

Salient Points on Tax Treatment Under the Half-Act Code Consumer Provisions

General Categories of New Requirements

How and Who: Three things that debtors are required to do with taxes and related documents:

File with the Court
File with the taxing authority
Submit to the Trustee

What:

Tax returns
Tax transcripts (what qualifies as a transcript?)
Statements (what qualifies as a statement?)

When or Why: Triggers for action:

Specific dates in relation to first meeting of creditors or confirmation
Specific dates in relation to due date of returns
Request by specific parties (what is a request? is it a motion?)
Unclear or apparently self-executing

Tax Return Requirements By Case Chronology

(both chapters 7 and 13 as indicated)

§1308(a)

How: File
Who: Taxing Authority
When: Not later than (“NLT”) the day before the date first set for 341(a)
What: All returns for taxable years ending during the 4-year ending at petition (does this move up the due date for the return?)

§1307(e)

Consequence: On request of a party in interest **or** the UST **and** after notice and a hearing, the court **shall** dismiss or convert to chapter 7, whichever is in the best interests of the creditors **and** the estate, if debtors fails to comply with §1308.

§1308(b)(1)

Consequence: If not filed, the trustee **may** hold the §341(a) open for a reasonable period of time that is not longer than:

- If return is tardy, 120 days from first date set for §341(a)
- If return is not yet due, 120 days from first date set for §341(a) or last date the return is due including any automatic extensions actually requested by the debtor (how will trustee know?)

- §521(j)(1)** **Consequence:** If a debtor fails to file any tax return that comes due after commencement of the case **or** to obtain an extension, the taxing authority **may** request that the case be dismissed or converted
- §521(j)(2)** If that doesn't motivate the debtor to file or get an extension within 90 days after the request the court **shall** convert or dismiss, whichever is in the best interests of creditors **and** the estate (will conversion or dismissal ever be in the best interests of the estate merely because a tax return wasn't filed?)
- §521(e)(2)(A)(i)** **How:** Provide
Who: The Trustee
What: Returns or transcripts for tax year ending before case file and for which a return was filed
When: NTL 7 days before date first set for 341
Why: Unclear, nothing in the statute
- §521(e)(2)(A)(ii)** **How:** Provide
Who: Any creditor who makes a timely request (*see* Interim Rules and Forms 4002(b)(3) which provides that timely means at least 15 days before the first date set for the §341(a))
What: Returns or transcripts for tax year ending before case file and for which a return was filed
When: At the same time the debtor provides to trustee
Why: n/a
- §521(e)(2)(B)** **Consequence:** If debtor fails to comply the court shall dismiss the case unless debtor demonstrates it was due to circumstances beyond the debtor's control ("DTCBTDC") (how does the court know to dismiss?)
- §521(e)(2)(C)** Same as §521(e)(2)(B) but worded slightly different (why redundancy in the law?)
- §521(j)(1) & (2)** **Consequence:** Described on page one above (does "file" mean with the taxing authority or with the court?)
- §521(f)(1)-(3)** **Chapter 7's and Chapter 13's**
- How:** File
Who: The Court
When: At the same time filed with taxing authority (exactly the same time?)
What: Returns or transcripts for
- tax years ending while case pending,
 - Ch 13 and 7 returns filed after commencement of case for 3 tax years ending before case file
 - Amendments

Why: At the request of the court, the UST or any party in (annual requests? One request?)

§521(f)(4)

Chapter 13's w/o confirmed plans

How: File

Who: The Court

When: 90 days after the end of the tax year or 1 year after petition filed (does this change due date?)

What: Statement, under penalty of perjury

- of the income and expenditures of the debtor during the tax year **and**
- of the monthly income of the debtor that shows how income and expenditures are calculated. (*see also* §707(b)(2)(C))

Why: At the request of the court, the UST or any party in (annual requests? One request?)

§521(f)(4)

Chapter 13's w/ confirmed plans

How: File

Who: The Court

When: NLT 45 days before the anniversary of confirmation

What: Statement, under penalty of perjury

- of the income and expenditures of the debtor during the tax year **and**
- of the monthly income of the debtor that shows how income and expenditures are calculated. (*see also* §707(b)(2)(C))

Why: At the request of the court, the UST or any party in (annual requests? One request?)

Other Provisions

Availability of Tax Returns For Review:

§521(g)(2)

How: Available for inspecting and copying subject to privacy provisions (AO to promulgate regulations)

Who: From the Trustee with respect to returns provided under §521(e)(2)(A)
From the Court with respect to returns filed under §521(f) (is trustee relieved of duty if on file with Court?)

What: Returns or transcripts described in §521(e)(2)(A) and (f)

When: n/a

Why: n/a

Confirmation:

§1325(a)(9) All tax returns must be filed as a pre-requisite to confirmation (filed with the court or the taxing authority?)

Priority Tax Claims:

§507(a)(8)(A) The “look back period” of 240 days for priority claims is suspended for any period during which there is a pending offer in compromise or a stay was in effect.

§507(a)(8)(G) The “otherwise applicable time period” for priority claims is also suspended for any period during which collection was prevented by non-bankruptcy law, by a stay in a prior case, or the existence of a confirmed plan, plus 90 days.

Dischargeability:

§1328(a) Super-discharge is diminished. Certain taxes are now excluded from discharge including those under §507(a)(8)(C) and §523(a)(1)(B) and (C).

Interest Rates:

§511 Tax claims are entitled to interest at the rates determined by non-bankruptcy law, if interest or prevent value is due. Keep in mind that diminished dischargeability means that more tax claims are non-dischargeable and there will be requests to pay interest much like interest has been paid on student loans in the past. But see the limitations included at §1322(b)(10).

Other:

§502(b)(9) Claims bar date for taxing authorities changed to:

- 180 days after the date of the order for relief, or
- if the claims is for a tax based on a return filed under §1308, not later than 60 days after the date on which the return was filed
- may be the later of the two (*see* Interim Rules and Forms 3002(c) which includes two alternative proposals)