

## TRANSMITTAL OF TAX RETURNS TO THE CHAPTER 13 TRUSTEE

BAPCPA places a duty on the Debtor to provide copies of tax returns or transcripts to various entities within specific time limits. The Trustee's office would like to coordinate with Debtors' attorneys and the IRS to find the most efficient method to obtain and then transmit this tax information to the Chapter 13 Trustee. To that end, we have met with representatives of the IRS and discussed streamlined procedures to ensure compliance with BAPCPA.

Chapter 13 Debtors will have to comply with three new sections relating to tax returns:

1. Section 1308 requires the Chapter 13 Trustee to ascertain whether the Debtor has filed all tax returns required for the four years preceding the bankruptcy filing. The returns must be filed no later than the day before the original date for the First Meeting of Creditors.
2. Section 521(e)(2)(A) requires the Debtor to provide to the Trustee a copy of the Debtor's federal tax return (or a transcript) for the most recent tax year no later than 7 days before the original First Meeting of Creditors.
3. Section 521(f) permits the Chapter 13 Trustee to request copies of any federal income tax returns (or transcripts) with respect to each tax year of the Debtor ending while the case is pending. The returns are to be provided at the same time they are filed with the taxing authority.

To meet the "due diligence" standard, a Debtor's attorney will want to review the tax information prior to a new bankruptcy case being filed. Since Debtors often do not have all of their records, the cheapest and easiest way to comply with the requirements for the pre-petition tax years may be to have the Debtor request the tax transcripts directly from the IRS. These transcripts are available for free and can be requested by phone or by mail. The Debtor can call the IRS's toll-free customer service number, (800) 829-1040, to request a transcript and they will generally respond within 10 days. Transcripts can be ordered by mail using IRS Form 4506T. The IRS has several types of transcripts available:

1. The tax return transcript shows most line items from the tax return as it was originally filed. It does not show any changes or adjustments made after the return was filed.
2. The tax account transcript shows basic financial data, such as adjusted gross income, taxable income, and whether the Debtor paid the tax due or received a refund. It also shows later adjustments made after the return was filed.
3. The information return transcript is a combination of line item information and later adjustments to the account.

The Debtor can request a copy of his filed tax return by submitting Form 4506 to the IRS. There is a fee of \$39 per requested return and it may take 60 days to be processed.

The IRS does not have the statutory authority to disclose a Debtor's tax information to a Chapter 13 Trustee unless it pertains to an IRS claim in that case. A Debtor's attorney or a Chapter 13 Trustee can have direct access to the Debtor's tax information, however, if the Debtor provides the IRS with a signed consent. Both Form 4506-T and Form 4506 can be used to mail the tax transcript or return directly to the Debtor, Debtor's attorney or to the Trustee. For a copy of IRS Form 4506-T, go to [www.irs.gov](http://www.irs.gov) and do a keyword search for "Form 4506-T" and click on the Form 4506-T link.

Once the Debtor and/or the Debtor's attorney have the tax information, it will need to be submitted to the Chapter 13 Trustee in a timely manner. Our office would prefer that this information be received as early as possible in the case so that we can review it well before the First Meeting of Creditors. Since the attorney should have the tax information prior to filing, it could be made available to the Trustee as soon as the case is filed. Our office would prefer that the tax information be transmitted by email to our pre-confirmation analysts at [attydocs@rodersch13.com](mailto:attydocs@rodersch13.com). Please note somewhere in your email that it is for a Grand Rapids, Traverse City or Marquette case. The tax returns or transcripts can otherwise be faxed to us at 616-454-9798.

The Trustee will also require copies of post-petition tax information pursuant to section 521(f). The Debtor's attorney should have the Debtor sign Form 8821, which permits the IRS to disclose a Debtor's tax information to whomever the Debtor designates for up to three years from the date it is signed. The Debtor could designate her attorney and /or the Chapter 13 Trustee to receive copies of future tax returns or transcripts while the Debtor is in a pending Chapter 13 case. The attorney for the Debtor may want to review the tax information before forwarding it to the Trustee. The tax information can then be sent to the Trustee's office by fax or by email to [kim@rodersch13.com](mailto:kim@rodersch13.com). Using Form 8821 would certainly reduce the number of Motions to Dismiss filed by the Trustee for failure to provide post-petition tax returns.

For additional information regarding these tax forms and related tax issues, visit [www.irs.gov/newsroom](http://www.irs.gov/newsroom). Our website is [www.rodersch13.com](http://www.rodersch13.com).

Our thanks to SueAnn Symons of the IRS and Agnes Kempker-Cloyd of the US Attorney's Office for their assistance.

Please feel free to contact our office regarding these procedures and especially with suggestions and ideas to make this process even more efficient for all involved.