MISSISSIPPI BANKRUPTCY CONFERENCE 2026
FEDERAL TAX ISSUES IN BANKRUPTCY[1]

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I. Notice

A. Law

1. 11 U.S.C. § 342(f)(1) - An entity may file with any bankruptcy court a notice of address to be used . . . by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

2. Fed. R. Bankr. P. 5003(e) - United States and state governmental units may designate service addresses on a mailing register kept by the clerk of court.

3. Fed. R. Bankr. P. 2002(j) - Copies of notices required to be mailed to all creditors under this rule shall be mailed . . . (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; [and] (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted . . . .

4. Fed. R. Bankr. P. 7004(b)(4) - Service may be made by first class mail postage prepaid as follows: [u]pon the United States, by mailing a copy of the summons and complaint to the **civil process clerk** at the office of the United States Attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency.

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[1] This is not an official statement of the United States of America, United States Attorney's Office for the Northern District of Mississippi, United States Department of Justice, or Internal Revenue Service. The information contained herein and the oral presentation of it is provided solely for informational (sometimes entertainment) purposes and is intended to be used strictly as a basis for discussion (not retaliation or ridicule). It is not intended to be a complete overview of the subject matter nor should it be construed as legal advice.

5. Fed. R. Bankr. P. 7004(b)(5) - Service may be made by first class mail postage prepaid as follows: A[u]pon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer and agency.

6. Fed. R. Bankr. P. 9014(b) - Contested matters are served in the same manner as an adversary proceeding under Fed. R. Bankr. P. 7004. Therefore, the agency, the United States Attorney and the Attorney General of the United States must be served with contested matters. *See I.R.S. v. Patriot Contracting Corp.*, 2007 WL 433392 (Bankr. D.N.J. 2007) (In short, Rules 9014(b) and 7004(b)(4) provide that motions brought in contested matters must be served by mailing a copy of the motion to the particular agency, the local United States Attorney's Office and the Attorney General of the United States.

7. "Notice or knowledge of an Assistant United States Attorney cannot, as a general proposition, be imputed to the particular agency to which a debt is owing. *United States, Small Business Administration v. Bridges*, 894 F.2d 108, 112 (5th Cir. 1990) (holding that notice or actual knowledge of one United States government agency will not be imputed to another agency); *In re H. & C. Table Co.*, 457 F.Supp. 858, 860 (W.D. Tenn. 1978) (The United States is a monstrous government and one agency will not always know what another agency is doing; when the appropriate representative of the government is not notified, the rights of the United States may be jeopardized (citation omitted); *U.S. Metal Products Co. v. United States*, 302 F. Supp. 1263, 1270 (E.D.N.Y. 1969) (discussing that notice or actual knowledge of one portion of an agency not imputed to another portion of the same agency); *United States v. Yale Transport Corp.*, 184 F.Supp. 42, 47 (S.D.N.Y. 1960) ([N]otice of bankruptcy proceedings should be reasonably calculated to come to the attention of that branch of the Government familiar with the claims involved and which exercises functions with respect thereto; *U. S. v. Golenburg*, 175 F.Supp. 415, 418 (N.D. Ohio 1959) (holding that imputing notice or knowledge from one government agency to another is obviously unreasonable).

8. Summary

a. Where the IRS is a creditor, provide notice to the IRS at its designated addresses.

b. Where another federal agency is a creditor, provide notice to the agency and the United States Attorney.

c. Serve adversary proceedings on the agency (IRS if taxes are implicated), the United States Attorney, and the Attorney General.

d. Serve contested matters (objections to claim, motions, plans, etc.) on the agency (IRS if taxes are implicated), the United States Attorney, and the Attorney General. 3

B. The IRS has listed the address on the Northern District of Mississippi Bankruptcy Court's register as:

Internal Revenue Service
P.O. Box 7346
Philadelphia, Pennsylvania 19101-7346

FAX: (855) 235-6787

C. What Address to Use to Serve the United States Attorney with Adversary Proceedings and Contested Matters (Objections to Claim, Motions, Plans, etc.) in the Northern District of Mississippi?

Office of the United States Attorney
Attn: Civil Process Clerk
900 Jefferson Ave.
Oxford, MS 38655

D. What Address to Use to Serve the Attorney General of the United States with Adversary Proceedings and Contested Matters (Objections to Claim, Motions, Plans, etc.)?

For IRS Matters:

Attorney General of the United States
U.S. Department of Justice Tax Division
Civil Trial Section, Southern Region
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

For Non-IRS Matters:
Attorney General of the United States
Main Justice Building
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Practice Pointer - Include both the U.S. Attorney and the Attorney General on your mailing matrix to ensure that service of a plan which significantly affects the interest of the United States (e.g., provides for the valuation of a secured claim, seeks an injunction, materially modifies terms of the form plan, etc.) is proper.

II. Information Gathering-IRS Account

Fastest and best way to get information for an individual

https://www.irs.gov/individuals/get-transcript

Note: This method requires an individual to establish a ID.me account. They may already have one as one account allows you to sign in to other government agencies.

Access tax records and transcripts in your Individual Online Account
You can view your tax records in your Individual Online Account. This is the fastest, easiest way to:

- **View, print or download your transcripts**
- **Find out how much you owe**
- **Look at your payment history**
- **See your prior year adjusted gross income (AGI)**
- **View other tax records**
- **Information return documents to assist in filing your claims**

If you have any trouble

https://www.irs.gov/individuals/transcript-services-for-individuals-faqs

Available Transcript Types

- **Tax Return Transcript**: Shows most line items from your original tax return as filed, including adjustments (Form 1040 series).
- **Tax Account Transcript**: Shows basic data like marital status, type of return filed, adjusted gross income, taxable income, and payment history or post-filing adjustments.
- **Record of Account:** Combines the tax return and tax account transcripts into a single comprehensive record. **THIS IS THE MOST COMPREHENSIVE ONE YOU CAN GET!**
- **Wage and Income Transcript**: Shows data from information returns received by the IRS, such as Form W-2, Form 1099, Form 1098, and Form 5498.
- **Verification of Non-filing Letter**: Proof from the IRS that they have no record of a processed Form 1040 for the requested year.

Alternative to getting a transcript online
We recommend getting a transcript online since that's the fastest method. If you're unable to register, you can get a tax return or tax account transcript mailed to you instead.
What you need
To get a transcript mailed to you, you need your mailing address from your latest return.
What you get
- Tax return or tax account transcript types delivered by mail
- Transcripts that arrive in **5 to 10 calendar days** at the address we have on file for you

You can also request a transcript be mailed to you by calling our automated phone transcript service at 800-908-9946.

III. Priority Tax Claims - Section 507(a)(8)

The following federal government tax claims are entitled to priority claims status:

A. Three Year Rule. Income taxes for which a return is last due, considering extensions, within 3 years of the date of the filing of the bankruptcy case. 11 U.S.C. § 507(a)(8)(A)(i). The operative date is the due date (as extended) for such return, not the actual filing date.

B. 240 Day Rule. Income taxes assessed within 240 days of the petition date. 11 U.S.C. § 507(a)(8)(A)(ii). The 240-day period is extended in two situations. First, it is extended by the time which an offer in compromise was pending or in effect during the 240-day period, plus 30 days. Second, it is extended by the time a stay against collection proceeding was in effect during the 240-day period, plus 90 days.

C. Still Assessed Rule. 11 U.S.C. § 507(a)(8)(A)(iii). If an income tax has not been assessed, but is still assessable, then it is entitled to priority status unless the statute of limitations is still open because of a late or unfiled return or the taxpayers fraud. Congress did not want to penalize creditors for a debtors bad acts. However, the rule applies if the statute of limitations on assessment is open for some other reason, such as a consent to extend the statute executed by the debtor or pending Tax Court litigation.

D. Withholding Taxes. A tax required to be collected or withheld and for which the debt is liable in whatever capacity is a priority tax claim. 11 U.S.C. § 507(a)(8)(C).

E. Employment Taxes - Three Year Rule. Employment taxes for which a return is last due, considering extensions, within 3 years of the date of the filing of the bankruptcy case. 11 U.S.C. § 507(a)(8)(D). This category covers Form 940 and 941 taxes.

F. Excise Taxes. There are two types of excise taxes which are entitled to priority claim status: (1) excise taxes on prepetition transactions for which a return is last due considering extensions within three years of the filing of the bankruptcy case, and (2) Excise taxes for which a return is not required and which relate to a transaction which occurred within three years of the filing of the bankruptcy case. 11 U.S.C. § 507(a)(8)(E).

G. Customs Duties. Certain customs duties are entitled to priority claims status. 11 U.S.C. § 507(a)(8)(F).

H. Compensatory Loss Penalties. A penalty related to a Section 507(a)(8) claim which is compensation for actual pecuniary loss is entitled to priority claims status. 11 U.S.C. § 507(a)(8)(G).

I. Other Important Points About Priority Tax Claims.

1. Interest which accrues on a prepetition tax claim is entitled to the same priority as the underlying tax claim. *In re Larson*, 862 F.2d 112, 119 (7th Cir. 1988); *In re Stonecipher Distributors, Inc.*, 80 B.R. 949 (Bankr. W.D. Ark. 1987).

2. Tolling. Amended § 507(a)(8) (hanging paragraph) codifies and extends the Supreme Courts holding in *Young v. United States*, 535 U.S. 43 (2002) (serial bankruptcies toll tax priority time periods). Specifically, the time periods for determining whether a tax is a priority claim is tolled for the following time periods:

(a) the time during which a collection due process request, hearing, and appeal prevented collection, plus 90 days; plus

(b) the time during which the automatic stay was in effect or during which one or more confirmed plans prohibited collection, plus 90 days.

(c) Erroneous Refunds - have the same priority status as the tax to which they relate. 11 U.S.C. § 507(c).

IV. Administrative Tax Claims - Section 507(a)(2)

These are claims which arise during the pendency of the bankruptcy case. The claim is allowable under Section 503. In Chapter 13, the IRS has the option of filing a claim under Section 1305(a)(1). The debtor does not have the option of filing a Section 1305(a) claim on behalf of the IRS. *In re Dickey*, 64 B.R. 3 (Bankr. E.D. Va. 1985); *see also In re Hudson*, 158 B.R. 670, 674 (Bankr. N.D. Ohio 1993). The IRS makes its determination based upon the size of the claim, whether the IRS holds other prepetition claims, the debtors willingness to amend the plan to pay the Section 1305(a) claim and the availability of other assets. If the IRS files a Section 1305(a) claim, it is treated as a priority claim.

Interest on administrative claims is an administrative expense. *In re Mark Anthony Constr., Inc.*, 886 F.2d 1101 (9th Cir. 1989). Penalties related to administrative taxes are also entitled to administrative priority. 11 U.S.C. § 503(b)(1)(C); *In re Friendship College*, 737 F.2d 430 (4th Cir. 1984).

V. Practical Issues



Consult the Internal Revenue Service Manual ("IRSM" or "IRM"). It is not secret. It is a public document. It is confusing to me, too, at times. However, it can be a great resource. Here is the link for it and, specifically, for the part that deals with collections (Part 5).

https://www.irs.gov/irm/part5/index.html

DISCLAIMER: The IRM is an internal operational handbook made public via the Freedom of Information Act (FOIA); it **does not carry the force and effect of law**.

Offers in Compromise/Payment Arrangements

5.9.4.11 (09-05-2025)
Offers in Compromise and Bankruptcy

1. ***Introduction.*** The Bankruptcy Code provides a means for balancing the interests of the taxpayer and the Service, as does the administrative offer in compromise (OIC). An administrative offer in compromise is one submitted in accordance with the guidelines

and procedures set forth in Rev. Proc. 2003-71 and IRM 5.8, *Offer in Compromise*. Administrative and legal problems would be created if a tax liability were simultaneously the subject of a court-supervised bankruptcy case and the administrative offer in compromise process.

2. **IRS Policy.** When a taxpayer has filed for bankruptcy protection, IRS's policy is not to consider an OIC from a taxpayer in bankruptcy. Instead SCI considers payment proposals, usually in the form of plans filed by the debtor in the bankruptcy case, under guidelines set forth in IRM 5.9.8.17.1, The Plan of Reorganization, IRM 5.9.9.5, Chapter 12 Plans, and IRM 5.9.10.5, The Chapter 13 Plan, depending upon the type of bankruptcy case filed.

3. **Rule.** The rule to follow on OIC by the IRS:

    a. 4. An OIC is returned to the debtor as *"not processable"* if the taxpayer is a debtor in a bankruptcy case for which a discharge has not yet been entered. The return of the OIC as "not processable" does not constitute a rejection and it does not entitle the debtor to file an appeal.

    b. 5. However, even though an OIC is not considered when a taxpayer is in bankruptcy, **in appropriate cases**, **the IRS may work with the debtor within the bankruptcy case to achieve a result that is in the best interests of both the debtor and the IRS.** (See IRM 5.9.8.17.1(8), Deficient Plans - Exceptions, and IRM 5.9.10.5.5(4), Deficient Plans - Exceptions.)

6. **Specific Bankruptcy Chapters.** Listed below is the IRS's policy for specific bankruptcy chapters which clarify the IRS's position on the processing and consideration of an OIC in bankruptcy-related situations.

    a. 7**. Chapter 7.** Only after a discharge or a dismissal has taken place, can an OIC be considered by the IRS in a Chapter 7 proceeding. Because a Chapter 7 discharge is usually issued quickly, the taxpayer is not harmed by the delay. Furthermore, once the discharge is entered, the IRS will be able to determine which taxes are discharged and will be able to make a determination of "Doubt as to Collectibility" under its administrative OIC procedures. (See IRM 5.8.10.2.3, Acceptance of Offer in Compromise After Chapter 7 Bankruptcy.)

    b. 8. **Chapter 11.** In Chapter 11 cases involving individual debtors, as in Chapter 13 cases, the IRS will not consider any OIC prior to discharge, completion of the payments under the plan, or dismissal. When the Chapter 11 debtor is a non-individual, an OIC can be *considered* in unusual circumstances after plan confirmation, if the tax liabilities are the subject of a defaulted plan and the default cannot be cured or the plan

cannot be modified. Such an OIC is only appropriate if unanticipated changes in circumstances cause an inability to meet the terms of the plan. The decision for consideration of an OIC must be made on a case by case basis. The IRS can decline to consider an OIC after a Chapter 11 default if the particular facts of the case show an OIC would be inappropriate.

Note: Before the IRS can consider processing an OIC in a Chapter 11 bankruptcy case involving a non-individual, the IRS must have made a determination that the debtor's plan has actually defaulted and cannot be cured, and the taxpayer has no other outstanding liabilities. Additionally, the bankruptcy court can no longer have jurisdiction over any tax liabilities which are the subject of the OIC submitted. The IRS's decision to *consider* an OIC submitted by a debtor does not indicate the IRS has *accepted* the offer.

c. 9. **Chapter 12.** An OIC in Chapter 12 generally will not be considered. However, in unusual instances, changed circumstances may justify consideration of an OIC in defaulted Chapter 12 plan cases, just as in defaulted Chapter 11 plans, especially since Chapter 12 bankruptcies tend to involve struggling small businesses.

d. 10. **Chapter 13.** An OIC will not be considered prior to discharge, completion of the payments under the plan, or dismissal of a Chapter 13 plan.

Note: This policy does not result in harm to the debtor because the debtor is not precluded from resolving their tax liabilities in the context of the bankruptcy proceeding.

11. **Consideration of an OIC.** The IRS's decision to *consider* an OIC from debtors who have taken advantage of the relief offered under the Bankruptcy Code is limited to the situations described above. The IRS's decision to *accept* an OIC falls within the discretion of the IRS.
12. **Pre-Petition OIC Payments.** When a debtor has submitted an OIC with a payment pre-petition, and they file bankruptcy while the OIC is pending, the IRS may generally retain the payment. A payment made within 90 days before the filing of a bankruptcy may qualify as a preferential transfer and be avoidable under 11 USC 547(b). However, the trustee has the burden of proving this payment is a preference. The IRS may retain this OIC payment until the trustee persuades the IRS the payment is a preference and not subject to the exceptions under 11 USC 547(c). Some payments, namely those to pay off trust fund taxes, are not avoidable as preferences, because the debtor has no property interest in the funds.

13. **Post-Petition OIC Payments.** When a debtor submits an OIC with a payment post-petition, the payment will be treated in the following manner according to

the bankruptcy chapter under which the debtor has filed for bankruptcy protection:

a. 14. **Chapter 7.** The IRS can keep the payment submitted with the OIC, without violating the automatic stay, if the payment is made from post-petition earnings and is applied to non-dischargeable taxes. Post-petition earnings are not property of the estate, and the IRS may retain down payments made with such earnings even if the OIC is deemed not processable. In this situation, SCI must document the AIS history screen with pertinent information relating to such payments, including any contacts made with the debtor on this matter, and confer with Counsel should legal advice be required.

b. 15. **Chapter 11.** The IRS cannot retain OIC payments submitted by a Chapter 11 debtor post-petition. In general, property of the estate in Chapter 11 may include property listed under 11 USC 541 that is obtained post-petition. For Chapter 11 debtors who are individuals, property of the estate includes post-petition earnings. The IRS may not retain OIC payments made with property of the estate.

c. 16. **Chapter 12 and 13.** The IRS cannot retain OIC payments submitted by a Chapter 12 or 13 debtor post-petition. In Chapter 12 and 13, property of the estate includes property under 11 USC 541 that is acquired post-petition and earnings obtained post-petition. The IRS may not retain OIC payments made with property of the estate.

Installment Agreements

5.9.4.20 (09-05-2025)
Installment Agreements and Bankruptcy

Bankruptcy Does Not Terminate a Valid Installment Agreement. After an installment agreement becomes effective, the Internal Revenue Code limits the conditions terminating such an agreement; *a bankruptcy petition is not one of them.* (See IRC § 6159(b) and *Treas. Reg. § 301.6159-1(c) and (c)(2)(i)*.) An installment agreement is considered to be *suspended* by a bankruptcy filing, not *terminated*.

Note:

A termination of an installment agreement while a taxpayer is in bankruptcy could be viewed as an act to collect the underlying tax liabilities, and hence, a violation of the bankruptcy automatic stay (11 USC § 362).

Payment through a Prepetition Installment Agreement in Good Standing Under Section 1322(b)(5). Section 1322(b)(5) allows a debtor to cure a default and maintain payments on any

claim where the final payment on the debt is due after the completion of the plan. Taxes are due and payable immediately and in almost every circumstance will not be susceptible of being paid under Section 1322(b)(5). An exception exists where the debtor has a formal installment agreement with the IRS, which was not terminated prepetition. *See In re Gordon*, 217 B.R. 973 (Bankr. S.D. Ga. 1997). However, if Section 1322(b)(5) is properly utilized, the entire tax secured, priority and general debt, including penalties and interest, included within the agreement will be nondischargeable pursuant to Section 1328(a)(1). Installment agreements also have provisions which allow the IRS to increase the payments if the taxpayers financial circumstances change and to terminate the agreement if the taxpayer fails to file or pay future taxes. If a debtor has a prepetition installment, the plan should assume the installment agreement as an executory contract and specifically provide that the tax debt is nondischargeable. Postpetition installment agreements cannot be obtained from a local Internal Revenue Service office because such offices do not have authority over a debtor=s tax account once bankruptcy is filed; authority rests with the Insolvency Unit upon the filing of a bankruptcy case. Further, if a debtor=s tax liability is referred to the Department of Justice for litigation, the IRS loses authority to enter into an installment agreement as settlement authority then rests with the Department of Justice. 26 U.S.C. § 7122(a). Stated another way, if the United States Attorney objects to confirmation of a plan, the debtor may not approach the IRS to obtain an installment agreement and the IRS is without authority to enter into one.

TAX RETURNS

5.9.4.16 (02-03-2023)

Unfiled Pre-Petition Returns

1. **Debtor Compliance.**IRM 5.9.13.18.2, Addressing Unfiled Returns, provides in-depth procedures for securing and processing delinquent tax returns from debtors.
2. **Valid Tax Return.** For what constitutes a valid tax return in bankruptcy proceedings, see IRM 5.9.2.10.1.2, A Valid Tax Return, and IRM 5.9.17.8.1, Determining Dischargeability of Late Filed Returns in Which a SFR was Prepared.

5.9.4.17 (02-03-2023)

Unfiled Post-Petition Returns

1. **Individuals.** No bankruptcy code provision specifically prescribes a requirement for individuals to file post-petition tax returns. However, 11 USC 521(j)(1) provides that if a debtor in a Chapter 7, 11, 12 or 13 bankruptcy, fails to file tax returns that become due after the commencement of the case, the IRS may request the court to convert or dismiss the case.
2. **Chapter 11.** Debtors in Chapter 11 bankruptcies can face conversion to Chapter 7 or dismissal if they fail to file tax returns due after the date of the order for relief, or fail to pay taxes owed after the petition date in a timely manner (11 USC 1112 (b)(4)(I)).
3. **Motions to Convert or Dismiss.** Since the courts or the trustees may be unaware of a debtor's noncompliance with tax laws, the government's interest may best be served by a

FI caseworker referring the case to the USAO to request the filing of a motion to convert or dismiss bankruptcies.