

## DEBTOR/CREDITOR

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*Creditors Get Non-Compete Payments*

Who is entitled to payments due under a non-competition agreement after the recipient of the payments files an individual bankruptcy petition: the debtor or his creditors? Earlier this year, a federal appeals court in Richmond decided in favor of the creditors.

John Andrews built a successful ready-mix concrete business which he sold in 1989. As a condition of that sale, the buyer required Mr. Andrews to execute a non-competition agreement under which Mr. Andrews would receive \$62,500 quarterly for a period of four years. Mr. Andrews filed a bankruptcy petition with four payments remaining. Mr. Andrews continued to honor his obligation not to compete following the commencement of his bankruptcy case.

The appeals court was asked to decide whether the payments received by Mr. Andrews after the bankruptcy were "earnings from services performed" which do not become part of the bankruptcy estate available to pay creditors. The court reasoned that payments under the non-competition agreement were more closely related to the pre-bankruptcy sale of Mr. Andrews' business than to his post-bankruptcy forbearance from competition. The court expressed concern that it would be too easy for the seller of a business to divert a portion of the purchase price away from creditors by use of a non-competition agreement.

*Andrews v. Riggs National Bank (In re Andrews)*, 80 F.3d 906 (4th Cir. 1996).

*IRS Errors Preclude Collection*

Taxes assessed within 240 days prior to the filing of a bankruptcy petition are entitled to priority status. This 240-day period is extended by the amount of time during which the taxpayer/debtor has an offer in compromise pending with

the IRS. However, a bankruptcy court in Florida found that where the offer in compromise was so defective as to be "unprocessable" under the IRS's internal guidelines, the time was not extended, even though the IRS mistakenly treated the offer in compromise as pending. The court allowed the 240-day period to expire, depriving the IRS of its priority. *In re Romagnolo*, 195 B.R. 801 (Bankr. M.D. Fla.1996).

A bankruptcy court in Chicago ruled that where the IRS filed its priority claim late and failed to object to confirmation of a debtor's Chapter 13 plan which provided no payment to the IRS, the IRS was barred from reopening the case to obtain payment of its claim.

*In re Puckett*, 193 B.R. 842 (Bankr. N.D. Ill. 1996).

*Disclosure of Bankruptcy Required*

Effective October 1, 1996, no person may sell or offer to sell a business opportunity in Maryland without filing a disclosure document which reveals whether the seller or any of the seller's officers, directors, trustees, general partners, general managers or principal executives has filed bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or was an owner, principal officer, or general partner of any other person that has filed bankruptcy, been adjudged bankrupt, or was reorganized due to insolvency during or within the last seven years.

1996 Md. Laws Ch. 517.



*This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.*

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