

No. 10-875

In the Supreme Court of the United States

LYNWOOD D. HALL AND BRENDA A. HALL,
PETITIONERS

v.

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 11 U.S.C. 1222(a)(2)(A) authorizes the bankruptcy court, in a case brought under Chapter 12 of the Bankruptcy Code, to treat as a dischargeable non-priority claim a federal income tax debt arising out of the debtor's post-petition sale of a farm asset.

TABLE OF CONTENTS

| | Page |
|--|------|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Statutory and other provisions involved | 2 |
| Statement | 2 |
| Summary of argument | 7 |
| Argument: | |
| 11 U.S.C. 1222(a)(2)(a) is inapplicable to income tax obligations arising from the post-petition sale of farm assets | 11 |
| A. A Chapter 12 plan is limited to pre-petition claims | 11 |
| 1. Chapter 12 distinguishes between pre-petition claims and post-petition liabilities | 12 |
| 2. Section 1222(a)(2)(a) does not bring post-petition debts within the ambit of a Chapter 12 plan | 17 |
| 3. The Chapter 13 framework indicates that a Chapter 12 plan does not cover post-petition tax liabilities | 20 |
| B. Post-petition income taxes of an individual Chapter 12 debtor do not qualify as “administrative expenses” because they are not “incurred by the estate” | 21 |
| 1. Reading the Bankruptcy and Internal Revenue Codes together precludes treating post-petition income taxes as “administrative expenses” of an individual debtor’s Chapter 12 estate | 22 |
| 2. Petitioners’ interpretation of the phrase “incurred by the estate” ignores the Internal Revenue Code and conflicts with other provisions of the Bankruptcy Code | 28 |

IV

| Table of Contents—Continued: | Page |
|---|------|
| a. Not every tax incurred after the filing of the bankruptcy petition is “incurred by the estate” | 29 |
| b. Various provisions of the Internal Revenue Code bear on the determination whether a post-petition income tax is “incurred by the estate” | 34 |
| 3. The treatment of post-petition income taxes under Chapter 13 confirms that such taxes are not administrative expenses under Chapter 12 . . . | 37 |
| Conclusion | 40 |
| Appendix | 1a |

TABLE OF AUTHORITIES

Cases:

| | |
|--|---------------|
| <i>Allied Mech. Servs., Inc., In re</i> , 885 F.2d 837 (11th Cir. 1989) | 26 |
| <i>Brown, In re</i> , No. 05-41071, 2006 WL 3370867 (Bankr. D. Mass. Nov. 20, 2006) | 37 |
| <i>Calore Express Co., In re</i> , 288 F.3d 22 (1st Cir. 2002) | 26 |
| <i>Connecticut Nat’l Bank v. Germain</i> , 503 U.S. 249 (1992) | 31, 32 |
| <i>Dawes, In re</i> : No. 09-3129, 2011 WL 2450930 (10th Cir. June 21, 2011), petition for cert. pending, No. 11-217 (filed Aug. 17, 2011) | <i>passim</i> |

| Cases—Continued: | Page |
|---|------------|
| 382 B.R. 509 (Bankr. D. Kan. 2008), aff'd, 415 B.R. 815 (D. Kan. 2009), rev'd, No. 09-3129, 2011 WL 2450930 (10th Cir. June 21, 2011), petition for cert. pending, No. 11-217 (filed Aug. 17, 2011) | 5 |
| <i>Dewsnup v. Timm</i> , 502 U.S. 410 (1992) | 14 |
| <i>Doe v. Chao</i> , 540 U.S. 614 (2004) | 32 |
| <i>First Truck Lines, Inc., In re</i> , 48 F.3d 210 (6th Cir. 1995), rev'd <i>sub nom. United States v. Noland</i> , 517 U.S. 535 (1996) | 29 |
| <i>Flo-Lizer, Inc., In re</i> , 916 F.2d 363 (6th Cir. 1990) | 26 |
| <i>Gyulafia, In re</i> , 65 B.R. 913 (Bankr. D. Kan. 1986) | 37, 39 |
| <i>Hamilton v. Lanning</i> , 130 S. Ct. 2464 (2010) | 19 |
| <i>Helvering v. Stockholms Enskilda Bank</i> , 293 U.S. 84 (1934) | 14 |
| <i>Holywell Corp. v. Smith</i> , 503 U.S. 47 (1992) | 13, 23, 26 |
| <i>Kerwin, In re</i> , 996 F.2d 552 (2d Cir. 1993) | 20 |
| <i>Knudsen, In re</i> , 356 B.R. 480 (Bankr. N.D. Iowa 2006), aff'd in part, rev'd in part, 389 B.R. 643 (N.D. Iowa 2008), aff'd <i>sub nom. Knudsen v. IRS</i> , 581 F.3d 696 (8th Cir. 2009) | 4, 6 |
| <i>Knudsen v. IRS</i> , 581 F.3d 696 (8th Cir. 2009) | 6 |
| <i>Massachusetts v. EPA</i> , 549 U.S. 497 (2007) | 32 |
| <i>Nicholas v. United States</i> , 384 U.S. 678 (1986) | 30 |
| <i>Pacific-Atl. Trading Co., In re</i> , 64 F.3d 1292 (9th Cir. 1995) | 26 |
| <i>Pelofsky v. Wallace</i> , 102 F.3d 350 (8th Cir. 1996) | 20 |
| <i>Preferred Door Co., In re</i> , 990 F.2d 547 (10th Cir. 1993) | 26 |

VI

| Cases—Continued: | Page |
|--|--------|
| <i>Ransom v. FIA Card Servs., N.A.</i> , 131 S. Ct. 716 (2011) | 17 |
| <i>Ripley, In re</i> , 926 F.2d 440 (5th Cir. 1991) | 12, 15 |
| <i>Rodriguez v. United States</i> , 480 U.S. 522 (1987) | 20 |
| <i>Ryan, In re</i> , 228 B.R. 746 (Bankr. D. Or. 1999) | 28 |
| <i>Schilke, In re</i> , 379 B.R. 899 (Bankr. D. Neb. 2007, aff'd, No. 4:07CV3283, 2008 WL 4224279 (D. Neb. Sept. 9, 2008), aff'd <i>sub nom.</i> <i>Knudsen v. IRS</i> , 581 F.3d 696 (8th Cir. 2009) | 6 |
| <i>Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.</i> , 549 U.S. 443 (2007) | 19 |
| <i>United States v. Hillsborough Holdings Corp.</i> , 116 F.3d 1391 (11th Cir. 1997) | 19, 26 |
| <i>United States v. Noland</i> , 517 U.S. 534 (1996) | 26, 29 |
| <i>Valen Mfg. Co. v. United States</i> , 90 F.3d 1190 (6th Cir. 1996) | 25 |
| <i>Whall, In re</i> , 391 B.R. 1 (Bankr. D. Mass. 2008) | 37 |
| <i>White, In re</i> , 25 F.3d 931 (10th Cir. 1994) | 20 |
| <i>Ybarra, In re</i> , 424 F.3d 1018 (9th Cir. 2005), cert. denied, 547 U.S. 1163 (2006) | 15 |
| Statutes and rules: | |
| Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, | |
| 119 Stat. 23 | 2 |
| § 705(1)(A), 119 Stat. 126 | 19 |
| § 719(a)(1), 119 Stat. 131 | 36 |
| § 1003(c), 119 Stat. 186 | 4 |
| § 1501, 119 Stat. 216 | 4 |

VII

| Statutes and rules—Continued: | Page |
|--|----------------------|
| Bankruptcy Act, 11 U.S.C. 701 <i>et seq.</i> (1964) (Ch. XI) . . . | 30 |
| Bankruptcy Code, 11 U.S.C. 101 <i>et seq.</i> : | |
| Ch. 1: | |
| 11 U.S.C. 101(10)(A) | 2, 12 |
| 11 U.S.C. 101(10)(B) | 13 |
| Ch. 3: | |
| 11 U.S.C. 301 | 2 |
| 11 U.S.C. 346 (1982) | 10, 36 |
| 11 U.S.C. 346 | 36 |
| 11 U.S.C. 346(b) | 36, 37 |
| 11 U.S.C. 346(b)(1) (1982) | 35 |
| 11 U.S.C. 346(c)(1) (1982) | 35 |
| 11 U.S.C. 346(d) (1982) | 35 |
| 11 U.S.C. 348(d) | 13 |
| Ch. 5: | |
| 11 U.S.C. 501(a) | 12 |
| 11 U.S.C. 502(b) | 13 |
| 11 U.S.C. 502(f) | 13 |
| 11 U.S.C. 502(g) | 13 |
| 11 U.S.C. 502(h) | 13 |
| 11 U.S.C. 502(i) | 13 |
| 11 U.S.C. 503 | 30 |
| 11 U.S.C. 503(a) | 12 |
| 11 U.S.C. 503(b) | 3, 6, 15, 22, 29, 34 |
| 11 U.S.C. 503(b)(1)(A) | 14, 15 |
| 11 U.S.C. 503(b)(1)(A)(i) | 3, 27 |
| 11 U.S.C. 503(b)(1)(B) | 4, 5, 8, 22 |

VIII

| Statutes and rules—Continued: | Page |
|---|-----------------------|
| 11 U.S.C. 503(b)(1)(B)(i) | 3, 5, 22 |
| 11 U.S.C. 503(b)(1)(B)(ii) | 22 |
| 11 U.S.C. 503(b)(1)(C) | 29 |
| 11 U.S.C. 503(b)(2) | 14, 15 |
| 11 U.S.C. 507 | <i>passim</i> |
| 11 U.S.C. 507(a) | 3, 13 |
| 11 U.S.C. 507(a)(1) | 13 |
| 11 U.S.C. 507(a)(2) | <i>passim</i> |
| 11 U.S.C. 507(a)(3)-(10) | 13 |
| 11 U.S.C. 507(a)(8) | 8, 18, 19, 22 |
| 11 U.S.C. 507(a)(8)(A) | 3, 19 |
| 11 U.S.C. 521 (2006 & Supp. III 2009) | 17 |
| 11 U.S.C. 521(a)(1)(B) | 17 |
| Ch. 7 (11 U.S.C. 701 <i>et seq.</i>) | 9, 11, 22, 26, 30, 35 |
| 11 U.S.C. 704(a)(8) | 26 |
| 11 U.S.C. 726(b) | 14 |
| 11 U.S.C. 727(b) | 12 |
| Ch. 11 (11 U.S.C. 1101 <i>et seq.</i>) | <i>passim</i> |
| 11 U.S.C. 1106(a)(1) | 26 |
| 11 U.S.C. 1123(a)(1) | 14 |
| 11 U.S.C. 1129(a)(9)(A) | 14 |
| 11 U.S.C. 1141(d)(1)(A) | 12 |
| Ch. 12 (11 U.S.C. 1201 <i>et seq.</i>) | <i>passim</i> |
| 11 U.S.C. 1203 | 26 |
| 11 U.S.C. 1207 | 34 |
| 11 U.S.C. 1222 | 2, 4, 12, 16 |
| 11 U.S.C. 1222(a)(1) | 17 |

IX

| Statutes and rule—Continued: | Page |
|--|-------------------|
| 11 U.S.C. 1222(a)(2) (2000) | 18, 24 |
| 11 U.S.C. 1222(a)(2) | <i>passim</i> |
| 11 U.S.C. 1222(a)(2)(A) | <i>passim</i> |
| 11 U.S.C. 1222(c) | 16 |
| 11 U.S.C. 1225 | 12 |
| 11 U.S.C. 1225(b)(1)(B) | 17 |
| 11 U.S.C. 1225(b)(2) | 17 |
| 11 U.S.C. 1226(b) | 28 |
| 11 U.S.C. 1226(b)(1) | <i>passim</i> |
| 11 U.S.C. 1227 | 7 |
| 11 U.S.C. 1227(a) | 2, 7, 12 |
| 11 U.S.C. 1227(b) | 35 |
| 11 U.S.C. 1228(a) | 2, 12 |
| Ch. 13 (11 U.S.C. 1301 <i>et seq.</i>) | <i>passim</i> |
| 11 U.S.C. 1305 | 8, 10, 21, 38, 39 |
| 11 U.S.C. 1305(a)(1) | 21, 39, 39 |
| 11 U.S.C. 1305(b) | 21 |
| 11 U.S.C. 1322(a)(2) | 21 |
| 11 U.S.C. 1325(b)(1)(B) | 17 |
| 11 U.S.C. 1325(b)(2) | 17 |
| 11 U.S.C. 1326(b) | 38 |
| 11 U.S.C. 1326(b)(1) | 14, 38, 39 |
| Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 255, 110 Stat. 3105 | 11 |
| Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 | 30 |

| Statutes and rules—Continued: | Page |
|---|---------------|
| Sec. 101, 92 Stat. 2549: | |
| § 346, 92 Stat. 2565 | 35 |
| § 346(b)(1), 92 Stat. 2565 | 35 |
| § 346(c)(1), 92 Stat. 2566 | 35 |
| § 346(d), 92 Stat. 2566 | 35 |
| Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, | |
| § 3(a)(1), 94 Stat. 3397 | 32 |
| Internal Revenue Code (26 U.S.C.): | |
| Subtit. A (26 U.S.C. 1-1563) | 28 |
| 26 U.S.C. 1398 | <i>passim</i> |
| 26 U.S.C. 1398(a) | 4 |
| 26 U.S.C. 1399 | <i>passim</i> |
| Subtit. C (26 U.S.C. 3101-3510) | 28 |
| 26 U.S.C. 3102(a) | 28 |
| 26 U.S.C. 3402(a) | 28 |
| Subtit. F: | |
| 26 U.S.C. 6012(b)(3) | 9, 26 |
| 26 U.S.C. 6110(b)(1)(A) | 27 |
| 26 U.S.C. 6110(i)(1) | 27 |
| 26 U.S.C. 6110(k)(3) | 27 |
| 26 U.S.C. 6151(a) | 26 |
| 26 U.S.C. 6651 | 33 |
| 26 U.S.C. 6654 | 33 |
| 26 U.S.C. 6655 | 33 |
| 26 U.S.C. 6658 | 29, 33 |
| 26 U.S.C. 6658(a)(1) | 33 |
| 26 U.S.C. 7501(a) | 28 |

XI

| | |
|---|------------------------|
| Rules—Continued: | Page |
| Fed. R. Bankr. P.: | |
| Rule 1007(b) | 17 |
| Rule 1007(c) | 17 |
| Miscellaneous: | |
| 4 <i>Collier Bankruptcy Manual</i> (Alan N. Resnick & Henry J. Sommer eds., 4th ed. Nov. 2010) | 38 |
| <i>Collier on Bankruptcy</i> : | |
| Vol. 5 (Lawrence P. King ed., 15th ed. 1988) | 12 |
| Vol. 8 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. July 2010) | 20 |
| H.R. Conf. Rep. No. 958, 99th Cong., 2d Sess. (1986) | 11, 20 |
| H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) | 22, 23, 31, 34, 35, 36 |
| H.R. Rep. No. 31, 109th Cong., 1st Sess. Pt. 1 (2005) | 37 |
| IRS: | |
| Chief Couns. Advice: | |
| No. 200113027 (Mar. 30, 2001), 2001 WL 307746 ... | 38 |
| No. 200235024 (Aug. 30, 2002), 2002 WL 1999525 | 26 |
| No. 200518002 (May 6, 2005), 2005 WL 1060956 ... | 27 |
| Litig. Guideline Mem. GL-26 (Dec. 16, 1996), 1996 WL 33107107 | 38 |
| Internal Revenue Manual: | |
| (1988) | 25 |
| (1998) | 25 |
| (2002) | 25 |
| (2004) | 9, 25, 27 |

XII

| Miscellaneous—Continued: | Page |
|--|--------|
| (2006) | 25, 38 |
| Sidney Levinson, <i>Does an Administrative Expense Constitute a “Claim”</i> , 25 Cal. Bankr. J. 289 (2000) ... | 14 |
| Official Bankr. Form 6 | 17 |
| S. Rep. No. 989, 95th Cong., 2d Sess. (1978) | 27, 30 |
| S. Rep. No. 1106, 95th Cong., 2d Sess. (1978) | 14 |
| S. Rep. No. 1035, 96th Cong., 2d Sess. (1980) | 28 |

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-17) is reported at 617 F.3d 1161. The opinion of the district court (Pet. App. 18-33) is reported at 393 B.R. 857. The opinion of the bankruptcy court (Pet. App. 34-46) is reported at 376 B.R. 741.

JURISDICTION

The judgment of the court of appeals was entered on August 16, 2010. A petition for rehearing was denied on October 1, 2010 (Pet. App. 47). The petition for a writ of certiorari was filed on December 30, 2010, and was granted on June 13, 2011. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND OTHER PROVISIONS INVOLVED

Pertinent statutory provisions and provisions of the Internal Revenue Manual are set forth in an appendix to this brief. App., *infra*, 1a-18a.

STATEMENT

1. a. Chapter 12 of the Bankruptcy Code (11 U.S.C.) addresses certain debts of family farmers and fishermen. A Chapter 12 plan binds each “creditor,” 11 U.S.C. 1227(a), which the Code defines as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor,” 11 U.S.C. 101(10)(A).¹ Section 1222 identifies the types of claims that may be included in the Chapter 12 plan. 11 U.S.C. 1222. Once a debtor completes payments pursuant to the plan, Section 1228(a) authorizes a discharge of all debts provided for by the plan (with certain exceptions). 11 U.S.C. 1228(a).

Section 1222(a)(2)(A), which was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23, permits family farmers to treat certain governmental claims resulting from the disposition of farm assets as unsecured claims, which are not entitled to priority status and are dischargeable after less than full payment under the Chapter 12 plan. That provision states:

§ 1222. Contents of Plan

(a) The plan shall—

* * * * *

¹ The commencement of a case, *i.e.*, the filing of the bankruptcy petition, constitutes the order for relief in a voluntary bankruptcy case. 11 U.S.C. 301.

(2) provide for the full payment, in deferred cash payment, of all claims entitled to priority under section 507, unless—

(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge.

11 U.S.C. 1222(a)(2)(A).

Section 507 of the Code accords priority status to enumerated categories of claims and expenses. In relevant part, Section 507(a) states that “[t]he following expenses and claims have priority in the following order: * * * (2) Second, administrative expenses allowed under section 503(b) of this title,” 11 U.S.C. 507(a)(2), and “(8) Eighth, * * * [certain] tax[es] on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition,” 11 U.S.C. 507(a)(8)(A). Section 503(b), in turn, includes in its enumeration of allowable administrative expenses the costs of “services rendered [to the estate] after the commencement of the case,” 11 U.S.C. 503(b)(1)(A)(i), and “any tax * * * incurred by the estate,” 11 U.S.C. 503(b)(1)(B)(i).

In Chapter 12 cases, Section 1226(b)(1) establishes a special procedure for the payment of allowable administrative expenses. Section 1226(b)(1) states that “[b]efore or at the time of each payment to creditors under the plan, there shall be paid * * * any unpaid claim of the kind specified in section 507(a)(2),” 11 U.S.C. 1226(b)(1), *i.e.*, administrative expenses allowed under Section 503(b).

b. Section 1399 of the Internal Revenue Code states that “[e]xcept in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under [the Bankruptcy Code].” 26 U.S.C. 1399. Section 1398 applies, with certain exceptions not relevant here, to “any case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of [the Bankruptcy Code] in which the debtor is an individual.” 26 U.S.C. 1398(a).

2. a. On August 9, 2005, petitioners filed for Chapter 12 bankruptcy relief.² J.A. 1. The bankruptcy court subsequently granted petitioners’ motion to sell their 320-acre farm for \$960,000, J.A. 19-24, and the ensuing post-petition sale produced a capital gain that increased petitioners’ overall federal income tax liability by approximately \$29,000, J.A. 35. As set forth in their first amended plan, petitioners proposed to treat the tax debt as a dischargeable unsecured liability. J.A. 35-36.

Petitioners argued that a Chapter 12 debtor can treat post-petition income taxes as “administrative expenses” of the bankruptcy estate under Section 503(b)(1)(B), even though a Chapter 12 estate is not a “separate taxable entity.” Although administrative expenses ordinarily would be entitled to priority under Section 507(a)(2), petitioners argued that the income taxes at issue here are stripped of priority by operation of Section 1222(a)(2)(A). Petitioners contended that their post-petition tax liability therefore could be discharged after less than full payment. Pet. App. 36, 41 (citing *In re Knudsen*, 356 B.R. 480 (Bankr. N.D. Iowa 2006), *aff’d in part, rev’d in part*, 389 B.R. 643 (N.D.

² Although BAPCPA is generally effective for cases filed on or after October 17, 2005, BAPCPA’s changes to Section 1222 were made effective to cases filed on or after the date of its enactment (April 20, 2005). See BAPCPA §§ 1003(c), 1501, 119 Stat. 186, 216.

Iowa 2008), *aff'd*, 581 F.3d 696 (8th Cir. 2009)). The United States objected to the proposed treatment of petitioners' post-petition tax debt, arguing that the debt was neither collectible nor dischargeable in bankruptcy but would instead remain the independent responsibility of petitioners. J.A. 43-47.

b. The bankruptcy court sustained the government's objection to petitioners' proposed Chapter 12 plan. Pet. App. 34-46. The court agreed with the government that the applicability of Section 1222(a)(2)(A) turned on whether the post-petition income tax liability could be "incurred by the estate" pursuant to 11 U.S.C. 503(b)(1)(B). Pet. App. 37-39. The court explained that Section 503(b)(1)(B)(i) must be read consistently with 26 U.S.C. 1398 and 1399, which establish that a Chapter 12 bankruptcy filing does not create a separate taxable entity for income tax purposes. The bankruptcy court held that, in light of those provisions, "the capital gains tax arising from the postpetition sale of the farm land cannot be a tax 'incurred' by the Chapter 12 Estate under § 503(b)(1)(B)(i)." Pet. App. 44; see *id.* at 42-44. The court observed that its ruling would not render Section 1222(a)(2)(A) superfluous because, "as written, § 1222(a)(2)(A) creates an exception for priority claims arising from the *prepetition* sale, transfer or exchange of farm assets." *Id.* at 45-46.

c. The district court reversed. Pet. App. 18-33. The district court agreed with the conclusion of the bankruptcy court in *In re Dawes*, 382 B.R. 509 (Bankr. D. Kan. 2008), *aff'd*, 415 B.R. 815 (D. Kan. 2009), *rev'd*, No. 09-3129, 2011 WL 2450930 (10th Cir. June 21, 2011), petition for cert. pending, No. 11-217 (filed Aug. 17, 2011), which had rejected the government's argument that Section 503(b)(1)(B)(i) requires the existence of a separate taxable estate. Pet. App. 30. The district court also agreed with

the bankruptcy courts in *Knudsen, supra*, and in *In re Schilke*, 379 B.R. 899 (Bankr. D. Neb. 2007), aff'd, No. 4:07CV3283, 2008 WL 4224279 (D. Neb. Sept. 9, 2008), aff'd *sub nom. Knudsen v. IRS*, 581 F.3d 696 (8th Cir. 2009), both of which had relied in part on legislative history in concluding that 11 U.S.C. 1222(a)(2)(A) applies to post-petition as well as pre-petition taxes. Pet. App. 31-32.

3. The court of appeals reversed the district court's judgment. Pet. App. 1-17. The court explained that, because a Chapter 12 estate is not a separate taxable entity under Sections 1398 and 1399 of the Internal Revenue Code, "a chapter 12 estate cannot incur taxes." *Id.* at 6. The court relied in part on case law reaching the same conclusion for Chapter 13 estates. *Ibid.* The court concluded that "[b]ecause a chapter 12 estate cannot 'incur' a tax," petitioners' post-petition tax liability does not constitute an "administrative expense" within the meaning of Section 503(b), and petitioners therefore "cannot get the benefit of section 1222(a)(2)(A)." *Ibid.*

The court of appeals recognized that its conclusion was contrary to that reached by the Eighth Circuit in *Knudsen v. IRS*, 581 F.3d 696 (2009), but the court found the Eighth Circuit's reasoning unpersuasive. Pet. App. 8-13. In particular, the Ninth Circuit disagreed with the Eighth Circuit's refusal to look to the Internal Revenue Code when determining whether a post-petition tax debt was "incurred by the estate." *Id.* at 11-13. The Ninth Circuit noted that the Bankruptcy Code standing alone does not resolve the question whether a Chapter 12 estate can incur taxes, and that "Congress has indicated repeatedly that it is aware that the taxable entity provisions in the Internal Revenue Code are relevant to the Bankruptcy Code." *Id.* at 12.

The court of appeals also noted that petitioners could not avoid the post-petition tax liability simply by including

that liability in their plan, because “the Bankruptcy Code places limits on the liabilities a plan may address.” Pet. App. 7-8 n.2. Citing Section 1227 of the Bankruptcy Code, the court explained that a Chapter 12 plan is limited to pre-petition claims. *Ibid.*

Judge Paez dissented. Pet. App. 16-17. Based on his view that Congress intended Section 1222(a)(2)(A) to help family farmers, “regardless of whether they sold the assets before or after filing their Chapter 12 petition,” he would have held that petitioners could “treat the capital gains taxes arising from the post-petition sale of their farm assets as an unsecured claim.” *Id.* at 16.

SUMMARY OF ARGUMENT

Petitioners’ income tax liability arising out of the post-petition sale of farm assets is not subject to 11 U.S.C. 1222(a)(2)(A) and must be collected outside the Chapter 12 bankruptcy proceedings.

A. 1. Consistent with the general structure of the Bankruptcy Code, a Chapter 12 plan is limited to pre-petition debts. Section 1227(a) provides that a Chapter 12 plan binds each “creditor,” which the Code defines as the holder of a pre-petition claim. By referring only to “claims” (as opposed to “claims” and “expenses”) entitled to priority under Section 507, Section 1222(a)(2) reflects the Code’s distinction between pre-petition claims (which are covered by the Chapter 12 plan) and post-petition administrative expenses (which are not). And Section 1226(b)(1) separately provides for (super-priority) payment of administrative expenses outside of the Chapter 12 plan. The extra-plan treatment of post-petition debts in a Chapter 12 case is also consistent with ordinary Chapter 12 practice, in which post-petition income taxes are taken into account

when determining the debtor's disposable income for purposes of plan confirmation, not as part of the plan itself.

2. Because Section 1222(a)(2)(A) provides the debtor relief for a subset of priority claims covered by a Chapter 12 plan, it cannot apply to petitioners' post-petition tax liability, because post-petition debts are not covered by the plan at all. Section 1222(a)(2)(A) does not establish any mechanism to bring into a Chapter 12 plan post-petition debts that would otherwise fall outside the bankruptcy case. Rather, Section 1222(a)(2)(A) provides farmers relief from those tax claims that are otherwise entitled to priority under 11 U.S.C. 507(a)(8), namely pre-petition claims arising from the sale of farm assets.

3. The treatment of post-petition income tax debts under Chapter 13, on which Chapter 12 was modeled, reinforces the conclusion that a Chapter 12 plan does not cover such debts. Section 1305 authorizes governmental bodies to file claims for post-petition tax debts and treats such debts as pre-petition claims. Section 1305 would be unnecessary if a Chapter 13 plan already covered post-petition tax debts. Because Chapter 12 contains no provision analogous to Section 1305, and Chapter 12 and 13 plans are otherwise comparable in scope, the logical inference is that Congress did not intend for post-petition tax debts to be encompassed by a Chapter 12 plan.

B. 1. Even if a Chapter 12 plan encompassed post-petition administrative expenses, Section 1222(a)(2)(A) would not cover the post-petition income tax debt at issue in this case. As relevant here, Section 507(a)(2) encompasses "administrative expenses allowed under section 503(b)." 11 U.S.C. 507(a)(2). Section 503(b)(1)(B), in turn, treats as administrative expenses taxes "incurred by the estate." Because the filing of a Chapter 12 petition does not create

a “separate taxable entity,” 26 U.S.C. 1398, 1399, a Chapter 12 estate cannot “incur” federal income taxes.

That result comports with Congress’s practical understanding that Chapter 12 (and 13) plans are confirmed relatively quickly, after which property transfers back from the estate to the debtor. Congress appears to have concluded that, because a Chapter 12 estate is unlikely to remain in existence for a prolonged period, it is unnecessary to treat the estate as a separate taxable entity with an obligation to file its own tax return. That conclusion also avoids a conflict between Section 1222(a)(2), which provides for deferred payment of plan claims, and Section 1226(b)(1), which provides for separate up-front payment of administrative expenses.

Contrary to petitioners’ assertion (Br. 47), the Internal Revenue Service (IRS) has consistently taken the view that an individual debtor’s post-petition income taxes cannot be collected under Chapter 12. The IRS took that position even before the 2005 enactment of Section 1222(a)(2)(A), when treatment of such liabilities as administrative expenses would have facilitated the government’s tax-collection efforts. *E.g.*, Internal Revenue Manual (I.R.M. or Manual) 25.17.12.9.3(1) (2004) (“Unlike a Chapter 13 proceeding, no provision exists for filing claims for postpetition taxes in a Chapter 12 bankruptcy.”).

2. Although all taxes “incurred by the estate” are incurred post-petition, not all post-petition taxes are “incurred by the estate.” Petitioners’ reliance on cases involving corporate Chapter 7 and 11 debtors is misplaced because the Internal Revenue Code (26 U.S.C. 6012(b)(3)) requires the bankruptcy trustee in those contexts to make a tax return—thereby incurring tax liability—notwithstanding the lack of a separate taxable entity. The legislative history invoked by petitioners, which consists

largely of a single Senator's statements concerning unenacted bills, does not override the natural interpretation of the various Bankruptcy and Internal Revenue Code provisions that bear on the determination whether the taxes at issue here constitute "administrative expenses."

Since the enactment of the Bankruptcy Code in 1978, Congress has relied on Chapter-specific separate-entity rules to govern the question whether a bankruptcy estate has incurred particular taxes. As enacted in 1978, 11 U.S.C. 346 (1982) addressed, on a Chapter-by-Chapter basis, the question whether income generated during a bankruptcy case is taxable to the estate or to the debtor. Although Section 346 applied only to state and local taxes, Congress subsequently enacted 26 U.S.C. 1398 and 1399 to apply the same approach to federal taxes. The text and history of those provisions make clear that Congress intended them to govern the question whether particular taxes are "incurred by" a bankruptcy estate.

3. It is well established that Chapter 13 estates do not "incur" income taxes, and that such post-petition taxes cannot be collected as administrative expenses in Chapter 13 proceedings. The only relevant difference between Chapter 12 and 13 cases is that Chapter 12 contains no analogue to Section 1305, which authorizes governmental entities to file proofs of claim for post-petition taxes. The absence of any such provision in Chapter 12 reinforces the conclusion that post-petition income taxes in Chapter 12 cases must be collected outside the bankruptcy plan.

ARGUMENT**11 U.S.C. 1222(a)(2)(A) IS INAPPLICABLE TO INCOME TAX OBLIGATIONS ARISING FROM THE POST-PETITION SALE OF FARM ASSETS**

For two independent reasons, the post-petition income tax liability at issue here is not subject to 11 U.S.C. 1222(a)(2)(A) and must be collected outside the Chapter 12 bankruptcy proceedings. *First*, consistent with the structure of Chapter 12 (and Chapter 13, on which Chapter 12 is modeled), a Chapter 12 plan is limited to pre-petition claims and does not cover post-petition debts. Because Section 1222(a)(2)(A) simply provides for special treatment of a subset of priority claims covered by a Chapter 12 plan, it cannot apply to petitioners' post-petition tax liability.

Second, even if a Chapter 12 plan encompassed post-petition administrative expenses, it would not encompass the tax liability at issue here. Petitioners contend that the relevant taxes qualify as "administrative expenses" because they were "incurred by the estate." The Chapter 12 estate of an individual cannot incur federal income taxes, however, because it is not a separate taxable entity.

A. A Chapter 12 Plan Is Limited To Pre-Petition Claims

Chapter 12 of the Bankruptcy Code was enacted in 1986 to "offer[] family farmers the important protection from creditors that bankruptcy provides while, at the same time, preventing abuse of the system and ensuring that farm lenders receive a fair payment." H.R. Conf. Rep. No. 958, 99th Cong., 2d Sess. 48 (1986) (*1986 Conference Report*); see Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 255, 100 Stat. 3105. As a general matter, "bankruptcy proceedings do not address postpetition claims: "The basic scheme of the Bankruptcy Code is to affect claims arising

prior to the filing of the petition under title 11.” *In re Ripley*, 926 F.2d 440, 443 (5th Cir. 1991) (quoting 5 *Collier on Bankruptcy* ¶ 1305.01[1], at 1305-2 (Lawrence P. King ed., 15th ed. 1988)) (Chapter 13 case); cf. 11 U.S.C. 727(b) (limiting Chapter 7 discharge to “debts that arose before the date of the order for relief”).³ Chapter 12 is consistent with that basic scheme.

1. Chapter 12 distinguishes between pre-petition claims and post-petition liabilities

a. As set forth in Section 1222, a Chapter 12 plan provides for the payment—in full or in part—of certain claims against the debtor. After a Chapter 12 plan is confirmed (11 U.S.C. 1225) and the debtor completes all payments thereunder, “the court shall grant the debtor a discharge of all debts provided for by the plan,” except for specified debts not at issue here. 11 U.S.C. 1228(a).

A Chapter 12 plan and the ultimate discharge order generally are limited to claims incurred before the filing of the bankruptcy petition. “[T]he provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor.” 11 U.S.C. 1227(a); compare 11 U.S.C. 501(a) (stating that a “creditor” may file a “proof of claim”), with 11 U.S.C. 503(a) (stating that an “entity” may file “a request for payment of an administrative expense”). The Bankruptcy Code defines a “creditor” as an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor,” 11 U.S.C. 101(10)(A), *i.e.*, a holder of a

³ Chapter 11 establishes a different demarcation date by providing that the plan and resulting discharge cover debts that “arose before the date of [plan] confirmation,” 11 U.S.C. 1141(d)(1)(A), rather than limiting discharge to debts that arose before the bankruptcy petition was filed.

*pre-petition claim.*⁴ See note 1, *supra*; see also 11 U.S.C. 502(b) (requiring the court to determine the amount of a claim “as of the date of the filing of the petition”). A Chapter 12 plan thus does not bind holders of post-petition liabilities because they are not “creditors.” See Pet. App. 7a n.2; cf. *Holywell Corp. v. Smith*, 503 U.S. 47, 58-59 (1992) (“Even if § 1141(a) binds creditors of the corporate and individual debtors with respect to claims that arose before confirmation, we do not see how it can bind the United States or any other creditor with respect to post-confirmation claims. Cf. 11 U.S.C. § 101(10) (1988 ed., Supp. II) (defining ‘creditor’ as used in § 1141(a) as an entity with various kinds of pre-confirmation claims).”).⁵

b. Chapter 12’s distinction between pre-petition and post-petition debts is reflected in Section 1222(a)(2) itself. As described above (pp. 2-3, *supra*), Section 1222(a)(2) provides for the full payment under a Chapter 12 plan of “claims entitled to priority under section 507.” 11 U.S.C. 1222(a)(2). Section 507(a), however, addresses both “expenses and claims.” Section 507(a) enumerates nine categories of “claims,” all of which arise pre-petition. 11 U.S.C. 507(a)(1) and (3)-(10). It also includes one category of “expenses”—allowable “administrative expenses,” 11 U.S.C. 507(a)(2)—such as fees for services rendered to the estate,

⁴ Although the term “creditor” also includes holders of the post-petition obligations specified in 11 U.S.C. 101(10)(B), the Code explicitly treats those obligations “as if [they] had arisen before the date of the filing of the petition,” *i.e.*, as pre-petition claims. 11 U.S.C. 502(f), (g), (h) and (i); see 11 U.S.C. 348(d). In any event, the post-petition income tax liability at issue in this case does not fall within any of those exceptions.

⁵ As noted above (note 3, *supra*), unlike for other Chapters, the key dividing line for dischargeable claims in a Chapter 11 plan is the time of plan confirmation, not filing of the bankruptcy petition.

11 U.S.C. 503(b)(1)(A) and (2), all of which necessarily arise post-petition. The reference in Section 1222(a)(2) to “claims” under Section 507, rather than to “expenses and claims” under Section 507, is thus consistent with the understanding that a Chapter 12 plan is limited to pre-petition debts.

“The dual reference to ‘expenses and claims’ appears to be no accident, given that the language constitutes a significant change in language from that used in the former Bankruptcy Act.” Sidney Levinson, *Does an Administrative Expense Constitute a “Claim”*, 25 Cal. Bankr. J. 389, 392 (2000); see S. Rep. No. 1106, 95th Cong., 2d Sess. 20 (1978) (“The committee amendments contain several changes designed to clarify the distinction between a ‘claim’ (which generally relates to a debt incurred before the bankruptcy petition is filed) and an administrative expense (which is an expense incurred by the trustee after the filing of the petition).”). To be sure, Congress has not rigorously adhered to that terminological distinction, since some Bankruptcy Code provisions refer to administrative expenses as “claims.” See Pet. Br. 13-15 (citing, *e.g.*, 11 U.S.C. 726(b), 1123(a)(1), 1129(a)(9)(A), 1226(b)(1), 1326(b)(1)). Each of the provisions cited by petitioners, however, refers to “claims” of the “kind specified in” Section 507(a)(2), thus making clear Congress’s intent to cover administrative expenses. By contrast, Section 1222(a)(2)’s use of the term “claim” without cross-reference to Section 507(a)(2) is best understood to reflect the general rule that “claims” do not include post-petition liabilities. See *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934) (recognizing that same “words, though in the same act, are found in such dissimilar connections as to warrant the conclusion that they were employed in the different parts of the act with different intent”); cf. *Dewsnup v. Timm*, 502 U.S. 410, 417

(1992) (rejecting argument that “the words ‘allowed secured claim’ must take the same meaning in [Bankruptcy Code] § 506(d) as in § 506(a)”).

c. Chapter 12 provides an alternative mechanism, outside the four corners of the plan itself, for payment of post-petition administrative expenses. Section 1226(b)(1) states that “[b]efore or at the time of each payment to creditors under the plan, there shall be paid * * * any unpaid claim of the kind specified in section 507(a)(2),” *i.e.*, administrative expenses allowed under Section 503(b). 11 U.S.C. 1226(b)(1). As a result, plan payments to pre-petition creditors must cease until administrative expenses are paid. Section 1226(b)(1) thus assures that the holders of certain post-petition debts—including fees accrued for services rendered to the estate, see 11 U.S.C. 503(b)(1)(A) and (2)—are paid in full through the bankruptcy proceedings.

That assurance of full payment provides an important incentive for third parties to do business with a debtor and provide necessary services in furtherance of the bankruptcy case. See, *e.g.*, *In re Ybarra*, 424 F.3d 1018, 1026 (9th Cir. 2005) (“The purpose of administrative priority status is to encourage third parties to contract with the bankruptcy estate for the benefit of the estate as a whole.”), cert. denied, 547 U.S. 1163 (2006). By contrast, post-petition debts that do not qualify as allowable “administrative expenses”—*e.g.*, a Chapter 12 debtor’s post-petition consumer debt—must be collected not only outside the Chapter 12 plan, but outside the bankruptcy proceedings altogether. See *Ripley*, 926 F.2d at 443 (“When [a post-petition] claim arises, the entity possessing it usually will seek satisfaction of the debt outside of the bankruptcy proceedings.”). Section 1226(b)(1)’s special treatment of “administrative expenses” thus reinforces the general rule that post-

petition debts are neither collectible nor dischargeable in a bankruptcy case.

Acceptance of petitioners' position would create a conflict between Sections 1222(a)(2) and 1226(b)(1). By providing that the administrative expenses of a Chapter 12 estate must be paid "[b]efore or at the time of each payment to creditors under the plan," Section 1226(b)(1) confers on such expenses a sort of super-priority status. Section 1222, by contrast, generally requires deferred payment (without interest) of priority claims over the three-to-five year term of the plan. 11 U.S.C. 1222(a)(2) and (c). By limiting Section 1222(a)(2) to "claims entitled to priority under section 507" (rather than "claims *and expenses* entitled to priority under section 507"), Congress avoided giving conflicting directives with respect to the payment of administrative expenses in Chapter 12 proceedings. Congress's separate provision for administrative expenses in Chapter 12 cases reinforces the inference that the omission of any reference to "expenses" in Section 1222(a)(2) was a deliberate wording choice.

The conflict between the two provisions would be particularly severe in cases, like this one, that involve debts owed to governmental units arising from the sale of farm assets. Section 1226(b)(1)'s super-priority rule for administrative expenses contains no exception for debts of that character. Debts subject to Section 1222(a)(2)(A)'s priority-stripping effect, by contrast, are not simply subject to deferred payment but are treated as unsecured claims. If petitioners' post-petition tax debt is held (as petitioners urge) to be a claim for administrative expenses covered by Section 507(a)(2), then Section 1222(a)(2)(A) allows it to be treated as an unsecured non-priority claim (thereby rendering it dischargeable after less than full payment), while Section 1226(b)(1) requires it to be paid at or before the time pay-

ments are made to other creditors. If properly confined to pre-petition liabilities, by contrast, Section 1222(a)(2)(A) creates no such conflict, since pre-petition debts cannot qualify as administrative expenses.

d. Established Chapter 12 practices reflect the understanding that post-petition income taxes remain the personal obligation of the debtor, to be collected outside the bankruptcy framework. A Chapter 12 debtor's post-petition income taxes are typically addressed through 11 U.S.C. 521 (2006 & Supp. III 2009), entitled "Debtor's duties," which obligates a debtor to file schedules of current income and current expenditures with the bankruptcy petition. 11 U.S.C. 521(a)(1)(B); see Fed. R. Bankr. P. 1007(b) and (c); Official Bankr. Form 6, Sched. I (Current Income of Individual Debtor(s)), Sched. J (Current Expenditures of Individual Debtor(s)). A debtor lists on those schedules his projected income and projected expenses, including his projected tax obligations. See *id.* Sched. I (line 4a), Sched. J (line 12). Those schedules allow the court to determine whether a debtor will have sufficient disposable income, after expenses, to execute the proposed plan. See 11 U.S.C. 1222(a)(1), 1225(b)(1)(B) and (2); cf. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 721-722 (2011) (discussing "disposable income" under the analogous Chapter 13 provisions, 11 U.S.C. 1325(b)(1)(B) and (2)). The debtor's actual and anticipated post-petition taxes thus are among the expenses the bankruptcy court considers in determining whether a Chapter 12 plan should be confirmed, but their payment is not provided for by the plan itself.

2. Section 1222(a)(2)(A) does not bring post-petition debts within the ambit of a Chapter 12 plan

a. Before BAPCPA was enacted, Section 1222(a)(2) required the debtor to submit a reorganization plan that

provided for the full payment, in deferred cash payments, of all “claims entitled to priority under section 507.” 11 U.S.C. 1222(a)(2) (2000). As amended by BAPCPA, Section 1222(a)(2) states that the plan shall provide:

for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge.

11 U.S.C. 1222(a)(2)(A). Under the newly added subsection (A), a governmental claim that arises from the disposition of a farm asset and that otherwise qualifies for priority status under 11 U.S.C. 507 is treated as a general unsecured claim under a Chapter 12 plan. BAPCPA thus created a limited exception to the general rule that a Chapter 12 plan must provide for full payment of all priority claims. Section 1222(a)(2)(A) does not alter the established distinction between pre-petition and post-petition debts, however, nor does it bring within a Chapter 12 plan or case any debts that otherwise would be subject to collection outside the bankruptcy framework.

b. Section 1222(a)(2)(A) provides meaningful relief to debtors, even though it does not encompass post-petition tax liabilities, because it “creates an exception for priority claims arising from the *prepetition* sale, transfer or exchange of farm assets.” Pet. App. 45-46. Petitioners argue that limiting Section 1222(a)(2)(A) to pre-petition tax claims “ascribe[s] an unlikely intent to Congress.” Pet. Br. 28. They observe (*id.* at 28-32) that BAPCPA amended Section

507(a)(8), which provides for priority treatment of specified tax claims, to limit it to taxes on income “for a taxable year ending on or before the date of the filing of the petition.” 11 U.S.C. 507(a)(8)(A). Consistent with the IRS’s preexisting position that income taxes are incurred only on the last day of the taxable year, that amendment made clear that Section 507(a)(8) does not confer priority status on claims for taxes on income earned at an earlier time within the same taxable year in which a bankruptcy petition was filed. See *United States v. Hillsborough Holdings Corp.*, 116 F.3d 1391, 1394 (11th Cir. 1997); BAPCPA § 705(1)(A), 119 Stat. 126 (amending 11 U.S.C. 507(a)(8)).

The practical effect of current Section 507(a)(8) is to make the range of tax debts that are entitled to priority treatment somewhat smaller than it might otherwise be. But since Section 1222(a)(2) refers specifically to “claims entitled to priority under section 507,” 11 U.S.C. 1222(a)(2), Congress evidently intended to incorporate the priority rules established by the various provisions of Section 507. If it is otherwise appropriate to construe Section 1222(a)(2) as incorporating the established distinction between pre- and post-petition liabilities, Congress’s specification (in the BAPCPA amendment to Section 507(a)(8)) of the line between pre- and post-petition tax debts provides no basis for departing from that approach.

As this Court recently stated with respect to a different aspect of BAPCPA, the Court “will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.” *Hamilton v. Lanning*, 130 S. Ct. 2464, 2473 (2010) (quoting *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 454 (2007)). In rejecting the contention that Section 1222(a)(2)(A) authorizes discharge (after partial payment) of post-petition tax debts, the Tenth Circuit observed

that “Congress, while intent on providing special tax relief to farmers, may not have seen fit to undertake such a large rewriting of the bankruptcy or tax codes in service of that mission—especially when *pre*-petition income tax relief could be provided surgically with the simple addition of § 1222(a)(2)(A).” *In re Dawes*, No. 09-3129, 2011 WL 2450930, at *6 (June 21, 2011), petition for cert. pending, No. 11-217 (filed Aug. 17, 2011); see *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987) (“[N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute’s primary objective must be the law.”).

3. *The Chapter 13 framework indicates that a Chapter 12 plan does not cover post-petition tax liabilities*

The view that petitioners’ post-petition tax liabilities are outside a Chapter 12 plan, and thus beyond the reach of Section 1222(a)(2)(A), is reinforced by the longer established Chapter 13 framework. Chapter 12 was modeled on Chapter 13, which addresses “Adjustment of Debts of an Individual with Regular Income” (other than family farmers). See *1986 Conference Report* 48 (“This new chapter is modeled closely after existing chapter 13.”); 8 *Collier on Bankruptcy* ¶ 1200.01[5], at 1200-8 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. July 2010) (“Chapter 12 was modeled after chapter 13 and the overall structure of the two chapters is similar.”); see also, *e.g.*, *Pelofsky v. Wallace*, 102 F.3d 350, 351 n.2 (8th Cir. 1996); *In re White*, 25 F.3d 931, 933 (10th Cir. 1994); *In re Kerwin*, 996 F.2d 552, 559 (2d Cir. 1993).

Chapter 13 authorizes the filing of a proof of claim for “taxes that become payable to a governmental unit while the case is pending.” 11 U.S.C. 1305(a)(1). Such a claim is treated under the plan “the same as if such claim had arisen before the date of the filing of the petition.” 11 U.S.C. 1305(b). Section 1305 would be unnecessary if Section 1322(a)(2)—which states, in language parallel to that of Section 1222(a)(2), that “[t]he plan shall * * * provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507,” 11 U.S.C. 1322(a)(2)—already provided for priority treatment of post-petition tax debts. The perceived need for Section 1305 to allow post-petition tax claims to be asserted in Chapter 13 cases, combined with the absence of any comparable provision in Chapter 12, reinforces the conclusion that post-petition tax liabilities fall outside a Chapter 12 plan.

B. Post-Petition Income Taxes Of An Individual Chapter 12 Debtor Do Not Qualify As “Administrative Expenses” Because They Are Not “Incurred By The Estate”

As explained above, Section 1222(a)(2)(A) does not encompass the post-petition tax liabilities at issue in this case because a Chapter 12 plan is limited to pre-petition debts. But even if some post-petition administrative expenses could be included in a Chapter 12 plan, Section 1222(a)(2)(A) would be inapplicable here. Petitioners rely on Bankruptcy Code provisions that give priority status to “administrative expenses” under various circumstances. The post-petition income tax debts of individual Chapter 12 debtors, however, are not “administrative expenses” under the applicable Bankruptcy and Internal Revenue Code provisions.

1. Reading the Bankruptcy and Internal Revenue Codes together precludes treating post-petition income taxes as “administrative expenses” of an individual debtor’s Chapter 12 estate

a. By its terms, Section 1222(a)(2)(A) applies only to governmental claims that otherwise qualify for priority treatment under Section 507. Of the ten categories of expenses and claims that are entitled to priority status under Section 507, two address taxes: (i) claims for certain pre-petition taxes (11 U.S.C. 507(a)(8)), and (ii) allowable administrative expenses (11 U.S.C. 507(a)(2)), which include in certain cases post-petition taxes. Section 507(a)(8) does not apply here because the tax at issue in this case arises out of a sale of land that occurred *after* the Chapter 12 petition was filed. Section 507(a)(2) confers priority status on “administrative expenses allowed under section 503(b),” 11 U.S.C. 507(a)(2), and Section 503(b)(1)(B) identifies as allowable administrative expenses “any tax * * * incurred by the estate, * * * except a tax of a kind specified in section 507(a)(8) [pre-petition taxes].” 11 U.S.C. 503(b)(1)(B)(ii). Thus, even if the phrase “claims entitled to priority under section 507” in Section 1222(a)(2) encompassed administrative expenses under Section 503(b), petitioners’ income tax debt could qualify only if it was “incurred by the estate.”

The determination whether an income tax is “incurred by the estate” (11 U.S.C. 503(b)(1)(B)(i)) depends in part on the nature of the debtor and on the chapter of the Bankruptcy Code under which relief is sought. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 277 (1977) (*1977 House Report*). Under the Internal Revenue Code provision that governs federal income taxes, a bankruptcy filing does not create a “separate taxable entity,” 26 U.S.C. 1399, except in the case of an individual debtor who files for Chapter 7 or

Chapter 11 bankruptcy protection, see 26 U.S.C. 1398. See p. 4, *supra*. Because a Chapter 12 estate is not a “separate taxable entity,” it cannot incur federal income taxes. Nor, as petitioners acknowledged (Br. 53), does the trustee of an individual’s Chapter 12 estate have a duty to file a tax return. Because “[t]he Internal Revenue Code ties the duty to pay federal income taxes to the duty to make an income tax return,” *Holywell Corp.*, 503 U.S. at 52, the absence of a filing obligation reinforces the conclusion that the estate of an individual Chapter 12 debtor does not incur federal income-tax liability. See *In re Dawes*, 2011 WL 2450930, at *3 (“Only the debtor, not the estate, is *liable* for the payment of these taxes,” and thus “the estate does not *incur* such taxes.”). Because the post-petition taxes arising out of petitioners’ sale of assets were not “incurred by the estate,” they do not qualify as “administrative expenses.” Pet. App. 5-6.

In explaining Congress’s decision not to treat Chapter 13 estates as separate taxable entities, the 1977 House Report explained that “most chapter 13 estates will only remain open for 1 or 2 months until confirmation of the plan at which time section 1327(b) of Title 11 will almost always revert title to property of the estate in the debtor.” *1977 House Report* 276. Because the “discharge normally occurs only after completion of all payments under the plan which can be expected to be 2 or 3 years after the commencement of the [Chapter 13] case[,] * * * the debtor does not get an immediate fresh start.” *Ibid.* In addition, “a Chapter 13 trustee has a limited role in administering the estate, and is precluded from operating any business of the debtor.” *Id.* at 277. Accordingly, the House Report concluded, “there is no reason to impose a duty to pay taxes on the trustee.” *Ibid.* The same is true for Chapter 12 estates. See *Dawes*, 2011 WL 2450930, at *3 (“[B]ecause Chapter 12

and 13 cases are typically confirmed quickly (at least compared to bankruptcies under Chapters 7 and 11), the expectation is that the debtor's post-petition earnings and taxes will meet up in his hands soon enough.”⁶

b. Well before the 2005 BAPCPA amendments that added Section 1222(a)(2)(A) to the Bankruptcy Code, the IRS had recognized that it could not collect post-petition income-tax liabilities from an individual debtor within the framework of a Chapter 12 plan. That longstanding position reinforces the conclusion that such taxes are not “administrative expenses” of a Chapter 12 estate.

Before BAPCPA was enacted, it would have served the government's tax-collection interests to characterize the post-petition income-tax liabilities of an individual Chapter 12 debtor as administrative expenses entitled to priority under Section 507(a)(2). That interpretation would have entitled the government to full payment of such taxes either “[b]efore or at the time of each [plan] payment” pursuant to Section 1226(b)(1), or (under petitioners' view) through the Chapter 12 plan pursuant to pre-BAPCPA Section 1222(a)(2). At least as early as 1998, however, the IRS took the position that the statutory scheme did not permit such a result: “Unlike a Chapter 13 proceeding, no provision exists for filing claims for postpetition taxes in a Chapter 12

⁶ The court in *Dawes* further explained:

The rationale for allocating tax liability like this in Chapter 12 and 13 bankruptcies appears to be a pragmatic one. Upon confirmation of a plan under those chapters, the estate property, including any post-petition income, joins the post-petition income taxes back in the hands of the debtor. Disregarding the temporary existence of a bankruptcy estate for purposes of tax liability tidies the accounting somewhat, because there's only a single return—the debtor's—that needs to be filed and kept track of.

bankruptcy.” I.R.M. 25.17.12.9.3 (2004); see I.R.M. 25.17.12.9.3(1) (2002) (“There is no provision for filing claims for postpetition taxes in a Chapter 12 bankruptcy as there is in a Chapter 13 proceeding.”); I.R.M. 5.9.10.8(4) (1998) (“*[T]here is no provision for post-petition claims as in a Chapter 13 proceeding.*”); cf. I.R.M. 57(13)6.2(5) (1988) (“If the debtor incurs post-petition liabilities, [the government] may proceed with collection outside the plan to the extent there are assets not subject to the automatic stay.”). The IRS has adhered to that position since—including in the current, post-BAPCPA version of the Manual provision. See I.R.M. 5.9.9.9.3 (2006) (“Unlike a Chapter 13 proceeding, no provision exists for filing claims for postpetition taxes of a debtor who is an individual in a Chapter 12 bankruptcy.”).

The IRS’s consistent position on Chapter 12’s treatment of an individual debtor’s post-petition income taxes—even when that position was to the government’s detriment—disproves petitioners’ contention (Br. 47) that the government has “changed its historical position” in light of BAPCPA’s enactment of Section 1222(a)(2)(A). Petitioners assert that “[u]ntil the enactment of Section 1222(a)(2)(A), the IRS did not contest the principle that taxes incurred during bankruptcy estate administration have administrative expense priority.” *Ibid.* As the Manual provisions cited above demonstrate, that assertion is not an accurate characterization of the IRS’s historical position with respect to Chapter 12.⁷

⁷ The provisions of the Internal Revenue Manual “do not have the force and effect of law,” but rather “only govern the internal affairs of the Internal Revenue Service.” *Valen Mfg. Co. v. United States*, 90 F.3d 1190, 1194 (6th Cir. 1996) (internal quotation marks and citation omitted). The Manual provisions cited above, however, demonstrate the IRS’s consistent practice and refute petitioners’ contention.

The cases and materials on which petitioners rely (Br. 48) deal with corporate Chapter 7 or 11 debtors.⁸ Unlike the estate of an individual Chapter 12 or 13 debtor, the estate of a corporate Chapter 7 or 11 debtor can be liable for post-petition federal income taxes even though it is not a “separate taxable entity.” Section 6012(b)(3) of the Internal Revenue Code requires a corporation’s bankruptcy trustee to file the debtor corporation’s federal income tax returns. 26 U.S.C. 6012(b)(3); see 11 U.S.C. 704(a)(8), 1106(a)(1). As explained above (p. 23, *supra*), that duty to file the tax return causes the estate of a Chapter 7 or 11 corporate debtor to be liable for, or “incur,” such taxes.⁹ See 26 U.S.C. 6151(a) (“the person required to make [the tax] return shall * * * pay such tax”); *Holywell Corp.*, 503 U.S. at 52; see also *Dawes*, 2011 WL 2450930, at *3 (distinguishing corporate Chapter 7 and 11 debtors from individual Chapter 12 debtors such as petitioners). The sources on which petition-

⁸ See *United States v. Noland*, 517 U.S. 535, 536-537 (1996) (corporate Chapter 11 debtor); *Holywell Corp.*, *supra* (corporate Chapter 11 debtor); *In re Calore Express Co.*, 288 F.3d 22, 28 (1st Cir. 2002) (corporate Chapter 11 debtor); *Hillsborough Holdings Corp.*, 116 F.3d at 1392-1393 (corporate Chapter 11 debtor); *In re Pacific-Atl. Trading Co.*, 64 F.3d 1292 (9th Cir. 1995) (Chapter 7 corporate debtor); *In re Preferred Door Co.*, 990 F.2d 547, 548 (10th Cir. 1993) (corporate Chapter 11 debtor); *In re Flo-Lizer, Inc.*, 916 F.2d 363, 364 (6th Cir. 1990) (corporate Chapter 11 debtor); *In re Allied Mech. Servs., Inc.*, 885 F.2d 837, 837 (11th Cir. 1989) (corporate Chapter 11 debtor); IRS Chief Couns. Advice No. 200235024 (Aug. 30, 2002), 2002 WL 1999525 (corporate Chapter 11 debtor).

⁹ For that reason, the estate of a corporate (as opposed to individual) Chapter 12 debtor—whose trustee must also file the debtor corporation’s federal income tax returns pursuant to 26 U.S.C. 6012(b)(3); see 11 U.S.C. 1203—could be viewed as incurring post-petition income taxes. Such taxes would be collectible as administrative expenses pursuant to Section 1226(b)(1), rather than outside the bankruptcy case as required for an individual Chapter 12 debtor.

ers rely are thus inapposite in this case, which involves individual Chapter 12 debtors.

Petitioners' reliance (Br. 49) on IRS Chief Couns. Advice No. 200518002 (May 6, 2005), 2005 WL 1060956, is also misplaced.¹⁰ That advice states that "the Service has strong support for continuing to contend that its administrative expense claim in a Chapter 12 case must be paid in full before other creditors with lower priority begin receiving payments." *Id.* at 5, 2005 WL 1060956 at *4. That statement primarily reflects the government's understanding that administrative expenses, pursuant to Section 1226(b)(1), are treated separately from other claims in a Chapter 12 plan. See *ibid.* To be sure, the advice implicitly assumes that at least *some* post-petition taxes will qualify as administrative expenses in Chapter 12 cases. But the advice does not specify *which* taxes should be treated as administrative expenses, and it does not suggest that the post-petition income taxes of an individual Chapter 12 debtor fall within that category. As explained above (see note 9, *supra*), the post-petition income taxes of a *corporate* Chapter 12 debtor could be treated as administrative expenses. The Bankruptcy Code and its legislative history also support the view that post-petition *employment* taxes can be treated as administrative expenses.¹¹ Cf. Pet. Br. 49 (erroneously sug-

¹⁰ We note that, pursuant to 26 U.S.C. 6110(k)(3), Chief Counsel advice prepared by the IRS Office of Chief Counsel may not be used or cited a precedent. See 26 U.S.C. 6110(b)(1)(A) (defining "written determination"); 26 U.S.C. 6110(i)(1) (defining "Chief Counsel advice"). Nor does it constitute an official ruling or position of the IRS. I.R.M. 33.1.2.2.3.4(1) (2004).

¹¹ See 11 U.S.C. 503(b)(1)(A)(i) (including as administrative expenses "wages, salaries, and commissions for services rendered after the commencement of the case"); S. Rep. No. 989, 95th Cong., 2d Sess. 66 (1978) ("The actual, necessary costs and expenses of preserving the estate,

gesting that *In re Ryan*, 228 B.R. 746 (Bankr. D. Or. 1999), a Chapter 12 case treating post-petition employment taxes as administrative expenses, involved capital gains taxes).

2. *Petitioners’ interpretation of the phrase “incurred by the estate” ignores the Internal Revenue Code and conflicts with other provisions of the Bankruptcy Code*

Petitioners’ argument ultimately depends on the proposition that the phrase “incurred by the estate” means simply “incurred post-petition.” That reading ignores the relevant Internal Revenue Code provisions, however, and it creates other anomalies within the Bankruptcy Code.

including wages, salaries, or commissions for services rendered after the order for relief, and any taxes on, measured by, or withheld from such wages, salaries, or commissions, are allowable as administrative expenses.”). In addition, the “separate taxable entity” rules of 26 U.S.C. 1398 and 1399 apply only to federal income taxes, not employment taxes. See S. Rep. No. 1035, 96th Cong., 2d Sess. 4 (1980) (“The bill [that became Section 1398] treats the bankruptcy estate of an individual in a liquidation or reorganization case under the new bankruptcy statute as a separate taxable entity for Federal income tax purposes.”). Indeed, Sections 1398 and 1399 are located in Subtitle A of the Internal Revenue Code (26 U.S.C. 1-1563), which governs income taxes, while employment taxes are the subject of Subtitle C (26 U.S.C. 3101-3510).

If treated as administrative expenses, the employment taxes of a Chapter 12 debtor would be governed by Section 1226(b)(1) rather than by Section 1222(a)(2). Employment taxes, the greater portion of which are trust fund taxes withheld from employee wages (26 U.S.C. 3102(a), 3402(a), 7501(a)), ordinarily must be paid when wages are paid. Application of Section 1226(b)(1) ensures that such taxes are paid “[b]efore or at the time of each payment to creditors under the plan” (11 U.S.C. 1226(b)) rather than “in deferred cash payments” (11 U.S.C. 1222(a)(2)) over the life of a multi-year plan. Cf. pp. 15-16, *supra*.

a. *Not every tax incurred after the filing of the bankruptcy petition is “incurred by the estate”*

Petitioners assert that the determination whether a particular tax qualifies as an administrative expense “turn[s] on whether the tax was incurred after commencement of the bankruptcy case.” Pet. Br. 22; see *id.* at 10-33. That argument is unsound. To be sure, all taxes “incurred by the estate” under Section 503(b) are incurred post-petition, since no bankruptcy estate exists until the petition is filed. As the court of appeals explained, however, “although all taxes ‘incurred by the estate’ are ‘incurred post-petition,’ not all ‘taxes incurred post-petition’ are ‘incurred by the estate.’” Pet. App. 10; see *Dawes*, 2011 WL 2450930, at *4 (“The fact that a bankruptcy estate can’t incur liabilities until it comes into existence doesn’t mean *every* liability that arises after a petition is filed is automatically incurred by the estate and becomes its liability.”).

Petitioners invoke, *inter alia*, this Court’s decision in *United States v. Noland*, 517 U.S. 535 (1996); snippets of legislative history; and a provision of the Internal Revenue Code (26 U.S.C. 6658) other than Sections 1398 and 1399. Pet. Br. 15-28. None of those materials provides a sound basis for disregarding the most natural interpretation of the Bankruptcy and Internal Revenue Code provisions discussed above.

i. Petitioners rely (Br. 15-17) on this Court’s statement in *Noland* that the government’s claim for a post-petition tax penalty qualified as an “administrative expense” under 11 U.S.C. 503(b)(1)(C). See 517 U.S. at 541, 543. The penalty at issue in *Noland*, however, stemmed not from income taxes, but rather from non-payment of employment taxes. See *In re First Truck Lines, Inc.*, 48 F.3d 210, 211 (6th Cir. 1995) (“During the postpetition operation of its business, the debtor-in-possession did not pay to the Internal Reve-

nue Service accrued Federal Insurance Contributions Act and Federal Unemployment Tax Act taxes.”), rev’d *sub nom. Noland, supra*. That distinction bears directly on the question whether particular tax liabilities are treated as administrative expenses. See p. 27 & note 11, *supra*. In addition, *Noland* involved a corporate Chapter 11 (and eventually Chapter 7) debtor (see 517 U.S. at 536-537), and corporate Chapter 7 and 11 bankruptcy trustees are responsible for post-petition income taxes even though the estate in those cases is not a “separate taxable entity.” See p. 26, *supra*. Petitioners’ reliance (Br. 17) on *Nicholas v. United States*, 384 U.S. 678 (1986), which involved a corporate debtor under Chapter XI of the predecessor Bankruptcy Act (*id.* at 679), is misplaced for the same reason.

ii. Petitioners primarily rely on two sets of legislative history materials. The first consists of committee reports accompanying the Bankruptcy Reform Act of 1978 (1978 Act), Pub. L. No. 95-598, 92 Stat. 2549, which enacted the current Bankruptcy Code (including 11 U.S.C. 503 and 507). Petitioners cite (Br. 20) the Senate Report’s statement that “[i]n general, administrative expenses include taxes which the trustee incurs in administering the debtor’s estate, including taxes on capital gains from sales of property by the trustee and taxes on income earned by the estate during the case.” S. Rep. No. 989, 95th Cong., 2d Sess. 66 (1978). The Tenth Circuit aptly observed that “as legislative history goes this is no smoking gun.” *Dawes*, 2011 WL 2450930, at *7. The Senate Report was issued two years before the enactment of 26 U.S.C. 1398 and 1399, which establish that a Chapter 12 estate is not a “separate taxable entity.” In any event, the quoted excerpt simply describes the proper treatment of taxes “which the trustee incurs”; it does not discuss the analysis that should be used

to determine whether a particular tax is incurred by the trustee or by the debtor. See Pet. App. 15.

Petitioner's reliance (Br. 19) on a statement in the parallel House Report—that “[t]axes arising from the operation of the estate after bankruptcy are entitled to priority as administrative expenses,” *1977 House Report* 193—is similarly misplaced. That general statement does not purport to address all types of bankruptcies or taxes, let alone to resolve the question whether income taxes arising from a Chapter 12 debtor's post-petition sale of farm assets “aris[e] from operation of the estate.” Indeed, the *1977 House Report* also explains that the bankruptcy estate sometimes may “not [be] a separate taxable entity”; that in some cases “any income * * * is to be taxed only to the debtor”; and that “[t]he duration of a chapter 13 case is so short that there is no reason to impose a duty to pay taxes on the trustee.” *Id.* at 277.

Petitioners also rely on various statements by a single Senator about unenacted predecessor bills that contained language identical to current 11 U.S.C. 1222(a)(2)(A). See Pet. Br. 23-26 (citing four floor statements, one letter, and one written hearing statement by Senator Grassley from 1999-2001 concerning unenacted precursor bills). Those statements reflect Senator Grassley's concern about farmers' tax liabilities in bankruptcy and his desire to reduce the priority, in Chapter 12 cases, of income tax liabilities arising from the sale of farm assets. For several reasons, however, petitioners' reliance on those statements is unavailing. See Pet. App. 14-16.

First, recourse to legislative history is unwarranted because the Bankruptcy Code provisions at issue here are not ambiguous when read together with the pertinent provisions of the Internal Revenue Code. See, *e.g.*, *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

Second, floor statements are a particularly unreliable form of legislative history. *Ibid.* Third, comments regarding unenacted bills offer little insight into the intent of the subsequent Congress that actually enacted Section 1222(a)(2)(A). See *Massachusetts v. EPA*, 549 U.S. 497, 529-530 (2007) (explaining that views of one Congress ordinarily should not be attributed to another); *Doe v. Chao*, 540 U.S. 614, 620-622 (2004).

Finally, and perhaps most significantly, Senator Grassley's statements "don't speak directly to the question whether post-petition income taxes qualify as administrative expenses under [11 U.S.C.] 503(b)." *Dawes*, 2011 WL 2450930, at *7. Section 1222(a)(2)(A) strips priority from certain claims for which the government would otherwise be entitled to full payment under the Chapter 12 plan. The dispute between the parties in this case concerns the antecedent question whether, if Section 1222(a)(2)(A) had never been enacted, petitioners' post-petition tax debts could have been collected within the bankruptcy case. The resolution of that question turns on *other* Bankruptcy and Internal Revenue Code provisions that were enacted many years before Senator Grassley made the statements on which petitioners rely. Those statements could not "have influenced or reflected the intent of the 1978 Congress that enacted [11 U.S.C.] 503(b)," *ibid.*, nor could they have informed the understanding of the 1980 Congress that enacted 26 U.S.C. 1398 and 1399, see Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, § 3(a)(1), 94 Stat. 3397.

Petitioners assert that "[t]he whole point of [Section 1222(a)(2)(A)] was to enable family farmers to confirm plans that would downsize their farm assets, pay their creditors with sale proceeds, and be discharged from the tax liability arising from the sale." Pet. Br. 59. That broad-brush characterization, however, ignores the finely reticu-

lated statutory framework on which Section 1222(a)(2)(A) is premised. Section 1222(a)(2)(A) accords Chapter 12 debtors meaningful relief in a specific manner—by stripping priority from specified claims as to which provision for full payment would otherwise be a prerequisite to confirmation of the plan. Section 1222(a)(2)(A) does not purport to alter the established rules—central among which is the distinction between pre- and post-petition liabilities—that are used to determine whether particular debts are collectible inside or outside bankruptcy. To extend bankruptcy relief to debts incurred *after* a Chapter 12 petition was filed would have entailed a much more significant departure from background bankruptcy norms, and such a step could not have been accomplished through simple adjustment of the boundary between priority and non-priority claims.

iii. Petitioners' reliance (Br. 20-22) on 26 U.S.C. 6658 is also unavailing. Section 6658 addresses the effect of a bankruptcy filing on the applicability of penalties under 26 U.S.C. 6651, 6654, and 6655 for failing to make timely tax payments. Section 6658 suspends those penalties "if such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses." 26 U.S.C. 6658(a)(1).

Petitioners assert that "Congress used the words 'incurred by the estate' in IRC 6658 to refer to the post-petition incurrence of taxes, just as it used them in Bankruptcy Code 503(b)(1)(B)(i) for the same purpose." Pet. Br. 21. But while petitioners cite (*ibid.*) legislative history reflecting Congress's awareness that taxes "incurred by the estate" would be incurred post-petition, not all post-petition taxes are "incurred by the estate." See p. 29, *supra*. Section 6658 does not address the question whether post-petition income taxes constitute administrative ex-

penses “incurred by the estate” in the context of a Chapter 12 farm bankruptcy.

- b. *Various provisions of the Internal Revenue Code bear on the determination whether a post-petition income tax is “incurred by the estate”*

Petitioners contend (Br. 34) that “[t]he Bankruptcy Code, not the [Internal Revenue Code], controls rights and obligations to distribute bankruptcy estate funds to pay taxes and other claims.” They argue on that basis that the Court should disregard the Internal Revenue Code, and 26 U.S.C. 1398 and 1399 in particular, in determining whether post-petition income taxes are “incurred by the estate” for purposes of 11 U.S.C. 503(b). Pet. Br. 33-50. That argument is misconceived.

i. Petitioners contend (Br. 33-40) that, because the filing of a Chapter 12 petition creates an estate that can hold property, any federal income taxes attributable to the sale of such property are necessarily incurred by the estate. For that proposition, petitioners rely on 11 U.S.C. 1207, which enumerates the property included in a Chapter 12 estate, and on the fact that “the postpetition income, profits and assets of a Chapter 13 debtor have always been property of the bankruptcy estate.” Pet. Br. 39.

The provisions on which petitioners rely, however, do not address the estate’s susceptibility to taxes. “A threshold issue to be considered when a debtor files a petition under title 11 is whether the estate created under § 541 of proposed title 11 should be treated as a separate taxable entity.” *1977 House Report 275*. As the court of appeals observed (Pet. App. 11), Section 1207 “does not contain the

slightest suggestion that the ability to retain property implies the ability to incur taxes.”¹²

ii. Petitioners contend that “[w]hen the Bankruptcy Code was enacted, Congress did not make bankruptcy estates into ‘separate’ taxable entities.” Pet. Br. 36. That is incorrect. The 1978 Act that enacted the Bankruptcy Code included Chapter-specific rules governing the determination whether income realized during the bankruptcy case was taxable under state and local laws to the estate or to the debtor. See 1978 Act, sec. 101, § 346, 92 Stat. 2565 (11 U.S.C. 346). As originally enacted, for example, Section 346(b)(1) provided that in a Chapter 7 or 11 case involving an individual debtor, income was taxable only to the estate and not to the debtor. § 346(b)(1), 92 Stat. 2565. Section 346(c)(1), by contrast, provided that the estate of a partnership or corporate debtor is not a separate entity for tax purposes, and that any income was to be taxed against the debtor as if the bankruptcy case had not commenced. § 346(c)(1), 92 Stat. 2566. Of particular relevance here, Section 346(d) provided that the estate of a Chapter 13 debtor was not a separate taxable entity and that any income was to be taxed to the debtor only. § 346(d), 92 Stat. 2566; see *1977 House Report 276, 277* (The Chapter 13 “estate is not a separate taxable entity,” and “Section 346(d) indicates that any income * * * is to be taxed only to the debtor.”).

Apparently because of a concern over proper committee jurisdiction, the rules set forth in 11 U.S.C. 346 (1982) ap-

¹² Even under petitioners’ theory, the income tax arising from an asset sale that occurs after plan confirmation would not be a tax “incurred by the estate” because, “[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.” 11 U.S.C. 1227(b); cf. Pet. Br. 40-42 (arguing that “[t]axation of income after plan confirmation is unclear”).

plied only to state and local taxes.¹³ Those rules served, however, as the precursors to 26 U.S.C. 1398 and 1399, which were enacted two years later. Indeed, the *1977 House Report* noted the “strong bankruptcy policy that these provisions apply equally to Federal, State, and local taxes,” *1977 House Report* 275, and it specifically anticipated the eventual extension of the same rules to federal taxes. The Report explained: “Though the bill has been amended to remove Federal taxes from the scope of the four sections, the discussion in this section will proceed as though the bill had not been so amended. This will give a better picture of how these provisions would apply to Federal taxes should the Ways and Means Committee decide in its bankruptcy-tax bill to follow with respect to Federal taxes the proposals made here with respect to State and local taxes.” *Ibid.*

iii. Congress amended 11 U.S.C. 346 in 2005 in the same law that added Section 1222(a)(2)(A). BAPCPA § 719(a)(1), 119 Stat. 131. Section 346(b) now provides as follows:

Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income,

¹³ The *1977 House Report* stated:

[I]n order to avoid any possible jurisdictional conflict with the Ways and Means Committee over the applicability of these provisions to federal taxes, H.R. 8200 has been amended to make the sections inapplicable to Federal taxes. The amendment will expedite Floor consideration of the remainder of the bill, because it will obviate the need for a sequential referral of the bill to Ways and Means, which will be considering these provisions and other bankruptcy-related tax law later in this Congress.

1977 House Report 275.

gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate.

11 U.S.C. 346(b). Congress thus expressly linked the proper incidence of state and local taxes in the bankruptcy context to the presence or absence of a “separate taxable estate” under the Internal Revenue Code. See H.R. Rep. No. 31, 109th Cong., 1st Sess. Pt. 1, at 105 (2005) (explaining that amended Section 346(b) “conforms state and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor”). In combination with 26 U.S.C. 1398 and 1399, amended Section 346(b) requires that the post-petition income of a Chapter 12 debtor be taxed under state and local law to the debtor rather than to the bankruptcy estate. There is no sound reason to ignore Sections 1398 and 1399 in determining whether analogous federal income taxes are “incurred by the estate.”

3. *The treatment of post-petition income taxes under Chapter 13 confirms that such taxes are not administrative expenses under Chapter 12*

As discussed above (pp. 20, 22-23, *supra*), Chapter 12 was modeled on Chapter 13, and 26 U.S.C. 1398 and 1399 treat the two chapters alike. Bankruptcy courts have recognized that Chapter 13 estates cannot “incur” income taxes, and that post-petition income taxes therefore are not collectible as administrative expenses. See, e.g., *In re Whall*, 391 B.R. 1, 5-6 (Bankr. D. Mass. 2008); *In re Brown*, No. 05-41071, 2006 WL 3370867, at *3 (Bankr. D. Mass. Nov. 20, 2006); *In re Gyulafia*, 65 B.R. 913, 916 (D. Kan. 1986); see also 4 *Collier Bankruptcy Manual* ¶ 1305.02[1],

at 1305-4 (Alan N. Resnick & Henry J. Sommer eds., 4th ed. Nov. 2010) (“[A] tax on postpetition income of the debtor or of the Chapter 13 estate is not a liability of the chapter 13 estate; it is a liability of the debtor alone, by virtue of section 346(b).”). The IRS has reached the same conclusion. See, *e.g.*, I.R.M. 5.9.10.9.2(3) (2006) (“Claims for postpetition taxes should not be filed as administrative claims because the Service views postpetition taxes as constituting a liability of the debtor, rather than the [Chapter 13] estate.”).¹⁴ Indeed, petitioners acknowledge (Br. 44) that “[i]f the IRS declines to file a proof of claim [under 11 U.S.C. 1305], the postpetition tax claim is no longer treated in the [Chapter 13] bankruptcy case, and becomes a personal liability of the debtor.”¹⁵

¹⁴ See also IRS Chief Couns. Advice No. 200113027, at 6 (Mar. 30, 2001), 2001 WL 307746, at *4 (“[O]ur position is that since post-petition tax liabilities are, in Chapter 13 cases, incurred by the debtor, rather than the bankruptcy estate, characterizing such liabilities as administrative expenses is inconsistent with section 503 of the Bankruptcy Code and is not a practice which should be perpetuated.”); IRS Litig. Guideline Mem. GL-26, at 9 (Dec. 16, 1996), 1996 WL 33107107, at *6 (stating that submission of a request for payment of a Chapter 13 debtor’s post-petition taxes as administrative expenses “is not a viable option for the Service”).

¹⁵ As explained above (see p. 21, *supra*), 11 U.S.C. 1305(a)(1) authorizes the filing of a proof of claim “for taxes that become payable to a governmental unit while the case is pending.” If a Chapter 13 debtor’s post-petition income taxes could be treated as “administrative expenses,” however, the government would be entitled to payment of such taxes “[b]efore or at the time of each payment to creditors under the plan.” 11 U.S.C. 1326(b); see 11 U.S.C. 1326(b)(1); cf. pp. 15-16, *supra* (discussing analogous super-priority status of administrative expenses in Chapter 12 cases under Section 1226(b)(1)). If that option were available, the government would have no incentive to invoke Section 1305(a)(1) because it could obtain higher priority treatment of the post-petition tax debt via Section 1326(b)(1)—thereby “render[ing] section

None of the statutory provisions that potentially bear on the determination whether a post-petition tax debt constitutes an “administrative expense”—see 11 U.S.C. 503(b), 507(a)(2), 1226(b)(1), 1326(b)(1); 26 U.S.C. 1398, 1399—distinguishes between Chapters 12 and 13. Petitioners assert (without meaningful elaboration) that the established understanding of Chapter 13 is irrelevant here because Chapter 12 contains no provision analogous to Section 1305. Pet. Br. 44-45. That is a non sequitur. Far from strengthening petitioners’ position, the absence from Chapter 12 of any counterpart to Section 1305 underscores Congress’s intent that the post-petition income taxes of Chapter 12 debtors should be collected outside the bankruptcy plan. See p. 21, *supra*. Since Section 1222(a)(2)(A) simply strips priority status from governmental claims that would otherwise be payable in full under the plan, it has no effect on liabilities (like the tax debt at issue here) that are collectible outside the plan as personal obligations of the debtor.

1305(a)(1) superfluous or at least insignificant.” *Gyulafia*, 65 B.R. at 917.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 11 U.S.C. 101 provides, in pertinent part:

Definitions

In this title the following definitions shall apply:

* * * * *

(10) The term “creditor” means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

* * * * *

2. 11 U.S.C. 346 (1982), as enacted by the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, Sec. 101(a), § 346, 92 Stat. 2565, provides, in pertinent part:

Special tax provisions

(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i) and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

(b)(1) In a case under chapter 7 or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be

(1a)

taxed to such individual. Except as provided in section 728 if this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

* * * * *

(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

* * * * *

(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

* * * * *

3. 11 U.S.C. 346 provides, in pertinent part:

Special provisions related to the treatment of State and local taxes

* * * * *

(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make such returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

* * * * *

4. 11 U.S.C. 502 provides, in pertinent part:

Allowance of claims or interests

* * * * *

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the

United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

* * * * *

5. 11 U.S.C. 503 provides, in pertinent part:

Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate including—

(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substan-

tially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

(B) any tax—

(i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and

(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;

* * * * *

6. 11 U.S.C. 507(a) provides, pertinent part:

Priorities

(a) The following expenses and claims have priority in the following order:

* * * * *

(2) Second, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

* * * * *

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a

prior case under this title during that 240-day period, plus 90 days.¹

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(c) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

¹ So in original. The period should be “; or”.

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisal or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time dur-

ing which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

* * * * *

7. 11 U.S.C. 1222 provides, in pertinent part:

Contents of plan

(a) The plan shall—

* * * * *

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

(B) the holder of a particular claim agrees to a different treatment of that claim;

* * * * *

8. 11 U.S.C. 1226 provides, in pertinent part:

Payments

* * * * *

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(2) of this title; and

* * * * *

9. 11 U.S.C. 1227(a) provides:

Effect of confirmation

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

10. 11 U.S.C. 1228(a) provides:

Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a

judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title.

11. 11 U.S.C. 1305 provides, in pertinent part:

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.

* * * * *

12. 11 U.S.C. 1322 provides, in pertinent part:

Contents of plan

(a) The plan shall—

* * * * *

(2) 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;

* * * * *

13. 11 U.S.C. 1326 provides, in pertinent part:

Payments

* * * * *

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(2) of this title;

* * * * *

14. 26 U.S.C. 1398(a) provides:

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.

15. 26 U.S.C. 1399 provides:

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.

16. 26 U.S.C. 6012 provides, in pertinent part:

Persons required to make returns of income

* * * * *

(b) **Returns made by fiduciaries and receivers.—**

* * * * *

(3) **Receivers, trustees and assignees for corporations**

In a case where a receiver, trustee in a case under Title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

* * * * *

17. 26 U.S.C. 6151 provides, in pertinent part:

Time and place for paying tax shown on returns

(a) **General rule**

Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at

the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * *

18. 26 U.S.C. 6658 provides, in pertinent part:

Coordination with Title 11

(a) Certain failures to pay tax

No addition to the tax shall be made under section 6651, 6654, or 6655 for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) if such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) if—

(A) such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and

(B)(i) the petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) the date for making the addition to the tax occurs on or after the day on which the petition was filed.

* * * * *

19. Section 5.9.9.3 of the current version of the Internal Revenue Manual (2006) provides, in pertinent part:

Postpetition Liabilities in Chapter 12

1. ***No Provision for Postpetition Tax Debts.*** Unlike a Chapter 13 proceeding, no provision exists for filing claims for postpetition taxes of a debtor who is an individual in a Chapter 12 bankruptcy.

* * * * *

20. Section 5.9.10.9.2 of the current version of the Internal Revenue Manual (2006) provides, in pertinent part:

Section 1305 Claims

* * * * *

3. ***Classification.*** A § 1305 claim is treated as a prepetition claim. Claims for postpetition taxes should not be filed as administrative claims because the Service views postpetition taxes as constituting a liability of the debtor, rather than the estate.

21. Section 25.17.12.9.3 of the Internal Revenue Manual (2004) provides, in pertinent part:

Postpetition Liabilities in Chapter 12

- (1) ***No Provision for Postpetition Tax Debts.*** Unlike a Chapter 13 proceeding, no provision exists for filing claims for postpetition taxes in a Chapter 12 bankruptcy.

* * * * *

22. Section 25.17.12.9.3 of the Internal Revenue Manual (2002) provides, in pertinent part:

Postpetition Liabilities in Chapter 12

- (1) ***No Provision for Postpetition Tax Debts.*** There is no provision for filing claims for postpetition taxes in a Chapter 12 bankruptcy as there is in a Chapter 13 proceeding.

* * * * *

23. Section 5.9.10.8 of the Internal Revenue Manual (1998) provides, in pertinent part:

Monitoring Compliance

* * * * *

- (4) Much of the property the debtor acquires after the bankruptcy becomes property of the bankruptcy estate, therefore, it is not subject to administrative collection. See BC § 1207(a) for

property of the estate. If the debtor has significant post-petition liabilities, a referral to have the bankruptcy dismissed should be pursued. **Note: there is no provision for post-petition claims** as in a Chapter 13 proceeding.

24. Section 57(13)6.2(5) of the Internal Revenue Manual (1988) provides, in pertinent part:

Compliance Monitoring of Chapter 12 Cases

* * * * *

- (5) If the debtor incurs post-petition liabilities, SPf may proceed with collection outside the plan to the extent there are assets not subject to the automatic stay. SPf should request a one-time opinion on how to proceed when Chapter 12 debtors incur post-petition liabilities.