

DEBTOR/CREDITOR

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*Payment of Real Property Transfer**Tax Excused*

Among the special benefits which Congress gave to Chapter 11 debtors is the ability to sell real property under a plan of reorganization without paying the transfer and recordation taxes. Congress did this in order to provide additional funds for other creditors at the expense of the taxing authorities.

A federal appeals court in Richmond recently clarified the extent of this special bankruptcy power. A debtor's Chapter 11 plan of reorganization had created a liquidating trust which took title to the debtor's real estate assets, sold the assets, and distributed the proceeds to creditors. The plan stated that both the transfer of the real property from the debtor to the trust and the transfer from the trust to ultimate purchasers would be exempt from transfer and recordation taxes. The State of Maryland argued that the second transfer from the trust to an ultimate purchaser was not entitled to the exemption from transfer tax, because neither the trust nor the purchaser was a debtor in bankruptcy. Rejecting this argument, the court concluded that both transfers were pursuant to the plan and exempt from transfer tax.

Maryland v. Antonelli Creditors' Liquidating Trust, 1997 U.S. App. LEXIS 22547 (4th Cir. Aug. 26, 1997).

The bankruptcy exemption from transfer taxes may be useful in other contexts. Secured lenders might consider whether a "friendly" Chapter 11, with its exemption from transfer tax, is less expensive than an uncontested foreclosure or a deed in lieu of foreclosure. Property owners might try to use Chapter 11 simply to sell valuable property without payment of the transfer tax, although this strategy entails risk.

No Chapter 11 for Partnership

A federal appeals court in New York held earlier this year that a partnership in dissolution is ineligible to file a Chapter 11 case. The court reasoned that the requirement under the Uniform Partnership Act to wind-up the partnership's affairs was inconsistent with the reorganization purpose of Chapter 11.

The partnership in question was not actually attempting to liquidate and wind-up its affairs, but was technically in dissolution under the UPA, because one of its two partners had withdrawn. The Uniform Partnership Act lists other circumstances which also cause dissolution, including death or bankruptcy of any partner. As partnerships in financial difficulty often also have partners in financial difficulty, the court's ruling may provide creditors with an additional argument to defeat a single-asset real estate partnership's Chapter 11 filing.

C-TC 9th Avenue Partnership v. Norton Co. (In re C-TC 9th Avenue Partnership), 113 F.3d 1304 (2d Cir. 1997).



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.

Prepared by James C. Olson, Attorney and Counselor at Law