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### *Taxes from Late-Filed Return Discharged*

The bankruptcy statute permits a taxpayer to discharge the obligation to pay certain income taxes, but only if a tax return has been filed. The rules regarding which unpaid taxes may be discharged are complex and beyond the scope of this note. Our question is whether a late-filed return can permit the discharge of tax liability.

The 2005 amendments to the bankruptcy statute define a tax return sufficient to discharge tax liability as “a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements).” Some courts have held that a late-filed return never satisfies the “filing requirements”, and taxes for that year may never be discharged in bankruptcy.

A bankruptcy appellate panel in Boston recently decided that a late-filed return could qualify as a “return” to permit discharge of tax debt where the return was filed before the taxing authority assessed a deficiency and more than two years before the filing of the bankruptcy case. *Pendergast v. Massachusetts Dep’t of Revenue*, 510 B.R. 1 (Bankr. 1<sup>st</sup> Cir. 2014).

### *Third-Party Payment Defeats Preference*

A bankruptcy trustee may recover as preferences certain payments made by a debtor to creditors within 90 days prior to filing a bankruptcy petition. A creditor may defeat the trustee’s ability to recover a preference by showing that the creditor gave “new value” to the debtor after receiving the payment from the debtor sought to be recovered. A federal appeals court ruled this year that in certain situations a third-party can provide “new value” to defeat a trustee’s preference claim against a creditor.

LGI provided utility bill paying services to fast food chains. Within 90 days prior to LGI’s bankruptcy, LGI made payments to utilities for electricity. Subsequent to the

payments, the utilities did not provide any new value to LGI. However, the utilities continued to provide power to LGI’s fast food clients, who paid LGI for the utility service. LGI did not pass on these payments to the utilities. The court held that the customer payments to LGI provided new value which could be used by the utilities to defeat the trustee’s preference claim.

*Stoebner v. San Deigo Gas & Electric Co. (In re LGI Energy Solutions, Inc.)*, 746 F.3d 350 (8<sup>th</sup> Cir. 2014).

### *Inaction Violates Automatic Stay*

A vendor/creditor sued a customer for unpaid invoices in state court. The creditor obtained a judgment and sought to locate assets from which to satisfy the judgment. The customer filed a bankruptcy petition. After being informed of the bankruptcy, the state judge stayed the collection proceedings, but scheduled a status conference in three months which all parties were required to attend.

The Virginia bankruptcy judge held that the status conference in state court violated the automatic bankruptcy stay and sanctioned the creditor for failing to attempt to cancel the status conference.

*Skill force, Inc. v. Hafer*, 509 B.R. 523 (Bankr. E.D. Va. 2014).



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