

1304. The trustee must perform the duties specified in sections 1106(a)(3) and 1106(a)(4), relating to investigation of the debtor.

REFERENCES IN TEXT

Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(3), is chapter XIII of act July 1, 1898, ch. 541, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930, which was classified to chapter 13 (§1001 et seq.) of former Title 11.

Sections 464 and 466 of the Social Security Act, referred to in subsec. (d)(1)(A)(i), are classified to sections 664 and 666, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-327 substituted “704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9)” for “704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9)”.

2005—Subsec. (b)(6). Pub. L. 109-8, § 219(d)(1), added par. (6).

Subsec. (d). Pub. L. 109-8, § 219(d)(2), added subsec. (d). 1994—Subsec. (b)(3). Pub. L. 103-394 struck out “and” at end.

1986—Subsec. (a). Pub. L. 99-554, § 228(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “If the court has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the court shall appoint a person to serve as trustee in the case.”

Subsec. (d). Pub. L. 99-554, § 228(2), struck out subsec. (d) which read as follows: “If the number of cases under this chapter commenced in a particular judicial district so warrant, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.”

Subsec. (e). Pub. L. 99-554, § 283(w), which directed the amendment of par. (1) by substituting “set for such individual” for “fix” could not be executed in view of the repeal of subsec. (e) by section 228(2) of Pub. L. 99-554. See 1984 Amendment note below.

Pub. L. 99-554, § 228(2), struck out subsec. (e) which read as follows:

“(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

“(A) a maximum annual compensation, not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

“(B) a percentage fee, not to exceed ten percent, based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

“(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

“(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

“(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

“(i) such individual’s actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

“(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.”

1984—Subsec. (b)(1). Pub. L. 98-353, § 314(1), substituted “704(7), and 704(9) of this title” for “and 704(8) of this title”.

Subsec. (b)(2). Pub. L. 98-353, § 314(2), struck out “and” at the end.

Subsec. (b)(3) to (5). Pub. L. 98-353, § 525(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Pub. L. 98-353, § 314(3), (4), substituted “; and” for the period at end of par. (3) and added par. (4).

Subsec. (e)(1). Pub. L. 98-353, § 525(b)(1), which directed the amendment of par. (4) by substituting “set for such individual” for “fix” was executed to par. (1) as the probable intent of Congress.

Subsec. (e)(1)(A). Pub. L. 98-353, § 525(b)(2), struck out “for such individual” after “a maximum annual compensation”.

Subsec. (e)(2)(A). Pub. L. 98-353, § 525(b)(3), substituted “received by” for “of”, and “of all such payments made” for “upon all payments”.

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 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by section 228 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 283 of Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) 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.

§ 1303. Rights and powers of debtor

Subject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2646.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1303 of the House amendment specifies rights and powers that the debtor has exclusive of the trustees. The section does not imply that the debtor does not also possess other powers concurrently with the trustee. For example, although section 1323 is not specified in section 1303, certainly it is intended that the debtor has the power to sue and be sued.

SENATE REPORT NO. 95-989

A chapter 13 debtor is vested with the identical rights and powers, and is subject to the same limitations in regard to their exercise, as those given a liquidation trustee by virtue of section 363(b), (d), (e), (f), and (h) of title 11, relating to the sale, use or lease of property.

§ 1304. Debtor engaged in business

(a) A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(a)(8) of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2646; Pub. L. 98-353, title III, §§311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389; Pub. L. 111-327, §2(a)(40), Dec. 22, 2010, 124 Stat. 3562.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1304(b) of the House amendment adopts the approach taken in the comparable section of the Senate amendment as preferable to the position taken in the House bill.

SENATE REPORT NO. 95-989

Increased access to the simpler, speedier, and less expensive debtor relief provisions of chapter 13 is accomplished by permitting debtors engaged in business to proceed under chapter 13, provided their income is sufficiently stable and regular to permit compliance with a chapter 13 plan [section 101(24)] and that the debtor (or the debtor and spouse) do not owe liquidated, noncontingent unsecured debts of \$50,000, or liquidated, noncontingent secured debts of \$200,000 (§109(d)).

Section 1304(a) states that a self-employed individual who incurs trade credit in the production of income is a debtor engaged in business.

Subsection (b) empowers a chapter 13 debtor engaged in business to operate his business, subject to the rights, powers and limitations that pertain to a trustee under sections 363(c) and 364 of title 11, and subject to such further limitations and conditions as the court may prescribe.

Subsection (c) requires a chapter 13 debtor engaged in business to file with the court certain financial statements relating to the operation of the business.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-327 substituted “704(a)(8)” for “704(8)”.

1984—Subsec. (b). Pub. L. 98-353, §526, struck out the comma after “of the debtor”.

Subsec. (c). Pub. L. 98-353, §311(b)(2), substituted “section 704(8)” for “section 704(7)”.

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.

§ 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 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 payable 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 com-