Chapter 13:
Recent Developments Including Issues Regarding Tax Treatment, Liens, and Feasible Plans

William J. McLeod, Moderator
U.S. Bankruptcy Court (D. Mass.); Boston

Carolyn A. Bankowski
Standing Chapter 13 Trustee (E.D. Mass.)
Boston

Peter C. Fessenden
Standing Chapter 13 Trustee (D. Maine);
Brunswick

Susan Grossberg
Grossberg Law Offices; Boston

Craig R. Jalbert
Verdolino & Lowey, PC; Foxboro, Mass.

A SHORT PRIMER ON TAX ISSUES IN CHAPTER 13

AMERICAN BANKRUPTCY INSTITUTE
BOSTON
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PETER C. FESSENDEN
Standing Chapter 13 Trustee, District of Maine

Bankruptcy in its several chapters offers protection from creditors, including tax creditors. Some chapters offer more protection than others. This portion of the materials outlines briefly the treatment of tax claims under Chapter 13.

Section 106(a)(1) abrogates sovereign immunity for governmental units with respect to §362(a). [All statutory references are to Title 11 of the United States Code unless otherwise stated.] The automatic stay unquestionably applies to federal tax authorities, including the imposition of actual damages and attorney's fees under §362(k) for violation of the stay. While "governmental unit" under §101(27) includes states and state-created entities, there has been no definitive ruling on the impact of §106(a) to impose §362 liability under the Eleventh Amendment with respect to state tax authorities. The Supreme Court ducked the issue in *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S.Ct. 1905 (2004). *Hood* held that a bankruptcy discharge of student loans was an *in rem* proceeding outside of the protections of the Eleventh Amendment. Since the stay prohibits collection of pre-petition debts – including taxes – against property of the estate and property of the debtor, the same *in rem* rubric should void any state action in violation of the stay, even if damages under §362(k) might not be available. Punitive damages under §362(k) against any government – federal or state – are not allowable.

Under 26 U.S.C. § 6321, a lien arises in favor of the IRS for any nonpayment of taxes. (All state tax authorities have similar provisions. For the sake of simplicity, this discussion focuses solely on IRS practice and procedure.) The lien attaches to all property of the debtor. As a statutory lien (*see*, §101(53) and §545), it is not subject to exemptions created by §522 or applicable state law. While "dirt for debt" plans are generally not favored in Chapter 13 practice, there are anecdotal reports of retirement accounts with easily-determined cash values being turned over to the IRS in satisfaction of tax liabilities outside the administration of the Chapter 13 trustee. Such a turnover is its own taxable event, so the diminution of a debtor's retirement account is necessarily larger than the debt itself.

Upon the filing of a Chapter 13 case, the lien is perfected against third parties only if it was recorded pre-petition in compliance with 26 U.S.C. §6323(f). If unrecorded, the automatic stay prevents its perfection post-petition. §362(a)(4). Once recorded, the lien is effective for ten years (plus renewal periods), 26 U.S.C. §6323(g)(3), and applies to all after-acquired property. The protections of §552(a) apply only to "security interests," which are defined in §101(51) as consensual liens. Thus, undischarged tax debt secured by a recorded statutory lien encumbers property that the debtor acquires post-petition. *United States v. Booth Tow Services, Inc.*, 64 B.R. 539, 542 (W.D. Mo. 1985); *contra*, *In re Fuller*, 134 B.R. 945 (9th Cir. BAP 1992) (minority position: property acquired free of pre-petition recorded lien).

As secured claims to the extent of value, recorded tax liens are governed by §1325(a)(5). Absent consent, they must be paid in full one way or the other: by cash through the plan, by surrender of the collateral, or by survival of the lien. "To the extent of value" under §506(a) may tempt debtor's counsel to be supple in valuing property because, except where the amount of its claim makes the exercise worthwhile, the IRS rarely challenges a debtor's Schedules A/B values. Counsel should be cautious about minimizing exempt equity in real estate and exempt equity interests in personal property which remain collateral for the recorded IRS lien in the light of *In re Hannigan*, 409 F.3. 480 (1st Cir. 2005) (disingenuously low values on schedules may preclude otherwise legitimate claims of exemption against other creditors).

Most – but not all – tax debts are entitled to priority under §507(a). Priority claims in Chapter 13 must be paid in full, absent agreement by the tax creditor. §1322(a)(2). "Agreement" under §1322(a)(2) is more than failure to object – it requires an explicit affirmation by the priority creditor that it accepts less than full payment.

Tax claims entitled to priority are set out in §507(a)(8). They include all trust fund taxes (e.g. withholding taxes, sales taxes, etc., including 26 U.S.C. §6672 "100% civil penalties" imposed on responsible persons charged with administering trust fund taxes for a taxpayer), property taxes incurred within the year prior to the filing of the bankruptcy petition, employment taxes due within the three years prior to the filing of the petition, excise taxes due within the three years prior to the filing of the petition, and customs duties incurred within one to four years prior to the filing of the petition (depending on the nature of the obligation). Priority tax debts also include pecuniary loss penalties. Finally, priority debts include non-fraudulent income taxes last due (including extensions) within three years prior to the bankruptcy filing, or for which a return was filed within two years prior to the filing, or which were assessed within 240 days prior to the filing. By negative implication, of course, priority tax debts do *not* include non-pecuniary loss penalties, most notable the various income tax

penalties for late filing or underpayment. Similarly, income taxes that were assessed more than 240 days prior to the bankruptcy petition *and* were filed more than two years prior to the bankruptcy petition *and* were due (including extensions) more than three years before the bankruptcy petition lose their priority status and become non-priority obligations. (In the absence of a perfected tax lien, they become general non-priority unsecured debt.)

While all priority tax claims under §507(a)(8) are nondischargeable in Chapters 7, 11 and 12 (and in a "hardship" discharge under §1328(b)), certain priority income tax debts *are* dischargeable by way of a full compliance Chapter 13 discharge under §1328(a). Specifically, income taxes are dischargeable in Chapter 13 if (a) the returns were filed prior to the bankruptcy (§523(a)(1)(B)(i)), and (b) the returns were timely filed (including extensions) more than two years prior to the bankruptcy (§523(a)(1)(B)(ii)), and (c) the returns were non-fraudulent (§523(a)(1)(C)), and (d) the debtor did not willfully attempt in any manner to evade or defeat such tax (§523(a)(1)(C)), and (e) the debt appears on the bankruptcy schedules (§523(a)(3)(A)).

The importance of dischargeability of income tax debts is significant. A Chapter 13 case runs for three to five years. The pre-petition tax obligation is rarely paid immediately up front. While neither interest nor penalties accrue on dischargeable tax debt, they compound monthly on the unpaid balance of non-dischargeable tax debts during the travel of the case. As a result, debtors may emerge from Chapter 13 with substantial obligations to the tax authorities.

Debtor's counsel should compute carefully the timing requirements for dischargeable income taxes to be sure that the bankruptcy petition is not filed unnecessarily soon. In addition, the terms of the plan should state explicitly that all payments made though the trustee must be applied first to the pre-petition principal obligation, rather than at the discretion of the IRS.

Finally, in an end run around §502(b)(2) as an incentive to proposing 100% plans (and to challenging general unsecured claims in an effort to transform a composition plan into a 100% plan), §1322(a)(10) permits the payment of post-petition interest on non-dischargeable claims where all other allowed claims are paid in full. (This subsection applies to all priority obligations and is not limited to tax debts.) While it does not expressly permit the payment of post-filing tax penalties, there is no prohibition under §502(b) or elsewhere in the Bankruptcy Code for the payment of accruing penalties under the plan. As a result, attentive debtor's counsel may be able to craft far greater relief under Chapter 13 than that proffered by less sophisticated practitioners.

Hybrid Plans: the New Alternative Fuel for Keeping Debtors in Their Homes

by
Susan Grossberg
Grossberg Law Offices, Boston, Massachusetts

Debtors with underwater mortgages are trapped, unable to move or sell, and frequently the only way out is to just walk away, leaving another boarded-up, foreclosed home in the neighborhood and yet another non-performing loan for the lender. Debtor's counsel's ability to provide meaningful options to such a client, by bifurcating the mortgage and avoiding the lien on the unsecured portion under 11 U.S.C. §506,[1] is under attack and diminishing.

In chapter 7, of course, debtors can do nothing but strip off non-consensual judicial liens which impair exemptions under 11 U.S.C. §522(f). The Supreme Court in *Dewsnup v. Timm*, 502 U.S. 410 (1992), won't even allow avoiding a wholly unsecured claim in chapter 7.

Even in a chapter 13 case, §1322(b)(2) allows for modification of only secured claims "other than a claim secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. §1322(b)(2)[2] and *Nobelman v. American Savings Bank*, 508 U.S.

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[1] Section 506 of the Bankruptcy Code provides in relevant part the following:

> (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim....
>
> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void ...
>
> 11 U.S.C. § 506(a), (d).

[2] Bankruptcy Code section 1322(b) provides in pertinent part:

> (b) Subject to subsections (a) and (c) of this section, the plan may—
>
> (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims....
>
> (5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or

324, 113 S.Ct. 2106, 124 L.Ed.2d 228 (1993). Further, §1325(a)(5)(B)(ii) requires that "property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." Thus payment of the full amount of the modified secured claim must be completed over the life of the plan, which §1322(d) states cannot exceed five years. Finally, BAPCPA added the additional requirement that payment of such modified secured claims must be in equal monthly amounts. §1325(a)(5)(B)(iii)(I).

This would mean, for example, that when a debtor has a mortgage with a loan balance of $350,000 on a two-family home worth $200,000, the debtor must be able to pay the $200,000 amount of the secured claim in equal payments over 60 months. At a 5% interest rate the debtor would have to cough up $3,774.25 per month for just the principle and interest. Taking into account the trustee's administrative fee (which packs on an additional 10% in this jurisdiction), that's a plan payment of $4,193.61 with no dividend to unsecured creditors. Hardly a viable option for a debtor.

Creative debtor's counsel are instead turning to §1322(b)(5), for an adaptation of the "cure and maintain" plan called the "hybrid plan." The "hybrid plan" is not a late model vehicle. It has been referenced in bankruptcy cases since at least the mid-1990s. In *In re McGregor*, 172 B.R. 718, (Bkrtcy.D.Mass. 1994), Judge Queenan held that bifurcation of the mortgage under §506(a) was permissible since the property was a multi-family and that §1322(b)(5) allowed the debtor to make the contract payments until such time as the secured portion of the claim was paid in full, but only if the debtor kept all the other terms of the note in place. *McGregor* at 719.

Judge Queenan held that as long as the same monthly mortgage payment, interest rate and other terms specified in the note continued, that there would then be "maintenance of payments" for purposes of §1322(d)(5) which allows for "maintenance of payments while the

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> secured claim on which the last payment is due after the date on which the final payment under the plan is due....
>
> 11 U.S.C. § 1322(b)(2), (5).

case is pending on any unsecured or secured claim on which the last payment is due after the final payment under the plan." 11 U.S.C. §1322(b)(5). Therefore the three to five year limitation on plan payments of §1322(d)[3] would then have no application because §1322(b)(5) permits payments lasting longer than five years. *Id.* at 721. Judge Queenan distinguished between modification of the secured claim under §1322(b)(2) and maintenance of payments of a bifurcated secured claim under (b)(5):

> "Presumably, if only subsection (b)(2) were applicable, the payments would have to be completed within five years. But subsection (b)(5) provides independent support for such a plan. Subsection (b)(5) does not require the plan proponent to avoid modification of the "rights" of the secured claim holder. Its command is complied with so long as payments are maintained on the "secured claim." The amount of the secured claim is determined by valuation pursuant to section 506(a). This wording avoids the fine distinction made in *Nobelman,* based on the wording of subsection (b)(2), between modification of the "rights" of a secured claim holder and modification of the "secured claim." Subsection (b)(5), moreover, provides that its provisions control "notwithstanding paragraph (2) of this subsection." *Id*. at 721.

It is this "fine distinction" between modification of the rights of a secured claim holder (the note amount, interest rate, etc.) and modification of the secured claim (mere bifurcation pursuant to §506) which enables the "hybrid plan." *McGregor* was published on October 21, 1994 and the reasoning was followed shortly thereafter by Judge Feeney in opinions in two separate cases both published on December 5, 1994: *In Re Murphy*, 175 B.R. 134, 137 (Bkrtcy.D.Mass. 1994) and *Brown v. Shorewood Fin., Inc., GTE,* 175 B.R. 129, 133 (Bankr.D.Mass.1994). In *Murphy*, the debtor sought to bifurcate the mortgage and re-amortize the secured portion of the note over the remaining 26 year term to lower the monthly payment.

[3] Prior to the 1994 amendment of Section 1322 what we now know as subsection 1322(d) was denominated as 1322(c). Thus references in *McGregor*, *Murphy*, and *Brown* to subsection 1322(c) are to the five year limitation on plan term now in 1322(d).

Judge Feeney denied confirmation noting that even the lender recognized the debtor's option to bifurcate the loan, cure arrears through the plan payments and maintain the contract payment amount until the secured portion of the loan was paid in full, a period less than the 26 years remaining on the note term. *Murphy* at 136.

In *Brown*, Judge Feeney went a step further confirming a "hybrid plan" and directing application of payment of pre-petition arrears to the secured portion of the bifurcated loan. *Brown* at 133-134. Four years later, Rhode Island District Court Judge Torres chimed in affirming a bankruptcy court's approval of a "hybrid plan" over the objection of a mortgagee. *Fed. Nat'l Mortg. Assn. v. Ferreira (In re Ferreira),* 223 B.R. 258, (D. R.I.1998). Judge Torres followed the reasoning in *McGregor* and further stated, "the interpretation urged by [the mortgagee] flies in the face of the decisions rendered by virtually every bankruptcy court in the First Circuit that has addressed the question." *Ferreira* at 262. This holding was reaffirmed just two years ago by Bankruptcy Judge Votolato in Rhode Island, stating "This Court's position regarding secured claim payments beyond the plan's term has been clear since the mid–1990s. [string cite omitted.]" *In re Veliz*, 2009 WL 3418638, fn. 1 (Bkrtcy.D.R.I. 2009).

Finally, less than six months ago, the District Court in Massachusetts recognized the §1322(b)(5) option for a debtor to "cure the mortgage default and maintain the same payments of principal and interest under the current note during the life of the plan and beyond, as necessary for the total principal payment to equal the amount of the secured claim." *In re Bell*, 2011 WL 2712755 at pg 3 (D. Mass. 7/12/11). One would seemingly take comfort from these cases that the "hybrid plan" is alive and well and being easily utilized by debtors. But similar to the auto industry trying to kill the electric car before it learned to develop the hybrid, the mortgage industry is attempting to quash the "hybrid plan" instead of welcoming a vehicle that would allow the lender to retain a performing loan where a debtor would otherwise walk away.

Confirmation of a "hybrid plan" was denied by Connecticut Bankruptcy Court Judge Dabrowski in *In re Koper*,284 B.R. 747 (Bankr. D. Conn. 2002). Judge Dabrowski refused to accept Judge Queenan's distinction in *McGregor* between modification of the "rights" of a

secured claim holder under 1322(b)(2) and modification of the "secured claim" pursuant to 1322(b)(5). *Koper* at 752. Instead, he held that any bifurcation of an undersecured claim required that the secured portion be paid within the 5 year plan term even if all the terms of the note were maintained. *Id*. J. Dabrowski concludes the opinion with a discussion of how he is not bound by his own prior confirmation of hybrid plans or even a U.S. District Court decision affirming an order overruling an objection to a hybrid plan. *Id*. At 755.

The Ninth Circuit came to a similar conclusion in *In re Enewally*, 368 F.3d 1165 (9th Cir. 2004), affirming a district court's reversal of a California bankruptcy court's plan confirmation. The 9th Circuit noted that "[a]lthough the bankruptcy court's analysis is arguably much closer to the original vision of the Bankruptcy Code than the district court's holding, we are not writing on a clean slate. . . . The logic of *Dewsnup* and *Nobelman* do not permit this construction." *Enewally* at 1171-1172.

Finally, Massachusetts' own Judge Bailey has chosen to follow this *Koper*/*Enewally* line of cases even while recognizing that he is at odds with established precedent in the 1st Circuit. Judge Bailey recently denied confirmation of "hybrid plans" in two cases. *In re Grinberg* (Bktcy D. Mass. Case no. 09-19205 Order dated 1/26/11) and *In re Pires* (Bktcy D. Mass. Case no. 09-18708 Opinion dated 11/7/11). The debtor in *Pires* has filed a notice of appeal of the denial of confirmation to the Bankruptcy Appellate Panel. Definitely a case to watch for consumer practitioners.

CONCLUSION

As Debtor's counsel, I wrestle with advising single family home-owners to employ a "cure and maintain" plan, when it is clear that after 5 years and tens of thousands of dollars the debtor will still be holding a property worth well less than what is owed. Especially when that debtor could walk away relatively unscathed in a Chapter 7. The "hybrid plan" at least gives multi-family homeowners a means to hold onto their home that makes financial sense. Yes, the lender gets a haircut, maybe a severe one, but the lender comes out with a performing loan and the debtor has a home instead of yet another abandoned, boarded-up blight on the neighborhood.

Carolyn A. Bankowski
Chapter 13 Trustee, Eastern Division of Massachusetts
Boston, Massachusetts

SUPREME COURT AND THE MEANS TEST – PART III (Applicable Commitment Period – Temporal or Multiplier)

"As numerous courts and commentators have noted, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") has created many difficult problems of statutory interpretation, none more vexing than those arising from application of the 'projected disposable income test' imposed by 11 U.S.C. sec. 1325(b)(1)." Baud v. Carroll, 634 F.3d 327 (6th Cir. 2011). The Supreme Court has issued two recent decisions which helped resolve conflicting decisions concerning the application of the means test form and the projected disposable income test. In Hamilton v. Lanning, 130 S.Ct. 2464 (2010), the Court adopted the "forward looking" approach, under which the debtor's projected disposable income is calculated by taking into account any "known or virtually certain changes" in the debtor's disposable income at the time of confirmation. Id. at 2478. In Ransom v. FIA Card Servs., 131 S.Ct. 716 (2011) the Court held that a debtor who does not make loan or lease payments may not take the car ownership deduction on the Means Test Form. Id. The Supreme Court is now considering whether to grant certiorari in a case that raises the issue as to whether the applicable commitment period is a temporal requirement.

In Baud v. Carroll, 634 F.3d 327 (6th Cir. 2011), the Sixth Circuit Court Of Appeals held that if the trustee or the holder of an unsecured claim objects to confirmation of a Chapter 13 plan, "the plan cannot be confirmed unless it provides that all of the debtor's projected disposable income to be received in the applicable commitment period will be applied to make payments over a duration equal to the applicable commitment period imposed by 1325(b)." Id. at 331. The Bankruptcy Code

provides that the "applicable commitment period" shall be 3 years or not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the applicable median income. 11 U.S.C. sec. 1325(b)(4). It further provides that it may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period. Id. The Debtors in Baud have requested certiorari to the Supreme Court which is pending.

There is a split amongst the circuits as to whether the applicable commitment period is a temporal requirement or a multiplier. The United States Court of Appeals for the Eleventh Circuit and a majority of other courts have held that the temporal requirement applies whether the debtor has positive, zero or negative projected disposable income. Baud at 336. The United States Court of Appeals for the Eighth Circuit and other courts have held that the temporal requirement applies to a debtor with positive projected disposable income but have declined to decide whether this temporal requirement applies when the debtor has zero or negative projected disposable income. Baud at 337. The United States Court of Appeals for the Ninth Circuit and other courts have held that the temporal requirement does not apply if the debtor has zero or negative projected disposable income. Baud at 337. A significant minority of lower courts have followed the "monetary" approach, holding that the debtor may propose a plan for shorter than the applicable commitment period as long as the plan provides for the payment of the monetary amount of disposable income projected to be received. See Baud at 337.

In Baud, the Court determined that reading sec. 1325(b)(1) in isolation, it might find the monetary approach to be the more plausible interpretation of the statute. Baud at

339. However, the court concluded that the reasoning employed in Lanning in which the Supreme Court relied both on the lack of explicit multiplier language in sec. 1325(b)(1) and on pre-BAPCPA practice and Ransom in which the Supreme Court relied on BAPCPA's purpose of ensuring that debtors "repay creditors the maximum then can afford" compelled the adoption of the temporal approach.

The Massachusetts Bankruptcy Court also recently issued a decision adopting the temporal requirement. In Filion, 452 B.R. 329 (Bankr.D.Mass. 2011), the Court stated "[A]s numerous courts before me have found, the plain language of 11 U.S.C. sec. 1325(b) supports the finding that 'applicable commitment period' is a temporal term. Filion at 332-333.

Query: May a debtor who proposes a plan for less than 100% but provides monies from an exempt asset, such as a sale plan, propose a term for less than the applicable commitment period required under 11 U.S.C. sec. 1325(b)?

Carolyn A. Bankowski
Chapter 13 Trustee, Eastern Division of Massachusetts

THE IMPORTANCE OF BEING EARNEST
(Section 1308 and Outstanding Tax Returns)

Section 1308(a) requires that a debtor file not later than the first date the sec. 341 meeting of creditors is scheduled "all tax returns for all taxable periods ending during the 4 year period ending on the date of the filing of the petition." See 11 U.S.C. sec. 1308(a) (emphasis supplied). This means that for tax year 2011, the debtor must have filed the 2011 tax return by January 2, 2012 if the debtor's 341 meeting is first scheduled for January 2, 2012. See In re Cushing, 401 B.R. 528, 537 (1st Cir. BAP 2009). "Irrespective of the date when the tax returns were due to be filed, sec. 1308(a) states that the same must be filed on or before the date of the sec. 341 meeting." Cushing at 537.

Section 1308(b)(1) allows the trustee discretion to hold the meeting open for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns but that discretion is limited to 120 days after the date of the meeting for any return that is past due. Cushing at 537 and 11 U.S.C. sec. 1308(b)(1). If the trustee opts to hold the meeting open pursuant to sec. 1308, a clear statement must be made for the record. Cushing at 538.

It is important for debtors and trustees to be aware of this requirement as the failure to properly hold the meeting open will result in stiff penalty for the debtor, i.e., dismissal or conversion of the debtor's case. Section 1307(e) of the Bankruptcy Code provides "[U]pon the failure of the debtor to file a tax return under section 1308 … the court **shall** dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate." 11 U.S.C. sec. 1307(e) (emphasis supplied). The Court will not have discretion to deny a motion to

convert or dismiss a case that is property brought before the Court. Debtor's counsel should make sure that if the debtor has outstanding tax returns as of the date of the 341 meeting, the Trustee holds the meeting open and clearly so states at the 341 meeting.

See Attached Updated Tax Affidavit and Instructions for concluding meetings once the returns are filed.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: Chapter 13
_____ Case Number: _____

_____

Debtor(s).

UPDATED CERTIFICATION AND AFFIDAVIT

The undersigned, being the Debtor(s) referenced above, do hereby certify under oath, that I have now filed all Federal, State and local tax returns required by law to be filed for all taxable periods ending within the 4-year period prior to the filing of this bankruptcy.

By signing this affidavit, I acknowledge that all of the statements contained herein are true and accurate, and the Trustee and Court may rely on these statements for purposes of determining if confirmation of my proposed Plan is allowed under the provisions of the Bankruptcy Code. Any inaccuracy in this affidavit may be grounds for revocation or denial of my confirmation.

Signed and sworn to this

Dated this the _____ day of _____, 20___.

_____
Debtor

_____
Debtor

THE MEETING OF CREDITORS IS BEING HELD OPEN TO _____
AT **10:00 A.M. THE MEETING WAS HELD OPEN PURSUANT TO 11 U.S.C. §1308 BECAUSE THERE ARE OUTSTANDING TAX RETURNS THAT MUST BE FILED.**

***IF THE OUTSTANDING RETURNS ARE FILED WITH THE PROPER TAXING AUTHORITIES BEFORE THE CONTINUED MEETING DATE PLEASE FOLLOW THESE INSTRUCTIONS*:**

1. FILL OUT THE AFFIDAVIT ON THE BACK OF THIS FORM.

2. SEND THE AFFIDAVIT TO OUR OFFICE BY FAX (617) 723-2998 OR BY EMAIL (taxes@ch13boston.com) WITH A REQUEST THAT THE MEETING BE CONCLUDED. DO NOT SEND THE AFFIDAVIT TO ANY OTHER EMAIL ADDRESS.

3. DO NOT FILE THE AFFIDAVIT OR THE TAX RETURN WITH THE COURT.

4. DO NOT SEND THE TRUSTEE THE TAX RETURN. WE ONLY NEED THE AFFIDAVIT.

5. IF YOU HAVE FOLLOWED THE INSTRUCTIONS ABOVE, THERE IS NO NEED TO APPEAR AT THE CONTINUED MEETING DATE.

IF THE OUTSTANDING RETURNS HAVE NOT BEEN FILED WITH THE PROPER TAXING AUTHORITIES BEFORE THE CONTINUED MEETING DATE, YOU MUST DO ONE OF THE FOLLOWING:

1. APPEAR AT THE CONTINUED MEETING DATE TO EXPLAIN WHY THE RETURNS HAVE NOT BEEN FILED.

2. CONTACT THE TRUSTEE'S OFFICE TO REQUEST THAT THE MEETING BE HELD OPEN TO A LATER DATE. PLEASE NOTE THAT PURSUANT TO 11 U.S.C. §1308, THE TRUSTEE CAN ONLY HOLD A MEETING OPEN FOR 120 DAYS FROM THE DATE OF THE 1ST MEETING OF CREDITORS. IF THE TRUSTEE CAN, WE WILL GIVE YOU A NEW DATE.

3. IF THE TRUSTEE CANNOT GIVE YOU A NEW DATE, YOU CAN FILE A MOTION WITH THE COURT UNDER §1308 REQUESTING AN ADDITIONAL 30 DAYS TO FILE THE TAX RETURN. PLEASE REFER TO §1308 FOR FURTHER DETAILS.

FAILURE TO FOLLOW THE INSTRUCTIONS ABOVE AND/OR TO APPEAR AT THE CONTINUED MEETING OF CREDITORS WILL RESULT IN THE MEETING BE CONCLUDED.