

§ 1305. Filing and allowance of postpetition claims

(a) A proof of claim may be filed by any entity that holds a claim against the debtor—

(1) for taxes that become payable to a governmental unit while the case is pending; or

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

(b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), 502(b), or 502(c) of this title, or disallowed under section 502(d) or 502(e) of this title, the same as if such claim had arisen before the date of the filing of the petition.

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2647.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1305(a)(2) of the House amendment modifies similar provisions contained in the House and Senate bills by restricting application of the paragraph to a consumer debt. Debts of the debtor that are not consumer debts should not be subjected to section 1305(c) or section 1328(d) of the House amendment.

Section 1305(b) of the House amendment represents a technical modification of similar provisions contained in the House bill and Senate amendment.

The House amendment deletes section 1305(d) of the Senate amendment as unnecessary. Section 502(b)(1) is sufficient to disallow any claim to the extent the claim represents the usurious interest or any other charge forbidden by applicable law. It is anticipated that the Rules of Bankruptcy Procedure may require a creditor filing a proof of claim in a case under chapter 13 to include an affirmative statement as contemplated by section 1305(d) of the Senate amendment.

SENATE REPORT NO. 95-989

Section 1305, exclusively applicable in chapter 13 cases, supplements the provisions of sections 501-511 of title 11, dealing with the filing and allowance of claims. Sections 501-511 apply in chapter 13 cases by virtue of section 103(a) of this title. Section 1305(a) provides for the filing of a proof of claim for taxes and other obligations incurred after the filing of the chapter 13 case. Subsection (b) prescribes that section 502 of title 11 governs the allowance of section 1305(a) claims, except that its standards shall be applied as of the date of allowance of the claim, rather than the date of filing of the petition. Subsection (c) requires the disallowance of a postpetition claim for property or services necessary for the debtor's performance under the plan, if the holder of the claim knew or should have known that prior approval by the trustee of the debtor's incurring of the obligation was practicable and was not obtained.

HOUSE REPORT NO. 95-595

Subsection (a) permits the filing of a proof of a claim against the debtor that is for taxes that become pay-

able to a governmental unit while the case is pending, or that arises after the date of the filing of the petition for property or services that are necessary for the debtor's performance under the plan, such as auto repairs in order that the debtor will be able to get to work, or medical bills. The effect of the latter provision, in paragraph (2), is to treat postpetition credit extended to a chapter 13 debtor the same as a prepetition claim for purposes of allowance, distribution, and so on.

§ 1306. Property of the estate

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first.

(b) Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2647; Pub. L. 99-554, title II, §257(u), Oct. 27, 1986, 100 Stat. 3116.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1306(a)(2) adopts a provision contained in the Senate amendment in preference to a similar provision contained in the House bill.

SENATE REPORT NO. 95-989

Section 541 is expressly made applicable to chapter 13 cases by section 103(a). Section 1306 broadens the definition of property of the estate for chapter 13 purposes to include all property acquired and all earnings from services performed by the debtor after the commencement of the case.

Subsection (b) nullifies the effect of section 521(3), otherwise applicable, by providing that a chapter 13 debtor need not surrender possession of property of the estate, unless required by the plan or order of confirmation.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554 inserted reference to chapter 12 in pars. (1) and (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 1307. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or

(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

(d) Except as provided in subsection (f) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.

(f) The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

(g) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2647; Pub. L. 98-353, title III, §§315, 527, July 10, 1984, 98 Stat. 356, 389; Pub. L. 99-554, title II, §§229, 257(v), Oct. 27, 1986, 100 Stat. 3103, 3116; Pub. L. 109-8, title II, §213(7), title VII, §716(c), Apr. 20, 2005, 119 Stat.

53, 130; Pub. L. 111-327, §2(a)(41), Dec. 22, 2010, 124 Stat. 3562.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1307(a) is derived from the Senate amendment in preference to a comparable provision contained in the House bill.

SENATE REPORT NO. 95-989

Subsections (a) and (b) confirm, without qualification, the rights of a chapter 13 debtor to convert the case to a liquidating bankruptcy case under chapter 7 of title 11, at any time, or to have the chapter 13 case dismissed. Waiver of any such right is unenforceable. Subsection (c) specifies various conditions for the exercise of the power of the court to convert a chapter 13 case to one under chapter 7 or to dismiss the case. Subsection (d) deals with the conversion of a chapter 13 case to one under chapter 11. Subsection (e) prohibits conversion of the chapter 13 case filed by a farmer to chapter 7 or 11 except at the request of the debtor. No case is to be converted from chapter 13 to any other chapter, unless the debtor is an eligible debtor under the new chapter.

HOUSE REPORT NO. 95-595

Subsection (f) reinforces section 109 by prohibiting conversion to a chapter under which the debtor is not eligible to proceed.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-327, §2(a)(41)(A)(i), substituted “subsection (f)” for “subsection (e)” in introductory provisions.

Subsec. (c)(9), (10). Pub. L. 111-327, §2(a)(41)(A)(ii), (iii), substituted “521(a)” for “521”.

Subsec. (d). Pub. L. 111-327, §2(a)(41)(B), substituted “subsection (f)” for “subsection (e)”.

2005—Subsec. (c)(11). Pub. L. 109-8, §213(7), added par. (11).

Subsecs. (e) to (g). Pub. L. 109-8, §716(c), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

1986—Subsec. (b). Pub. L. 99-554, §257(v)(1), inserted reference to section 1208 of this title.

Subsec. (c). Pub. L. 99-554, §229(1)(A), inserted “or the United States trustee” after “party in interest” in provisions preceding par. (1).

Subsec. (c)(9), (10). Pub. L. 99-554, §229(1)(B)-(D), added pars. (9) and (10).

Subsec. (d). Pub. L. 99-554, §257(v)(2), inserted reference to chapter 12.

Pub. L. 99-554, §229(2), inserted “or the United States trustee” after “party in interest”.

Subsec. (e). Pub. L. 99-554, §257(v)(3), inserted reference to chapter 12.

1984—Subsec. (b). Pub. L. 98-353, §527(a), inserted a comma after “time”.

Subsec. (c)(4). Pub. L. 98-353, §315(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 98-353, §§315(1), 527(b)(1), redesignated former par. (4) as (5) and inserted “a request made for” before “additional”. Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 98-353, §315(1), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 98-353, §§315(1), 527(b)(2), redesignated former par. (6) as (7) and substituted “or” for “and”. Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 98-353, §§315(1), 527(b)(3), redesignated former par. (7) as (8) and inserted “other than completion of payments under the plan” after “in the plan”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases

commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by section 229 of Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 257 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1308. Filing of prepetition tax returns

(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

(B) for any return that is not past due as of the date of the filing of the petition, the later of—

(i) the date that is 120 days after the date of that meeting; or

(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under paragraph (1), if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under paragraph (1) is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under paragraph (1) for—

(A) a period of not more than 30 days for returns described in paragraph (1)(A); and

(B) a period not to extend after the applicable extended due date for a return described in paragraph (1)(B).

(c) For purposes of this section, the term “return” includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or

local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.

(Added Pub. L. 109-8, title VII, §716(b)(1), Apr. 20, 2005, 119 Stat. 129; amended Pub. L. 111-327, §2(a)(42), Dec. 22, 2010, 124 Stat. 3562.)

REFERENCES IN TEXT

Section 6020 of the Internal Revenue Code of 1986, referred to in subsec. (c), is classified to section 6020 of Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111-327, §2(a)(42)(C), substituted “paragraph (1)” for “this subsection” wherever appearing in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 111-327, §2(a)(42)(A), substituted “paragraph (1)(A)” for “paragraph (1)”.

Subsec. (b)(2)(B). Pub. L. 111-327, §2(a)(42)(B), substituted “paragraph (1)(B)” for “paragraph (2)”.

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

SUBCHAPTER II—THE PLAN

§ 1321. Filing of plan

The debtor shall file a plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2648.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

Chapter 13 contemplates the filing of a plan only by the debtor.

§ 1322. Contents of plan

(a) The plan—

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor