

U.S. Department of Justice
Office of the United States Trustee for Region 8
Memphis, Tennessee



**OPERATING GUIDELINES
AND
REPORTING REQUIREMENTS
IN CHAPTER 11 CASES**

200 JEFFERSON AVENUE
SUITE 400
MEMPHIS, TENNESSEE 38103
(901) 544-3251

Revised: 04/15/2020

TABLE OF CONTENTS

INTRODUCTION 1

A. INTERVIEWS, MEETINGS, AND CONFERENCES 1

 1. INITIAL DEBTOR INTERVIEWS 1

 2. MEETING OF CREDITORS 1

 3. DEBTOR INSPECTIONS THE UNITED STATES TRUSTEE 2

B. BOOKS, RECORDS, ACCOUNTS, AND LICENSES 2

 1. BOOKS AND RECORDS 2

 2. BANK ACCOUNTS 3

 3. BUSINESS CREDIT CARD ACCOUNTS 4

 4. BUSINESS LICENSES 4

C. REPORTS, DOCUMENTS, AND OTHER REQUIREMENT 4

 1. EVIDENCE OF INSURANCE COVERAGE 4

 2. RECENT INCOME and PERSONAL PROPERTY TAX RETURNS 5

 3. POST-PETITION TAXES 5

 4. PHYSICAL INVENTORY and
 DETAILED LISTING OF AGED ACCOUNTS RECEIVABLES 6

 5. REPORTS ON ENTITIES IN WHICH THE ESTATE HAS AN INTEREST. 6

 6. REPORTS ON SALE OF REAL OR PERSONAL PROPERTY 6

 7. MONTHLY OPERATING REPORTS 6

 a. Small Business Cases 7

 b. Additional Records 7

 8. SMALL BUSINESS DEBTOR and INDIVIDUAL DEBTOR
 ADDITIONAL DUTIES 7

 9. DISCLOSURE STATEMENTS AND PLANS 7

 a. Disclosure Statement Requirements 8

 b. Caveat on Filing Chapter 11 Plans in Small Business Cases 9

 c. Chapter 11 Tally of Ballots 9

 10. POST-CONFIRMATION OPERATING REPORTS 9

 11. FINAL REPORT AND FINAL DECREE 10

 12. REPORTS IN CASES CONVERTED TO CHAPTER 7 10

 13. SERVICE OF DOCUMENTS ON THE UNITED STATES TRUSTEE ... 10

D. UNITED STATES TRUSTEE CHAPTER 11 QUARTERLY FEES 10

 1. DISCLOSURES PURSUANT TO THE DEBT
 COLLECTION IMPROVEMENT ACT 12

E. GENERAL RESTRICTIONS 13

 1. POST-PETITION TAXES, WAGES, AND
 EXPENSES OF ADMINISTRATION 13

 2. OBTAINING CREDIT 13

3. USE, SALE, OR LEASE OF PROPERTY OF THE ESTATE INCLUDING USE OF CASH COLLATERAL	13
4. EMPLOYMENT OF ATTORNEYS AND OTHER PROFESSIONALS	13
5. COMPENSATION OF PROFESSIONALS	14
6. COMPENSATION OF PRINCIPALS, PARTNERS, OFFICERS, OR DIRECTORS OF THE DEBTOR	14
7. PAYMENT OF PRE-PETITION DEBT	14
8. CHANGE OF ADDRESS OR TELEPHONE NUMBER	14
9. COMPLIANCE WITH BANKRUPTCY CODE AND RULES	14
F. MODIFICATIONS	14
TIMETABLE AND CHECKLIST	16
GUIDELINES FOR APPLICATIONS TO EMPLOY PROFESSIONAL PERSONS	19
GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES UNDER 11 U.S.C. § 330	22
IRS NOTICE 2006-83 PROVIDING GUIDANCE FOR INDIVIDUALS FILING BANKRUPTCY CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE	29

INTRODUCTION

Section 586(a)(3), title 28, United States Code provides for the supervision of the administration of Chapter 11 cases by the United States Trustee. Pursuant to that Section, the United States Trustee for Region 8 (“U.S. Trustee”), which is comprised of the judicial districts of the States of Kentucky and Tennessee, has promulgated the following requirements for Debtors and appointed trustees in Chapter 11 cases filed in the Western District of Tennessee for both the Western Division and the Eastern Division.

TIMELY COMPLIANCE WITH EACH OF THE FOLLOWING REQUIREMENTS IS MANDATORY. COMPLIANCE IS REQUIRED BY THE BANKRUPTCY CODE AND RULES. THE FAILURE TO COMPLY WITH ANY REQUIREMENT MAY RESULT IN THE UNITED STATES TRUSTEE OR OTHER PARTY FILING PAPERS SEEKING THE DISMISSAL OR CONVERSION OF YOUR BANKRUPTCY CASE, THE APPOINTMENT OF A TRUSTEE OR AN EXAMINER, OR THE IMPOSITION OF OTHER SANCTIONS.

A. INTERVIEWS, MEETINGS, AND CONFERENCES

1. INITIAL DEBTOR INTERVIEWS

The U.S. Trustee will require the Debtor, (in business cases, the Debtor’s senior management), and his, her, their, or its counsel and accountant to meet with member(s) of the staff of the U.S. Trustee at an Initial Debtor Interview (“IDI”). The IDI will generally be held within fifteen (15) days after the filing of a voluntary petition. The Debtor’s attorney will be contacted to set up the interview. The IDI date and time will also be confirmed by email. The IDI will normally be held prior to the initial Meeting of Creditors.

The purpose of the IDI is to discuss the Debtor’s particular financial situation, its operating framework under Chapter 11, and the requirements of the U.S. Trustee. At the interview, the U.S. Trustee shall: (1) investigate the Debtor’s past business practices, the Debtor’s past, present, and anticipated future corporate structure and ownership, and the conditions which necessitated the filing of the bankruptcy case; (2) inquire about the Debtor’s business plan and the anticipated plan of reorganization; (3) review the Debtor’s realty and personalty holdings; (4) investigate the Debtor’s financial condition as of the date of filing; and (5) explain the Debtor’s obligations to file Monthly Operating Reports, other reporting requirements, and other statutory obligations. See 11 U.S.C. § 586(a)(7)(A).

2. MEETING OF CREDITORS

A meeting of creditors will be held by the U.S. Trustee within 20 to 40 calendar days (up to 60 days for cases filed in the Western District of Tennessee, Eastern Division) after the filing of a voluntary petition. The Debtor and Debtor’s attorney are required to appear for the Meeting of Creditors. In the case of a joint petition, both Debtors must appear. In the case of a business Debtor, the Debtor shall appear through its senior management. The senior management of the

Debtor shall have personal knowledge of and be familiar with the operation of the Debtor's business and its bankruptcy proceeding. The U.S. Trustee may also request that additional representatives of the Debtor, such as an accountant and/or bookkeeper, attend the Meeting of Creditors and be made available for examination under oath.

All creditors and other parties in interest are notified of the meeting by the Clerk of the Bankruptcy Court. The Debtor(s) will be examined under oath by the representative of the U.S. Trustee, creditors, and other parties in interest in attendance pursuant to 11 U.S.C. §§ 341 and 343, and Fed.R.Bankr.P. Rule 2003(b). The Meeting of Creditors will be recorded. After notice of the Meeting of Creditors has been mailed, such meetings should not be canceled or rescheduled except in extraordinary circumstances. Debtor's Counsel must contact the Office of the U.S. Trustee to request the rescheduling of the Meeting of Creditors. If the request to reschedule is approved by the U.S. Trustee, Debtor's Counsel shall serve notice of the rescheduled Meeting of Creditors upon all parties indicated on the Creditor Matrix and shall file a Certificate of Service with the Clerk of the Bankruptcy Court certifying that notice has been served upon all parties.

To request a copy of the recorded Meeting of Creditors, the party must serve a written request upon the Office of the U.S. Trustee. The written request must provide the following: (1) case name, (2) case number, (3) division, and (4) date and time of the Meeting of Creditors. The written request must also be accompanied by a blank CD-R or CD+R.

The U.S. Trustee maintains recordings of the Meeting of Creditors in Chapter 11 cases for a time period of FIVE (5) years.

3. DEBTOR INSPECTIONS BY THE U.S. TRUSTEE

The U.S. Trustee, or a designated representative of the U.S. Trustee may request to inspect the Debtor's business premises, the Debtor's business records, and/or the Debtor's business books. These inspections will be conducted at reasonable times. The U.S. Trustee, or the designated representative, will provide the Debtor and Debtor's Counsel with written notice of the inspection, providing the Debtor reasonable notice of the time and date of the inspection and what the U.S. Trustee intends to inspect. In a Small Business Cases, the Debtor must allow the inspection by the U.S. Trustee. See 11 U.S.C. § 1116(7). In all other cases, the U.S. Trustee may still request and require an inspection of the Debtor's premises, books, and records. The U.S. Trustee may deem it appropriate to: (1) physically visit the business premises, (2) ascertain the state of the Debtor's books and records, and (3) verify that the Debtor has filed its tax returns. See 11 U.S.C. § 586(a)(7)(B).

B. BOOKS, RECORDS, ACCOUNTS, AND LICENSES

1. BOOKS AND RECORDS

The books and records of the Debtor must be closed out as of the date of the filing of the petition, and new books and records opened immediately thereafter, covering the post-petition period of the Debtor.

2. BANK ACCOUNTS

All pre-petition bank accounts and other deposit accounts of which the Debtor has possession, custody, control, ownership, use, or access must be closed upon the filing of the petition, and up to three (3) new accounts opened: the General Account, Payroll Account, and Tax Account. If the Debtor possesses cash collateral, additional accounts must be established and maintained in accordance with 11 U.S.C. §363(c)(4), and as required by the Bankruptcy Court and/or other parties in interest. Absent the consent of the secured creditor or an order of the bankruptcy court, a Debtor may not use cash collateral. See, 11 U.S.C. §363(c)(2).

All funds received or held by the Debtor must be deposited into an account with a financial institution designated by the U.S. Trustee as an authorized depository. A copy of the list of authorized depositories for the Western District of Tennessee is provided in the reporting package.

Should an authorized depository refuse to establish an account with a Debtor, additional safeguards and guidelines will need to be established between the Debtor and the U.S. Trustee. The Debtor shall notify the U.S. Trustee in writing requesting these additional safeguards. The U.S. Trustee will review the written request and, if appropriate, outline the additional safeguards to be established with the Debtor. At a minimum, the additional safeguards will require that all funds received or held by the Debtor must be deposited into an account with a financial institution insured by the Federal Deposit Insurance Corporation (FDIC), or similar nationally recognized institutional insurer. The FDIC insures its depositors (here Debtor) for \$250,000.00. This maximum amount is applied to each depositor by each insured institution. It does not apply to each account. Therefore, insurance is not increased merely by dividing funds among different accounts in the same institution. If the Debtor has one or more accounts in any single institution where the total amount of deposit exceeds \$250,000.00, then the Debtor must either open another account in a separate bank or require from the institution holding these funds a deposit of securities equal to the difference in the amount of deposit and \$250,000.00.

All checks SHALL be sequentially numbered. All checks SHALL have the type of account (general, payroll, tax, or cash collateral) imprinted on the face of each check.

All bank accounts and all checks for those accounts must be in the name of the Debtor.

All checks should be in substantially the following form:

<i>ABC Produce Supply</i>	<i>No. 0001</i>
<i>GENERAL ACCOUNT</i>	_____, 20__
<i>5555 Market Street</i>	
<i>Memphis, TN 38103</i>	
<i>Pay to the Order of</i> _____	\$ _____

<i>00XXX-XXX-00-XXXXX 000XXX-XX00</i>	_____

If the Debtor has pre-petition claims for employee/employer withholding taxes for state or federal taxes, state sales taxes, or has pre-petition claims for unpaid payroll, the U.S. Trustee may require the Debtor to open a Tax Account and/or a Payroll Account to ensure that the postpetition tax withholdings and/or payroll are properly being segregated and paid as they become due.

The Debtor, within fifteen (15) days after the date of filing the petition, but not later than the Initial Debtor Interview, must provide the U.S. Trustee with: (1) the IDI-4 Bank Account Declaration of Debtor form and (2) a copy of the account signature card which includes "Debtor in Possession" and the chapter 11 case number on the signature card.

3. BUSINESS CREDIT CARD ACCOUNTS

The Debtor shall close all business credit card accounts immediately. Should the Debtor-in-possession have the need for business credit card accounts, reporting guidelines will have to be established between the Debtor, the U.S. Trustee, and potentially the creditor (with regards to prepetition balances).

4. BUSINESS LICENSES

The Debtor shall keep current all business licenses and permits. The Debtor shall, upon request, furnish the U.S. Trustee with copies of all current licenses and permits and provide copies of all renewed licenses and permits as they are renewed.

C. REPORTS, DOCUMENTS, AND OTHER REQUIREMENTS

1. EVIDENCE OF INSURANCE COVERAGE

The Debtor shall insure, and maintain insurance upon all business-related property of the estate, which would customarily be insured in the business engaged in by the Debtor, or any non-business property which would customarily be insured by the Debtor or persons in circumstances similar to those of the Debtor in the area where the property is kept or utilized. If insurance is not maintained, the Debtor must file a verified statement explaining why the asset is uninsured and serve a copy of the statement upon each creditor who has a security interest in the uninsured property, if any.

The Debtor, within fifteen (15) calendar days after the date of the filing of the petition, but not later than the Initial Debtor Interview, must provide the U.S. Trustee with certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect and in the name of the Debtor. Each policy must disclose the type and extent of coverage, effective dates, names of the insurance carrier and broker, and the agent's name, address and telephone number.

The Debtor is required to show the U.S. Trustee, 200 Jefferson Ave., Suite 400, Memphis, TN 38103 as an additional certificate holder of the purpose of notification only.

Additionally, the Debtor is required to provide a copy of either a renewal or new policy of insurance prior to the time that any existing policy or coverage is to expire.

Generally, the following types of insurance are required:

- a. General Comprehensive/Public Liability;
- b. Casualty coverage (tangible assets capable of loss by fire, weather, theft, vandalism, etc.), in an amount at least equal to the replacement value of the property;
- c. Workers' Compensation and Unemployment Insurance;
- d. Vehicle;
- e. Product Liability.

Additionally, it may be necessary for an operating business to maintain the following types of insurance:

- a. Errors and Omissions; and/or
- b. Director and Officer Liability.

If a notice of cancellation or of non-renewal is given on any of the Debtor's insurance policies, or the Debtor decides not to renew any policy, the Debtor shall notify the U.S. Trustee in writing within three (3) business days after receipt of the notice or after deciding not to renew.

2. RECENT INCOME and PERSONAL PROPERTY TAX RETURNS

The Debtor, within fifteen (15) days of the filing of the petition, shall provide to the U.S. Trustee copies of its state and federal income tax returns, including all forms and schedules filed therewith, which the Debtor filed, or has prepared for filing, for the TWO (2) tax years preceding the filing of the petition. Additional tax years may be requested.

The Debtor, within fifteen (15) days of the filing of the petition, shall provide to the U.S. Trustee copies of all personal property tax returns for the TWO (2) tax years preceding the filing of the petition. Additional tax years may be requested.

The Debtor shall file returns for, BUT NOT PAY, all the pre-petition taxes, including sales taxes, within thirty (30) days of the date of the filing of the bankruptcy petition. A copy of each such return shall be served upon the U.S. Trustee.

3. POST-PETITION TAXES

Trust fund payroll taxes are those monies which the employer Debtor must withhold from employee's wages and deposit for the benefit of the U.S. Department of Treasury on behalf of the Internal Revenue Service ("IRS"), and other taxing authorities. These include withheld federal, state, and local income taxes as well as the employees' portion of the FICA taxes. The Debtor shall deposit to the Debtor's Tax Account sufficient post-petition funds to pay any tax liability associated with the Debtor's payroll, in accordance with the most recent edition of the

IRS Circular E Publication, and the state and local taxing authority guidelines, unless a Court order or other order of the taxing authority requires otherwise. As an alternative, payroll taxes may be deposited with the applicable agencies at the time of each payroll distribution. To verify deposits for trust fund taxes, the Debtor must attach evidence of payment or deposit to the Debtor's monthly schedule of post-petition liabilities/payables.

All post-petition Federal, state, local, and personal property tax returns shall be timely filed, and accompanied by payment in full of any tax liability. A copy of each return, and verification of payment of the taxes due, shall be served upon the U.S. Trustee.

4. PHYSICAL INVENTORY and DETAILED LISTING OF AGED ACCOUNTS RECEIVABLES

The Debtor, within fifteen (15) calendar days after the filing of the petition, is required to submit to the U.S. Trustee a physical inventory as of the date of the petition which provides an itemized cost value of the inventory held by the estate. The physical inventory shall indicate itemized values at COST as well as FAIR MARKET VALUE.

The Debtor, within fifteen (15) calendar days after the filing of the petition, is required to submit to the U.S. Trustee a detailed listing and aging of all accounts receivables. To the extent that the Debtor is owed money, the Debtor is to provide the name of the entity owing the Debtor, amount owed, date incurred, and the anticipated collectability.

5. REPORTS ON ENTITIES IN WHICH THE ESTATE HAS AN INTEREST

The Debtor-in-Possession must file financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The first report must be filed no later than seven days before the first date set for the meeting of creditors. Subsequent reports must be filed no less frequently than every six months thereafter. *See* Fed.R.Bankr.P. 2015.3.

6. REPORTS ON SALE OF REAL OR PERSONAL PROPERTY

The Debtor-in-Possession must file a report of sale as to any property sold, real or personal, not in the ordinary course of business. *See* Fed.R.Bankr.P. 6003 (f).

7. MONTHLY OPERATING REPORTS

FILING OF A FALSE OPERATING REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. § 3729(a)(7) AND/OR TO CRIMINAL PENALTIES UNDER 18 U.S.C. §§ 1001 AND/OR 1621.

In accordance with 28 U.S.C. § 586(a)(3)(D), 11 U.S.C. §§ 1106(a)(1), 1116(4), and Fed. R. Bankr. P. 2015(d), the Debtor shall file Monthly Operating Reports with the Clerk of the Bankruptcy Court no later than fifteen (15) calendar days after the close of each month. The Monthly Operating Report SHALL conform to the form(s) provided in the reporting package.

If the first Monthly Operating Report becomes due prior to the initial Meeting of Creditors, the Debtor shall prepare, sign, and have filed the Monthly Operating Report with the Clerk of the Bankruptcy Court prior to the Meeting of Creditors.

Monthly Operating Reports are required in all Chapter 11 cases until a Chapter 11 Plan is confirmed, the case is dismissed or converted, or Court order authorizes otherwise. A copy of the Monthly Operating Report is provided in the reporting package.

a. Small Business Cases

If the Debtor is a Small Business Case, as defined under Section 101, title 11, United States Code, then the Debtor SHALL utilize the Monthly Operating Report in Small Business Cases. A copy of a Monthly Operating Report in Small Business Cases is included in the reporting package.

A Debtor in a Small Business Case is also required to provide and disclose the industry classification code for the Debtor's business. The Department of Commerce, through its Census Bureau, promulgates the North American Industry Classification System (NAICS). This classification system is widely used for worker's compensation and tax purposes.

b. Additional Records

The U.S. Trustee may require additional information or reports reasonably necessary to properly and adequately supervise the administration of the bankruptcy estate.

8. SMALL BUSINESS DEBTOR and INDIVIDUAL DEBTOR ADDITIONAL DUTIES

The Debtor in a small business case shall, not later than seven (7) days after the order for relief, file with the Clerk of the Bankruptcy Court: (1) the most recent balance sheet of the business operations, (2) statement of operations, (3) cash-flow statement, and (4) Federal income tax return for the prior tax year. See 11 U.S.C. § 1116.

If the Debtor does not normally prepare balance sheets, cash-flow statements, or statement of operations, or has not filed a Federal income tax return for the prior tax year, then the Debtor shall file with the Clerk of the Bankruptcy Court a statement, under penalty of perjury, expressly providing which statements are not prepared and/or that the federal tax return has not been filed with the IRS.

9. DISCLOSURE STATEMENTS AND PLANS

In accordance with 11 U.S.C. § 1125, the Debtor must provide a Disclosure Statement ("DS") in conformity with the letter and the spirit of the Bankruptcy Code and Rules. The DS must

provide adequate information that is material, important, and necessary to evaluate a proposed plan. Adequate disclosures are comprised of all factors presently known that bear upon the success or failure of the proposed plan. A DS which can be characterized as essentially a summary of the proposed plan will generally be inadequate in its material information and disclosure.

a. Disclosure Statement Requirements

By statute, all DSs, MUST contain the following disclosure:

- (1) A discussion of the potential material Federal tax consequences of the plan to the Debtor, any successor to the Debtor, and a hypothetical investor typical of the holders of claims or interests in the case; 11 U.S.C. § 1125(a);

All DSs should also contain relevant statements in the following categories and factors in order for a hypothetical investor to make an informed judgment about the proposed plan:

- (2) The events that led to the filing of the bankruptcy case;
- (3) A description of the available assets and their value;
- (4) The anticipated future of the company;
- (5) The source of the information stated in the disclosure statement;
- (6) A disclaimer;
- (7) The present condition of the Debtor while in Chapter 11;
- (8) The scheduled claims as allowed or estimated by category;
- (9) The estimated return to parties under a Chapter 7 liquidation;
- (10) The accounting method utilized to produce financial information, and the identity of the accountants and others responsible for such information;
- (11) The future management of the company, including qualifications and compensation;
- (12) A summary of the Chapter 11 plan;
- (13) The estimated administrative expenses, including professional fees and priority claims;
- (14) The collectability of accounts receivable and counter-claims;
- (15) Financial information, data, evaluations or projections relevant to the decision to accept or reject the plan;
- (16) Information relevant to the risks posed to creditors under the plan;
- (17) The actual or projected realizable value from recovery of preferential or otherwise voidable claims;
- (18) Litigation likely to arise in a non-bankruptcy context;
- (19) State and Local tax attributes and consequences of the proposed plan; and,
- (20) The relationship of the Debtor with affiliates, subsidiaries, merger or acquisition interests, and the plan proponents.

b. Caveat on Filing Chapter 11 Plans in Small Business Cases

In Small Business cases, (including individuals classified as a Small Business Debtor), the Bankruptcy Court is required to confirm a Chapter 11 Plan within forty-five (45) days of the filing of the Chapter 11 Plan, if the proposed plan complies with the applicable provisions of the Bankruptcy Code and Rules. See 11 U.S.C. § 1129(e). Under certain conditions, this forty-five (45) day period may be extended by the court by order entered prior to the expiration of the existing deadline. See 11 U.S.C. § 1121(e)(3).

Official Forms B25A & B25B provide a sample plan and DS for a Small Business case.

c. Chapter 11 Tally of Ballots

In all cases, the Debtor (or plan proponent if not the Debtor), shall prepare a Tally of Ballots stating for each class of claims, the number and dollar amount of acceptances and rejections, and statement for each class of interests, the dollar amount of acceptances and rejections. The Debtor is to file with the Court a Tally of Ballots within five (5) days of the originally set confirmation hearing. A copy of the Tally of Ballots report is provided by the Clerk of the Bankruptcy Court. See Local Form 19.

10. POST-CONFIRMATION OPERATING REPORTS

FILING OF A FALSE OPERATING REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. § 3729(a)(7) AND/OR TO CRIMINAL PENALTIES UNDER 18 U.S.C. §§ 1001 AND/OR 1621.

The U.S. Trustee requires quarterly operating reports after confirmation of a plan of reorganization until the court grants a final decree, dismisses the case, or converts the case. In accordance with 28 U.S.C. § 586(a)(3)(D) and 11 U.S.C. § 1106(a)(1), the reorganized Debtor shall file an original Post-Confirmation Quarterly Operating Report (“PCQOR”) with the Clerk of the Bankruptcy Court no later than fifteen (15) calendar days after the close of each calendar quarter. The reorganized Debtor should be prepared to substantiate anything reported on the PCQOR to the U.S. Trustee. Requested substantiation could include, but is not limited to, such items as disbursement registers or bank statements. A copy of the PCQOR will be provided to the Debtor by the U.S. Trustee upon confirmation.

In an individual’s Chapter 11 case, upon Confirmation of the Plan, the Debtor does not receive a discharge under 11 U.S.C. § 1141(d)(5). Generally, a Bankruptcy Court will not be able to grant an individual Debtor a discharge in a Chapter 11 case until the completion of all payments under the plan. An individual Chapter 11 Debtor shall file PCQORs with the Clerk of the Bankruptcy Court until the later of: (1) a discharge is entered, (2) a final decree is entered and the case is closed or administratively closed, or (3) the case is converted or dismissed.

Upon entry of the final decree, the reorganized Debtor shall prepare a final PCQOR and serve the PCQOR on the U.S. Trustee no later than fifteen (15) calendar days after the final decree has been entered. This final PCQOR shall be prepared for the partial calendar quarter in effect as of the entry of the final decree.

11. FINAL REPORT AND FINAL DECREE

In accordance with Local Bankruptcy Rule 3022-1, the Debtor shall file a Final Report (Local Form 15) with the Clerk of the Bankruptcy Court no later than sixty (60) days after the entry of the Order Confirming the Plan.

Within sixty (60) days after substantial consummation of a Plan, as defined in 11 U.S.C. § 1101(2), the Plan proponent shall file a Motion for Final Decree pursuant to Fed. R. Bankr. P. 3022 (Local Form 16), or shall file a statement setting forth why such motion is premature.

12. REPORTS IN CASES CONVERTED TO CHAPTER 7

Should the case convert to a chapter 7, the Debtor or chapter 11 trustee, if one has been appointed, must comply with Fed.R.Bankr.P. 1019(1), (4), and (5) and Local Bankruptcy Rule 10007-1(e). All records and property must be turned over to the chapter 7 trustee. Property of the estate must be secured and preserved. The Debtor or chapter 11 trustee must also file, within thirty (30) days of entry of the conversion order, a Final Report and Account with the Court, with a copy served on the U.S. Trustee and the chapter 7 trustee assigned to the case.

The Final Report and Account should include a verified schedule of all property of the estate as of the date of conversion. This schedule of assets must be filed within five (5) days after entry of the order converting the case to chapter 7. Additionally, a schedule of unpaid debts incurred after commencement of the superseded case including the name and address of each creditor must be filed and served within fourteen (14) days after the entry of the order converting the case.

13. SERVICE OF DOCUMENTS ON THE U.S. TRUSTEE

The Debtor must serve the U.S. Trustee with a copy of all documents submitted to or filed with the Bankruptcy Court and all matters served on parties in interest pursuant to the Bankruptcy Rules. See, Fed.R.Bankr.P. 9034.

D. U.S. TRUSTEE CHAPTER 11 QUARTERLY FEES

Debtors in chapter 11 cases must pay a quarterly fee to the United States Trustee Program for each calendar quarter, or portion thereof, between the date of filing the petition and the date the court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy. The quarterly fee is calculated by totaling the debtor's disbursements as reported on the Monthly Operating Reports for the three-month calendar quarter, or portion thereof, according to the following chart. The quarterly fee amount will be estimated if disbursements for all of the months of a calendar quarter that the case is open have not been reported to the United States Trustee. The estimated fee is based on: a) reported disbursement history, b) initial financial data submitted when the case was filed, or c) an estimation done by the United States Trustee office. If

you calculate the fee to be less than the estimated quarterly fee on the statement, you must submit actual disbursement reports supporting your calculation to the bankruptcy court and the United States Trustee Office. A minimum fee of \$325.00 is due even if there are no disbursements during a calendar quarter. There is no proration of the fee.

The Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, temporarily amended the calculation of chapter 11 quarterly fees effective January 1, 2018. Under this amendment, during each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund (Fund) as of September 30 of the most recent full fiscal year is less than \$200 million, the quarterly fee payable for a calendar quarter in which disbursements equal or exceed \$1 million shall be the lesser of 1 percent of such disbursements or \$250,000. The Consolidated Appropriations Act, 2020, enacted on December 20, 2019, provides that 28 U.S.C. § 1930(a)(6)(B) “shall be applied for this fiscal year and next fiscal year by substituting ‘\$300,000,000’ for ‘\$200,000,000.’” Pub. L. No. 116-93, § 219, 133 Stat. 2317, 2415 (2019). As a result, the Fund balance precondition for application of the amended fee schedule is \$300,000,000 for fiscal years 2020 and 2021.

The balance in the Fund as of September 30, 2019, was less than \$135 million. Accordingly, the amended chapter 11 quarterly fee schedule below applies for the calendar quarters beginning October 1, 2019 through September 30, 2020.

TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$0 to \$14,999.99	\$325.00
\$15,000 to \$74,999.99	\$650.00
\$75,000 to \$149,999.99	\$975.00
\$150,000 to \$224,999.99	\$1,625.00
\$225,000 to \$299,999.99	\$1,950.00
\$300,000 to \$999,999.99	\$4,875.00
\$1,000,000 or more	1% of quarterly disbursements or \$250,000, whichever is less

Quarterly fees are due no later than one month following the end of each calendar quarter. Failure to pay quarterly fees may result in the conversion or dismissal of the case. Payment of that quarter’s fees and any past due fees and interest, if applicable, must be made before the effective date of a confirmed plan of reorganization and quarterly fees will continue to accrue until entry of the final decree, or until the case is converted or dismissed. Failure to pay these fees may result in a motion by the United States Trustee to convert the case to a chapter 7 case.

Payment Options

A billing statement from the United States Trustee Program is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Chapter 11 quarterly fees may be paid online at <https://www.pay.gov/public/form/start/672415208>. The site will only accept payments made by electronic funds transfer from a bank account. Payments using a debit card, credit card or other types on online payments such as PayPal will NOT be accepted.

Chapter 11 quarterly fees may also be paid by mailing the tear-off portion of the statement and a check, made payable to "United States Trustee".

The address to use to mail quarterly fee payments is:

United States Trustee Payment Center
P.O. Box 6200-19
Portland, OR 97228-6200

The address to use for overnight delivery is:

U.S. Bank
Attn. Government Lockbox - U.S. Trustee Payment Center 6200-19
17650 N.E. Sandy Blvd
Portland, OR 97230-5000

The addresses shown above are for a lockbox at a bank. Do not use these addresses for service of process, correspondence or any purpose other than paying quarterly fees. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed.

Each quarterly fee must be timely paid. Failure to receive a bill from the Executive Office for United States Trustees does not excuse timely payment. Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case pursuant to 11 U.S.C. 1112 (b)(4)(K) (for cases filed on or after October 17, 2005) or 11 U.S.C. 1112(b)(10) (for cases filed before October 17, 2005).

1. DISCLOSURES PURSUANT TO THE DEBT COLLECTION IMPROVEMENT ACT

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE U.S. TRUSTEE PURSUANT TO 28 U.S.C. § 1930(a)(6)

Please be advised that, pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, et. seq., the U.S. Trustee intends to use the Debtor's Taxpayer Identifying Number, ("TIN"), as reported by the Debtor or Debtor's counsel in connection with the Chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including Chapter 11 quarterly fees, that are owed to the U.S. Trustee.

The U.S. Trustee will provide the Debtor's TIN to the U.S. Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the Debtor, including but not limited to tax refunds, (2) report the delinquency to credit reporting agencies, (3) send collection notices to the Debtor, (4) engage private collection agencies to collect the debt, and/or (5) engage the U.S.

Attorney's Office to sue for collection. Collection costs WILL BE added to the total amount of the debt.

E. GENERAL RESTRICTIONS

1. POST-PETITION TAXES, WAGES, AND EXPENSES OF ADMINISTRATION

The Debtor must remain current with all expenses of administration during the pendency of the chapter 11 case. The Debtor, as a fiduciary, must withhold, collect, and deposit all taxes owed to the Internal Revenue Service and state and local taxing authorities. These taxes include, but are not limited to, federal and state withholding, employee's portion of F.I.C.A., federal and state unemployment insurance, transient occupancy taxes, and sales and use taxes. All administrative priority wages, employee related payments and other expenses of administration must be paid as they become due.

2. OBTAINING CREDIT

11 U.S.C. § 364(b), Fed. R. Bankr. P. 2002, and 4001 provides that the Debtor may not obtain credit nor incur unsecured debt other than in the ordinary course of business without prior court approval. Section 364(c) also requires court approval before the obtaining of credit or the incurring of debt with priority over certain administrative expenses. Section 364(c) requires court approval before obtaining credit or incurring debt that is secured by a lien on property of the estate. The Debtor should also consult with its attorney before extending credit or lending funds to third parties.

3. USE, SALE, OR LEASE OF PROPERTY OF THE ESTATE INCLUDING USE OF CASH COLLATERAL

11 U.S.C. §363(b), Fed. R. Bankr. P. 2002, 4001, and 6004 requires a Debtor to obtain prior court approval for the use, sale, or lease of property of the estate when such use, sale, or lease is not in the ordinary course of business of the Debtor. All cash collateral shall be segregated from the Debtor's other business operating cash and bank accounts and shall be deposited in separate bank accounts.

4. EMPLOYMENT OF ATTORNEYS AND OTHER PROFESSIONALS

A Debtor may employ an attorney, accountant, or other professional only upon authorization by the court. The professional being sought to be employed must prepare a Verified Statement in accordance with Fed. R. Bankr. P. 2014.

5. COMPENSATION OF PROFESSIONALS

No expenses, compensation, or other forms of payments may be made to attorneys, accountants, or other professionals authorized by the Bankruptcy Court to be employed by the Debtor after the filing of the petition without prior court authorization after notice to all creditors and the opportunity for a hearing. See, 11 U.S.C. §§ 327 through 331 and Fed.R.Bankr.P. 2014, 2016, and 2017.

All applications for compensation shall comply with the requirements of 11 U.S.C. § 331, 330, Fed. R. Bankr. P. 2016, and shall also comport with the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330*, (“Guidelines”)(attached hereto). See 61 C.F.R. 24890 (May 17, 1996). A copy of the Guidelines has been made part of the Historical Notes to Fed. R. Bankr. P. 2016. When the request for fees, compensation, and expenses exceeds \$25,000, the applicant shall submit a time and expense detail electronically to the U.S. Trustee in a format compatible with the U.S. Trustee’s software.

6. COMPENSATION OF PRINCIPALS, PARTNERS, OFFICERS, OR DIRECTORS OF THE DEBTOR

No compensation or other remuneration, outside of the ordinary course of business shall be paid by the Debtor to: (1) any officer, director, or shareholder of a corporation, (2) to any partners of a Debtor partnership, or (3) to an individual Debtor without first complying with the provisions of 11 U.S.C. § 503(a) and (b)(1)(A). Bonuses, severance packages, stock options, etc. are considered outside of the ordinary course of business.

7. PAYMENT OF PRE-PETITION DEBT

There are specific prohibitions and restrictions against payment of certain debts incurred prior to the filing of the bankruptcy petition without court authorization. The Debtor is cautioned to consult with its attorney regarding any payment of pre-petition debts outside of a Confirmed Plan.

8. CHANGE OF ADDRESS OR TELEPHONE NUMBER

The Debtor must notify the U.S. Trustee, in writing within forty-eight (48) hours, of any change of address or telephone number of the Debtor and Debtor’s attorney. The Debtor must also file with the Clerk of the Bankruptcy Court a change of address form. Fed. R. Bankr. P. 4002(5).

9. COMPLIANCE WITH BANKRUPTCY CODE AND RULES

The Debtor is required to comply in all respects with the Bankruptcy Code and Rules, and should uphold the requirements of the Local Rules of the Bankruptcy Court. These operating guidelines and reporting requirements do not alter, amend, or otherwise relieve the Debtor from any requirements of the Bankruptcy Code and Rules, the Bankruptcy Local Rules, any Interim Rules, or any orders entered by the Bankruptcy Court.

F. MODIFICATIONS

The U.S. Trustee may, at any time, amend or modify these requirements to better suit the peculiarities of any particular chapter 11 case.

Additional requirements may include, but are not limited to, the submission of audited and unaudited financial statements, state and federal payroll or income tax returns, state sales tax returns (with all schedules and attachments), copies of trust agreements or conveyances, and examination of the Debtor's books, records, and bank statements.

A Debtor may request to amend or modify these requirements. Any request to amend or modify these requirements must be submitted in writing, and no such amendments or modifications are valid unless and until they are approved by the office of the U.S. Trustee in writing.

PAUL A. RANDOLPH
ACTING UNITED STATES TRUSTEE
REGION 8

TIMETABLE AND CHECKLIST

- I. Contemporaneous With Filing of Petition
 - A. Bankruptcy Petition Cover Sheet.
 - B. Creditors' Matrix. Fed. R. Bankr. P. 1007(a), Local Rule 1007(a)-1.
 - C. Corporate Ownership Statement. Fed. R. Bankr. P. 1007(a), 7007.1.
 - D. List of 20 Largest Unsecured Creditors. Fed. R. Bankr. P. 1007(d).
 - E. (Individual Cases) - Debtor's Statement of Current Monthly Income, Means Testing Form - B22B.
 - F. (Individual Cases) - Debtor's Certificate of Credit Counseling or Debtor's Certification of Exigent Circumstances requesting an extension to obtain Credit Counseling or Debtor's motion requesting non-application of Credit Counseling requirement and certification of disability. 11 U.S.C. § 109(h).
 - G. Petition with required Exhibits. May be extended Fed. R. Bankr. P. 1007(c).
- II. Immediately After Filing of Petition
 - A. Close all pre-petition bank accounts, books, and records and all business credit card accounts.
 - B. Open new debtor-in-possession books and records, and debtor-in-possession bank accounts (i.e., General, Tax, and Payroll accounts).
 - C. Conduct physical inventory.
 - D. Amend all Certificate(s) of Insurance to show the U.S. Trustee, 200 Jefferson Ave., Suite 400, Memphis, TN 38103 as an additional certificate holder for the purpose of notification only.
- III. Within Seven (7) Days After Filing of Petition (Small Business Cases)
 - A. File a copy of the Debtor's most recent Balance Sheet;
 - B. File a copy of the Debtor's most recent Statement of Operations;
 - C. File a copy of the Debtor's most recent Cash-Flow Statement; and
 - D. File a copy of the Debtor's most recent Federal Income Tax Return (redact privacy indicators); or
 - E. File a Statement by the Debtor, made under penalty of perjury that no balance sheet, statement of operation, or cash-flow statement has been prepared and no Federal tax return has been filed. See 11 U.S.C. § 1116(1)(B).

- IV. Within Fifteen (15) Days After Filing of Petition
 - A. File Schedules of Assets and Liabilities and Statement of Financial Affairs if not filed with the Petition and Exhibits.
 - B. File Motion to Extend Time Period to File Schedules, Statements, and Lists, if they have not previously been filed.
 - C. Provide the U.S. Trustee evidence of appropriate insurance coverage.
 - D. Provide the U.S. Trustee proof of closing all pre-petition bank accounts.
 - E. Provide the U.S. Trustee proof of the opening of new debtor-in-possession bank accounts by providing copies of the signature cards.
 - F. Attend Initial Debtor Interview.
 - G. Provide the U.S. Trustee copies of the Debtor's state and federal income tax returns for the last two years.
 - H. Provide the U.S. Trustee a Physical Inventory.
- V. Within Thirty (30) Days After Filing of Petition
 - A. File and Serve Initial Applications to Employ Professionals or Other Professionals; particularly an Application to Employ Debtor's Counsel.
- VI. Within Twenty to Forty (Sixty in Jackson) Days After Filing of Petition
 - A. The Debtor (and joint Debtor) must appear and submit to questions under oath at the Meeting of Creditors. If a business Debtor, the appearance must be through the Debtor's Senior Management. If a business Debtor, the Debtor's accountant may also be required to attend. Debtor's Counsel must be present at the Meeting of Creditors.
- VII. During the Chapter 11 Case.
 - A. Submit timely payments of U.S. Trustee Quarterly Fees each quarter.
 - B. Allow the U.S. Trustee, or a designated representative of the U.S. Trustee, to inspect the Debtor's business premises, books, and records at reasonable times, after reasonable prior written notice.
 - C. File Reports for each month (or quarter if post-confirmation) within fifteen (15) calendar days of the end of the month (or quarter).
 - D. Maintain, subject to Section 363(c)(2), insurance customary and appropriate to the Debtor and the Debtor's industry.
 - E. Provide the U.S. Trustee copies of renewals or new policies of insurance for property of the estate prior to the expiration of existing policies.

- F. Serve the U.S. Trustee with copies of all documents filed with the Court.
 - G. Timely file all tax returns and other government filings.
 - H. Timely pay, subject to Section 363(c)(2), all taxes entitled to administrative expense priority, except those being contested by appropriate proceedings being diligently prosecuted.
 - I. Timely File Disclosure Statement and Plan of Reorganization. Generally within 120 days of the filing date. 11 U.S.C. § 1121(b). In Small Business Cases, a plan must be filed within 300 days after the filing of the petition. 11 U.S.C. § 1121(c)(2).
- VIII. Post-Confirmation
- A. File a Final Report (Local Form 15) no later than sixty (60) days after the entry of the Order Confirming the plan. Local Bankruptcy Rule 3022-1.
 - B. File a Motion for Final Decree pursuant to Fed. R. Bankr. P. 3022 (Local Form 16), or a statement setting forth why such motion is premature, within thirty (30) days after substantial consummation of a plan.

**GUIDELINES FOR APPLICATIONS TO
EMPLOY PROFESSIONAL PERSONS
(Attorneys, Auctioneers, Appraisers, Accountants,
Agents and Other Professionals)**

The following Guidelines for Applications To Employ Professional Persons are intended to assist attorneys in preparation of such applications. Failure to utilize these guidelines may result in objections to the application by the U.S. Trustee. These guidelines include the minimum requirements set forth in Bankruptcy Rule 2014 (a).

1. It must be signed by a person authorized to make the application.
2. The application must state facts showing the necessity for such employment.
3. It must state the name of the person or firm to be employed.
4. The application must state the reason for the selection of the particular professional to be employed. A statement of the past experience of the professional should be included.
5. It must state the specific services to be rendered in connection with the employment.
6. The application must be accompanied by a verified statement that, to the best of the professional's knowledge, the professional has no connection to any party-in-interest to the case and has no interest adverse to the estate of the debtor. The declaration should not merely state legal conclusions, but should state the professional's connections, if any, to the debtor, creditors or any other party-in-interest, including their respective attorneys and accountants, or the United States Trustee or persons employed by the Office of the U.S. Trustee.
7. The application must state the amount of the retainer previously received and the terms and conditions of employment, including the then current hourly rate(s) charged by each professional expected to render services, including partners, associates and paraprofessional persons employed by the professional and whose services will be utilized for the benefit of and whose time will be charged to the estate. The terms of employment may not violate applicable provisions of the Bankruptcy Code. No fees, reimbursement of costs or payments under a retainer agreement can be paid until the request for such fees, costs or payments has been submitted to and approved by the Bankruptcy Court after notice.
8. It must include a statement that no compensation will be paid by the applicant to the professional except upon application to and approval by the Bankruptcy Court after notice and a hearing.
9. If an application to employ a professional is made after the date of commencement of post-petition services by the professional, the U.S. Trustee may object. Applications to employ professionals nunc pro tunc should be made only in extraordinary situations. Every nunc pro tunc application should be accompanied by a statement setting forth the

following criteria.

- (a) The debtor, trustee or committee expressly contracted with the professional person to perform the services which were thereafter rendered;
- (b) The party for whom the work was performed approves the entry of the nunc pro tunc order;
- (c) The applicant has provided notice of the application to creditors and parties-in-interest and has provided an opportunity for filing objections;
- (d) No creditor or party-in-interest offers reasonable objection to the entry of the nunc pro tunc order;
- (e) The professional satisfied all the criteria for employment under the Bankruptcy Code and the Bankruptcy Rules at or before the time services were actually commenced and remained qualified during the period for which services were provided;
- (f) The work was performed properly, efficiently and to a high standard of quality;
- (g) No actual or potential prejudice will inure to the estate or other parties in interest;
- (h) The applicant's failure to seek pre-employment approval is satisfactorily explained;
- (i) The applicant exhibits no pattern of inattention or negligence in soliciting judicial approval for employment of professionals.

In re Twinton Properties Partnership, 27 Bankr. 817, 819-820 (Bankr. M.D. Tenn. 1983) *report approved*, 33 Bankr. 111 (M.D. Tenn. 1983). Any nunc pro tunc application should also state the amount of fees and expenses which have accrued during the period between the date of the commencement of post-petition services and the date of the application to employ.

- 10. Applications providing for payment by the debtor-in-possession or Chapter 11 trustee of a post-petition retainer are rare and will be objected to unless a showing of unusual circumstances has been made to the satisfaction of the U.S. Trustee.
- 11. If more than one counsel is being retained to represent the applicant, there should be some statement in the application as to the need for dual counsel, the services to be performed by each, and an affirmative statement in each application that there will be no duplication of services. A separate application is required for each professional.
- 12. When the debtor-in-possession or Chapter 11 trustee has made an application to employ a professional person, any successor professional must obtain similar court authorization for such employment pursuant to § 327 of the Bankruptcy Code and Bankruptcy Rule 2014. The application to employ must be submitted and approved prior to the successor

professional commencing services on behalf of the debtor-in-possession or Chapter 11 trustee. Additional requirements may be imposed by local rules.

PAUL A. RANDOLPH
ACTING UNITED STATES TRUSTEE
REGION 8
KENTUCY/TENNESSEE

UNITED STATES TRUSTEE FEE GUIDELINES

GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. § 330 (Appendix A to 28 C.F.R. § 58)

(a) General Information.

(1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. § 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under § 330 of the Bankruptcy Code, 11 U.S.C. § 101, et seq. (“Code”), in accordance with procedural guidelines (“Guidelines”) adopted by the Executive Office for United States Trustees (“Executive Office”). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee’s discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee’s discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under § 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in § 330 of the Code and Rule

2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under §§ 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) Contents of Applications for Compensation and Reimbursement of Expenses. All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than § 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format.

(i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or “lumped” together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature of nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A--Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§ 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.
Valuation: Appraise or review appraisals of assets.

IRS Notice 2006-83 Providing Guidance for Individuals Filing Bankruptcy Cases Under Chapter 11 of the Bankruptcy Code

Part III - Administrative, Procedural, and Miscellaneous

Individual Chapter 11 Debtors

Notice 2006-83

This **notice** provides guidance for individuals who file bankruptcy cases under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) on or after October 17, 2005. This notice also provides guidance for (1) employers of these individuals, (2) persons filing Forms W-2, 1099-INT, 1099-DIV, 1099-MISC, and other information returns (including Schedule K-1) that report payments to these individuals, and (3) Chapter 11 trustees in bankruptcy cases filed by these individuals. Upon consideration of the comments received concerning this notice, as requested in section 7, additional guidance may be published.

Section 1 PURPOSE

The bankruptcy estate of a Chapter 11 debtor who is an individual is a separate taxable entity under section 1398 of the Internal Revenue Code. The estate, rather than the debtor, must include in its gross income all of the debtor's income to which the estate is entitled under the Bankruptcy Code, except for amounts received or accrued by the debtor before the commencement of the case. Section 1115 of the Bankruptcy Code was enacted by section 321(a)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23 (2005) and is effective for cases filed on or after October 17, 2005. As a result of the enactment of section 1115, the bankruptcy estate, rather than the debtor, must include in its gross income both (1) the debtor's gross earnings from his or her performance of services after the commencement of the case ("post-petition services") and (2) the gross income from property acquired by the debtor after the commencement of the case ("post-petition property"). I.R.C. § 1398(e)(1). The gross earnings from post-petition services include wages and other compensation earned by a debtor who is an employee and self-employment income earned by a debtor who is a self-employed individual.

Section 2 BACKGROUND AND GENERAL LEGAL PRINCIPLES

.01 The commencement of a bankruptcy case creates an estate, which generally includes all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1). Specific exclusions apply, however. See 11 U.S.C. § 541(b) (excluded property). See also 11 U.S.C. § 522 (exempt property); 11 U.S.C. § 554 (abandoned property). Exempt property and abandoned property are initially part of the bankruptcy estate, but are subsequently removed from the estate. By contrast, property excluded from the estate is never included in the estate.

.02 Confirmation of a Chapter 11 plan of reorganization generally vests all the property of the estate in the debtor, except as otherwise provided in the plan or in the court order confirming the plan. 11 U.S.C. § 1141(b). If no plan is confirmed and a bankruptcy case is dismissed, the property of the estate generally reverts in the debtor, unless the court orders otherwise. 11 U.S.C.

§ 349(b)(3).

.03 When a trustee is appointed pursuant to section 1104 of the Bankruptcy Code, the debtor generally must turn over to the trustee control over the assets of the bankruptcy estate. In most Chapter 11 cases, a trustee is not appointed and the debtor (referred to as the debtor in possession) remains in control of the property of the bankruptcy estate. Under section 1107(a) of the Bankruptcy Code, the debtor in possession must perform all the functions and duties of a trustee, except for the duties specified in Bankruptcy Code section 1106(a)(2), (3) and (4).

.04 Because the bankruptcy estate is a separate taxable entity, the trustee or debtor in possession must obtain an employer identification number (EIN) for the estate. I.R.C. § 6109. The trustee or debtor in possession uses the EIN on any tax returns filed for the estate.

.05 Section 1398(e)(1) of the Code provides that the gross income of the estate includes the gross income of the debtor to which the estate is entitled under the Bankruptcy Code. Section 1398(e)(2) provides that the gross income of the debtor does not include any item to the extent the item is included in the gross income of the bankruptcy estate.

.06 In general, the determination of whether or not any amount paid or incurred by the estate is allowable as a deduction or credit to the estate shall be made as if the amount were paid or incurred by the debtor and as if the debtor were still engaged in the trades and businesses, and in the activities, the debtor was engaged in before the commencement of the case. I.R.C. § 1398(e)(3)(A). The estate is, however, specifically allowed a deduction for administrative expenses allowed under section 503 of the Bankruptcy Code and for any fee or charge assessed against the estate under chapter 123 of title 28 of the United States Code. I.R.C. § 1398(h)(1).

.07 The individual debtor must continue to file his or her own individual tax returns during the bankruptcy proceedings. I.R.C. § 6012(a)(1).

.08 For bankruptcy cases filed before October 17, 2005, the property of the estate does not generally include any post-petition property acquired by an individual Chapter 11 debtor. Nor in those cases does the property of the estate include the individual Chapter 11 debtor's earnings from post-petition services, because section 541(a)(6) of the Bankruptcy Code specifically excluded those earnings from the estate. See, e.g., *In re Fitzsimmons*, 725 F.2d 1208 (9th Cir. 1984); *In re Larson*, 147 B.R. 39 (Bankr. D.N.D. 1992). Therefore, in these cases income from post-petition property and earnings from post-petition services are not generally includible in the estate's gross income. Instead, such income and earnings are generally includible in the debtor's gross income.

.09 Section 321 of BAPCPA made several changes to Chapter 11, effective for bankruptcy cases filed by individuals on or after October 17, 2005. Although many of the provisions that apply to individual Chapter 11 cases now operate in a manner similar to the provisions that apply in Chapter 13 cases, section 1398 of the Internal Revenue Code has not been amended and continues to apply to individual Chapter 11 cases, but not to Chapter 13 cases. Based on section 1115 of the Bankruptcy Code, read in conjunction with section 1398(e)(1) of the Internal Revenue Code, the debtor's gross earnings from post-petition services and gross income from post-petition property are, in general, includible in the bankruptcy estate's gross income, rather

than in the debtor's gross income. This rule is subject to the exceptions noted below in sections 2.10, 2.11, 2.12, and 2.13.

.10 If a chapter 11 case is converted to a Chapter 13 case, the Chapter 13 estate is not a separate taxable entity and earnings from post-conversion services and income from property of the estate realized after the conversion to Chapter 13 are taxed to the debtor. I.R.C. § 1399.

.11 If the Chapter 11 case is converted to a Chapter 7 case, section 1115 will not apply after conversion and earnings from post-conversion services will be taxed to the debtor, rather than the estate. 11 U.S.C. § 541(a)(6). In such a case, the property of the Chapter 11 estate will become property of the Chapter 7 estate. Any income on this property will be taxed to the estate even if the income is realized after the conversion to Chapter 7.

.12 If a Chapter 11 case is dismissed, the debtor is treated as if the bankruptcy case had never been filed and as if no bankruptcy estate had been created. I.R.C. § 1398(b)(1).

.13 For Chapter 11 cases filed by individuals on or after October 17, 2005, the estate's gross income includes gross income from property held by the debtor when the case commenced ("prepetition property"), as was the case under pre-BAPCPA law. There are certain exceptions to this general rule, however. The gross income on pre-petition property is included in the gross income of the debtor, rather than the estate, if the pre-petition property is excluded from the estate and the gross income is subject to taxation. Also, the gross income on pre-petition property is included in the gross income of the debtor, rather than the estate, after the pre-petition property is removed from the estate by exemption or abandonment.

Section 3 FILING INCOME TAX RETURNS OF THE DEBTOR AND THE ESTATE; NOTIFICATION TO PERSONS FILING INFORMATION RETURNS (OTHER THAN FORM W-2) OF THE STATUS OF THE CHAPTER 11 BANKRUPTCY CASE

.01 The debtor in possession or trustee, if one is appointed, must prepare and file the income tax returns of the bankruptcy estate if required under section 6012(a)(9). I.R.C. § 6012(b)(4). In preparing the income tax returns of the debtor and the bankruptcy estate, the debtor in possession (or the trustee) must follow the rules stated in sections 2.09, 2.10, 2.11, 2.12, and 2.13 of this notice, and must attach to the returns the statement discussed in section 6.

.02 A debtor in possession may be compensated by the estate to manage or operate a trade or business that the debtor conducted before the commencement of the bankruptcy case. Such payments should be reportable by the debtor as miscellaneous income on his or her individual income tax return. I.R.C. § 61(a). Amounts paid by the estate to the debtor in possession for managing or operating the trade or business may qualify as administrative expenses of the estate. An administrative expense allowed by the bankruptcy court under section 503 of the Bankruptcy Code will generally be deductible by the estate as an administrative expense when it is paid or incurred. I.R.C. § 1398(h)(1).

.03 Within a reasonable time after the commencement of a Chapter 11 bankruptcy case, the trustee (if one is appointed) or the debtor in possession should provide notification of the bankruptcy estate's EIN to persons that are required to file information returns with respect to the bankruptcy estate's gross income, gross proceeds, or other types of reportable payments. I.R.C. §6109(a)(2). Since these payments are property of the estate under section 1115, such persons

should report the gross income, gross proceeds, or other reportable payment on an appropriate information return using the estate's name and EIN in the time and manner required under the Internal Revenue Code and regulations (see, e.g., sections 6041 through 6049). The trustee or debtor in possession should not, however, provide the EIN to the debtor's employer or other person filing Form W-2 with respect to the debtor's wages or other compensation, since section 1115 does not affect the determination of what constitutes wages for purposes of Federal income tax withholding or the Federal Insurance Contributions Act. I.R.C. §§ 3121(a) and 3401(a). As provided in section 5, an employer should continue to report all wage income and accompanying tax withholdings, whether pre-petition or post-petition, on a Form W-2 issued to the debtor under the debtor's social security number. See sections 6721 through 6724 for applicable penalties for failure to comply with information reporting requirements, including providing taxpayer identification numbers, and provisions for penalty waivers for reasonable cause.

.04 When a Chapter 11 bankruptcy case is closed, dismissed, or converted to a case under Chapter 12 or 13 of the Bankruptcy Code, the bankruptcy estate ends as a separate taxable entity. The debtor should, within a reasonable time, provide notification of the closing, dismissal, or conversion to the persons that were previously notified of the bankruptcy case under section 3.03 to the extent notification is necessary to ensure that gross income, gross proceeds, and other types of reportable payments realized after the closing, dismissal, or conversion are reported to the proper person and with the correct taxpayer identification number. Gross income, gross proceeds, and other reportable payments realized after the closing, dismissal, or conversion to Chapter 12 or 13 should, in general, be reported to the debtor, rather than the estate.

.05 If the Chapter 11 case is converted to a Chapter 7 case, the bankruptcy estate will continue to exist as a separate taxable entity and gross income (other than post-conversion income from the debtor's services), gross proceeds, or other reportable payments should continue to be reported to the estate if the gross income, gross proceeds, or other reportable payment represents property of the Chapter 7 estate. As section 2.11 notes, income from services performed by the debtor after conversion to Chapter 7 is not property of the Chapter 7 bankruptcy estate. Therefore, within a reasonable time after the conversion to Chapter 7, the debtor should notify payors required to report the debtor's nonemployee compensation on Form 1099-MISC that such compensation earned after the conversion to Chapter 7 should be reported using the debtor's name and taxpayer identification number, rather than the estate's name and TIN.

.06 The debtor is not required to file a new Form W-4 with an employer adjusting the debtor's withholding allowances solely because the debtor has filed a Chapter 11 case and his or her post-petition wages are includible in the gross income of the estate. This is true even though the estate may be taxed at a higher tax rate than the debtor and is entitled to only one personal exemption. A new Form W-4 may be necessary, however, under the applicable regulations when, for instance, the debtor employee is no longer entitled to claim the same number of allowances claimed on the Form W-4 previously provided to the employer, such as for certain deductions or credits that now belong to the estate. See § 31.3402(f)(2)-1 of the Employment Tax Regulations. Furthermore, even where not required, in some circumstances it may be prudent for the debtor to file a new Form W-4 to increase the amount of income tax withheld from the debtor's post-petition wages that will be allocated to the estate in accordance with section 6. Otherwise, estimated tax payments on behalf of the estate may be required in order to avoid a penalty for underpayment of estimated tax. See section 6654(a).

Section 4 APPLICATION OF THE SELF-EMPLOYMENT TAX

.01 Section 1401 of the Internal Revenue Code imposes a tax upon the self-employment income of every individual. The term "self-employment income" means the net earnings from self-employment derived by an individual. I.R.C. §1402(b). The term "net earnings from self-employment" means, in relevant part, the gross income derived by an individual from any trade or business carried on by such individual less deductions allowed attributable to such trade or business. I.R.C. § 1402(a).

.02 Under section 1115 of the Bankruptcy Code, the earnings from a Chapter 11 debtor's post-petition services, including the debtor's self-employment income, constitute property of the estate under section 1115. As property of the estate, the income from post-petition services is includible in the income of the bankruptcy estate, rather than the income of the debtor. I.R.C. §1398(e)(1). However, neither section 1115 of the Bankruptcy Code nor section 1398 of the Internal Revenue Code addresses the application of the self-employment tax to the earnings from the individual debtor's continuing services. Because the debtor continues to derive gross income from the performance of services as a self-employed individual after the commencement of the bankruptcy case, the debtor must continue to report on Schedule SE of the debtor's individual income tax return the self-employment income earned post-petition, which includes the attributable deductions, and must pay the resulting self-employment tax imposed by section 1401.

Section 5 APPLICATION OF EMPLOYMENT TAXES AND OBLIGATION TO FILE FORM W-2

.01 As a result of the enactment of section 1115, post-petition wages earned by a debtor are generally treated for income tax purposes as gross income of the estate, rather than the debtor. The reporting and withholding obligations of a debtor's employer, however, have not changed as a result of the enactment of section 1115. Section 1115 has no effect on the determination of wages under the Federal Insurance Contributions Act (FICA), including application of the contribution and benefit base (as determined under section 230 of the Social Security Act). I.R.C. § 3121(a). Similarly, the enactment of section 1115 has no effect on the determination of wages for Federal Unemployment Tax Act (FUTA) tax or Federal Income Tax Withholding purposes. See I.R.C. §§ 3306(b) and 3401(a).

.02 Since section 1115 does not affect the application of FICA tax, FUTA tax, or Federal Income Tax Withholding, with respect to the wages of a Chapter 11 debtor in a case commenced on or after October 17, 2005, an employer should continue to reflect such wages and accompanying tax withholdings on a Form W-2 issued to the debtor under the debtor's name and social security number.

Section 6 ALLOCATION OF INCOME AND CREDITS ON INFORMATION RETURNS AND REQUIRED STATEMENT FOR RETURNS

.01 When an employer issues a Form W-2 to a Chapter 11 debtor reporting all of the debtor's wages, salary, or other compensation to the debtor for a calendar year, and a portion of the wages, salary, or other compensation represents earnings from post-petition services includible in the estate's gross income under section 1398(e)(1), an allocation of the amounts reported on

the Form W-2 must be made. The debtor in possession, or the trustee, if one is appointed, must allocate in a reasonable manner wages, salary, or other compensation reported in box 1 and the withheld income tax reported in box 2 of Form W-2 between the debtor and the estate. The allocations must be in accordance with all the rules stated in sections 2.09, 2.10, 2.11, 2.12, and 2.13 of this notice. If reasonable, the debtor and trustee may use a simple percentage method for allocating income and withheld income tax between the debtor and the estate. The same method used to allocate income must be used to allocate withheld income tax. For example, if one-sixth of the wages reported on Form W-2 for the calendar year ending December 31, 2005, was earned after the commencement of the case and must therefore be included in the estate's gross income, one-sixth of the withheld income tax reported on Form W-2 must be claimed as a credit on the estate's income tax return and five-sixths of the withheld income tax must be claimed as a credit on the debtor's income tax return. See I.R.C. § 31(a).

.02 In some cases, persons filing information returns may report to the debtor gross income, gross proceeds, or other reportable payments that should have been reported to the bankruptcy estate using Forms 1099-INT, 1099-DIV, 1099-MISC, Schedule K-1 or other information returns. This may occur, for instance, if the debtor in possession fails to notify the payor of the bankruptcy in accordance with section 3.03. In these cases, the debtor in possession, or the trustee, must allocate the improperly reported income in a reasonable manner between the debtor and the estate. In general, the allocation must ensure that any income (and any income tax withheld) attributable to the post-petition period is reported on the estate's return, and any income (and income tax withheld) attributable to the pre-petition period is reported on the debtor's return. The allocations, however, must be in accordance with all the rules stated in sections 2.09, 2.10, 2.11, 2.12, and 2.13 of this notice.

.03 The debtor must attach a statement to his or her income tax return stating that he or she filed a Chapter 11 bankruptcy case. The statement must reflect the foregoing allocations of income and withheld income tax and must describe the method used to allocate income and withheld tax between the debtor and the estate. The statement should list the filing date of the bankruptcy case, the bankruptcy court in which the case is pending, the bankruptcy court case number, and the bankruptcy estate's EIN. The debtor in possession or trustee must attach a similar statement to the income tax return of the estate.

.04 The following model statement may be used by debtors, debtors in possession and trustees in complying with the requirements of section 6 of this notice:

Notice XXXX-XX Statement

Pending Bankruptcy Case

The taxpayer, _____, filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code on _____ in the Bankruptcy Court for the _____ District of _____. The bankruptcy court case number is _____. Gross income, and withheld federal income tax, reported on Form W-2, Forms 1099, K-1, Schedule K-1, and other information returns received under the taxpayer's name and social security number (or other taxpayer identification number) are allocated between the taxpayer and the bankruptcy estate (EIN__-____) as follows, using [describe allocation method]:

	<u>Year</u>	<u>Taxpayer</u>	<u>Estate</u>
1.	Form W-2 from ____ Co. Withheld income tax shown on Form W-2	\$____ \$____	\$____ \$____
2.	Form 1099-INT from ____ Bank Withheld income tax (if any) shown on Form 1099-INT	\$____ \$____	\$____ \$____
3.	Form 1099-DIV from ____ Co. Withheld income tax (if any) shown on Form 1099-DIV	\$____ \$____	\$____ \$____
4.	Form 1099-MISC from ____ Co. Withheld income tax (if any) shown on Form 1099-MISC	\$____ \$____	\$____ \$____

Section 7 REQUEST FOR COMMENTS

.01 The IRS and the Treasury Department are aware that further guidance may be needed as a consequence of the enactment of section 1115 and request comments from the public.

.02 In particular, section 1115 does not address whether, or to what extent, the income earned by the debtor from services performed after confirmation of the Chapter 11 plan is property of the estate or property of the debtor. Nor does section 1115 address whether, or to what extent, property of the estate retains its character as such after it vests in the debtor upon plan confirmation under section 1141(b) of the Bankruptcy Code. Courts have addressed the effects of plan confirmation on the scope and extent of the Chapter 13 estate under the analogous provisions of that Chapter, but the courts have reached varying and conflicting results. See, for example, *Telfair v. First Union Mortgage Corp.*, 216 F.3d 1333, 1340 (11th Cir. 2000) (describing the estate termination approach, the preservation approach, and the transformation approach) and *Barbosa v. Soloman*, 235 F.3d 31, 36, 37 (1st Cir. 2000) (describing a fourth, hybrid, approach). Comments are requested as to the proper treatment of post-confirmation income, given the conflicting holdings under analogous provisions of Chapter 13. Comments are also requested as to whether the terms of the Chapter 11 plan and the order confirming the plan may affect the taxation of post-confirmation earnings of the debtor and post-confirmation income on property of the estate.

.03 Section 3.02 of this Notice addresses the tax consequences of compensation that a debtor in possession receives from the estate for managing or operating a trade or business carried on by

the debtor before the commencement of the bankruptcy case. In some cases, however, the estate might not conduct a trade or business because the debtor was the employee of a third party before the commencement of the case and continues as an employee post-petition. Comments are requested on the tax treatment to the estate and the debtor of the portion of the post-petition compensation from a third party employer that the bankruptcy court allows the debtor to retain to pay for the debtor's personal or living expenses. In particular, comments are requested regarding whether such post-petition compensation is subject to double taxation as gross income to the debtor under section 61 and earnings under section 1115(a)(2) of the Bankruptcy Code includible in the estate's gross income under section 1398(e)(1), without a corresponding deduction for the estate.

.04 Comments should be submitted on these and other relevant issues in writing on or before December 1, 2006, to the Internal Revenue Service, P.O. Box 7604, Washington, D.C. 20044, Attn: CC:PA:CBS (Notice 2006-83). Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at Room 105, First Floor, Internal Revenue Service, 1901 S. Bell Street, Jeff Davis Highway, Arlington, Va., Attn: CC:PA:CBS (Notice 2006-83). Submissions may also be sent electronically via the internet to the following email address: Notice.comments@irs.counsel.treas.gov. Include the notice number (Notice 2006-83) in the subject line. All comments will be available for public inspection and copying.

Section 8 PAPERWORK REDUCTION ACT

.01 The collection of information in the notice has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2033.

.02 An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

.03 The collection of information in the notice is in section 6 of this notice entitled "Allocation of Income and Credits on Information Returns and Required Statement for Returns." The collection of information is required for compliance with I.R.C. §1398. The collection of information is required to comply with the Internal Revenue Code. The likely respondents are individuals and their chapter 11 bankruptcy estates.

.04 The estimated total annual reporting burden is 1,500 hours. The estimated annual burden per respondent is 1/2 hour. The estimated number of respondents is 3,000. The estimated frequency of responses is annually.

.05 Books or records relating to a collection of information must be retained as long as their contents may become material to the administration of the internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Section 9 DRAFTING INFORMATION

The principal author of this notice is William F. Conroy of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact William F. Conroy at (202) 622-3620 (not a toll-free call).