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**Subject:** FW: Guidance Concerning Chapter 7 Tax Issues/Recent 9th Circuit Opinion  
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**Attachments:** [Cloebeck, 788 F3d 1243.pdf](#)

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**Guidance for Chapter 7 Trustee Concerning Tax Issues**  
*(August 31, 2015)*

Chapter 7 Trustees:

The Ninth Circuit Court of Appeals recently held that a trustee must provide notice and a hearing under 11 U.S.C. § 503(b) prior to paying taxes incurred by the bankruptcy estate that are an administrative expense under section 503(b)(1)(B). *Dreyfuss v. Cory (In re Cloebeck)*, 788 F.3d 1243, 1246-47 (9th Cir. 2015). A copy of this case is attached. Further, the Court noted that the trustee must pay the estate taxes on or before the due date other than in limited situations. *Id.* at 1246; *see also* 28 U.S.C. § 960(b) and 11 U.S.C. § 503(b)(1)(D). Finally, the court noted that the hearing requirement insures that interested parties have an opportunity to contest the taxes before they are paid. *Cloebeck*, at 1246. This is a change in procedure for trustees operating in districts that did not previously require notice or a hearing before paying administrative taxes.

We reviewed our policies and guidance concerning tax issues in Chapter 7 cases in light of *Cloebeck*, the decisions in the *800Ideas.com, Inc.* case (*see In re 800Ideas.com, Inc.*, 496 B.R. 165 (9th Cir. BAP 2013) and 527 B.R. 701 (Bankr. S.D. Cal. 2015) (addressing a trustee's unexcused failure to timely file tax returns and the administrative treatment of the resulting tax penalties)), and tax-related problems and issues noted during our TIR and TFR reviews of cases. Based on *Cloebeck*, *800Ideas.com* and section 503(b) we provide the following guidance concerning timely filing tax returns, providing notice/hearing before paying administrative taxes, and timely paying taxes. Please review the information below and take steps to ensure that your practices comply.

1. As required by *Cloebeck*, trustees must provide notice and an opportunity for hearing prior to paying bankruptcy estate taxes that are an administrative expense. Plan ahead and allow sufficient time for the court to enter any order required before the taxes are due.
2. The notice or motion for approval to pay administrative taxes should disclose the amount and type of taxes that are proposed for payment; the year or other period for which the taxes are incurred; if penalties and interest have been incurred and are proposed for payment from the estate, the amount of each; and the justification for paying penalties and interest.

We also will increase our examination of tax-related issues during our TIR and TFR reviews and other reviews of your cases, so you may notice more inquiries from our staff concerning these issues. Also, when you submit a TFR in a case that may raise tax related questions, please feel free to include a brief note in the transmittal e-mail concerning any estate tax issues, if it is not obvious from the TFR or filed documents in the case. During our next

chapter 7 trustee training we will address administrative tax responsibilities.

Finally, because of the importance of your obligations to timely file tax returns and pay taxes, consider adopting the following practices in your case administration, if you have not done so:

- Obtain necessary records from debtor as soon as possible;
- Employ the accountant early in the case if tax returns are, or are likely to be, required;
- Evaluate tax consequences prior to sale;
- Evaluate tax issues regarding assets you do not intend to liquidate and abandon if appropriate;
- Discuss potential tax consequences of sale or settlement in the notice;
- Know which cases are likely to require tax returns and flag them;
- Assess all asset cases at the beginning of each year for tax filing requirements;
- File returns timely;
- If an extension is requested and taxes will be owed, make an estimated tax payment;  
and
- Attempt to obtain abatement of penalties, if there was good cause for delay.

Thank you for your attention to these important issues.

Respectfully,

**David W. Newman**

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