

## 02 - IRS Can Collect Interest On Taxes Paid As Part Of Bankruptcy Plan

In re Widick, (Bkcty Ct NE 9/10/2019) 124 AFTR 2d ¶2019-5228

A bankruptcy court has held that the IRS can collect post-petition interest on taxes that were paid in full under a Chapter 13 bankruptcy plan.

Background. Under Code Sec. 6672, if an employer fails to properly pay over its payroll taxes, IRS can seek to collect a trust fund recovery penalty equal to 100% of the unpaid taxes from a "responsible person," i.e., a person who: (a) is responsible for collecting, accounting for, and paying over payroll taxes; and (b) willfully fails to perform this responsibility.

Discharge of a Chapter 13 debtor is governed by 11 USC 1328, which provides in relevant part that "after completion by the debtor of all payments under the plan," the court shall "grant the debtor a discharge of all debts provided for by the plan or disallowed under [11 USC 502], except any debt...of the kind specified in [11 USC 507(a)(8)(C)]." The debts identified as exempt in 11 USC 507(a)(8)(C) are "allowed unsecured claims of governmental units, only to the extent that such claims are for...a tax required to be collected or withheld and for which the debtor is liable in whatever capacity," including the trust fund recovery penalty under Code Sec. 6672.

Under 11 USC 502, the filing of a bankruptcy petition generally stops the accruing of interest on a debtor's liability. However, it does not prevent IRS from collecting from individual debtors' post-petition, pre-bankruptcy plan interest accruing on non-dischargeable tax debt after the date of the petition. As described by the Eighth Circuit, "in the instance of taxes and interest on such, Congress has determined that the problems of financing the government override granting debtors a wholly fresh start...Thus, post-petition interest is non-dischargeable, and the [debtor] remain[s] personally liable for that interest subsequent to bankruptcy proceedings." (In re Hanna, (CA 8 1989) 872 F.2d 829)

Facts. Mr. Widick filed for Chapter 13 bankruptcy in 2010 owing personal income taxes. Subsequent to the filing, the IRS assessed a trust fund recovery penalty against him.

During the bankruptcy proceedings, Mr. Widick paid the income tax due and the trust fund recovery penalty. He then received an order of discharge from the bankruptcy court.

The IRS, post-discharge, assessed Widick for the unpaid, non-dischargeable interest on the taxes and civil penalties.

Mr. Widick argued that the unpaid post-petition interest on taxes and penalties that he paid in full under a bankruptcy plan could not be collected by the IRS after discharge.

Decision. The bankruptcy court disagreed with Mr. Widick and held that the IRS could collect the interest.

The court found that the reasoning of *Hanna* held here too. Widick did not present any legal argument distinguishing his case from *Hanna* or otherwise explaining why the legal principles of *Hanna* did not apply here.