

or adjudicated by a judicial or administrative tribunal of competent jurisdiction before the bankruptcy case, and the prosecution by the trustee of an appeal from an order of such a body if the time for review or appeal has not expired before the commencement of the bankruptcy case. As under current Bankruptcy Act §2a (2A), *Arkansas Corporation Commissioner v. Thompson*, 313 U.S. 132 (1941), remains good law to permit abstention where uniformity of assessment is of significant importance.

Section (c) deals with procedures for obtaining a prompt audit of tax returns filed by the trustee in a liquidation or reorganization case. Under the bill as originally introduced, a trustee who is "in doubt" concerning tax liabilities of the estate incurred during a title 11 proceeding could obtain a discharge from personal liability for himself and the debtor (but not for the debtor or the debtor's successor in a reorganization), provided that certain administrative procedures were followed. The trustee could request a prompt tax audit by the local, State, or Federal governmental unit. The taxing authority would have to notify the trustee and the court within sixty days whether it accepted the return or desired to audit the returns more fully. If an audit were conducted, the tax office would have to notify the trustee of any tax deficiency within 4 months (subject to an extension of time if the court approved). These procedures would apply only to tax years completed on or before the case was closed and for which the trustee had filed a tax return.

The committee bill eliminates the "in doubt" rule and makes mandatory (rather than optional) the trustee's request for a prompt audit of the estate's tax returns. In many cases, the trustee could not be certain that his returns raised no doubt about possible tax issues. In addition, it is desirable not to create a situation where the taxing authority asserts a tax liability against the debtor (as transferee of surplus assets, if any, return to him) after the case is over; in any such situation, the debtor would be called on to defend a tax return which he did not prepare. Under the amendment, all disputes concerning these returns are to be resolved by the bankruptcy court, and both the trustee and the debtor himself do not then face potential post-bankruptcy tax liabilities based on these returns. This result would occur as to the debtor, however, only in a liquidation case.

In a reorganization in which the debtor or a successor to the debtor continues in existence, the trustee could obtain a discharge from personal liability through the prompt audit procedure, but the Treasury could still claim a deficiency against the debtor (or his successor) for additional taxes due on returns filed during the title 11 proceedings.

HOUSE REPORT NO. 95-595

Subsection (c) is new. It codifies in part the referee's decision in *In re Statmaster Corp.*, 465 F.2d 987 (5th Cir. 1972). Its purpose is to protect the trustee from personal liability for a tax falling on the estate that is not assessed until after the case is closed. If necessary to permit expeditious closing of the case, the court, on request of the trustee, must order the governmental unit charged with the responsibility for collection or determination of the tax to audit the trustee's return or be barred from attempting later collection. The court will be required to permit sufficient time to perform an audit, if the taxing authority requests it. The final order of the court and the payment of the tax determined in that order discharges the trustee, the debtor, and any successor to the debtor from any further liability for the tax. See Plumb, *The Tax Recommendations of the Commission on the Bankruptcy Laws: Tax Procedures*, 88 Harv. L. Rev. 1360, 1423-42 (1975).

AMENDMENTS

2005—Subsec. (a)(2)(C). Pub. L. 109-8, §701(b), added subpar. (C).

Subsec. (b). Pub. L. 109-8, §703, added par. (1), redesignated existing provisions of subsec. (b) as par. (2) and

inserted "at the address and in the manner designated in paragraph (1)" after "determination of such tax" in introductory provisions, redesignated former pars. (1) to (3) of subsec. (b) as subpars. (A) to (C), respectively, of par. (2), and redesignated former subpars (A) and (B) of par. (1) as cls. (i) and (ii), respectively, of subpar. (A).

Subsec. (b)(2). Pub. L. 109-8, §715, inserted "the estate," after "misrepresentation," in introductory provisions.

1984—Subsec. (a)(2)(B)(i). Pub. L. 98-353 substituted "or" for "and".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 506. Determination of secured status

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub. L. 98-353, title III, §448, July 10, 1984, 98 Stat. 374; Pub. L. 109-8, title III, §327, title VII, §712(d), Apr. 20, 2005, 119 Stat. 99, 128.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 506(a) of the House amendment adopts the provision contained in the Senate amendment and rejects a contrary provision as contained in H.R. 8200 as passed by the House. The provision contained in the Senate amendment and adopted by the House amendment recognizes that an amount subject to set-off is sufficient to recognize a secured status in the holder of such right. Additionally a determination of what portion of an allowed claim is secured and what portion is unsecured is binding only for the purpose for which the determination is made. Thus determinations for purposes of adequate protection is not binding for purposes of "cram down" on confirmation in a case under chapter 11.

Section 506(b) of the House amendment adopts language contained in the Senate amendment and rejects language contained in H.R. 8200 as passed by the House. If the security agreement between the parties provides for attorneys' fees, it will be enforceable under title 11, notwithstanding contrary law, and is recoverable from the collateral after any recovery under section 506(c).

Section 506(c) of the House amendment was contained in H.R. 8200 as passed by the House and adopted, verbatim, in the Senate amendment. Any time the trustee or debtor in possession expends money to provide for the reasonable and necessary cost and expenses of preserving or disposing of a secured creditor's collateral, the trustee or debtor in possession is entitled to recover such expenses from the secured party or from the property securing an allowed secured claim held by such party.

Section 506(d) of the House amendment is derived from H.R. 8200 as passed by the House and is adopted in lieu of the alternative test provided in section 506(d) of the Senate amendment. For purposes of section 506(d) of the House amendment, the debtor is a party in interest.

Determination of Secured Status: The House amendment deletes section 506(d)(3) of the Senate amendment, which insures that a tax lien securing a non-dischargeable tax claim is not voided because a tax authority with notice or knowledge of the bankruptcy case fails to file a claim for the liability (as it may elect not to do, if it is clear there are insufficient assets to pay the liability). Since the House amendment retains section 506(d) of the House bill that a lien is not voided unless a party in interest has requested that the court determine and allow or disallow the claim, provision of the Senate amendment is not necessary.

SENATE REPORT NO. 95-989

Subsection (a) of this section separates an unsecured creditor's claim into two parts: He has a secured claim to the extent of the value of his collateral; and he has an unsecured claim for the balance of his claim. The subsection also provides for the valuation of claims which involve setoffs under section 553. While courts will have to determine value on a case-by-case basis, the subsection makes it clear that valuation is to be determined in light of the purpose of the valuation and the proposed disposition or use of the subject property. This determination shall be made in conjunction with any hearing on such disposition or use of property or on a plan affecting the creditor's interest. To illus-

trate, a valuation early in the case in a proceeding under sections 361-363 would not be binding upon the debtor or creditor at the time of confirmation of the plan. Throughout the bill, references to secured claims are only to the claim determined to be secured under this subsection, and not to the full amount of the creditor's claim. This provision abolishes the use of the terms "secured creditor" and "unsecured creditor" and substitutes in their places the terms "secured claim" and "unsecured claim."

Subsection (b) codifies current law by entitling a creditor with an oversecured claim to any reasonable fees (including attorney's fees), costs, or charges provided under the agreement under which the claim arose. These fees, costs, and charges are secured claims to the extent that the value of the collateral exceeds the amount of the underlying claim.

Subsection (c) also codifies current law by permitting the trustee to recover from property the value of which is greater than the sum of the claims secured by a lien on that property the reasonable, necessary costs and expenses of preserving, or disposing of, the property. The recovery is limited to the extent of any benefit to the holder of such claim.

Subsection (d) provides that to the extent a secured claim is not allowed, its lien is void unless the holder had neither actual notice nor knowledge of the case, the lien was not listed by the debtor in a chapter 9 or 11 case or such claim was disallowed only under section 502(e).

HOUSE REPORT NO. 95-595

Subsection (d) permits liens to pass through the bankruptcy case unaffected. However, if a party in interest requests the court to determine and allow or disallow the claim secured by the lien under section 502 and the claim is not allowed, then the lien is void to the extent that the claim is not allowed. The voiding provision does not apply to claims disallowed only under section 502(e), which requires disallowance of certain claims against the debtor by a codebtor, surety, or guarantor for contribution or reimbursement.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-8, §327, designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 109-8, §712(d)(1), inserted "or State statute" after "agreement".

Subsec. (c). Pub. L. 109-8, §712(d)(2), inserted "including the payment of all ad valorem property taxes with respect to the property" before period at end.

1984—Subsec. (b). Pub. L. 98-353, §448(a), inserted "for" after "provided".

Subsec. (d)(1). Pub. L. 98-353, §448(b), substituted "such claim was disallowed only under section 502(b)(5) or 502(e) of this title" for "a party in interest has not requested that the court determine and allow or disallow such claim under section 502 of this title".

Subsec. (d)(2). Pub. L. 98-353, §448(b), substituted "such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title" for "such claim was disallowed only under section 502(e) of this title".

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 507. Priorities

(a) The following expenses and claims have priority in the following order: