, or if the debtor obtained a voluntary dismissal of that case after a creditor requested relief from the automatic stay, then the automatic stay in the current case does not bar actions to enforce the lien against real property. For tax collectors, this means that the automatic stay does not bar the initiation or continuation of foreclosure proceedings against the property when the debtor was the subject of a prior case, as described above. In addition, the automatic stay does not bar actions to enforce a lien against real property if the bankruptcy court in a previous case entered an order barring the debtor from filing another bankruptcy case.<sup>47</sup> Finally, the automatic stay does not go into effect—absent action by the court to apply the stay—if the debtor in the present bankruptcy action had two or more

bankruptcy cases pending in the preceding year and both were dismissed.<sup>48</sup>

If a debtor had one bankruptcy case pending in the preceding year and that case was dismissed, new 11 U.S.C. § 362(c)(3)(A) provides that the stay, “with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease[,] shall terminate with respect to the debtor on the 30th day after the filing of the later case.” What exactly does this mean?<sup>49</sup>

Several courts have determined that this provision provides for only a limited lifting of the stay and that the stay remains in effect after thirty days against property of the estate and is lifted only for actions taken with respect to the debtor or the debtor's property.<sup>50</sup> Thus, creditors, including local tax collectors, would be ill-advised to proceed with enforced-collection measures pursuant to Section 362(c)(3)(A) without first petitioning the bankruptcy court for relief from the automatic stay.<sup>51</sup> Moreover, questions remain regarding what actions may be pursued even under the limited lifting of the stay for “actions taken with respect to the debtor or the debtor's property.” The Bankruptcy Court for the Eastern District of North Carolina, in *In re Paschal*, determined that the phrase “actions taken” refers to formal judicial, administrative, or similar actions taken prior to the filing of the pending bankruptcy petition.<sup>52</sup> In practice, this exception may be so limited as to be of little benefit to tax collectors since virtually all actions they might take to enforce payment of property taxes would be actions against property of the estate as distinguished from actions taken with respect to the debtor or the debtor's property.

## If the tax collector cannot attach, levy or foreclose upon property, how do the taxes get paid?

As mentioned above, the bankruptcy code substitutes an orderly and judicially monitored system for the repayment of creditors for the ad hoc, disorganized, and self-help collection scheme that otherwise would prevail once creditors learned of a debtor's insolvency. The presence of the automatic stay forces creditors to participate in the bankruptcy code's system for the payment of debts. Creditors, including tax collectors, participate in this system by filing proofs of claim for debts owed. Claims submitted by creditors then are classified and paid in the order of priority established by the code for each particular type of claim. The following section describes how

claims are classified and given a priority status based upon the type of debt and when it was incurred.

## Classification of Claims

Creditors, including taxing units, notify the bankruptcy court of their right to payment from the debtor by filing a proof of claim.<sup>53</sup> Governmental units, including cities and counties, must file a proof of claim within 180 days of the date the case is filed.<sup>54</sup>

Claims for payment of ad valorem taxes under the bankruptcy code generally fall into one of three classifications: (1) secured claims, (2) priority claims, and (3) general unsecured claims. All claims that are unpaid at the time the bankruptcy petition is filed and that are assessed while the case is pending are subject to classification under the code.

Creditors with secured claims stand the best chance of recovering what they are owed. This is so because of the secured status of these creditors' interest rather than because the bankruptcy court affords such claims priority for payment. By diligently monitoring the bankruptcy proceedings, secured creditors can ensure that secured claims are paid as part of a repayment plan or when a trustee sells any property. In addition, secured creditors can object to any action by the trustee or debtor that jeopardizes the creditor's ability to enforce their security interest against property subject to the lien after the bankruptcy case concludes and the stay is lifted. Tax claims secured by a lien on real property owned by the debtor are this type of secured claim. It includes all claims for property taxes assessed on real property because such taxes become a lien on real property, by operation of law, on January 1 when they are assessed.<sup>55</sup> It also includes claims for taxes assessed on personal property (other than taxes on registered motor vehicles) owned by a taxpayer who also owns real property in the taxing unit, because such personal property taxes also are a lien on the owner's real property.<sup>56</sup> Among *unsecured* claims, priority claims are first in line to be paid from the bankruptcy estate. Ten types of unsecured claims are subject to this priority treatment and are paid in the order in which they are listed in the bankruptcy code.<sup>57</sup> Ad valorem taxes may qualify for priority treatment pursuant to two of these classifications: administrative expenses (second priority) or tax claims (eighth priority). Other unsecured claims for payment of ad valorem taxes are classified as general unsecured claims.

Both secured and unsecured amounts owed for taxes assessed while the bankruptcy is pending qualify as second-priority administrative expenses.<sup>58</sup> Interest incurred on such tax claims is generally accorded administrative status by implication.<sup>59</sup> As second-priority claims, these claims are subordinate in order of payment of unsecured claims in the bankruptcy case only to domestic support obligations, which are first-priority claims. In cases filed after October 17, 2005, taxing units are not required to file a request for payment of post-petition property taxes in order for such taxes to be an allowed administrative expense.<sup>60</sup> Taxing units are required to file claims for post-petition taxes in pre-BAPCPA cases.<sup>61</sup>

Claims for property taxes incurred *before* the filing of the bankruptcy petition that were last payable without penalty *within a year* of the filing of the petition qualify as eighth-priority claims under the code.<sup>62</sup> Property taxes in North Carolina, other than those on registered motor vehicles, are incurred on January 1, the listing date.<sup>63</sup> Property taxes on motor vehicles registered in North Carolina law are incurred annually on the date the registration is renewed or a new registration is applied for.<sup>64</sup> The last day for payment without penalty (that is, interest) on property taxes other than taxes on registered motor vehicles is the January 5 following the September 1 due date.<sup>65</sup> The last day for payment of the property tax on registered motor vehicles is the last day of the fourth month following the date of registration or renewal.<sup>66</sup> Two examples of the way to determine whether a tax owed is an eighth-priority claim—rather than a general unsecured claim—illustrate this point.

Suppose a debtor who owns no real property in the jurisdiction failed to pay the 2005 property taxes assessed on business personal property. The taxing officials did not act to enforce payment of these taxes before the debtor filed for bankruptcy on February 1, 2006. What is the status of the taxing unit's claim for the 2005 personal property taxes? First, these taxes were incurred on January 1, 2005, before the filing of the bankruptcy petition. Thus, under the bankruptcy code, the 2005 taxes are pre-petition taxes for purposes of classification. The taxes are unsecured because they were assessed on personal property and the debtor owns no real property in the taxing unit. (If the debtor owned real property in the taxing unit as of January 1, 2005, the taxes assessed against the debtor's personal property would be a lien on the debtor's real estate and the unpaid personal property taxes would be a secured claim.)<sup>67</sup> Taxes only become a lien on personal property after such property has been levied upon or attached by the

taxing unit.<sup>68</sup> Since the taxing unit in this case has taken no such action, the taxes remain unsecured. The 2005 taxes were last payable without interest on January 5, 2006, which is within one year of February 1, 2006, the date the bankruptcy petition was filed. The taxing unit's claim for 2005 taxes on the debtor's business personal property thus qualifies as an eighth-priority claim. The interest that accrued on the taxing unit's claim before the bankruptcy petition was filed (2 percent for January 6, 2006, through January 31, 2006) also is accorded priority status.<sup>69</sup>

Suppose that the same debtor owns a vehicle and renews the vehicle's registration on October 1, 2005. Property taxes on the vehicle were incurred October 1, 2005, which, of course, predates the February 1, 2006, filing of the bankruptcy petition. The taxes are payable without penalty until February 28, 2006, which is after the bankruptcy filing date. The claim for these taxes is therefore a pre-petition claim that was payable without penalty at the time the petition was filed. Since taxes on registered motor vehicles are not a lien on real property, they are always unsecured claims, unless the debtor's property has been levied upon or attached. Assuming there has been no levy or attachment in this case, which is a reasonable assumption since the taxes were not delinquent at the time the bankruptcy petition was filed, the claim for taxes on the registered motor vehicle qualifies as an eighth-priority claim.

## Discharge of Debts

Depending on the type of bankruptcy proceeding, taxing units may expect to have some portion of their claims paid during the course of the bankruptcy proceeding. Taxing units also should anticipate the possibility that the debtor's personal liability for certain tax claims that are not paid during the bankruptcy proceeding will be discharged at the close of the bankruptcy case.

While the automatic stay and the rules regarding classification of claims universally apply to all chapters of bankruptcy, the rules governing the payment of claims during the bankruptcy case and the discharge of personal liability afforded to the debtor upon emergence from bankruptcy differ according to the type of bankruptcy case. Depending on the characteristics of the debtor and the debt, a debtor may petition for bankruptcy pursuant to chapters 7, 9, 11, 12, or 13 of the bankruptcy code. Taxing units seldom encounter bankruptcy proceedings filed pursuant to chapter 12, which

permits family farmers and family fishermen to petition for bankruptcy, or chapter 9, which permits municipalities to file for bankruptcy. These types of bankruptcy proceedings are not, therefore, addressed in this bulletin.

This section briefly summarizes the distinguishing characteristics of the three major types of bankruptcy: chapter 7, entitled "Liquidation"; chapter 11, entitled "Reorganization"; and chapter 13, entitled "Adjustment of Debts of an Individual with Regular Income." It also addresses the issues of whether, and in what manner, taxing units can expect to have their claims paid during the course of such proceedings and the extent to which the debtor's personal liability for such claims is discharged at the conclusion of the bankruptcy case.

## Chapter 7 Liquidation

In a chapter 7 bankruptcy, a trustee appointed by either the bankruptcy administrator or United States trustee collects the nonexempt assets of the debtor's estate (if there are any), sells them, and distributes the cash to creditors, subject to the debtor's right to retain exempt property and the rights of secured creditors.<sup>70</sup> In most chapter 7 cases, the debtor has no nonexempt assets. These are referred to as "no-asset" cases. Obviously, if the trustee has no assets to liquidate, there will be no distribution of funds to creditors through the bankruptcy proceeding. If a debtor does have assets that may be distributed to creditors, claims filed within the time limits set forth in Section 501—or by the earlier of ten days after the mailing of the summary of the trustee's final report or the date the trustee begins final distribution of estate property—are paid in the order established in Section 507 of the code.<sup>71</sup> Allowed unsecured claims other than claims for payments owed for fines, penalties, forfeitures, or punitive damages are next in line to priority claims, followed by payment of interest at the legal rate calculated from the date the petition was filed.<sup>72</sup> In liquidating the assets of an estate, a trustee in a chapter 7 case filed before October 17, 2005, may, after exhausting unencumbered assets of the estate, subordinate property tax liens on real property by selling the property and paying from the portion of the proceeds normally allocable to the tax lien any unsecured claims that have a higher priority than unsecured tax claims.<sup>73</sup> Liens of property taxes may not be subordinated in cases filed on or after October 17, 2005, the effective date of the BAPCPA.<sup>74</sup>

While an individual, partnership, or corporation may file for chapter 7 bankruptcy, only an individual may receive a discharge in a chapter 7 case.<sup>75</sup> The

discharge of an individual under chapter 7 eliminates his or her personal liability for all pre-petition property tax debts, with two exceptions. The debtor remains personally liable for (1) unsecured priority tax claims and (2) pre-petition debt not listed or scheduled in a way that permits a creditor who had no notice or actual knowledge of the bankruptcy case to file a proof of claim in a timely manner.<sup>76</sup>

What effect does this discharge have on the collection of ad valorem taxes? Once the taxpayer's personal liability is discharged, the tax collector may no longer use the remedies of attachment, garnishment, and levy to satisfy the discharged tax obligations. However, *liens* on real property arising from unpaid pre-petition tax obligations are not discharged in a chapter 7 bankruptcy proceeding.<sup>77</sup> Therefore, if the trustee does not sell the property and subordinate tax liens to priority unsecured claims or extinguish the tax lien,<sup>78</sup> a taxing unit retains its security interest in real property for unpaid taxes at the conclusion of the bankruptcy. Given that a lien for taxes owed on personal property attaches to any real estate the taxpayer owns in the taxing jurisdiction as of the assessment date,<sup>79</sup> a tax collector may be able to collect delinquent personal and real property taxes through a foreclosure proceeding instituted after the taxpayer's discharge from bankruptcy.

It also bears noting that in a no-asset chapter 7 case, the debtor's personal liability for unpaid property taxes may be discharged even when the tax office receives no notice of the bankruptcy proceeding. This is so because no deadline is set for the filing of claims in a no-asset chapter 7 case. In fact, the bankruptcy court specifically directs creditors in no-asset cases not to file proofs of claim. Because there is no deadline in such cases, there is no time when it becomes too late "to permit the timely filing of a proof of claim."<sup>80</sup> Thus, the exception to discharge for unsecured debt does not apply.

## Chapter 11 Reorganization

Corporations, sole proprietorships, partnerships, and individuals may file for chapter 11 bankruptcy, although it is most often utilized by commercial enterprises that wish to continue operating a business and repay creditors through a court-approved plan of reorganization.<sup>81</sup> A firm that files for chapter 11 bankruptcy typically remains in possession of its property and serves in a fiduciary capacity with the rights and powers of a chapter 11 trustee.<sup>82</sup> The debtor files a plan of reorganization that classifies

claims and specifies whether they are impaired (that is, not payable in full) under the plan. The plan must provide for the same treatment of each claim in a particular class<sup>83</sup> and ultimately must be approved by the court.<sup>84</sup> A court may approve a plan only if it meets certain statutory thresholds for repayment of claims or permits impaired creditors to retain certain property interests.<sup>85</sup> A chapter 11 plan permits a debtor to repay certain obligations and provides that others will be discharged.

With respect to claims for ad valorem taxes, chapter 11 plans must provide that holders of secured claims retain the liens securing their claims and receive post-confirmation interest unless such creditors agree to contrary plan provisions.<sup>86</sup> To the extent that a claim for property taxes is oversecured, interest for the period from the time of the petition through the confirmation period (also referred to as *gap interest*) must be paid at the Machinery Act rate.<sup>87</sup>

Post-confirmation interest on secured claims for unpaid property taxes in bankruptcy cases filed before October 17, 2005, the date BAPCPA amendments became effective, must be paid at the legal rate set by the court.<sup>88</sup> In post-BAPCPA cases, post-petition interest on secured claims for property taxes assessed under North Carolina law must be paid at the Machinery Act rate.<sup>89</sup>

Chapter 11 plans must provide for payment of eighth-priority unsecured tax claims in regular installments totaling a value as of the effective date of the plan that is equal to the allowed amount of such claims.<sup>90</sup> Such claims are payable over a period not to exceed five years from the date the petition is filed.<sup>91</sup> The BAPCPA requires that eighth-priority claims receive equal or superior treatment under the plan than other unsecured claims.<sup>92</sup> The code's requirement that the value as of the effective date of the plan equal the allowed eighth-priority claim requires that such claims accumulate post-plan-confirmation interest at the legal rate set by the court. There is no requirement that the plan pay the gap interest on eighth-priority tax claims that accrues between the date the petition is filed and the date the plan is confirmed.<sup>93</sup> Such interest amounts can be significant, given that the plan may not be confirmed for years after the petition is filed.<sup>94</sup> However, even though such interest may not be included in the plan, it is not discharged upon confirmation of the plan.<sup>95</sup> The debtor therefore remains personally liable for such gap interest on eighth-priority tax claims.<sup>96</sup>

A chapter 11 plan must provide for payment of second-priority administrative expenses, which includes claims filed for post-petition ad valorem

taxes, in cash equal to the allowed amount of such claims. The code does not include a provision for paying these amounts in installments over a period of years.<sup>97</sup>

The effect of a chapter 11 discharge varies according to whether the debtor is an individual or another entity. In a chapter 11 case filed by a business, the court's confirmation of the plan serves as the discharge of pre-confirmation debts.<sup>98</sup> The terms of the plan substitute for the debtor's pre-bankruptcy obligations.<sup>99</sup> Individual debtors are discharged in separate actions upon completion of payments under the chapter 11 plan or upon payments that equal what creditors would have received in a chapter 7 proceeding.<sup>100</sup> Individual debtors discharged from chapter 11 remain personally liable for eighth-priority tax claims, including any gap interest accruing on such claims, but they are relieved of personal liability for debts other than those listed in 11 U.S.C. § 523.<sup>101</sup> Individuals also remain personally liable for pre-petition debt not listed or scheduled in time to permit a creditor who had no notice or actual knowledge of the bankruptcy case to file a timely proof of claim.<sup>102</sup> Business entities, in contrast, are discharged from *all* pre-petition debts whether or not provided for in the plan, including priority tax claims.<sup>103</sup>

Upon confirmation, property dealt with by the plan is freed of all pre-existing liens unless the plan specifies otherwise.<sup>104</sup> Taxing units should therefore make efforts to ensure that their liens are preserved by the plan.<sup>105</sup>

### Chapter 13 Payment Plan

Chapter 13 is commonly referred to as the "wage earner" chapter. Its purpose is to allow financially distressed individuals to repay creditors in whole or in part through a repayment plan that extends over a three- to five-year period.<sup>106</sup> Under current law, individuals are eligible for chapter 13 relief if they have regular income, unsecured debts of less than \$307,765, and secured debts of less than \$922,975.<sup>107</sup> These dollar limits are adjusted for inflation every three years.<sup>108</sup>

A chapter 13 debtor must file a plan of repayment within fifteen days of the filing of the petition.<sup>109</sup> The plan must provide for full payment of all priority claims unless a creditor agrees to different treatment of its priority claim.<sup>110</sup> If the plan classifies claims, it must provide the same treatment for each claim within each class and require the debtor to commit the portion of his or her future income

necessary to carry out the plan.<sup>111</sup> A chapter 13 plan may provide for payment of secured claims, or secured claims may be paid outside the plan.<sup>112</sup> If the plan includes secured claims, it must demonstrate that one of the following conditions has been met with respect to each allowed secured claim:<sup>113</sup> that the person or entity holding the claim (1) has accepted the plan, (2) will receive the property securing the claim by surrender of the debtor, or (3) will retain its lien and the payments to be made over the term of the plan equal the present value of the allowed claim on the effective date of the plan.<sup>114</sup> For an oversecured claim for property taxes assessed under North Carolina law, the plan must provide for gap interest at the Machinery Act rate for the period between the filing of the petition filing and confirmation of the plan.<sup>115</sup> The plan must provide for post-confirmation interest on secured claims at the legal rate in cases filed before the BAPCPA became effective and at the Machinery Act rate for cases filed before October 17, 2005.<sup>116</sup>

Chapter 13 plans provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly.<sup>117</sup> The trustee then distributes the funds to creditors according to the plan.<sup>118</sup> If a creditor with an unsecured nonpriority claim objects to the plan, the debtor can either (1) pay the amount of that creditor's claim in full or (2) commit all his or her projected "disposable income" to the plan during the plan period.<sup>119</sup> *Disposable income* is defined as income not reasonably necessary for the maintenance or support of debtors and their dependants; it includes charitable contributions, which may amount to as much as 15 percent of a debtor's gross income.<sup>120</sup>

Because secured claims generally pass through bankruptcy unaffected, secured creditors may decide that it is unnecessary to file proofs of claim in a chapter 13 case. They should nonetheless monitor the bankruptcy proceeding, as their rights may be affected by the terms of the plan. The extent to which a taxing unit's security interest may be compromised by neglecting to protect its right in bankruptcy is demonstrated by *In re Tepper*.<sup>121</sup> Tepper filed for chapter 13 bankruptcy on March 13, 1996. He listed the county tax collector as a creditor holding unsecured claims in the amount of \$2,248.99 in 1994 and 1995 ad valorem taxes. The tax collector did not file a proof of claim with the bankruptcy court. In August 1996, Tepper filed a chapter 13 plan that included no disbursements to the county for ad valorem taxes. The court confirmed the plan in November 1996. After the plan was confirmed, the county tax collector told Tepper that he would attempt to collect the delinquent ad valorem taxes after Tepper was discharged from bankruptcy. Tepper

then filed proofs of claims on behalf of the tax collector, listing as priority claims \$100 each for 1994 and 1995 taxes and the remainder of the taxes as unsecured priority claims. The tax collector did not object to the proofs of claim filed on behalf of the taxing unit. In the meantime, Tepper proposed to modify the plan to pay \$200 in priority tax claims to the tax collector “as full and complete payment of all claims.” The tax collector did not object to the modified plan either, and it was confirmed. Tepper was discharged from bankruptcy on July 9, 2001. On July 25, 2001, the tax collector billed Tepper for \$4,042.93 in 1994 and 1995 taxes, of which \$2,046.59 was interest. Tepper filed an adversary proceeding claiming that the tax was discharged in bankruptcy. The tax collector asserted that its claim for taxes was a secured claim that survived the chapter 13 proceeding, as both the original and modified plans stated that secured creditors would retain their rights.

The court noted that a creditor with a secured claim may ignore the bankruptcy proceeding and look to its lien for satisfaction of the debt *where no proof of claim is filed*. However, the court held, if a chapter 13 plan modifies the amount of a secured claim in accordance with an allowed proof of claim, the holder of the claim is bound by the terms of the plan. The court noted that Section 1328 of the bankruptcy code provides that upon completion of plan payments, a debtor is discharged from all debts “provided for” by the plan. Because the county tax debt was provided for by Tepper’s chapter 13 plan, the court found that the debt was discharged in bankruptcy.

The moral of the story: While secured claims will not be affected if no proof of claim is filed,<sup>122</sup> creditors should remain aware that the debtor may file a proof of claim representing the creditor’s secured interest. A proof of claim filed in accordance with Bankruptcy Rule 3001 constitutes prima facie evidence of the validity and amount of the claim. If the debtor files such a proof of claim in an amount less than the creditor’s lien and the creditor fails to object and the plan is confirmed, the creditor will be bound by its terms.<sup>123</sup>

If the debtor fails to make payments in accordance with the confirmed plan, the case may be dismissed or converted to a liquidation case under chapter 7.<sup>124</sup> A debtor who completes payments under the chapter 13 plan will be discharged, insofar as property taxes are concerned, from all debts “provided for by the plan or disallowed under [11 U.S.C. §] 502.”<sup>125</sup> Thus, if a taxing unit files a proof of claim for property taxes, those debts should be

“provided for” by the plan or disallowed. As the *Tepper* court explained, “provided for” does not mean *paid*: “Under § 1328, a debt is ‘provided for’ when a plan makes a provision for, deals with, or even *refers to* a claim.”<sup>126</sup>

If a taxing unit files no proof of claim for property taxes, a question arises as to whether the debtor’s personal liability for unpaid pre-petition taxes is discharged upon completion of payments pursuant to a chapter 13 plan. In such a case, the claim will not be “provided for” by the plan. The issue, thus, is whether an unfiled claim is “disallowed under section 502.” The Court of Appeals for the Tenth Circuit concluded in *G.S. Omni Corp. v. United States* that “a claim cannot be disallowed for failure to file.”<sup>127</sup> After the *G.S. Omni* decision, however, Congress amended Section 502 to provide for the disallowance of proofs of claims that are untimely filed.<sup>128</sup> Accordingly, the Bankruptcy Court for the Western District of Michigan, in *In re Jones*, disallowed a claim by the IRS based on its failure to timely file the proof of claim.<sup>129</sup> A taxing unit could argue, based on *G.S. Omni*, that if its claim was not disallowed, it was not discharged in the bankruptcy proceedings. A court might decline to accept this argument, however, as it would put a taxing unit that failed to file a claim in a better situation than a creditor that filed a late proof of claim that was disallowed by the court.

A debtor unable to complete chapter 13 payments through no fault of his or her own but who has made payments on unsecured claims equal to those that would have been paid in a chapter 7 liquidation, may receive a hardship discharge.<sup>130</sup> A hardship discharge does not, however, discharge a debtor’s personal liability for priority tax claims.<sup>131</sup> Hardship discharges are uncommon in practice.

Regardless of the tax collector’s ability to collect taxes owed from the personal assets of the discharged chapter 13 debtor, liens for unpaid property taxes survive a chapter 13 discharge, hardship or otherwise, although, as noted above, such liens may be modified by the terms of a confirmed plan.

## Summary

The following tables describe the operation of the automatic stay under various conditions and set forth the general rules governing whether claims survive a debtor’s discharge from bankruptcy and whether, and at what rate, interest will be paid on allowed claims.

Table 1. Application of Automatic Stay

Bankruptcy Code	Automatic Stay	Conditions
11 U.S.C. § 362(b)(20)	No stay of act to enforce lien against real property absent order from court upon motion of debtor that relieves debtor from order entered in previous case lifting stay.	<ul style="list-style-type: none"> <li>• Previous bankruptcy case.</li> <li>• Court granted relief from stay in previous case pursuant to 11 U.S.C. § 362(d)(4) as to this real property.</li> <li>• Based on finding that debtor filed bankruptcy to defraud creditors by transferring property or filing multiple bankruptcies.</li> <li>• Order granting relief from stay entered in last two years.</li> </ul>
11 U.S.C. § 362(b)(21)	No stay of act to enforce lien against real property.	<ul style="list-style-type: none"> <li>• Previous bankruptcy case pending in last 180 days, and               <ul style="list-style-type: none"> <li>• Previous case dismissed for failure to follow orders of court or to appear, or</li> <li>• Debtor obtained voluntary dismissal of case after creditor requested relief from automatic stay.</li> </ul> </li> </ul>
11 U.S.C. § 362(b)(21)	No stay of act to enforce lien against real property.	<ul style="list-style-type: none"> <li>• Court entered order in previous bankruptcy case prohibiting debtor from filing another case.</li> </ul>
11 U.S.C. § 362(c)(3)	Automatic stay ends thirty days after filing of bankruptcy petition with respect to the debtor for any pending actions taken with respect to a debt or property securing such debt.	<ul style="list-style-type: none"> <li>• Debtor is an individual.</li> <li>• Debtor filed a previous bankruptcy case that was pending in the preceding one year.</li> <li>• Case pending in preceding year was dismissed.</li> </ul>
11 U.S.C. § 362(c)(4)	No automatic stay.	<ul style="list-style-type: none"> <li>• Debtor is an individual.</li> <li>• Debtor filed two or more bankruptcy cases that were pending in previous year.</li> <li>• Two or more of debtor's cases pending in previous year were dismissed.</li> </ul>

**Table 2. Status of Unpaid Property Taxes upon Discharge from Bankruptcy.<sup>132</sup>**

<b>Chapter</b>	<b>Property Taxes Secured by a Lien on Real Property</b>	<b>Property Taxes Not Secured by a Lien on Real Property that Would Not Qualify as Priority Tax Claims</b>	<b>Property Taxes that Would Qualify as Eighth-Priority Tax Claims</b>
7	Lien for taxes remains on property. Debtor is not personally liable for pre-petition secured property taxes.	Debtor is not personally liable for pre-petition property taxes in this category.	Debtor remains personally liable for taxes in this category.
11	Lien remains on property (if provided for in plan). Debtor is not personally liable for pre-confirmation property taxes.	Debtor is not personally liable for pre-confirmation property taxes in this category.	Individual debtor remains personally liable for taxes in this category. <ul style="list-style-type: none"> <li>• Individual debtor remains personally liable for gap interest.</li> <li>• No personal liability for entity debtors.</li> </ul>
13	Lien remains on property, but may be modified by plan. Debtor is not personally liable for taxes provided for by plan or disallowed.	Debtor is not personally liable for taxes provided for by plan or disallowed.	Debtor is not personally liable for taxes provided for by plan or disallowed. Note that priority tax claims must be paid in full under chapter 13 plan.

**Table 3. Post-Petition Interest Payments on Bankruptcy Claims for Delinquent Ad Valorem Taxes.**

Chapter	Secured claim	Nonpriority unsecured claim	Eighth-priority tax claim	Second-priority administrative expenses
7	Yes, if claim is oversecured; post-petition interest at Machinery Act rate. 11 U.S.C. § 506(b)	Yes, interest paid at Machinery Act rate. Paid after all other claims.  11 U.S.C. §§ 726(a)(5), 511(a)	Yes, interest paid at Machinery Act rate. Paid after all other claims.  11 U.S.C. §§ 726(a)(5)	Yes, all post-petition interest at Machinery Act rate.  11 U.S.C. § 503
11	Yes, <ul style="list-style-type: none"> <li>• to extent claim is oversecured; gap interest at Machinery Act rate.</li> <li>• for all secured claims, in cases filed before 10/17/2005, post-discharge interest at legal rate.</li> <li>• For all secured claims, in cases filed after 10/17/2005, post-discharge interest at Machinery Act rate</li> </ul> 11 U.S.C. §§ 506(b) 511(a), 1129(a)(7)(b)	No interest.	Yes; post-discharge (post-plan-confirmation) interest at the Machinery Act rate.  11 U.S.C. § 1129(a)(9)(C); 11 U.S.C. § 511(b)	Yes, post-petition interest at Machinery Act rate.  11 U.S.C. § 503
13	Yes, <ul style="list-style-type: none"> <li>• to extent claim is oversecured; gap interest at Machinery Act rate.</li> <li>• 11 U.S.C. § 506(b)</li> <li>• Post-discharge interest at Machinery Act rate for cases filed after 10/17/05, post-discharge interest at legal rate for cases filed before 10/17/05.</li> </ul> 11 U.S.C. § 1325(a)(5)(B)(ii); 11 U.S.C. § 511(a)	No interest.	No interest.  11 U.S.C. § 1322(a); <i>In re Fowler</i> , 394 F.3d 1208, 1212 (9th Cir. 2005)	Yes, all post-petition interest, not just post-discharge interest at Machinery Act rate.  11 U.S.C. § 503(b); <i>United States v. Friendship College</i> , 737 F.2d 430 (4th Cir. 1984); <i>In re Fowler</i> , 394 F.3d 1208 (9th Cir. 2005)

1. See *In re Integrated Telecom Express, Inc.*, 384 F.3d 108 (3d Cir. 2004) (explaining that good faith standard is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy and to prevent abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without providing any corresponding benefit); see also *Carolin Corp. v. Miller*, 886 F.2d 693, 698 (4th Cir. 1989) (finding good faith requirement “indispensable to proper accomplishment of the basic purposes of Chapter 11 protection”).
2. See *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997).
3. *Local Loan*, 292 U.S. 234, 244 (1934) (quoting *Williams v. U.S. Fidelity & Guaranty Co.*, 236 U.S. 549, 554–55 (1915)).
4. *Id.*
5. See *Integrated Telecom*, 384 F.3d at 108.
6. THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* 5–19 (1986).
7. See *Holtkamp v. Littlefield (In re Holtkamp)*, 669 F.2d 505, 508 (7th Cir. 1982) (noting that the automatic stay in bankruptcy operates “to preserve what remains of the debtor’s insolvent estate and to provide a systematic equitable liquidation procedure for all creditors”).
8. *Id.*; JACKSON, *LOGIC AND LIMITS OF BANKRUPTCY LAW* 5–19
9. Citations to the bankruptcy code as it existed before BAPCPA amendments are to the 2000 version of the U.S. Code. Citations of the current bankruptcy code are to the 2005 version of the U.S. Code Annotated.
10. Bankruptcy cases are launched by the filing of a petition. Fed. R. Bankr. P. 1002.
11. *In re Lile*, 103 B.R. 830, 836 (Bankr. S.D. Tex. 1989).
12. 11 U.S.C. § 362; *Mann v. Chase Manhattan Mortgage Corp.*, 316 F.3d 1, 3 (1st Cir. 2003).
13. 3 COLLIER ON BANKRUPTCY § 362.03 (Alan N. Resnick & Henry J. Sommer eds., 15th ed., rev. 2006).
14. See *Mann*, 316 F.3d at 1, 3.
15. *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997) (automatic stay designed to afford debtors “breathing room” free from creditor harassment).
16. 3 COLLIER ON BANKRUPTCY at § 362.03.
17. 11 U.S.C.A. § 362(h) (2005).
18. *Id.* at § 362.11.
19. *Id.* at § 362(h).
20. *Id.* at § 362.02.
21. *Id.* at § 362(a)(1).
22. 11 U.S.C.A. § 362(a)(3) (2005).
23. *Id.* at §§ 541(a)(1) and 541(b) (setting forth narrow exceptions from broad definition).
24. Wages earned by an individual debtor for services performed after commencement of the case are not property of the estate. *Id.* at § 541(a)(6).
25. *Id.* at § 362(a)(5).
26. *Id.* at § 362(b)(18).
27. 11 U.S.C.A. § 362(b)(9)(D) (2005).
28. WILLIAM A. CAMPBELL, *PROPERTY TAX COLLECTION IN NORTH CAROLINA* 237 (4th ed. 1998).
29. 11 U.S.C.A. § 362(c) (2005).
30. *Id.* at § 362(a)(3) (prohibiting any act to obtain possession of the property of the estate).
31. *Id.* at § 1325(b).
32. *Id.* at § 1306.
33. *Id.* at § 1327(b).
34. *In re Leavell*, 190 B.R. 536 (Bankr. E.D. Va. 1995) (discussing cases attempting to reconcile §§ 1306(a) and 1327(b)).
35. See *In re Johnson*, 335 B.R. 805 (Bankr. W.D. Tenn. 2006).
36. *In re Reynard*, 250 B.R. 241 (Bankr. E.D. Va. 2000).
37. See *In re Leavell*, 190 B.R. at 539 (citing cases holding that upon confirmation of plan property that is necessary to implement the chapter 13 plan remains property of the estate protected by the automatic stay).
38. *In re Reynard*, 250 B.R. at 248.
39. *Id.*
40. *Id.*
41. But see *In re Reamy*, 169 B.R. 352 (Bankr. D. Md. 1994) (concluding that the county could foreclose on tax lien after confirmation of chapter 13 plan).
42. G.S. 105-330.4(b)
43. *Id.*
44. G.S. 105-330.7; G.S. 20-50.4.
45. WILLIAM A. CAMPBELL, *PROPERTY TAX COLLECTION IN NORTH CAROLINA* 235 (4th ed. 1998).
46. 11 U.S.C.A. § 362(b)(21) (2005).
47. *Id.*
48. *Id.* at § 362(c)(4).

49. As one court explained: "In an Act [BAPCPA] in which head-scratching opportunities abound for both attorneys and judges alike, § 362(c)(3)(A) stands out. It uses the amorphous phrase 'with respect to' a total of four times in short order and raises questions about the meaning of the words 'action taken,' and 'to the debtor.' The language of the statute is susceptible to conflicting interpretations, and if read literally, would apply to virtually no cases at all. In sum, it's a puzzler." *In re Paschal*, 337 B.R. 274, 277 (Bankr. E.D.N.C. 2006).

50. See *In re Jones*, 339 B.R. 360, 363 (Bankr. E.D.N.C. 2006); *In re Harris*, 2006 WL 1195396 (Bankr. N.D. Ohio 2006); *In re Moon*, 339 B.R. 668, 671 (Bankr. N.D. Ohio 2006).

51. See *In re Moon*, 339 B.R. at 672.

52. *In re Paschal*, 337 B.R. at 277.

53. 11 U.S.C.A. § 501(a) (2005); Fed. R. Bankr. P. 3001.

54. 11 U.S.C.A. § 502(b)(9).

55. G.S. 105-355.

56. *Id.*

57. 11 U.S.C.A. § 507(a)(1)–(10) (2005).

58. *Id.* at § 503(b)(1)(B)(i) (according administrative status to any tax incurred by the estate, including property taxes).

59. See *U. S. v. Friendship College, Inc.*, 737 F.2d 430, 433 (4th Cir. 1984).

60. 11 U.S.C. § 503(b)(1)(D) (2005); see also Carl M. Jenks, *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Summary of Tax Provisions*, 79 AM. BANKR. L.J. 893, 906–07 (2005) (discussing BAPCPA amendments to provisions governing taxes that qualify as administrative expenses).

61. 11 U.S.C. § 503(b) (2000).

62. *Id.* at § 507(a)(8).

63. See G.S. 105-285 (value, ownership, and location of property to be determined as of January 1); G.S. 105-355 (providing that lien attaches to real property as of date property is to be listed pursuant to G.S. 105-285); *In re Member's Warehouse*, 991 F.2d 116 (4th Cir. 1993) (holding that assessment date for real property taxes in North Carolina is January 1).

64. G.S. 105-330.2.

65. *Id.* at 105-360.

66. *Id.* at 105-330.4.

67. G.S. 105-355.

68. *Id.*

69. See 11 U.S.C.A. § 502(b) (2005) (allowing claims in the amount owed on the date of petition).

70. See BANKRUPTCY BASICS 7 (Bankr. Judges Div. Admin. Office of the Courts) (rev. 3d. ed. April 2006), available at [www.uscourts.gov/bankruptcycourts/bankruptcybasics.html](http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html). Section 522 defines the property exempted from the estate. 11 U.S.C.A. § 522 (2005).

71. 11 U.S.C.A. § 726 (2005).

72. *Id.*

73. 11 U.S.C. § 724 (2000); See *In re A.G. Van Metre, Jr., Inc.*, 155 B.R. 118 (Bankr. E.D.Va. 1993) (affirming sale of property free and clear of liens in which statutory tax lien was subordinated to administrative expenses), *aff'd*, 16 F.3d 414 (4th Cir. 1994) (per curiam) (unpublished).

74. 11 U.S.C.A. § 724(b) (2005); See also Jenks, *supra* note 60, at 893 (discussing treatment of tax claims under BAPCPA).

75. See 11 U.S.C.A. §§ 109(b), 101(41), 727(a) (2005).

76. *Id.* at § 727.

77. See *id.* at § 524(a)(2); *In re Tarnow*, 749 F.2d 464 (7th Cir. 1984).

78. 11 U.S.C.A. §§ 363, 724 (2005).

79. See G.S. 105-355(a).

80. *In re Serge*, 285 B.R. 632, 634 (Bankr. M.D.N.C. 2002); see also WILLIAM A. CAMPBELL, PROPERTY TAX COLLECTION IN NORTH CAROLINA 14 (4th ed. Supp. 2000) (citing holding in *Judd v. Wolfe*, 78 F.3d 110 (3d Cir. 1996), that in a no-asset, no-bar date case, dischargeability is unaffected by scheduling).

81. BANKRUPTCY BASICS, *supra* note 70, at 32.

82. *Id.*

83. 11 U.S.C.A. § 1123 (2005).

84. *Id.* at §§ 1121; 1129.

85. *Id.* at 1129(a)(7).

86. *Id.* at § 1129(b)(2).

87. *Id.* at § 506(b).

88. 11 U.S.C.A. § 1129(a)(7), (b)(2)(A) (2005).

89. *Id.* at § 511(a) (2005).

90. *Id.* at § 1129(a)(9) (2005).

91. *Id.* at § 1129(a)(9)(C) (2005).

92. *Id.* at § 1129(a)(9)(C)(iii) (2005).

93. *United States v. Heisson (In re Heisson)*, 217 B.R. 1 (Bankr. D. Mass. 1997) (explaining that 11 U.S.C. § 502(b)(2) (2000) prevents filing of a claim for gap interest, and that, therefore, claims under § 1129(a)(9) include interest only to the date of the petition).

94. *See, e.g., In re Artisan Woodworkers*, 225 B.R. 185 (B.A.P. 9th Cir. 1998) (petition filed May 14, 1986, and plan confirmed February 10, 1989); *In re Heisson*, 217 B.R. at 2 (petition filed November 8, 1991, and plan confirmed May 31, 1995).

95. *United States v. Tuttle*, 291 F.3d 1238, 1244 (10th Cir. 2002) (explaining that § 1141(d)(2) specifically provides that confirmation of a chapter 11 plan does not discharge a debtor from any debt listed in § 523, which in turn provides that a discharge does not discharge an individual debtor from any debt for a tax liability regardless of whether a claim for such tax liability was filed or allowed); *In re Heisson*, 217 B.R. at 5 (reaching same conclusion).

96. *Tuttle*, 291 F.3d at 1244; *Heisson*, 217 B.R. at 5.

97. *See Jenks, supra* note 60, at 906 (discussing BAPCPA provisions requiring payment of post-petition taxes when due).

98. 11 U.S.C.A. § 1141(d) (2005).

99. *In re H.R.P. Auto Center, Inc.*, 130 B.R. 247, 256 (Bankr. N.D. Ohio 1991).

100. 11 U.S.C.A. § 1141(d)(5) (2005).

101. *See id.* at § 1141(d).

102. 11 U.S.C.A. § 1141(d)(2).

103. *Id.* at § 1141(d)(1). Corporate debtors are not, however, discharged from liability for a tax that the debtor willfully attempted to evade. *Id.* at § 1141(d)(6). Moreover, if a claimant has no notice of the bankruptcy proceeding, his or her claim is not discharged by the order of confirmation. *See Jones v. Chemetron Corporation*, 212 F.3d 199, 209 (3d Cir. 2000).

104. 11 U.S.C.A. § 1141(c) (2005).

105. WILLIAM A. CAMPBELL, *PROPERTY TAX COLLECTION IN NORTH CAROLINA* 250 (4th ed. 1998) (citing 11 U.S.C. §§ 1123, 1129).

106. *See BANKRUPTCY BASICS, supra* note 70, at 18.

107. 11 U.S.C.A. § 109(e) (2005).

108. *Id.* at § 104 (Adjustment of Dollar Amount, notes).

109. Fed. R. Bankr. P. 3015(b).

110. 11 U.S.C.A. § 1322(a)(2) (2005).

111. *Id.* at § 1322(a)(3).

112. WILLIAM A. CAMPBELL, *PROPERTY TAX COLLECTION IN NORTH CAROLINA*, Ch. XI Tax Claims and Bankruptcy, at 251 (4th ed. 1998) (noting that all three districts in North Carolina include secured claims in the plan).

113. Pursuant to 11 U.S.C. § 506(a), a secured claim is an "allowed secured claim" to the extent of the value of the security. *In re Townsend*, 256 B.R. 881, 883 (Bankr. N.D. Ill. 2001).

114. 11 U.S.C.A. § 1325(a)(5)(ii) (2005); *In re Grabow*, 323 B.R. 236, 237 (Bankr. E.D. Wis. 2005).

115. *Id.* at § 506(b).

116. *Id.* at §§ 511(b), 1325(a)(5)(B)(ii).

117. *BANKRUPTCY BASICS, supra* note 70, at 26.

118. *Id.*

119. *Id.* at 20 (citing 11 U.S.C. § 1325).

120. 11 U.S.C.A. § 1325(b)(2) (2005).

121. *In re Tepper*, 279 B.R. 859 (Bankr. M.D. Fla. 2002).

122. 11 U.S.C.A. § 1327 (2005).

123. *In re Tepper*, 279 B.R. at 864.

124. 11 U.S.C.A. § 1307 (2005).

125. *Id.* at § 1328.

126. *In re Tepper*, 279 B.R. at 865 (citing *Rake v. Wade*, 508 U.S. 464, 474 (1993)) (emphasis added).

127. *G.S. Omni*, 835 F.2d 1317, 1318 (10th Cir. 1987).

128. 11 U.S.C.A. § 502(b)(9) (2005).

129. *In re Jones*, 238 B.R. 338 (Bankr. W.D. Mich. 1999).

130. *See* 11 U.S.C.A. § 1328(b) (2005).

131. *Id.* at § 1328(c); WILLIAM A. CAMPBELL, *PROPERTY TAX COLLECTION IN NORTH CAROLINA* 252 (4th ed. 1998).

132. Debtors in chapter 7 or 13 cases and individual debtors in chapter 11 cases are not discharged from personal liability for pre-petition property taxes not listed or scheduled in time to permit a creditor who had no knowledge of the bankruptcy case to file a timely proof of claim. *See text* for a discussion of this exception to discharge in a Chapter 7 no-asset case.

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