

Tax Refund Claims of Bankruptcy Estates: A Look at Jurisdiction.

A fairly common feature of Chapter 11 reorganization plans is the establishment of a liquidating trust to disposed of particular assets of the debtor and pay out the proceeds to creditors. Tax refunds frequently fall into this category of assets.

When can tax refund claims be pursued in bankruptcy court? Well that depends. Section 505(a)(1) of the Bankruptcy Code gives bankruptcy courts broad authority to handle tax claims, but there are exceptions. For refund claims, the bankruptcy court's jurisdiction is subject to an exception: the court cannot address a refund claim before either "120 days after the trustee properly requests such refund" or a formal determination is made. 11 U.S.C. § 505(a)(2)(B). In Chapter 11 cases, if no trustee has been appointed, the debtor in possession exercises the trustee's authority. 11 U.S.C. § 1107(a).

What happens when the claim is pursued by a trustee of a liquidating trust? A recent opinion indicates that the bankruptcy court's jurisdiction turns on whether a refund claim was presented by a bankruptcy trustee or a debtor in possession. *United States v. Bond*, 2014 U.S. App. LEXIS 15557 (2d Cir. Aug. 13, 2014).

In *Bond*, the government had filed a request for administrative expense treatment for taxes due during the portion of a tax year that the bankruptcy case was pending. After a plan was confirmed creating a liquidating trust and appointing a trustee to manage it, the liquidating trustee counterclaimed for a tax refund for that same period. He also filed a refund claim with the IRS. Over a five year period between 2006 and 2011, the bankruptcy court addressed both the administrative expense claim and the refund claim, along with a dispute over set off rights.

The Second Circuit ruled that the bankruptcy court lacked jurisdiction. Since the IRS had not ruled on the administrative claim for a refund, the basic question was whether the filing of an administrative claim by a *bankruptcy trustee* or a debtor in possession was a jurisdictional requirement. Applying the plain meaning rule, the Second Circuit ruled that it was. The Court noted that the Bankruptcy Code provided for a shorter deadline for governmental units to act on refund claims made by a bankruptcy trustee or debtor in possession (normally a refund claimant must wait six months before filing suit) and concluded that Congress intended this authority to be exercised by a trustee or debtor in possession, which might need a prompt ruling to facilitate plan confirmation.

Since the liquidating trustee was appointed as part of the confirmation of a plan, he did not have the powers of a bankruptcy trustee. Consequently, the trustee of a liquidating trust may only pursue refund claims in the bankruptcy court in two situations: first, if the administrative claim was properly filed prior to his appointment; second, if the refund claim has been denied.

I apologize for the lack of citations. The LEXIS version of the opinion is not paginated.

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