

**Publication 908 (Rev. March 2009) Bankruptcy Tax Guide**

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**26 U.S.C. §§ 1398 and 1399**

**26 U.S.C. § 1398 Rules relating to individuals' title 11 cases**

**(a) Cases to which section applies.**--Except as provided in subsection (b), this section shall apply to any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code in which the debtor is an individual.

**(b) Exceptions where case is dismissed, etc.--**

**(1) Section does not apply where case is dismissed.**--This section shall not apply if the case under chapter 7 or 11 of title 11 of the United States Code is dismissed.

**(2) Section does not apply at partnership level.**--For purposes of subsection (a), a partnership shall not be treated as an individual, but the interest in a partnership of a debtor who is an individual shall be taken into account under this section in the same manner as any other interest of the debtor.

**(c) Computation and payment of tax; basic standard deduction.--**

**(1) Computation and payment of tax.**--Except as otherwise provided in this section, the taxable income of the estate shall be computed in the same manner as for an individual. The tax shall be computed on such taxable income and shall be paid by the trustee.

**(2) Tax rates.**--The tax on the taxable income of the estate shall be determined under subsection (d) of section 1.

**(3) Basic standard deduction.**--In the case of an estate which does not itemize deductions, the basic standard deduction for the estate for the taxable year shall be the same as for a married individual filing a separate return for such year.

**(d) Taxable year of debtors.--**

**(1) General rule.**--Except as provided in paragraph (2), the taxable year of the debtor shall be determined without regard to the case under title 11 of the United States Code to which this section applies.

**(2) Election to terminate debtor's year when case commences.--**

26 U.S.C. § 1398

**(A) In general.**--Notwithstanding section 442, the debtor may (without the approval of the Secretary) elect to treat the debtor's taxable year which includes the commencement date as 2

taxable years--

(i) the first of which ends on the day before the commencement date, and

(ii) the second of which begins on the commencement date.

**(B) Spouse may join in election.**--In the case of a married individual (within the meaning of section 7703), the spouse may elect to have the debtor's election under subparagraph (A) also apply to the spouse, but only if the debtor and the spouse file a joint return for the taxable year referred to in subparagraph (A)(i).

**(C) No election where debtor has no assets.**--No election may be made under subparagraph (A) by a debtor who has no assets other than property which the debtor may treat as exempt property under section 522 of title 11 of the United States Code.

**(D) Time for making election.**--An election under subparagraph (A) or (B) may be made only on or before the due date for filing the return for the taxable year referred to in subparagraph (A)(i). Any such election, once made, shall be irrevocable.

**(E) Returns.**--A return shall be made for each of the taxable years specified in subparagraph (A).

**(F) Annualization.**--For purposes of subsections (b), (c), and (d) of section 443, a return filed for either of the taxable years referred to in subparagraph (A) shall be treated as a return made under paragraph (1) of subsection (a) of section 443.

**(3) Commencement date defined.**--For purposes of this subsection, the term "commencement date" means the day on which the case under title 11 of the United States Code to which this section applies commences.

**(e) Treatment of income, deductions, and credits.--**

**(1) Estate's share of debtor's income.**--The gross income of the estate for each taxable year shall include the gross income of the debtor to which the estate is entitled under title 11 of the United States Code. The preceding sentence shall not apply to any amount received or accrued by the debtor before the commencement date (as defined in subsection (d)(3)).

**(2) Debtor's share of debtor's income.**--The gross income of the debtor for any taxable year shall not include any item to the extent that such item is included in the gross income of the estate by reason of paragraph (1).

**(3) Rule for making determinations with respect to deductions, credits, and employment taxes.**--Except as otherwise provided in this section, the determination of whether or not any amount paid or incurred by the estate--

(A) is allowable as a deduction or credit under this chapter, or

**(B)** is wages for purposes of subtitle C,

shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case.

**(f) Treatment of transfers between debtor and estate.--**

**(1) Transfer to estate not treated as disposition.--**A transfer (other than by sale or exchange) of an asset from the debtor to the estate shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the estate shall be treated as the debtor would be treated with respect to such asset.

**(2) Transfer from estate to debtor not treated as disposition.--**In the case of a termination of the estate, a transfer (other than by sale or exchange) of an asset from the estate to the debtor shall not be treated as a disposition for purposes of any provision of this title assigning tax consequences to a disposition, and the debtor shall be treated as the estate would be treated with respect to such asset.

**(g) Estate succeeds to tax attributes of debtor.--**The estate shall succeed to and take into account the following items (determined as of the first day of the debtor's taxable year in which the case commences) of the debtor--

**(1) Net operating loss carryovers.--**The net operating loss carryovers determined under section 172.

**(2) Charitable contributions carryovers.--**The carryover of excess charitable contributions determined under section 170(d)(1).

**(3) Recovery of tax benefit items.--**Any amount to which section 111 (relating to recovery of tax benefit items) applies.

**(4) Credit carryovers, etc.--**The carryovers of any credit, and all other items which, but for the commencement of the case, would be required to be taken into account by the debtor with respect to any credit.

**(5) Capital loss carryovers.--**The capital loss carryover determined under section 1212.

**(6) Basis, holding period, and character of assets.--**In the case of any asset acquired (other than by sale or exchange) by the estate from the debtor, the basis, holding period, and character it had in the hands of the debtor.

**(7) Method of accounting.--**The method of accounting used by the debtor.

**(8) Other attributes.--**Other tax attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

**(h) Administration, liquidation, and reorganization expenses; carryovers and carrybacks of certain excess expenses.--**

**(1) Administration, liquidation, and reorganization expenses.--**Any administrative expense allowed under section 503 of title 11 of the United States Code, and any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code, to the extent not disallowed under any other provision of this title, shall be allowed as a deduction.

**(2) Carryback and carryover of excess administrative costs, etc., to estate taxable years.--**

**(A) Deduction allowed.--**There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (i) the administrative expense carryovers to such year, plus (ii) the administrative expense carrybacks to such year.

**(B) Administrative expense loss, etc.--**If a net operating loss would be created or increased for any estate taxable year if section 172(c) were applied without the modification contained in paragraph (4) of section 172(d), then the amount of the net operating loss so created (or the amount of the increase in the net operating loss) shall be an administrative expense loss for such taxable year which shall be an administrative expense carryback to each of the 3 preceding taxable years and an administrative expense carryover to each of the 7 succeeding taxable years.

**(C) Determination of amount carried to each taxable year.--**The portion of any administrative expense loss which may be carried to any other taxable year shall be determined under section 172(b)(2), except that for each taxable year the computation under section 172(b)(2) with respect to the net operating loss shall be made before the computation under this paragraph.

**(D) Administrative expense deductions allowed only to estate.--**The deductions allowable under this chapter solely by reason of paragraph (1), and the deduction provided by subparagraph (A) of this paragraph, shall be allowable only to the estate.

**(i) Debtor succeeds to tax attributes of estate.--**In the case of a termination of an estate, the debtor shall succeed to and take into account the items referred to in paragraphs (1), (2), (3), (4), (5), and (6) of subsection (g) in a manner similar to that provided in such paragraphs (but taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate). In addition, the debtor shall succeed to and take into account the other tax attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of this section.

**(j) Other special rules.--**

**(1) Change of accounting period without approval.--**Notwithstanding section 442, the estate may change its annual accounting period one time without the approval of the Secretary.

**(2) Treatment of certain carrybacks.--**

**(A) Carrybacks from estate.--**If any carryback year of the estate is a taxable year before the estate's first taxable year, the carryback to such carryback year shall be taken into account for the debtor's taxable year corresponding to the carryback year.

**(B) Carrybacks from debtor's activities.--**The debtor may not carry back to a taxable year before the debtor's taxable year in which the case commences any carryback from a taxable year ending after the case commences.

**(C) Carryback and carryback year defined.--**For purposes of this paragraph--

**(i) Carryback.--**The term "carryback" means a net operating loss carryback under section 172 or a carryback of any credit provided by part IV of subchapter A.

**(ii) Carryback year.--**The term "carryback year" means the taxable year to which a carryback is carried.

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**26 U.S.C. § 1399**

**§ 1399. No separate taxable entities for partnerships, corporations, etc.**

Except in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.

11 U.S.C.A. § 505

§ 505. Determination of tax liability

**(a)(1)** Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

**(2)** The court may not so determine--

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title;

(B) any right of the estate to a tax refund, before the earlier of--

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request; or

(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.

**(b)(1)(A)** The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may--

(i) designate an address for service of requests under this subsection; and

(ii) describe where further information concerning additional requirements for filing such requests may be found.

(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

**(2)** A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the

manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax--

(A) upon payment of the tax shown on such return, if--

(i) such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

(ii) such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

(B) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

(C) upon payment of the tax determined by such governmental unit to be due.

**(c)** Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

