Fraudulent Silence

An attorney informed his client that he would not be able to continue representation unless the client arranged to pay $60,000 in past due legal fees. The client responded that his accountant was preparing a tax return, which would entitle him to a $100,000 refund, which he would use to pay the legal fees. The attorney continued to represent the client. The client subsequently filed the return, which sought a refund of only $60,000, without informing his attorney of the lower refund amount.

After the client filed a bankruptcy case, the attorney sought a declaration that the client's debt for the fees was not discharged, because the attorney continued to represent the client, relying on payment from the $100,000 tax refund.

The bankruptcy judge ruled that the attorney's fees were not discharged, because the client "intentionally misled [the attorney] and committed a false pretense by not disclosing the true amount of the refund" at a meeting with his attorney four months after filing his tax return.
Lamar, Archer & Cofrin, LLP v. Appling (In re Appling), 527 B.R. 545 (Bankr. M.D. Ga. 2015).

Late-Filed Tax Return Dischargeable

In the October 2012 and April 2015 issues of *Notes on Debtor/Creditor Relations*, this newsletter reported three federal appellate decisions holding that income taxes due from years for which the returns were not timely filed are not discharged in a subsequent bankruptcy case.

However, an Ohio bankruptcy judge has recently disagreed with these appellate decisions and argued that merely missing the filing deadline does not, by itself, preclude discharge of the taxes associated with the return. The return will be valid and the taxes dischargeable if: (1) it contains sufficient data to allow calculation of the tax; and (2) it represents an honest and reasonable attempt to satisfy the requirements of the tax law.
McBride v. City of Kettering (In re Kettering), 534 B.R. 326 (Bankr. S.D. Ohio 2015).

Individual Chapter 11 Debtor Loses Assets

A Chapter 11 plan divides creditors into classes, each of which votes to accept or reject the plan. If a class of unsecured creditors votes to reject the plan, the plan may not be confirmed unless that class is paid in full before any junior class retains any property under the plan. In a corporate case, this means that the equity holders cannot retain anything unless all classes of unsecured creditors vote to accept the plan or are paid in full. The application of this rule to the case of an individual, who has no equity holders, is less clear.

A bankruptcy appellate panel recently joined the majority of courts in deciding that an individual Chapter 11 debtor may not retain under a plan any property that the individual owned at the time of the bankruptcy filing, unless all unsecured classes accept the plan or are paid in full.
Heritage Bank v. Woodward (In re Woodward), 537 B.R. 894 (Bankr. 8th Cir. 2015).

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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. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive "Notes on Debtor/Creditor Relations", go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word "here".