



U.S. Department of Justice

Office of the United States Trustee

District of Utah

Washington Federal Bank Building, Suite 300
405 South Main Street Telephone: (801) 524-5734
Salt Lake City, Utah 84111 Facsimile: (801) 524-5628

OPERATING GUIDELINES AND REPORTING REQUIREMENTS OF THE UNITED STATES TRUSTEE

FOR CHAPTER 11 DEBTORS IN POSSESSION AND CHAPTER 11 TRUSTEES

I. INTRODUCTION

A. United States Trustee's Authority to Supervise Debtor in Possession

Pursuant to 28 U.S.C. §586 and 11 U.S.C. §704(8), the United States Trustee has established these **Operating Guidelines and Reporting Requirements** (the "requirements") for chapter 11 debtors in possession and chapter 11 trustees (the "debtor" or "debtors"). Under these requirements, debtors must establish and observe certain operating procedures and file certain financial reports with the Bankruptcy Court, the U.S. Trustee, and any committee appointed in the case by the U.S. Trustee. Counsel should carefully review these requirements with debtor upon receipt.

B. Compliance, Amendments or Modifications

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the filing of a motion to dismiss or convert the case or a motion to appoint a chapter 11 trustee or examiner.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing. To be effective, approval by the U.S. Trustee must be in writing.

C. Duties of Debtor in Possession

With the filing of a chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition debt current. (See 11 U.S.C. §§ 1106 and 1107.)

D. A Corporate Debtor's Failure to be Represented by Counsel is Grounds for Dismissal

United States Bankruptcy Court for the District of Utah has mandated in Local Bankruptcy Rule 9011-2(a) (per 28 U.S.C. §1654) that "a corporation, partnership, limited liability company, or unincorporated association may not file a petition or otherwise appear without an attorney in any case or proceeding. Failure to comply with this rule is grounds for dismissal of a case or proceeding, conversion of a case, appointment of a trustee or examiner, judgment by default, or other appropriate sanctions."

If the debtor is not an individual and is proceeding without counsel, the United States Trustee may seek a dismissal of the case or other appropriate remedies.

E. Duties of Trustee or Debtor in Possession in Small Business Cases

A "small business case" is a case in which the debtor is a "small business debtor" (*See* 11 U.S.C. §101 (51C) and (51D)). Section 1116 of Title 11 sets out a number of additional requirements in small business cases:

- 1) The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the documents do not exist.
- 2) The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the court or the U.S. Trustee, including initial debtor interviews, scheduling conferences, and the §341 meeting of creditors, unless the court waives the requirement upon a finding of extraordinary and compelling circumstances.
- 3) The debtor must timely file all schedules and statements of financial affairs unless the court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
- 4) The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedures or Local Bankruptcy Rules.
- 5) The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
- 6) The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those being appropriately and diligently contested, and subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
- 7) The debtor must allow the U.S. Trustee or a designated representative to inspect the debtor's business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

F. Individual Debtors

Title 11 includes a number of provisions that apply specifically to Chapter 11 cases in which the debtor is an individual (including a joint petition filed by a married couple), including the following:

- Property of the bankruptcy estate includes property acquired post-petition. 11 U.S.C. § 1115(a)(1).
- Property of the bankruptcy estate includes post-petition earnings from personal services. 11 U.S.C. §1115(a)(2).
- **Within 30 days** of filing a bankruptcy petition an individual debtor must apply for a **new tax identification number** and begin reporting income for his or her bankruptcy estate on IRS Form 1041 (see paragraph C of Section II below for further instructions).
- The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. 11 U.S.C. §1123(a)(8).
- If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer, with disposable income defined in 11 U.S.C. §1325(b)(2). 11 U.S.C. §1129(a)(15).
- At the request of the debtor, the trustee, the U.S. Trustee, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before completion of payments to 1) increase or reduce the amount of payments to a particular class; 2) extend or reduce the time period for payments; or 3) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. 11 U.S.C. §1127(e).
- At the request of the court, the U.S. Trustee, or any party in interest, the debtor must file with the court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. 11 U.S.C. §521(f).
- An individual debtor's plan of reorganization cannot be confirmed if the debtor has not filed all Federal, State, and Local tax returns and provided a copy to the Bankruptcy Court (with a copy to the U.S. Trustee) see §1325(a)(9) [See also §1228(b) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005].
- An individual debtor must remain current on all post-petition domestic support obligations 11 U.S.C. §112(b)(4)(P) to avoid conversion or dismissal for cause, and also to be eligible to confirm a plan 11 U.S.C. §1129(a)(14).

- An individual debtor does not receive a discharge until completion of all payments under the plan. The court may grant a discharge to an individual debtor who has not completed all plan payments if the court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the court also finds that modification of the plan under §1127 is not practicable. 11 U.S.C. §1141(d)(5).
- Individual Chapter 11 cases may remain open and under the jurisdiction of the bankruptcy court and supervision by the U.S. Trustee for up to five years following confirmation. During that period, quarterly U.S. Trustee fees will be assessed and reports will be due as outlined below in Section III, item D. An individual debtor is required to report the progress in meeting plan payments via a comparison of actual vs. required payments for each payee each quarter. As referenced above, per 11 U.S.C. §521(f) an individual debtor must provide copies of each tax return filed after confirmation to the Court and the U.S. Trustee up through the date of discharge.

II. OPERATING GUIDELINES

A. Bank Accounts/Money of the Estate

1. The debtor must immediately close pre-petition bank accounts and open new “debtor in possession” bank accounts. All receipts must flow through the debtor in possession account(s). All disbursements should be by check.
2. The account name on the bank’s records must include the words “Debtor in Possession.” Checks for all the new accounts must be pre-numbered by the printer, and must be **imprinted** with the words “Debtor in Possession” and the bankruptcy case number. Handwritten, typewritten, or hand-stamped versions are not acceptable. (See **Exhibit 1**.)
3. All money of the estate must be properly invested in accordance with 11 U.S.C. §345. Examples of deposits and investments that comply with §345(b) include, but may not be limited to, the following:
 - a. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - b. Investments in United States Treasury securities.
 - c. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. §9303, to secure the funds invested or on deposit.

Attached is a list of authorized depositories which are set up to assist debtors in possession with the handling of funds in Chapter 11 cases filed in this district. The institutions on the list

have signed agreements with the U.S. Trustee to automatically collateralize (or bond) account balances when they exceed the FDIC limit on insured amounts to assist the debtor in possession with its compliance on §345(b) (See **Exhibit 2A**). Debtors with revenues likely to approach or exceed \$100,000 in any one month during the pendency of its case are required to use an institution on this list. Please have the institution of your choice complete the attached collateralization certificate to include all account numbers which are to be collateralized (See **Exhibit 2B**).

B. Insurance

The debtor must maintain, without interruption, all insurance customarily carried in the debtor's line of business or required by law or regulation. If you have not already done so, please complete the "Insurance & Environmental Questionnaire" (See **Exhibit 3**) and fax it to the U.S. Trustee immediately along with evidence of insurance. In the District of Utah, this report is **due within 7 days of the Chapter 11 filing** pursuant to Local Rule 2081-1(a).

In most cases, the debtor will be required to carry liability, workers' compensation, and property insurance, i.e., fire and extended coverage. The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the U.S. Trustee of any lapse, cancellation, modification, or renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(C).

C. Taxes

The debtor must remain current on all post-petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(I).

Debtors who are individuals (who were reporting their income pre-petition on U.S. Individual Income Tax Return Form 1040) are required to obtain an "Employer Identification Number" (EIN) for the bankruptcy estate within 30 days of filing the bankruptcy petition. The debtor (or trustee) must prepare and file the income tax returns in accordance with "IRS Notice 2006-83 Providing Guidance Regarding Tax Treatment of Individual Chapter 11 Debtors" and in compliance with 11 U.S.C. §1115 as explained in that notice (if applicable, see **Exhibit 5**).

D. Quarterly Fees

Pursuant to 28 U.S.C. §1930(a)(6), debtors are required to pay certain fees for each calendar quarter (or portion thereof) until the case is dismissed or converted or a final decree is entered and the case is closed. (See **Exhibit 4**). Failure to pay quarterly fees when due is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(K).

E. Assessment of Interest & Collection on Unpaid Quarterly Fees

Under the Debt Collection act of 1982 , 31 U.S.C. §3717, our agency will charge interest on delinquent quarterly fee balances which are considered debts owed to the United States. The minimum rate charged is equal to the U.S. Treasury's "Current Value of Funds Rate" published annually by the Secretary of Treasury in the Federal Register and available on the Treasury's Financial Management Service's web site at www.fms.treas.gov/debt.

F. Legal Documents to Be Transmitted to the United States Trustee

Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9034, it is the responsibility of the debtor and the debtor's counsel to keep the U.S. Trustee apprised of all matters pertaining to the case at all times. This includes ensuring that the U.S. Trustee is served with copies of all papers (motions, applications, etc.) filed in the case.

G. Initial Debtor Interview

The U.S. Trustee will schedule an initial debtor interview ("IDI") with the debtor and counsel shortly after the case is filed. (See 11 U.S.C. §1116(2) for specific requirements in small business cases.) The IDI will generally be conducted either at the debtor's place of business or at the office of the U.S. Trustee. At the IDI, a bankruptcy analyst from the U.S. Trustee's office will seek to become familiar with the debtor's case as well as with the debtor's business plan and operations, assets, liabilities, and accounting methods. Accordingly, the debtor's representative(s) at the IDI should have personal knowledge and information regarding the debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements. The analyst will also discuss the role of the U.S. Trustee, explain the Operating Guidelines and Reporting Requirements, and discuss scheduling matters.

The IDI will be held as soon as practicable after the petition is filed prior to the meeting of creditors. Prior to the IDI, the debtor should ensure that the U.S. Trustee has a copy of the debtor's Statement of Financial Affairs and Schedules and the debtor's Initial Financial Report. (See Section III, **Reporting Requirements**). Failure by the debtor to attend this meeting (and all other meetings reasonably requested by the U.S. Trustee) is cause for conversion or dismissal of the bankruptcy case. 11 U.S.C. §1112(b)(4)(H).

H. Additional Legal Requirements

The debtor's attention is directed to the following selected provisions of the Bankruptcy Code:

1. Meeting of Creditors

A meeting of creditors is required to be held generally within 21 to 40 days after the petition is filed. The debtor or one of the debtor's officers, directors, or general partners must attend and respond, under oath, to questions from the U.S. Trustee and creditors regarding the

debtor's business and financial affairs, the cause of the bankruptcy, and the status of the debtor's reorganization efforts. (See 11 U.S.C. §§ 341 and 343.) Failure by the debtor to attend the meeting of creditors without good cause shown is grounds for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(G).

2. Unsecured Creditors' Committee

- a. As soon as possible after the entry of an order for relief, the U.S. Trustee will invite the 20 largest unsecured creditors to an organizational meeting for the purpose of forming an unsecured creditors' committee. This organizational meeting may be held in conjunction with the first meeting of creditors described above, or it may be scheduled separately. The debtor and the debtor's counsel may be requested to attend this meeting. (See 11 U.S.C. §1102.)
- b. If a committee is appointed by the U.S. Trustee, the debtor must provide the committee with copies of all financial reports required by the U.S. Trustee.
- c. If a committee is appointed in a small business case, the debtor is no longer considered a small business debtor unless the court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor.

3. Cash Collateral

The debtor may not use "cash collateral" unless the secured creditor agrees to such use, or such use is authorized by the court after notice and a hearing. (See 11 U.S.C. §363(c)(2).) Unauthorized use of cash collateral by the debtor that is substantially harmful to a creditor is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(D).

4. Obtaining Credit

The debtor may not obtain credit other than in the ordinary course of business without court authorization after notice and a hearing. (See 11 U.S.C. §364.)

5. Use, Sale or Lease of Property of the Estate

The debtor may not use, sell, or lease property of the estate when such use, sale, or lease is not in the ordinary course of business, except after notice and a hearing. (See 11 U.S.C. §363(b).)

6. Employment and Compensation of Professionals

The debtor may not employ or compensate professional persons, including the debtor's attorney, without court approval. (See 11 U.S.C. §§ 326-331, 503 and 1107.)

7. Prohibition on Payment of Pre-Petition Debts

The debtor must not pay any pre-petition debts without court approval. (See 11 U.S.C. Sec. 549.)

III. REPORTING REQUIREMENTS

In addition to the reports described below, the United States Trustee may require the submission of any additional information that may be necessary to properly monitor the administration of the estate. **The Initial Financial Report is to be submitted to the U.S. Trustee only; it is not to be filed with the Clerk of Court. The Monthly Operating Reports are to be filed with the Clerk of the Court, and a hard copy of each report bearing an original signature is to be submitted to the U.S. Trustee.** Copies of all reports must also be provided to any committee appointed by the U.S. Trustee. Debtors that file the reports electronically with the Court must comply with applicable requirements concerning retention of original signatures. The debtor's unexcused failure to comply with reporting deadlines or reporting requirements is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(F).

A. Initial Financial Report

1. The Initial Financial Report ("Initial Report") is due **twenty-one days** (per Local Rule 2081-1(a)) after the petition is filed. It is to be submitted only to the U.S. Trustee (due to the sensitive information contained in this report, do not file the Initial Report with the Bankruptcy Court), with a copy provided to any committee appointed in the case.
2. The Initial Report consists of the following:
 - a. **Cover Sheet (Form 1).**
 - b. **Latest fiscal year financial statements and tax returns.** The debtor must provide a complete set of financial statements for its most recent fiscal year. Publicly-held corporations must submit the most recent Form 10-K. Audited statements should be submitted if available. If audited statements are not available, the debtor should submit its last two federal income tax returns, along with unaudited statements. Individual debtors should redact any Social Security Numbers for themselves and their dependents that are included on the tax returns. Names of any minor children should also be redacted.
 - c. **Balance sheet as of the end of the month immediately prior to filing.**

(Debtors in small business cases are required to append their most recent balance sheet to the petition. 11 U.S.C. §1116(1)(A). If the balance sheet was filed with the petition, the debtor may check the "previously submitted" box on Form 1.)

- d. **Profit and loss statement (statement of operations) for the month immediately prior to filing and the year to date, through the end of that month.**

(Debtors in small business cases are required to append their most recent statement of operations to the petition. 11 U.S.C. §1116(1)(A). If the statement of operations was filed with the petition, the debtor may check the “previously submitted” box on Form 1.)

- e. **Maintaining insurance coverage.** The debtor must provide a certificate(s) of insurance, signed by an authorized representative of the carrier or agent, with the **United States Trustee named as a party to be notified** in the event of cancellation. [Proof of this change is due with the initial financial report]. All documents provided as evidence of insurance must clearly indicate the policy expiration date, the types and amounts of coverage, the location(s) covered, the deductible, the named insured, the insurer, and the name, address, and telephone number of the local agent.
- f. **Projections (Form IR-6).** The debtor must submit a projected statement of monthly revenue, expenses, and cash flow that covers the first 180 days of post-petition operations. Significant assumptions used in the projections must be described. The statement must provide sufficient detail to support a review of reasonableness when compared with other financial statements provided with the report.
- g. **Information concerning debtor in possession account(s).** The debtor must submit a sample voided check for each debtor in possession account. If a sample check is not yet available, the debtor must, in the interim, provide the account number and name and address of financial institution where the account is located.

WARNING to “Small Business” debtors: The filing of an Initial Report with the U.S. Trustee as outlined in Section A above does not satisfy the requirement by 11 U.S.C. §1116 to append those documents to the petition.

B. Monthly Operating Reports (Non-Small Business Cases)

1. A Monthly Operating Report must be submitted for each month (or portion thereof) after the petition is filed until a plan is confirmed or the case is dismissed or converted (11 U.S.C. §704(a)(8)). The Monthly Operating Report submitted for the month in which an order confirming the plan is entered should cover the entire month. Reporting for post-confirmation periods is required on a calendar quarter as discussed in Section F below.
2. The Monthly Operating Report is due **fourteen days** after the end of the month covered by the report (Local Rule 2081-1(b)). The Monthly Operating Report is to be filed with the Clerk of Court. A hard copy of the report with an original signature is to be submitted to

the U.S. Trustee. Copies must also be provided to any committee appointed in the case.

3. The Monthly Operating Report consists of the following:
 - a. **Cover Sheet (Form 2-A).**
 - b. **Cash Receipts and Disbursements Statements (Form 2-B).** The Cash Reconciliation (page 1 of Form 2-B) requires information for the monthly reporting period along with cumulative information from the petition date through the end of the reporting period.
 - c. **Balance Sheet (Form 2-C).** Comparative balance sheets as of the last month-end and the petition date must be provided.
 - d. **Profit and Loss Statement (Form 2-D).** Information must be provided for the monthly reporting period along with cumulative information from the petition date through the end of the reporting period.
 - e. **Supporting Schedules (Form 2-E):**
 - 1) Post-Petition Taxes Payable Schedule
 - 2) Insurance Schedule
 - 3) Accounts Receivable and Post-Petition Payable Aging Summary (debtor must attach detailed agings)
 - 4) Schedule of Payments to Attorneys and Other Professionals
 - 5) Schedule of Payments to Principals/Executives
 - f. **Quarterly Fee Summary (Form 2-F).**
 - g. **Narrative (Form 2-G).**
 - h. **Complete copies of bank statements for all accounts.**
 - i. **Bank statement reconciliations for all accounts.**

IMPORTANT: Before filing the monthly report please redact all but the last 4 digits of any bank account numbers. Also, redact or remove any images of scanned checks that accompany the bank statement.
4. Individuals (e.g. a joint-filing couple or individual debtor -- not corporations, partnerships, or LLCs) who are debtors should discuss appropriate monthly reporting requirements with the bankruptcy analyst assigned to the case. Monthly reports by individuals must include detailed reporting of all financial activity of the bankruptcy estate, including transactions generated by post-petition earnings from personal services, operation of a business, and sales of property of the estate.

5. Debtors who derive their income from closely held corporations, partnerships or limited liability companies are required to provide periodic financial statements for those closely-held entities (Federal Rule of Bankruptcy Procedure 2015.3 discussed in Section D below).
6. Each Monthly Operating Report must be prepared on the appropriate form. Computerized versions of these forms are available from the U.S. Trustee. Accounting-system-generated reports may be attached as exhibits if prior approval from the U.S. Trustee has been obtained.
7. The Monthly Operating Report must be prepared on 8-1/2 by 11 inch, standard quality white paper, in order to conform to court filing requirements. (See Local Rules and Standing Orders for other restrictions and requirements.)
8. The Monthly Operating Report must be legible. If possible, the report should be typed. No entries should be left blank; if an item does not apply, enter “0” or “N/A”.
9. Reports prepared on the accrual basis of accounting are **strongly** recommended. The debtor may not switch from accrual to cash basis reports without the prior written approval of the U.S. Trustee.
10. Regardless of who prepared the Monthly Operating Report, the report must be signed, under penalty of perjury, by the debtor(s), a corporate officer, a general partner, or the chapter 11 trustee, as appropriate.

C. Monthly Operating Reports (Small Business Cases).

As noted above, a “small business case” is a case in which the debtor is a “small business debtor” as defined in 11 U.S.C. §101 (51C) and (51D). With respect to the financial reports required in a small business case pursuant to 11 U.S.C. §308(b) and Federal Rules of Bankruptcy Procedure 2015(a)(6), the following shall apply:

1. A Small Business Monthly Operating Report must be submitted for each month. If the order for relief is within the first 15 days of a calendar month, the report shall be filed for the portion of that month. If the order for relief is after the 15th day of that month, the period for the remainder of the month shall be included in the report for the next calendar month. The obligation to file monthly reports terminates for the months subsequent to the effective date of the plan, or conversion or dismissal of the case. A Small Business Monthly Operating Report submitted for the month in which an order confirming the plan is entered should cover the entire month. Reporting for post-confirmation periods is required on a calendar quarter as discussed in Section F below.
2. The Small Business Monthly Operating Report must be prepared on Official **Form B425C** (a copy of this form will be provided to you by the U.S. Trustee at the initial debtor

interview). System-generated reports may be attached as exhibits if prior approval from the U.S. Trustee has been obtained.

3. The Small Business Monthly Operating Report is due **twenty-one days** after the end of the month covered by the report. The report is to be filed with the Clerk of Court. A hard copy of the report with an original signature is to be submitted to the U.S. Trustee. Copies must also be provided to any committee appointed in the case.
4. Individual debtors should discuss appropriate monthly reporting requirements with the bankruptcy analyst assigned to the case.
5. The Small Business Monthly Operating Report must be legible. If possible, the report should be typed. No entries should be left blank; if an item does not apply, enter "0" or "N/A".
6. Regardless of who has prepared the Small Business Monthly Operating Report, it must be signed, under penalty of perjury, by the debtor(s), a corporate officer, a general partner, or the chapter 11 trustee, as appropriate.

D. Reports Regarding Entities In Which Debtor Holds An Interest

Pursuant to Fed.R.Bankr.P. 2015.3, the debtor must file periodic financial reports of the value, operations, and profitability of each entity in which the debtor holds a substantial or controlling interest (except that the debtor does not need to file reports regarding any entity that is either a publicly traded corporation or is in bankruptcy). It is presumed that the debtor holds a substantial or controlling interest if the debtor controls or owns at least a 20% interest in the entity.

1. The periodic financial report must be prepared on the attached form (Official **Form B426**);
2. The first report shall be filed no later than **seven (7) days** before the first date set for the §341 meeting of creditors. Subsequent reports shall be filed at least every six (6) months thereafter. The obligation to file the periodic reports terminates upon the effective date of the plan, or conversion or dismissal of the case.
3. In addition to filing the periodic financial report with the Court, copies of the report shall be served on the U.S. Trustee, any committee appointed in the case, and any other party in interest that has filed a request therefor.

E. Reports on Cases Converted to Chapter 7

Pursuant to Fed.R.Bankr.P. 1019(5), the debtor must: 1) within **fourteen days** after entry of an order converting the case to a case under chapter 7, file a schedule of unpaid debts incurred after commencement of the chapter 11 case, such list to include the name and address of each post-petition creditor; and 2) within 30 days after entry of the order of conversion, file with the court and transmit to the U.S. Trustee a final report and account.

F. Post-Confirmation: Reporting Requirements & Quarterly Fees

Pursuant to 11 U.S.C. §1106(a)(7), the debtor must file a Post-Confirmation Quarterly Report (**Form 3**) for every post-confirmation calendar quarter, including the quarter in which the plan was confirmed and the quarter in which the debtor files its application for final decree. The first report should be for the entire calendar quarter, not just the post-confirmation period.

The final report should include all activity (including a projection, if necessary) through the hearing date of the application for final decree. The Post-Confirmation Quarterly Report is due **thirty days** after the end of each calendar quarter, except for the **final** Post-Confirmation Quarterly Report, which should be filed at the same time as the Chapter 11 Final Report and Motion for Final Decree.

Both plan payments and disbursements made outside the plan (i.e. in the ordinary course) are to be disclosed in each post-confirmation report. U.S. Trustee fees will be assessed on all post-confirmation disbursements (whether or not they were made pursuant to the plan). U.S. Trustee fees are due quarterly (see **Exhibit 4**) and will continue to be billed post-confirmation up through the docket date of a final decree, dismissal, or conversion. If a case is reopened following the entry of a final decree (i.e. a year later to enforce or modify a plan) fees will be assessed for that open period as well.

As discussed above (in Section II, Paragraph D), the U.S. Trustee will assess interest on any delinquent fee balances while the case is pending. Any balances remaining unpaid after the case is closed may be referred to the United States Treasury for collection (which may result in the assessment of additional interest and penalties).

DEBTOR IN POSSESSION ACCOUNTS

This is an example of a correctly styled check for a debtor in possession bank account. Please use it as a guide in setting up your account and ordering checks.

The words "Debtor in Possession" and the bankruptcy case number must be *imprinted on all* checks issued by a debtor. Handwritten, typewritten and hand-stamped versions are *not* acceptable. The use of the abbreviation "DIP" for "debtor in possession" is *not* acceptable. In addition, the checks must be prenumbered by the printer.

John Doe Holding, Inc., dba USA GOODS	1001
Debtor in Possession	
Case No. 88C-20000	
1400 Every Street	11-7/1000
Anytown, CO 80000	
(303) 111-1111	

PAY
TO THE
ORDER OF _____, \$(_____)
DOLLARS

Solvent National Bank
1 Finance Street
Metropolis, CO 80001

FOR _____
|:3 25079486|:57670 008641811 - 0801



U.S. Department of Justice

Office of the United States Trustee

Washington Federal Bank Building, Suite 300
405 South Main Street Telephone: (801) 524-5734
Salt Lake City, Utah 84111 Facsimile: (801) 524-5628

**UNITED STATES TRUSTEE'S LIST OF AUTHORIZED DEPOSITORIES
For Bankruptcy Cases Filed in the District of Utah
As of January 1, 2018**

DEPOSITORY

1. JP Morgan Chase Bank
2. Wells Fargo Bank
3. Bank of the West
4. Key Bank
5. Zions Bank
6. U.S. Bank of Utah -- (DIP accounts only)*

The following banks may also be used (but they currently may not have local branches in Utah):

7. Bank of America
8. Bank of New York Mellon
9. First National Bank of Vinita
10. First Tennessee Bank
11. Fifth-Third Bank
12. Integrity Bank
13. Rabobank
14. Union Bank of California
15. East West Bank
16. PNC Bank

All depositories on the list above (numbers 1 through 15) are available for the use of a Chapter 11 **Debtor-in-Possession (or DIP)** without restriction.

* BANKRUPTCY (Ch 7, 11, 12, 13) **TRUSTEES ARE RESTRICTED FROM THE USE OF #6 U.S. BANK** to hold and administer bankruptcy estate funds.

*Please contact **your attorney** or any Bankruptcy Analyst at the Office of the U.S. Trustee (801) 524-5734 with any questions about the use of any institutions on this list **prior to** establishing or changing your existing bank account(s).*



U.S. Department of Justice
Office of the United States Trustee
District of Utah

COLLATERALIZATION CERTIFICATE

"Debtor In Possession" bank account(s) are required under 11 U.S.C. § 345(b)

§ 345(b) of the Bankruptcy Code requires a chapter 11 debtor to protect its creditors' interests by depositing bankruptcy funds in a financial institution that will collateralize or bond the debtor's funds in favor of the United States. The financial institution must be approved by the United States Trustee in the district where the bankruptcy case is filed.

To assist a debtor in meeting the requirements of § 345(b), the United States Trustee for the District of Utah has executed depository agreements with a number of local and regional banks ("participating banks"). A list of such banks has been enclosed. Each participating bank on the list has agreed to comply with the provisions of § 345(b) and to make regular reports to the United States Trustee. A collateralization certificate, when signed by a participating bank, is the bank's acknowledgment that it will comply with its depository agreement with the United States Trustee for a particular bankruptcy case.

Debtor's Instructions

Within 30 days of filing a bankruptcy petition, the debtor shall submit to the United States Trustee a collateralization certificate from each bank holding the debtor's funds. For each participating bank holding the debtor's funds, have a representative of the bank sign a Collateralization Certificate listing each of the debtor's accounts at that institution. The debtor is responsible for returning the completed Collateralization Certificate to: **Office of the United States Trustee, 405 S. Main St., Suite 300, Salt Lake City, UT 84111 . . . or fax to (801) 524-5628 - Attention: James Gee**

If the debtor's current bank is not listed as a participating bank, the debtor shall either move bankruptcy funds to a participating bank. Please contact the Bankruptcy Analyst assigned to the debtor's case at (801) 524-5734 immediately if there are any questions or problems.

Depository, please complete the following section (see fax instructions above):

Debtor's Name	Case No.
Debtor's Account No(s).	
Bank Name	
Bank Address	
Bank Representative's Name	Title
Bank Representative's Signature	Date
Telephone No. ()	Fax No. ()
I certify that, pursuant to our depository agreement on file with the United States Trustee for the District of Utah, the debtor's accounts shown above will be included in our regular reports to the United States Trustee of bankruptcy funds on deposit at this financial institution.	



U.S. Department of Justice
Office of the United States Trustee
District of Utah

INSURANCE & ENVIRONMENTAL RISK QUESTIONNAIRE

The Failure to maintain appropriate insurance coverage is grounds for conversion or dismissal of a Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(c).

§1112 of the Bankruptcy Code requires a chapter 11 debtor to protect its assets and the public. Failure to have or maintain coverage consistent with industry standards constitutes grounds for dismissal or conversion of your case. This questionnaire is to notify the United States Trustee about the adequacy and recent history of insurance coverage on assets of your bankruptcy case.

THIS FORM AND A COPY OF YOUR MOST RECENT INSURANCE POLICY (declarations page only) SHOULD BE FAXED to the Office of United States Trustee WITHIN 5 BUSINESS DAYS OF RECEIPT.

Fax to: (801) 524-5628 Attention: James Gee Bankruptcy Analyst

Case Name _____ **Case No.** _____

Answer the following:

- 1) Was there insurance coverage on the assets of this estate at the date of the bankruptcy petition?
 YES ___ NO ___

- 2) Are the assets of this estate comprised solely of raw land or unimproved property including **all** of the following 1) no structures or buildings 2) no operating business 3) no known environmental hazards
 YES ___ NO ___

- 3) If insurance has lapsed or has been cancelled within the past year, indicate the date(s) of any gaps in coverage: _____

- 4) To the best of your knowledge, what assets, if any, were uninsured or under-insured on the date of the bankruptcy filing? _____

- 5) What efforts are underway to reinstate or increase insurance coverages to appropriate levels (to industry standards), if applicable? _____

- 6) Are there any known environmental hazards on any property of the debtor? Yes ___ No ___
 If yes, attach a list and explanation of each hazard.

IN ACCORDANCE WITH TITLE 28, SECTION 1746 OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE COMPLETED THIS INSURANCE QUESTIONNAIRE ON BEHALF OF THE CHAPTER 11 DEBTOR AND, TO THE BEST OF MY KNOWLEDGE, THIS REPORT AND RELATED DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

SIGNATURE OF RESPONSIBLE PARTY	DATE REPORT SIGNED
_____	_____

PRINTED NAME OF RESPONSIBLE PARTY AND POSITION WITH DEBTOR

CHAPTER 11 QUARTERLY FEES

Under 28 U.S.C. § 1930(a)(6), a quarterly fee shall be paid to the United States Trustee System Fund at Treasury in each case under chapter 11 (except small business cases under Subchapter V of chapter 11) for each calendar quarter, or portion thereof, between the date a bankruptcy petition is filed and the date the court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy.

Quarterly Fee Calculation

The quarterly fee is calculated by totaling the reported disbursements for the three-month calendar quarter, or portion thereof, according to the fee schedules shown below. 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) the reported disbursement history, b) the debtor's initial financial data submitted when the case was filed, or c) the United States Trustee's estimate. If there is a disagreement with the estimated quarterly fee noted on the billing statement, then Monthly Operating Reports or actual disbursement reports supporting a different calculation must be filed with the bankruptcy court and served on the United States Trustee office. A minimum fee of \$325.00 is due even if there were no disbursements during a calendar quarter. The fee is not prorated.

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.

FEE SCHEDULE FOR CALENDAR QUARTERS BEGINNING JANUARY 1, 2018 THROUGH SEPTEMBER 30, 2020

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***.

QUARTERLY FEE SCHEDULE (Effective Jan. 1, 2018 – Sept. 30, 2020)

[pursuant to 28 U.S.C. § 1930(a)(6)]

Disbursement Range	Quarterly Fee
\$0 to \$14,999.99	\$325
\$15,000 to \$74,999.99	\$650
\$75,000 to \$149,999.99	\$975
\$150,000 to \$224,999.99	\$1,625
\$225,000 to \$299,999.99	\$1,950
\$300,000 to \$999,999.99	\$4,875
\$1,000,000 or more	1% of quarterly disbursements <i>or</i> \$250,000, whichever is less

*Information on the Quarterly Fees applicable to quarters prior to Jan 1, 2018 and subsequent to Sept 30, 2020 (i.e. any updates/changes) can be found at <https://www.justice.gov/ust/chapter-11-quarterly-fees>

Fee Due Date

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 dismiss or 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.

Online Payments:

Chapter 11 quarterly fees may be paid online via electronic funds transfer from a bank account* at <https://www.pay.gov/public/form/start/672415208>

***Important:** pay.gov DOES **NOT** ACCEPT debit cards, credit cards, or any other types of online payments.

Payments via Check or Money Order:

Tear off the 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

Or for Overnight deliveries:

*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 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).

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

Please be advised that, pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the United States Trustee intends to use the debtor's Taxpayer Identification 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 United States Trustee.

The United States Trustee will provide the debtor's TIN to the 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, (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

▶ See separate instructions for each line. ▶ Keep a copy for your records.

OMB No. 1545-0003

EIN

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested THE BANKRUPTCY ESTATE OF _____		
2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name [DEBTOR'S NAME], DEBTOR-IN-POSSESSION	
4a Mailing address (room, apt., suite no. and street, or P.O. box) [DEBTOR'S MAILING ADDRESS]	5a Street address (if different) (Do not enter a P.O. box.)	
4b City, state, and ZIP code	5b City, state, and ZIP code	
6 County and state where principal business is located		
7a Name of principal officer, general partner, grantor, owner, or trustor [DEBTOR'S NAME], DEBTOR-IN-POSSESSION	7b SSN, ITIN, or EIN [DEBTOR'S SSN]	
8a Type of entity (check only one box)		
<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input checked="" type="checkbox"/> Other (specify) ▶ CHAPTER 11 BANKRUPTCY ESTATE		
<input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Plan administrator (SSN) _____ <input type="checkbox"/> Trust (SSN of grantor) _____ <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises Group Exemption Number (GEN) ▶ _____		
8b If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country
9 Reason for applying (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 12.) <input type="checkbox"/> Compliance with IRS withholding regulations <input checked="" type="checkbox"/> Other (specify) ▶ CHAPTER 11 BANKRUPTCY		
<input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Purchased going business <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
10 Date business started or acquired (month, day, year). See instructions. [PETITION DATE]	11 Closing month of accounting year	
12 First date wages or annuities were paid (month, day, year). Note. If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)		
13 Highest number of employees expected in the next 12 months (enter -0- if none).	Agricultural	Household
Do you expect to have \$1,000 or less in employment tax liability for the calendar year? <input type="checkbox"/> Yes <input type="checkbox"/> No. (If you expect to pay \$4,000 or less in wages, you can mark yes.)		
14 Check one box that best describes the principal activity of your business.		
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Health care & social assistance <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail <input type="checkbox"/> Other (specify) _____		
15 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		
16a Has the applicant ever applied for an employer identification number for this or any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No Note. If "Yes," please complete lines 16b and 16c.		
16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above. Legal name ▶ _____ Trade name ▶ _____		
16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known. Approximate date when filed (mo., day, year) _____ City and state where filed _____ Previous EIN _____		

Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code) ()
	Address and ZIP code	Designee's fax number (include area code) ()
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code) ()
Name and title (type or print clearly) ▶ _____		Applicant's fax number (include area code) ()
Signature ▶ _____		Date ▶ _____



U.S. Department of Justice

Office of the United States Trustee

**CERTIFICATION OF RECEIPT AND UNDERSTANDING OF NOTICE -
INDIVIDUAL CHAPTER 11 DEBTOR IRS FILING AND REPORTING
REQUIREMENTS UNDER SECTION 1115 OF THE BANKRUPTCY CODE**

NOTICE

The attached Internal Revenue Bulletin 2006-40 (Notice 2006-83) applies to the newly created section 1115 of the Bankruptcy Code, as enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Section 1115 is effective for cases filed on or after October 17, 2005.

Section 1115 provides that, for individual chapter 11 debtors, property of the estate includes property acquired after filing, but before closure, dismissal, or conversion. It also provides that property of the estate includes earnings from services performed after filing, but before closure, dismissal, or conversion.

The Internal Revenue Service (IRS) notice, which is effective immediately, establishes policies and procedures related to the fact that such property and services are subject to taxation as part of the individual chapter 11 estate.

I hereby certify that I have read and understand the foregoing Notice - Individual Chapter 11 Debtor IRS Filing and Reporting Requirements under Section 1115 of the Bankruptcy Code..

(Date)

(Debtor)

(Title)

(Print Name of Signatory)



Internal Revenue Bulletin: 2006-40

October 2, 2006

Notice 2006-83

Individual Chapter 11 Debtors

Table of Contents

- [Section 1. PURPOSE](#)
- [Section 2. BACKGROUND AND GENERAL LEGAL PRINCIPLES](#)
- [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](#)
- [Section 4. APPLICATION OF THE SELF-EMPLOYMENT TAX](#)
- [Section 5. APPLICATION OF EMPLOYMENT TAXES AND OBLIGATION TO FILE FORM W-2](#)
- [Section 6. ALLOCATION OF INCOME AND CREDITS ON INFORMATION RETURNS AND REQUIRED STATEMENT FOR RETURNS](#)
- [Section 7. REQUEST FOR COMMENTS](#)
- [Section 8. PAPERWORK REDUCTION ACT](#)
- [Section 9. DRAFTING INFORMATION](#)

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 ("pre-petition 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 2006-83 Statement		
<i>Pending Bankruptcy Case</i>		
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]:		
Year	Taxpayer	Estate
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 $\frac{1}{2}$ 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).

[Prev](#)

[Up](#)

[Next](#)

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