

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

PROCEDURES REGARDING
INTERNAL REVENUE SERVICE
CLAIMS IN CHAPTER 13 CASES
ASSIGNED TO JUDGE WAITES

ADMINISTRATIVE ORDER

In many Chapter 13 cases, the determination and payment of Internal Revenue Service claims is critical to the feasibility of the Chapter 13 plan. In order to improve the efficient administration of Chapter 13 cases by avoiding premature litigation regarding such claims, the undersigned encouraged the Chapter 13 trustees and IRS representatives to establish a reliable procedure which would fairly balance the needs of all parties.

The attached Agreement was reached and the parties seek its adoption as an Order of the Court.

Following an opportunity for public comment and consideration, the undersigned adopts the procedures set forth in the Agreement and orders such procedures effective in cases assigned to and pending before him, but only to the extent the terms of the Agreement do not contradict or constitute a waiver by any party of the provisions of the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 11, 2014

Agreement Regarding Chapter 13 Debtors' Filing of Previously- Unfiled Prepetition Tax Returns Required to be Filed Pursuant to 11 U.S.C. § 1308 and the IRS's Filing of Initial or Amended Proofs of Claim in Response Thereto

Preface. This agreement represents a new understanding between the Internal Revenue Service ("IRS") and W. Keenan Stephenson, Jr., Joy S. Goodwin, and James M. Wyman, Chapter 13 Trustees for the District of South Carolina, that is intended to take into account differing – and sometimes competing – priorities of those organizations and to strike a new balance regarding the relative burdens placed on them caused by the filing of prepetition federal tax returns by debtors during the course of their Chapter 13 bankruptcy proceedings.

Applicability. This agreement applies only to Chapter 13 cases that are assigned to Bankruptcy Judge John E. Waites.

This agreement applies to all prepetition tax returns, whether delinquent¹ or current², that the Debtor is required to file with the IRS under applicable nonbankruptcy law pursuant to 11 U.S.C. § 1308, including not only individual income (1040) tax returns, but also any other tax returns – e.g., those for social security (941/FICA or 944), unemployment (940/FUTA), heavy highway vehicle use (2290), partnership (1065), corporate income (1120) and excise (720) taxes – that the Debtor may be required to file.

¹ For the purposes of this agreement, "delinquent" tax returns constitute returns that were not filed with the IRS by the official deadline (including any filing extension granted by the IRS) applicable to the particular type of tax. (E.g., individual income (1040) tax returns are typically required to be filed on April 15 of the year following the year during which such taxes accrued.)

² For the purposes of this agreement, "current" tax returns constitute returns that, although not delinquent (as defined in footnote 1), are nevertheless required, pursuant to 11 U.S.C. § 1308(a), to be filed no later than the day before the date on which the meeting of creditors is first scheduled to be held under 11 U.S.C. § 341, if such date occurs prior to the official deadline applicable to the particular type of tax. (E.g., an individual income (1040) tax return for tax year 2013, although not required *under tax law* to be filed until April 15, 2014, would be required to be filed on February 10, 2014, if the § 341 meeting is first scheduled to be held on February 11, 2014.)

This agreement does *not* apply to any tax period –

- (a) for which the IRS has already made an assessment;
- (b) as to which the Debtor has filed an amended tax return that the IRS has not had an opportunity to review, or is in the process of reviewing, in order to decide whether or not to accept same³;
- (c) as to which the Debtor has filed an ostensible initial – i.e., unamended – tax return, but for which *the IRS itself* has previously prepared a substitute-for-return pursuant to 26 U.S.C. § 6020(b), utilizing income and other financial documentation then available to it pertaining to such Debtor; or
- (d) that is subject to an ongoing IRS examination (typically designated as a “Pending Examination” on the IRS’s most recently filed proof of claim or amendment thereof).

³It is well settled that there is no statutory provision requiring the IRS to accept an amended tax return that is filed after the deadline for the original return. *See Hillsboro Nat’l Bank v. C.I.R.*, 460 U.S. 370, 380 n.10 (1983) (citing *Koch v. Alexander*, 561 F.2d 1115, 1117 (4th Cir. 1977)). In *Koch*, the Fourth Circuit stated

[t]here is simply no statutory provision authorizing the filing of amended tax returns, and while the IRS has, as a matter of internal administration, recognized and accepted such returns for limited purposes, their treatment has not been elevated beyond a matter of internal agency discretion. . . . As the Third Circuit has recognized, “(I)t would be utterly disruptive of the administration of the tax laws if a taxpayer could disregard his return and automatically change an assessment based thereon by making an amended return in his favor long after the expiration of the time for filing the original return.”

Koch, 561 F.2d at 1117 (quoting *Miskovsky v. United States*, 414 F.2d 954, 956 (3rd Cir. 1969) and citing *Kearney v. A’Hearn*, 210 F. Supp. 10 (S.D.N.Y.1961), *aff’d per curiam* on the opinion of the district court in 309 F.2d 487 (2d Cir. 1962); *Klinghamer v. Brodrick*, 242 F.2d 563 (10th Cir. 1957)) (internal footnote omitted).

Agreement

1. Debtors who have unfiled delinquent or current tax returns must file *all* such returns no later than twenty-eight (28) days prior to the first-scheduled confirmation hearing. If *all* such returns are not filed with the IRS by such date, the IRS or the assigned Chapter 13 Trustee may move, pursuant to 11 U.S.C. § 1307(e), to dismiss the Debtor's chapter 13 bankruptcy case for failing to comply with the requirements of 11 U.S.C. § 1308. (Debtors are strongly encouraged, during the course of their bankruptcy cases, to file all such tax returns either locally – i.e., at the IRS's Columbia Insolvency Unit as described in paragraph 2 below – or electronically, inasmuch as Debtors filing such returns with an IRS Service Center or a local IRS Field Office may cause delays in the Insolvency Unit amending its proofs of claim.)

2. It will be the Debtor's responsibility to deliver – either by hand-delivery, United States mail, or overnight express mail – original *signed* copies of such returns (and/or an affidavit stating that one or more returns for any remaining outstanding tax periods are not required to be filed) to the IRS Insolvency Unit located at the Strom Thurmond Federal Building, 1835 Assembly Street, Room 469 (*not* the Taxpayer Assistance Room located on the Sixth Floor), Columbia, South Carolina 29201. (It may be necessary to knock on the door to such room to obtain assistance from personnel in such unit.) At its discretion, the IRS Insolvency Unit may also accept faxed copies of such returns. (Debtors are encouraged to file all delinquent or current tax returns at the same time.)

3. Within fourteen (14) days of its receipt of *all* delinquent or current tax returns required to be filed under 11 U.S.C. § 1308 (and/or an affidavit stating that one or more returns for any remaining outstanding tax periods are not required to be filed), the IRS

Insolvency Unit will file an initial or amended claim including the tax liability amount shown on each such return – or, in the event of a claimed tax refund, the amount of \$0.00 – as the tentative “Tax Due” amount, along with the notation of “Per Return” (to be inserted under the “Date Tax Assessed” column of such claim), for each such tax period so affected, *unless* the IRS has reasonable grounds to believe that any such return or affidavit so filed is not correct, in which case the IRS Insolvency Unit will not be required to so file or amend its proof of claim, but will communicate such information to the Debtor’s attorney within fourteen (14) days of its receipt of the return or affidavit at issue. The IRS will not be required to file an initial proof of claim or amended proof of claim as described herein until such time as the Debtor files *all* of the previously-unfiled prepetition tax returns required to be filed pursuant to 11 U.S.C. § 1308.

4. A Debtor shall not file an objection to any IRS claim or amended claim containing one or more estimated liabilities resulting from unfiled returns until after the aforesaid fourteen (14)-day period following the IRS’s receipt of *all* delinquent or current tax returns required to be filed under 11 U.S.C. § 1308 (and/or an affidavit stating that one or more returns for any remaining outstanding tax periods are not required to be filed) has passed.

Agreed this 7th day of February 2014, in Columbia, South Carolina.

/s/ W. Gaston Fairey

W. Gaston Fairey, # 758
Staff Attorney
Joy S. Goodwin, Chapter 13 Trustee
On behalf of Trustees Stephenson,
Goodwin and Wyman

/s/ J. Douglas Burnett

J. Douglas Barnett #2144
Assistant U.S. Attorney
On behalf of the Internal Revenue
Service