

DEBTOR/CREDITOR

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“Business Trust” May File Petition

Federal statute limits which types of legal entities are eligible to seek the protection of bankruptcy law. A "business trust" is eligible to file a bankruptcy petition, while a personal, family or testamentary trust is not.

A Maryland bankruptcy judge was recently asked to determine whether a generation skipping trust, which allowed property of the trust to be passed to beneficiaries named by the grantor's daughter in her will, was eligible for bankruptcy relief. The trust owned multiple shopping centers and directly employed 12 employees, in addition to numerous outside service providers.

The court determined that the primary purpose of this trust was to conduct business, rather than to preserve the assets for a future generation. Under these circumstances, the debtor was eligible for bankruptcy protection.

In re Jin Suk Kim Trust, 2011 Bankr. LEXIS 3086 (Bankr. D.Md. Aug. 8, 2011).

Limiting IRS Tax Lien

The IRS has more collection tools in its arsenal than the average creditor. The Anti-Injunction Act generally prohibits federal courts from entertaining any action to enjoin the IRS from assessing or collecting taxes. Additionally, the Declaratory Judgment Act prohibits courts from making declaratory judgments with respect to federal taxes.

Notwithstanding these special protections for the collection of taxes, a Pennsylvania bankruptcy court has held that neither statute prevents a bankruptcy court from reducing the amount of a tax lien to the value of the property subject to the lien. Once reduced, the lien could be satisfied through periodic payments over many years pursuant to a Chapter 11 plan of reorganization. This ability of the

taxpayer to reduce the tax lien and deal with it in the context of a Chapter 11 plan provides some counterweight to the IRS's expensive collection powers.

Berkebile v. Ocwen Loan Servicing (In re Berkebile), 444 B.R. 326 (Bankr. W.D. Pa. 2011).

Attorney Inaction Punished

The federal bankruptcy statute contains a list of debts that will not be discharged in a bankruptcy case. This list includes items like certain taxes, fraud, alimony and child support. One item on the list is debts which arise from "willful and malicious injury" caused to another. A Pennsylvania bankruptcy judge recently decided that deliberate intent to cause injury was not necessary to prevent the discharge of the debt.

For three years, an attorney representing a decedent's estate failed to respond to communications from his client and ignored two court orders to turn over his files to new counsel. This inaction caused financial loss to his client. The attorney claimed he was only negligent and unprofessional. The court characterized his inaction as consciously ignoring his obligations, knowing that this would adversely affect his client. Such "willful blindness" could not be discharged in bankruptcy.

Estate of DiSabato v. DiGiovanni (In re DiGiovanni), 446 B.R. 709 (Bankr. E.D.Pa. 2011).

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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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