

Apr. 20, 2005, was executed to this par., which was par. (4), to reflect the probable intent of Congress, notwithstanding that the redesignation of this par. as (5) by Pub. L. 109-8, §212(2), was effective 180 days after Apr. 20, 2005. See Effective Date of 2005 Amendment notes below.

Subsec. (a)(5)(B)(ii). Pub. L. 109-8, §1502(a)(1)(A)(i), substituted “paragraph (4)” for “paragraph (3)”.

Subsec. (a)(6). Pub. L. 109-8, §212(2), (7), redesignated par. (5) as (6) and substituted “Sixth” for “Fifth” in introductory provisions. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 109-8, §212(1), (2), (8), redesignated par. (6) as (7), substituted “Seventh” for “Sixth”, and struck out former par. (7) which read as follows: “Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

“(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

“(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.”

Subsec. (a)(8). Pub. L. 109-8, §705(2), inserted at end “An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.”

Subsec. (a)(8)(A). Pub. L. 109-8, §705(1)(A), inserted “for a taxable year ending on or before the date of the filing of the petition” after “gross receipts” in introductory provisions.

Subsec. (a)(8)(A)(i). Pub. L. 109-8, §705(1)(B), struck out “for a taxable year ending on or before the date of the filing of the petition” before “for which a return”.

Subsec. (a)(8)(A)(ii). Pub. L. 109-8, §705(1)(C), added cl. (ii) and struck out former cl. (ii) which read as follows: “assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or”

Subsec. (a)(8)(B). Pub. L. 109-8, §706, substituted “incurred” for “assessed”.

Subsec. (a)(8)(D). Pub. L. 109-8, §1502(a)(1)(A)(ii), substituted “paragraph (4)” for “paragraph (3)”.

Subsec. (a)(10). Pub. L. 109-8, §223, added par. (10).

Subsec. (b). Pub. L. 109-8, §1502(a)(1)(B), substituted “subsection (a)(2)” for “subsection (a)(1)”.

Subsec. (d). Pub. L. 109-8, §1502(a)(1)(C), substituted “subsection (a)(1)” for “subsection (a)(3)”.

1994—Subsec. (a)(3). Pub. L. 103-394, §207, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Third, allowed unsecured claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay—

“(A) earned by an individual within 90 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first; but only

“(B) to the extent of \$2,000 for each such individual.”

Subsec. (a)(4)(B)(i). Pub. L. 103-394, §108(c)(1), substituted “\$4,000” for “\$2,000”.

Subsec. (a)(5). Pub. L. 103-394, §§108(c)(2), 501(b)(3), substituted “section 557(b)” for “section 557(b)(1)” after “grain, as defined in” and “section 557(b)” for “section 557(b)(2)” after “facility, as defined in” in subpar. (A) and “\$4,000” for “\$2,000” in concluding provisions.

Subsec. (a)(6). Pub. L. 103-394, §108(c)(3), substituted “\$1,800” for “\$900”.

Subsec. (a)(7). Pub. L. 103-394, §304(c)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 103-394, §304(c)(2), redesignated par. (7) as (8) and substituted “Eighth” for “Seventh”. Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 103-394, §§304(c)(1), 501(d)(11)(A), redesignated par. (8) as (9) and substituted “Ninth” for “Eighth” and “a Federal depository institutions regulatory agency (or predecessor to such agency)” for “the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors.”

Subsec. (d). Pub. L. 103-394, §501(d)(11)(B), substituted “(a)(6), (a)(7), (a)(8), or (a)(9)” for “or (a)(6)”.

1990—Subsec. (a)(8). Pub. L. 101-647 added par. (8).

1984—Subsec. (a)(3). Pub. L. 98-353, §449(a)(1), inserted a comma after “severance”.

Subsec. (a)(4). Pub. L. 98-353, §449(a)(2), substituted “an employee benefit plan” for “employee benefit plans” in provisions preceding subpar. (A).

Subsec. (a)(4)(B)(i). Pub. L. 98-353, §449(a)(3), inserted “each” after “covered by”.

Subsec. (a)(5). Pub. L. 98-353, §350(3), added par. (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 98-353, §350(1), redesignated former par. (5) as (6) and substituted “Sixth” for “Fifth”. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 98-353, §§350(2), 449(a)(4), redesignated former par. (6) as (7), substituted “Seventh” for “Sixth”, and inserted “only” after “units.”

Subsec. (c). Pub. L. 98-353, §449(b), substituted “has the same priority” for “shall be treated the same”.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-8, title XIV, §1406, Apr. 20, 2005, 119 Stat. 215, provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title [amending this section and sections 523, 548, 1104, and 1114 of this title and enacting provisions set out as a note under section 523 of this title] and the amendments made by this title shall take effect on the date of the enactment of this Act [Apr. 20, 2005].

“(b) APPLICATION OF AMENDMENTS.—

“(1) IN GENERAL.—[Ex]cept as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act [Apr. 20, 2005].

“(2) AVOIDANCE PERIOD.—The amendment made by section 1402(1) [amending section 548 of this title] shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.”

Amendment by sections 212, 223, 705, 706, and 1502(a)(1) of 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 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, 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.

ADJUSTMENT OF DOLLAR AMOUNTS

For adjustment of dollar amounts specified in subsec. (a)(4) to (7) of this section by the Judicial Conference

of the United States, see note set out under section 104 of this title.

§ 508. Effect of distribution other than under this title

If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2585; Pub. L. 109-8, title VIII, §802(d)(7), Apr. 20, 2005, 119 Stat. 146.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 508(b) of the House amendment is new and provides an identical rule with respect to a creditor of a partnership who receives payment from a partner, to that of a creditor of a debtor who receives a payment in a foreign proceeding involving the debtor.

SENATE REPORT NO. 95-989

This section prohibits a creditor from receiving any distribution in the bankruptcy case if he has received payment of a portion of his claim in a foreign proceeding, until the other creditors in the bankruptcy case in this country that are entitled to share equally with that creditor have received as much as he has in the foreign proceeding.

AMENDMENTS

2005—Pub. L. 109-8 designated subsec. (b) as entire section and struck out subsec. (a) which read as follows: “If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.”

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.

§ 509. Claims of codebtors

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of such payment of such creditor’s claim is—

(A) allowed under section 502 of this title;
(B) disallowed other than under section 502(e) of this title; or
(C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor’s claim, until such creditor’s claim is paid in full, either through payments under this title or otherwise.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2585; Pub. L. 98-353, title III, §450, July 10, 1984, 98 Stat. 375.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 509 of the House amendment represents a substantial revision of provisions contained in H.R. 8200 as passed by the House and in the Senate amendment. Section 509(a) states a general rule that a surety or codebtor is subrogated to the rights of a creditor assured by the surety or codebtor to the extent the surety or codebtor pays such creditor. Section 509(b) states a general exception indicating that subrogation is not granted to the extent that a claim of a surety or codebtor for reimbursement or contribution is allowed under section 502 or disallowed other than under section 502(e). Additionally, section 509(b)(1)(C) provides that such claims for subrogation are subordinated to the extent that a claim of the surety or codebtor for reimbursement or contribution is subordinated under section 510(a)(1) or 510(b). Section 509(b)(2) reiterates the well-known rule that prevents a debtor that is ultimately liable on the debt from recovering from a surety or a codebtor. Although the language in section 509(b)(2) focuses in terms of receipt of consideration, legislative history appearing elsewhere indicates that an agreement to share liabilities should prevail over an agreement to share profits throughout title 11. This is particularly important in the context of codebtors who are partners. Section 509(c) subordinates the claim of a surety or codebtor to the claim of an assured creditor until the creditor’s claim is paid in full.

SENATE REPORT NO. 95-989

Section 509 deals with codebtors generally, and is in addition to the disallowance provision in section 502(e). This section is based on the notion that the only rights available to a surety, guarantor, or comaker are contribution, reimbursement, and subrogation. The right that applies in a particular situation will depend on the agreement between the debtor and the codebtor, and on whether and how payment was made by the codebtor to the creditor. The claim of a surety or codebtor for contribution or reimbursement is discharged even if the claim is never filed, as is any claim for subrogation even if the surety or codebtor chooses to file a claim for contribution or reimbursement instead.

Subsection (a) subrogates the codebtor (whether as a codebtor, surety, or guarantor) to the rights of the creditor, to the extent of any payment made by the codebtor to the creditor. Whether the creditor’s claim was filed under section 501(a) or 501(b) is irrelevant. The right of subrogation will exist even if the primary creditor’s claim is allowed by virtue of being listed under proposed 11 U.S.C. 924 or 1111, and not by reason of a proof of claim.

Subsection (b) permits a subrogated codebtor to receive payments in the bankruptcy case only if the creditor has been paid in full, either through payments under the bankruptcy code or otherwise.