

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

In Re:)
ANDERS H. KNUDSEN and)
CYNTHIA J. KNUDSEN,) Bankruptcy No. 05-03136
Debtors.) Chapter 12

POST- HEARING BRIEF MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES' OBJECTION TO CONFIRMATION OF THE CHAPTER 12 PLAN

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Comes Now, the United States of America, on behalf of the Internal Revenue Service ("IRS"), and in support of its objection to confirmation of the Debtors' 5th Amended Chapter 12 plan, files its brief memorandum of law following the confirmation hearing in the above-entitled matter.

I. PROCEDURAL CASE HISTORY

The Debtors, Anders and Cynthia Knudsen, (hereafter, "Debtors") filed this bankruptcy proceeding on July 1, 2005, seeking relief under Chapter 12 of the United States Bankruptcy Code. On July 12th and 13th, 2006, the court held a confirmation hearing on the Fifth Amended Chapter 12 plan and objections filed by the United States and the Chapter 12 Trustee to the plan.¹ The Debtor, Anders Knudsen and Dr. Neil Harl testified on behalf of the Debtors. Howard Hoy, with the Internal Revenue Service, testified on behalf of the United States. The court requested additional briefing as to issues raised in the confirmation hearing.

On February 8, 2006, the United States filed an amended pre-petition claim in this proceeding. Claim 16-1.² The United States' claim sets forth an unsecured priority claim in the amount of \$52,440.52 and a general unsecured claim in the amount of

¹Objections were filed by other creditors, but were resolved prior to the time of the confirmation hearing.

²IRS had filed previous claims which were amended by the IRS. Claim 8-1 was filed on August 11, 2005, was amended by Claim 11-1 filed on August 25, 2005, and by Claim 15-1 filed on November 14, 2005.

\$703.37. In addition, the United States claims a right to set-off in the amount of \$106.46. A portion of the United States' claim is estimated because Debtors have not yet filed the return for the period for which the tax is estimated. The priority claim includes tax and interest to the petition date. Penalties on the taxes for the priority claim are not included in the priority claim, but are included in the United States' unsecured claim.

A Proof of Claim is prima facie correct. Bankr. R. 3001(f). See *Whitney v. Dresser*, 200 U.S. 532 (1906); 4 Collier on Bankruptcy ' 502.02[1] (Matthew Bender 15th Ed. Revised 1999). See also, *In re Fogelberg*, 79 B.R. 368 (Bankr. N.D. Ill. 1986). The United States has not agreed to any treatment of its claim other than as provided for in the Bankruptcy Code.

Debtors have filed a proposed Chapter 12 Plan, the FIFTH AMENDED AND SUBSTITUTED CHAPTER 12 PLAN OF REORGANIZATION, Document 136, filed on June 8, 2006. In that Plan, Debtors propose, under 11 U.S.C. § 1222 (a)(2)(A), that prepetition taxes that arose from the sale of property used in Debtors' farm operation be paid as an unsecured claim and discharged. In their proposed Plan, Debtors also assert that postpetition taxes that might arise from the sale of property used in Debtors' farming operation be paid as an unsecured claim and be discharged pursuant to § 1222 (a)(2)(A) . Further, in their Plan, Debtors also propose a method of allocating the prepetition and postpetition taxes due between (1) taxes that did not arise from the sale of property used in Debtors' farm operation and (2) taxes that did arise from the sale of property used in Debtors' farm operation. Finally, the Debtors also propose to include the sale of hogs raised for sale to the slaughter market (market hogs) with the hogs used for breeding and raising hogs for the market (breeding stock) in those assets sold

as having been “used in” the Debtors’ farm operation as stated in 11 U.S.C. § 1222(a)(2)(A).

The United States objected to those portions of the Debtors’ proposed Plan which: (1) provided that prepetition taxes that arose from the sale of property used in Debtors’ farm operation be paid as an unsecured claim and be discharged; (2) provided that postpetition taxes that might arise from the sale of property used in Debtors’ farm operation be paid as an unsecured claim and be discharged; and (3) which provided for a method of allocating the prepetition and postpetition taxes due between [1] taxes that did not arise from the sale of property used in Debtors’ farm operation and [2] taxes that did arise from the sale of property used in Debtors’ farm operation. The United States also objected to including market hogs as assets used in farming and the Debtors’ claim that those market hogs were entitled to treatment under § 1222(a)(2)(A) of the Bankruptcy Code.

II. ARGUMENT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was enacted on April 20, 2005 with a general effective date of October 17, 2005. 11 U.S.C. § 1222(a)(2) was changed by BAPCPA, § 1003. The effective date of the changes to § 1222 was April 20, 2005, on cases filed on or after April 20, 2005. The changes, then, are applicable to Debtors’ proceeding. Changes to the other Bankruptcy Code statutes that are applicable to this matter were not effective until October 17, 2005 for cases filed on or after October 17, 2005. BAPCPA, § 1501. This Court, then, must give effect to the changes in 11 U.S.C. § 1222 while retaining the pre-BAPCPA meaning or effect of statutes that did not change. References to § 1222 in this brief will include a qualifier “pre-BAPCPA” or “post-BAPCPA”. References to other statutes are to the statutes in effect before the general BAPCPA effective date, October 17, 2006.

As background to discussing the effect of the change to § 1222(a)(2)(A) on Debtors' proposed Plan, it is appropriate to indicate how the Debtors would have been required to treat the United States' claim prior to BAPCPA 2005 to have confirmed a plan. The United States will show the effect of the change on the treatment of taxes. We will first show the comparison for the pre-petition tax claims, and then we will show the comparison for the post-petition taxes.

A. TREATMENT OF PRE-PETITION CLAIMS UNDER 11 U.S.C § 1222(a)(2)(A)

1. Treatment Of The United States' Prepetition Tax Claims Prior To the BAPCPA 2005 Change to Section 1222(a)(2)(A)

Prior to BAPCPA, the applicable portions of 11 U.S.C. § 1222(a)(2) read as follows:

§ 1222. Contents of plan

(a) The plan shall—

(1) . . .

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and . . .

Prior to BAPCPA, the United States would not have agreed to treatment of its priority claim other than as provided in § 1222(a)(2). Prior to BACCPA 2005, to be confirmed, Debtors' proposed Plan would have had to provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 507. Pre-BAPCPA, 11 U.S.C. § 1222(a)(2). Since the United States' prepetition claim included a claim entitled to priority under the authority of § 507(a)(8), the Debtors would have had to provide for full payment of the United States' priority claim, in the amount of \$52,440.52, or this Court could not confirm the Debtors' Plan pursuant to 11 U.S.C. § 1222(a)(2) . Pre-BAPCPA, the United States' priority claim would have had to be given priority, that is, it

would have had to be paid before Debtors paid any unsecured claimants. 11 U.S.C. § 507(a).

Prior to BAPCPA, 11 U.S.C. § 1228, read, in part, as follows:

§ 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 U.S.C. § 1222(b)(5) or 1222(b)(9)], unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title [11 U.S.C. § 503] or disallowed under section 502 of this title [11 U.S.C. § 502], except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 U.S.C. § 1222(b)(5) or 1222(b)(9)]; or

(2) of the kind specified in section 523(a) of this title [11 U.S.C. § 523(a)].

(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title [11 U.S.C. §§ 701 et seq.] on such date; and

(3) modification of the plan under section 1229 of this title [11 U.S.C. § 1229] is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title [11 U.S.C. § 1222(b)(5) or 1222(b)(9)]; or

(2) of a kind specified in section 523(a) of this title [11 U.S.C. § 523(a)].

Prior to BAPCPA, the applicable portions of 11 U.S.C. § 523(a), read as follows:

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required—

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

The United States' priority claim is a priority claim under the authority of 11 U.S.C. § 507(a)(8). Pre-BAPCPA, the Debtors would have had to fully pay the United States' prepetition priority claim or they would not receive a discharge of the priority claim. 11 U.S.C. §§ 507(a)(8); 523(a)(1)(A); 1228(c)(2). Since the claim would have been a priority claim under § 507(a)(8), it would have been an exception to discharge under § 523(a)(1)(A) and would not have been discharged unless fully paid as part of a confirmed Chapter 12 Plan.

2. Treatment Of The United States' Prepetition Tax Claims After the BAPCPA 2005 Change to Section 1222(a)(2)(A)

After BACCPA, the applicable portions of 11 U.S.C. § 1222(a) read as follows:

§ 1222. Contents of plan

(a) The plan shall—

(1) . . .

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

(B) the holder of a particular claim agrees to a different treatment of that claim;

The United States has not agreed to treatment of its priority claim other than as provided in § 1222(a)(2). After BACCPA 2005, the Debtors' proposed Plan may treat the United States' priority claim as an unsecured claim, but only if Debtors receive a discharge. In order to receive a discharge, Debtors must comply with pre-BAPCPA 11 U.S.C. § 1228, as quoted above.

Under BAPCPA 2005, it is not clear whether Congress intended for the United States' claims, formerly entitled to priority [and still entitled to priority if Debtor does not receive a discharge], to be "reclassified" from "priority" claims to "unsecured" claims. The United States asserts that it does not matter whether or not Congress intended to reclassify the claims or not and also asserts that all of the United States claims, listed as priority on its proof of claim, are not dischargeable.

3. This Court Cannot Confirm Debtor's Proposed Plan if Congress DID Intend That the United States' Claims be Reclassified

If Congress did intend that the United States' priority claims should be

reclassified from priority status to unsecured status, then this court still cannot confirm Debtors' proposed Plan under the provisions of 11 U.S.C. § 1225(a)(4). Section 1225(a)(4) reads as follows:

§ 1225. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) . . .

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date; . . .

If Congress did intend that the United States priority claims be reclassified, then the claims listed as priority on the United States' claim are reclassified to unsecured claims for plan purposes. If those claims are unsecured claims, then Debtors must pay on those reclassified claims at least as much as the United States would receive on those claims in a Chapter 7 case. But, in a Chapter 7 case, those claims would be entitled to priority payment ahead of unsecured claims. Debtors' proposed Plan, at Liquidation Analysis Schedule 1A, shows that in a Chapter 7 complete liquidation, Debtors would have \$98,089.00 available to pay the United States' priority claim of \$52,440.53. Debtors, then, can fully pay the priority claim in a Chapter 7 and therefore must fully pay the priority/unsecured claim in this Chapter 12. This Court cannot confirm Debtors' proposed Plan because Debtors do not propose to fully pay the United States' priority claim in the proposed Plan as required by 11 U.S.C. § 1225(a)(4).

4. This Court Cannot Confirm Debtor's Proposed Plan if Congress DID NOT Intend That the United States Claims be Reclassified

If Congress did not intend that the United States' priority claims should be

reclassified from priority status to unsecured status, then this court cannot confirm Debtors' proposed Plan, which proposes that the prepetition priority claim be discharged. The United States has objected to the Plan for the reason that the Plan proposes that non-dischargeable prepetition tax claims be discharged.

Section 523(a) provides that claims entitled to priority under § 507(a)(8) are excepted from discharge. 11 U.S.C. §§ 1228(a)(2); 523(a)(1)(A). If Congress did not intend that the United States priority claim be reclassified, then the claims are still prepetition priority claims under the provisions of 11 U.S.C. § 507(a)(8) and are excepted from discharge under § 523(a)(1)(A). This Court cannot confirm Debtors' proposed Plan which proposes to discharge those priority taxes over the objection of the United States.

B. TREATMENT OF POSTPETITION CLAIMS UNDER 11 U.S.C §1222(a)(2)(A)

1. Treatment Of The United States' Postpetition Tax Claims Before BAPCPA 2005 Change to Section 1222(a)(2)(A)

Pre-BAPCPA 2005, the Debtors' postpetition tax liabilities would not have been the liability of the bankruptcy estate but would have been Debtors' personal liability and would not have been discharged. Since the provisions of Chapter 12 were taken from, and are similar to, provisions in Chapter 13, we look to the payment scheme for taxes as contained in Chapter 13 cases for an interpretation of the payment scheme for taxes in Chapter 12.

The bankruptcy statutes were generally intended to affect only pre-petition claims. Pre-BAPCPA § 101(4) defined the term "claim" as the "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured". Pre-BAPCPA § 101(9) defined a "creditor" as an "entity which has a

claim against the Debtor that arose at the time of or before the Order for Relief concerning the Debtor " Pre-BAPCPA § 501 was applicable to all bankruptcy cases and provides that a creditor may file a proof of claim. A debtor could file a proof of claim for the creditor only when the creditor failed to timely file a proof of claim. See, Pre-BAPCPA 11 U.S.C. § 501(c); Bankruptcy Rule 3004. With certain exceptions, which would not have been applicable here, post-petition claims were generally not allowable in bankruptcy cases, including Chapter 13 cases. See, pre-BAPCPA 11 U.S.C. § 502(b). *In re Glover*, 107 B.R. 579, 580-581 (Bankr. S.D. Ohio 1989).

Pre-BAPCPA, the collection of post-petition tax debts in an individual's Chapter 12 proceeding, an individual's Chapter 13 proceedings and an individual's Chapter 11 case were all different. In a Chapter 11 proceeding, postpetition, pre-confirmation taxes were administrative expenses which must be paid on the plan's effective date. 11 U.S.C. § 1129(a)(9)(A). In a Chapter 13 proceeding, the postpetition creditor could elect, under 11 U.S.C. § 1305, to file a claim for postpetition taxes and have the debtor pay the postpetition tax claim through the Chapter 13 plan. There was no equivalent provision in Chapter 11 or Chapter 12.

Although postpetition tax creditors could choose to participate in a bankruptcy by filing a claim under 11 U.S.C. § 1305, such participation was not mandatory. Further, a debtor could not file a claim for postpetition taxes on behalf of a creditor and thus force the postpetition creditor to participate in the plan. See, *In re Epstein*, 200 B.R. 611, 614 (Bankr. S.D. Ohio 1996); *In re Haith*, 193 B.R. 341, 343 (Bankr. N.D. Ala. 1995); *In re Hudson*, 158 B.R. 670, 673 (Bankr. N.D. Ohio 1993); *In re Glover*, 107 B.R. 579 (Bankr. S.D. Ohio 1989); *In re Dickey*, 64 B.R. 3 (Bankr. E.D. Va. 1985); *In re Hester*, 63 B.R. 607 (Bankr. E.D. Tenn. 1986); *In re Hefner*, 32 B.R. 382 (Bankr. W.D.N.Y. 1983); *In re Nowak*, 17 B.R. 860 (Bankr. N.D. Ohio 1982).

To allow a debtor to force a postpetition creditor to participate in the plan and delay collection of its postpetition debts for the duration of the debtor's plan (up to five years) would have been inequitable. See, *In re Mason*, 45 B.R. 498 (Bankr. D. Or. 1984). This result would have been even more inequitable in the case of an involuntary creditor such as the Internal Revenue Service.

Pre-BAPCPA, the government could choose to either file a § 1305 claim, and collect the post-petition taxes through the Chapter 13 bankruptcy plan, or could choose not to file a § 1305 claim, and collect the post-petition taxes from the Chapter 13 debtor after discharge. A Chapter 13 debtor was not permitted to file a proof of claim on behalf of the tax creditor who did not file one. 11 U.S.C. § 502(i) did not allow for the treatment of post-petition tax claims as if they were pre-petition claims. The tax creditor had control on whether to voluntarily participate in the Chapter 13 plan. *In re Hudson*, 158 B.R. 670, 674 (Bankr. D. Ohio 1993).

Pre-BAPCPA, only debts that "have been provided for by" a Chapter 13 plan or "disallowed under section 502" were discharged under § 1328(a). See 11 U.S.C. § 1328(a). Therefore, if a tax creditor chose not to file a claim under § 1305(a), the claim was not discharged. *In re Wilkoff*, 87 A.F.T.R.2d (RIA) 2266, 2001 Bankr. LEXIS 124 (Bankr. D. Pa. 2001); *In re Dunn*, 83 B.R. 694 (Bankr. D. Neb. 1988).

Pre-BAPCPA, § 1228(a) provided a more limited discharge than does § 1328(a). However, § 1228(a) also provided for a discharge of administrative expenses allowed under § 503, a provision that is not contained in 1328(a). The United States asserts that the post-petition taxes here are not administrative expenses and, therefore, would not have been dischargeable under the authority of § 1228(a).

The applicable portion of pre-BAPCPA 11 U.S.C. § 503 reads as follows:

§ 503. Allowance of administrative expenses

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title [11 USCS § 502(f)], including—

(1) (A) the actual, necessary costs and expenses of preserving the estate including wages, salaries, or commissions for services rendered after the commencement of the case;

(B) any tax--

(i) incurred by the estate, except a tax of a kind specified in section 507(a)(8) of this title [11 USCS § 507(a)(8)]; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; and

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph;

Postpetition taxes in an individual's Chapter 12 case were not incurred by the bankruptcy estate but are incurred by the Debtors through their use of the bankruptcy estate. The postpetition taxes, then, will not be taxes "incurred by the estate" but will be taxes incurred by the individuals.

Like a Chapter 13 case, confirmation of a Chapter 12 Plan vests all property of the estate in the debtor. Courts have found that § 503 administrative expense status is not available to postpetition tax claims in a Chapter 13 case, and whether or not the taxes were incurred before or after confirmation. They found that § 503(b)(1)(B) does provide that taxes "incurred by the estate" can be administrative expenses. However, because confirmation of the Chapter 13 plan vested all the property of the estate in the debtor and released the estate from all claims and interests of the creditors, postconfirmation taxes are incurred by the debtor and are not administrative expenses under § 503(b)(1). 11 U.S.C. §§ 503(b)(1), § 1327(b) & (c); *In re Gyulafia*, 65 B.R. 913, 916 (Bankr. D. Kan. 1986).

In another context, but relevant to this case, the Eighth Circuit and this Court (Judge Kilburg) have found that a Chapter 13 bankruptcy estate may still exist after plan confirmation but still only to the extent of a debtor's assets needed to fund the Chapter 13 Plan. *Security Bank of Marshalltown, Iowa v. Nieman*, 1 F.3d 687 (8th Cir. 1993); *In re Truelove*, 74 A.F.T.R.2d Para. 5089 (Bankr. N.D. Iowa 1994). The Security Bank case and the Truelove cases are relevant because they show the extent to which a bankruptcy estate may exist after Plan confirmation.

Here, Debtor is proposing to grant § 503 administrative status to postpetition taxes when the Chapter 12 bankruptcy estate will have ceased to exist. Pre-BAPCPA, this Court would have denied administrative status and denied confirmation of Debtors' proposed Plan for the reason that the United States had not filed a request for administrative status and for the reason that the bankruptcy estate would have ceased to exist and, therefore, postpetition taxes could not be actual and necessary costs or expenses of preserving the Chapter 12 bankruptcy estate. 11 U.S.C. § 503(b)(1).

The postpetition tax scheme in a pre-BAPCPA individual Chapter 12 case was similar to both the corporate Chapter 11 postpetition tax scheme and the individual Chapter 13 postpetition tax scheme in which a § 1305 claim was not filed. In a corporate Chapter 11 proceeding, the postpetition taxes were the liability of the corporation and were not discharged. As discussed above, the postpetition taxes in a Chapter 13 proceeding in which a § 1305 claim was not filed were the liability of the Chapter 13 Debtor and were not discharged. Contrast a corporate Chapter 11 proceeding and a Chapter 13 proceeding with an individual's Chapter 11 proceeding. In the individual's Chapter 11 proceeding, the bankruptcy estate is a separate taxable entity from the individual. 26 U.S.C. § 1398. The income earned by the individual's Chapter 11 bankruptcy estate is taxed as an administrative expense to the bankruptcy

estate. The separate income of the individual Chapter 11 debtor is taxed to the individual.

In the present case, Debtors are attempting to pay the postpetition taxes, as administrative expenses, through their Chapter 12 Plan and to discharge their postpetition tax liability as part of their Chapter 12 Plan. But, because the postpetition taxes would not be "incurred by the estate, the postpetition taxes would not be pre-BAPCPA administrative expenses and would not be an "allowed" expense under pre-BAPCPA § 503. Since the postpetition taxes would not have been administrative expenses, they would not have been discharged under the provisions of pre-BAPCPA 1228(a).

In addition, since Chapter 12 does not contain a provision similar to § 1305, the situation in a pre-BAPCPA Chapter 12 proceeding is similar to the situation in a Chapter 13 proceeding in which a § 1305 claim is not filed. Debtors are attempting to include the postpetition taxes in their Chapter 12 Plan, an act which has the same result as if a Debtor, rather than the tax authority, filed a § 1305 claim and attempted to pay the § 1305 claim through a Plan. But, Debtors would not be allowed to file a § 1305 claim for the United States in a Chapter 13 proceeding and they should not be allowed to, in effect, file a postpetition claim for taxes in their Chapter 12 proceeding by including the postpetition taxes in their Plan over the objection of the United States. The United States, not the Debtors, has control of whether to allow the post-petition taxes to be paid through a Plan. *In re Hudson*, 158 B.R. 670, 674 (Bankr. S.D. Ohio 1993). Pre-BAPCPA, this Court would not have confirmed a Chapter 12 Plan which included payment of postpetition taxes over the objection of the United States.

Pre-BAPCPA, the United States would have objected to inclusion of the postpetition taxes in Debtors' Chapter 12 Plan. Following the postpetition tax schemes

in a corporate Chapter 11 and a Chapter 13 proceeding, this Court would not have confirmed Debtors proposed Chapter 12 Plan.

Now we will show the changes to the Bankruptcy Code that were included in BAPCPA 11 U.S.C. § 1222(a)(2)(A) and discuss whether those changes affect whether Debtors must provide for the United States' postpetition tax liabilities in their Chapter 12 Plan.

2. Treatment Of The United States' Postpetition Tax Claims After the BAPCPA 2005 Change to Section 1222(a)(2)(A)

A review of the Bankruptcy Code shows that the only applicable statute that was effective prior to the petition date, July 1, 2005, was 11 U.S.C. § 1222(a)(2). The changes to §§ 501, 502, 503, 1129, 1228, 1305, and 1328 were not effective until October 17, 2005.

The United States asserts that the change to § 1222(a)(2)(A) did not in any way affect the manner in which postpetition taxes are reported and paid. The bankruptcy statutes are generally intended to affect only pre-petition claims. As in the pre-BAPCPA period, § 101(4) defines the term "claim" as the "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured". As in the pre-BAPCPA period, § 101(9) defines a "creditor" as an "entity which has a claim against the Debtor that arose at the time of or before the Order for Relief concerning the debtor" As in the pre-BAPCPA period, § 501 is still applicable to all bankruptcy cases and provides that a creditor may file a proof of claim. A debtor could file a proof of claim for the creditor only when the creditor fails to timely file a proof of claim. See, 11 U.S.C. § 501(c); Bankruptcy Rule 3004. With certain exceptions, which are not applicable here, postpetition claims are generally not allowable in bankruptcy cases,

