Fordham Law Review

Volume 79 | Issue 2 Article 5

November 2011

Reconciling Ripley and Joye: A Fact-Sensitive Analysis of Petition-Year and Pre-Petition-Year Income Tax Claims in Chapter 13 Bankruptcies

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NOTES

RECONCILING *RIPLEY* AND *JOYE*: A FACT-SENSITIVE ANALYSIS OF PETITION-YEAR AND PRE-PETITION-YEAR INCOME TAX CLAIMS IN CHAPTER 13 BANKRUPTCIES

*Janicelynn J. Asamoto**

Parties to a chapter 13 bankruptcy often contest the status and dischargeability of income tax claims, especially when proofs of claim for these taxes are filed late. Prepetition claims that are filed late may be discharged once the debtor successfully completes a chapter 13 repayment plan. Taxing authorities, however, often allege that these liabilities represent nondischargeable postpetition claims that have "become payable" after the bankruptcy petition was filed. Courts have resolved this issue in conflicting ways: while some have found that taxes "become payable" at the end of the taxable year, most have ruled that the tax return's due date was decisive.

This Note observes, however, that this conflict appears rooted in a difference of fact. Courts favoring a tax-return rule have been addressing tax claims in the year the bankruptcy was filed. By contrast, courts that apply a taxable-year rule have been discussing tax claims for the year immediately preceding the bankruptcy filing. Finding this distinction significant, this Note presents an outline for analyzing income tax liability in chapter 13 cases and concludes that both the type of tax claim faced by each court and the petition-filing timeline are as significant to the courts' analyses as their respective interpretations of the phrase "become payable." Applying this framework, this Note illustrates that the taxable-year rule better establishes the critical date upon which taxes should "become payable" to a taxing authority.

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* J.D. Candidate, 2011, Fordham University School of Law. I thank Professor Susan Block-Lieb for her invaluable insight and guidance during the writing process. I also thank my parents, Wayne & Joy, my siblings, and friends for their encouragement and support.

INTRODUCTION

When Shelli and Teresa Joye filed for bankruptcy under chapter 13 of the Bankruptcy Code (Code), they notified their creditors—including the California Franchise Tax Board—of the bar date for prepetition claims. Rather than file a timely prepetition claim, the tax agency relied on a certain Code provision to file a postpetition claim after the bar date had expired. But after deciding that the claim was more accurately described as a prepetition claim filed late, the court discharged the debt. The silver lining in Shelli and Teresa's bankruptcy case, then, was successfully sidestepping payment of over $28,000 in back taxes.[1]

With few exceptions, the Code focuses on debts incurred before a debtor filed his bankruptcy petition.[2] A chapter 13 repayment plan contemplates

1. Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1073, 1079 (9th Cir. 2009). See *infra* Part II.B for a detailed analysis of this case and *infra* Part I.D.3.b for a discussion of the provision referred to in the text, 11 U.S.C. § 1305 (2006).

2. *See, e.g.*, 11 U.S.C. § 503 (allowing administrative expenses incurred after petition-filing date); *id.* § 1305 (describing procedure for filing and allowing certain postpetition claims); *id.* §§ 501(d), 502(b)(5), (e)–(i) (disallowing both postpetition interest not yet due and payable, and claims for postpetition alimony, maintenance, and support); *see also* 3 WILLIAM L. NORTON, JR. & WILLIAM L. NORTON III, NORTON BANKRUPTCY LAW AND

full or partial compensation of these prepetition claims.[3] Only in limited situations, described in Code § 1305, may a creditor submit proofs of postpetition claims.[4] In part, these postpetition claims "may be filed by any entity that holds a claim against the debtor . . . for taxes that become payable to a governmental unit while the case is pending."[5] In the situation described above, the court's ruling turned on an interpretation of when taxes "become payable" within the meaning of 11 U.S.C. § 1305.[6] Courts have grappled with the precise meaning of the phrase "become payable" because the interpretation of these two words carries more than mere lexicological significance. As the Joyes' situation exemplifies, thousands of dollars in tax liability, and even an individual's solvency after having filed for chapter 13, can turn on how a court interprets these two words.

One reading of the statute finds that tax claims "become payable" when they absolutely must be paid. Courts adhering to this tax-return rule use a tax return's due date (April 15, absent extensions) to distinguish those claims that have "become payable" from those that have not.[7] The contrary reading of the statute concludes that tax claims "become payable" when they are capable of being paid, even if they have not been assessed or come due. The courts that apply a taxable-year rule find that taxes are capable of being paid at the end of the taxable year and thus have "become payable" at that time.[8]

Various sources, including the U.S. Court of Appeals for the Ninth Circuit, characterize these competing interpretations of the Code as a circuit split.[9] A circuit split would certainly complicate bankruptcy proceedings at a time when bankruptcies steadily continue to rise.[10] Indeed, petitions to

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PRACTICE § 48:33 n.1 (3d ed. 2008) (describing how Code provisions interact to preclude filing claims for aforementioned postpetition alimony, maintenance, and support).

3. A reorganization plan must contemplate full repayment of priority prepetition claims; the extent to which other prepetition claims are repaid depends on the debtor's disposable income, his debts, and how he classifies the claims in the reorganization plan. *See* 11 U.S.C. § 1322.

4. *Id.* § 1305(a).

5. *Id.* § 1305(a)(1).

6. *In re Joye*, 578 F.3d at 1079. See *infra* Part II.B for a detailed analysis of this case.

7. This Note uses the term "tax-return rule" to describe this rule promulgated by the U.S. Court of Appeals for the Fifth Circuit. *See* United States v. Ripley (*In re* Ripley), 926 F.2d 440 (5th Cir. 1991).

8. This Note uses the term "taxable-year rule" when describing the analysis advanced by the U.S. Court of Appeals for the Ninth Circuit. *See In re Joye*, 578 F.3d 1070.

9. *Id.* at 1077 n.3; *id*. at 1082–83 (Graber, J., dissenting); *In re Senczyszyn*, 426 B.R. 250, 255 (Bankr. E.D. Mich. 2010); *Taxes "Payable" Under § 1305 When Capable of Being Paid*, WEST'S BANKR. NEWSL. (Thomson Reuters/West Eagan, MN), Sept. 9, 2009, at 2; *9th Circuit Rules That Tax Assessed on a Post Chapter 13 Filed Tax Return for a Prepetition Year is a Prepetition Debt*, BANKRUPTCYPROF BLOG (Aug. 23, 2009), http://lawprofessors.typepad.com/bankruptcyprof_blog/9th_circuit_briefs/.

10. Press Release, Am. Bankr. Inst., Total U.S. Bankruptcies in First Half of 2010 Up 14 Percent over First Half of 2009 (Aug. 17, 2010), *available at* http://www.abiworld.org/AM/PrinterTemplate.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=61613 [hereinafter ABI Press Release]. Consumer bankruptcies increased by fifteen percent; chapter 13 filings saw a nine percent increase. *Id.* While these increases are significant, they pale in comparison to the increase in filings seen between the first six months of 2008 and 2009. *See* Press Release, Am. Bankr. Inst., Total

file chapter 13 individual debt repayment plans are approaching pre-2005 levels.[11]

A more plausible explanation, however, is that a significant fact distinguishes the cases that led to these divergent rules, making a direct comparison problematic. A close look at these cases reveals that one court addressed a petition-year tax claim[12] while the other court was concerned with pre-petition-year tax liability.[13] Although the two readings of "become payable" play a role in the subsequent analysis, the type of tax claim before the court must be the initial focus. This Note underscores the importance of properly classifying contested income tax claims, a subject given only a cursory review by courts,[14] as it proposes a cogent framework for analyzing the proper status of these tax claims in a chapter 13 case.

In Part I, this Note provides an overview of the relevant bankruptcy concepts by describing the chapter 13 process generally and the Code's different treatment of prepetition and postpetition claims. Part II presents the analyses of the circuit courts that have addressed the status of income tax liability in a chapter 13 case. In *United States v. Ripley (In re Ripley)*,[15] the U.S. Court of Appeals for the Fifth Circuit discussed a debtor's tax liability in the petition-year and applied a tax-return rule to conclude that the contested tax liability was a postpetition claim. By contrast, the Ninth Circuit in *Joye v. Franchise Tax Board (In re Joye)*[16] applied a taxable-year rule when it concluded that a petition-year income tax claim was incurred prepetition.

Part III observes that, because the two cases are factually distinct, both the type of tax claim faced by each court and the petition-filing timeline are as significant to the courts' conclusions as their respective interpretations of

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U.S. Bankruptcies in First Half of 2009 Up 36 Percent over First Half of 2008; Chapter 11 Business Filings Increase 113 Percent (Aug. 13, 2009), *available at* http://www.abiworld.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=58407.

11. *See Personal Bankruptcy Filings by Quarter: 1992 (1st Quarter)–2009 (1st Quarter)*, AM. BANKR. INST. (2009), http://www.abiworld.org/statcharts/Quarterlypersonalfilingsthrough1Q09.pdf; *Non-business U.S. Bankruptcy Filings by Quarter*, CALCULATEDRISK: FINANCE AND ECONOMICS (Nov. 4, 2009, 11:21:00 AM), http://2.bp.blogspot.com/_pMscxxELHEg/SvGrknvU0fI/AAAAAAAAGuM/jQeNrFCu9F0/s1600-h/ABIOctober2009.jpg. Filings for all consumer bankruptcies increased in anticipation of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA or 2005 Amendments), which substantially changed such bankruptcies. *See Influence of Total Consumer Debt on Bankruptcy Filings: Trends by Year 1980–2008*, AM. BANKR. INST. (2009), http://www.abiworld.org/statcharts/ConsumerDebt-Bankruptcy2008FINAL.pdf.

12. This Note refers to income tax owed in the year a debtor filed his chapter 13 bankruptcy petition as "*petition-year*" tax liability.

13. As used in this Note, "*pre-petition-year*" tax liability is income tax incurred in the year that immediately precedes the petition-year. This terminology should not be mistaken for claims described as "*prepetition*," a broader bankruptcy term that encompasses all claims incurred before the debtor filed his bankruptcy petition.

14. *See* Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 151–52 (B.A.P. 10th Cir. 1998). Neither *In re Ripley* nor *In re Joye* addresses this issue with any great detail.

15. 926 F.2d 440 (5th Cir. 1991).

16. 578 F.3d 1070 (9th Cir. 2009).

the phrase "become payable." Using hypotheticals that illustrate the different claims at issue, Part III presents an analytical framework for determining the status of both petition-year and pre-petition-year income tax liability in chapter 13 cases. Applying that framework, this Note concludes that the taxable-year rule better establishes the critical date upon which taxes "become payable" to a governmental unit.

I. CHAPTER 13: PREPETITION AND POSTPETITION CLAIMS

Properly determining the status of income tax claims has significant ramifications for the individual debtor, the tax agency-creditor, and the advancement of the policy goals served by chapter 13 reorganizations. Part I.A provides a brief overview of the chapter 13 bankruptcy process. Part I.B describes the objectives of the Bankruptcy Code, emphasizing the policies implicated in chapter 13 when the creditor is a taxing authority. In particular, various Code provisions demonstrate congressional deference to federal and state taxing authorities, the involuntary creditors in a bankruptcy case.[17] However, a taxing authority's tardy engagement in bankruptcy cases often conflicts with a debtor's interest in securing speedy approval of their reorganization plans and proper compensation or discharge of their creditors' claims. Part I.C then describes how the Code views the chapter 13 bankruptcy estate.

When courts adjudicate the outcome of income tax claims, they essentially seek to determine whether the claim arose before the debtor filed for chapter 13 or, as noted in § 1305, "while the case is pending."[18] Part I.D distinguishes prepetition and postpetition claims by reviewing the relevant Code provisions and associated Federal Rules of Bankruptcy Procedure. This synopsis defines what constitutes a claim; how claims are prioritized, filed, accepted, barred, and discharged; and the ways in which treatment of a claim differs based on whether it arose before or after the chapter 13 petition was filed.

A. The Chapter 13 Bankruptcy Process

Most consumer-debtors face four options when filing for bankruptcy, only one of which concerns this Note.[19] The chapter 13 reorganization process is a recent addition in the long evolution of bankruptcy law.[20] In

17. *See infra* Part I.B.

18. 11 U.S.C. § 1305 (2006).

19. For an overview of the other forms of bankruptcy protection available for individual debtors, see generally MARJORIE GIRTH, BANKRUPTCY OPTIONS FOR THE CONSUMER DEBTOR (1981) (chapter 7 bankruptcies); CHARLES JORDAN TABB, THE LAW OF BANKRUPTCY 957–84 (1997) (chapter 12 bankruptcies); ELIZABETH WARREN, BUSINESS BANKRUPTCY (1993) (chapter 11 bankruptcies); ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS: TEXT, CASES, AND PROBLEMS 113–271 (6th ed. 2009) (chapter 7 and chapter 11 bankruptcies); Katherine M. Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 AM. BANKR. L.J. 729 (2005) (chapter 12 bankruptcies).

20. *See, e.g.*, W.J. JONES, THE FOUNDATIONS OF ENGLISH BANKRUPTCY: STATUTES AND COMMISSIONS IN THE EARLY MODERN PERIOD (1979); V. MARKHAM LESTER, VICTORIAN INSOLVENCY: BANKRUPTCY, IMPRISONMENT FOR DEBT, AND COMPANY WINDING-UP IN

the early twentieth century, when bankruptcy reorganization was available only to merchants and companies, a man named Valentine Nesbitt improvised a "wage-earner plan" for working individuals.[21] He believed that unscrupulous creditors shared responsibility for a debtor's financial situation and that debtors with a steady income often preferred to repay their debts, but simply required more time to do so.[22] These principles have survived the evolution of our present bankruptcy legislation.

The decision to file for bankruptcy under chapter 13 lies with the debtor alone;[23] creditors cannot force the debtor into a chapter 13 case.[24] Furthermore, although only the creditor of a postpetition claim can submit a proof of claim, the debtor ultimately decides whether a claim is provided for under a reorganization plan, further delegating pivotal decisions to the debtor.[25] The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), also known as the 2005 Amendments to the Bankruptcy Code (2005 Amendments), may have removed some of chapter 13's filing incentives,[26] but the Code's continued emphasis on the debtor's engagement in the process remains noteworthy.

An individual whose secured and unsecured debts do not exceed certain statutory thresholds may elect to repay creditors over time by proposing a debt repayment plan under chapter 13 of the Code.[27] A debt repayment plan commits all of the debtor's "disposable income" (as determined by a codified formula) to a bankruptcy trustee for a period of three to five

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NINETEENTH-CENTURY ENGLAND (1995); DAVID A. SKEEL, JR., DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA (2001) (examining the history and evolution of bankruptcy reform in the United States).

21. Timothy W. Dixon & David G. Epstein, *Where Did Chapter 13 Come from and Where Should It Go?*, 10 AM. BANKR. INST. L. REV. 741, 749–50 (2002).

22. *Id.* at 749.

23. However, since Congress adopted the "means test" in BAPCPA, certain debtors that do not qualify may be precluded from filing under chapter 7. In those cases, the case would either be dismissed or converted, with the debtor's permission, to a chapter 11 or chapter 13 reorganization. *See* 11 U.S.C. § 707(b) (2006).

24. CHARLES J. TABB & RALPH BRUBAKER, BANKRUPTCY LAW: PRINCIPLES, POLICIES, AND PRACTICE 73 (2d ed. 2006); *see also* 11 U.S.C. § 303(a).

25. *See* 1 HENRY J. SOMMER, CONSUMER BANKRUPTCY LAW & PRACTICE 131 (9th ed. 2009).

26. *See, e.g.*, *id.* at 4, 307 (listing changes in the 2005 Amendments that made filing under chapter 13 a less attractive option for debtors while noting that, its "Orwellian title" notwithstanding, the 2005 Amendments are "clearly *not* a 'Consumer Protection Act'"); Jack F. Williams & Jacob L. Todres, *Tax Consequences of Post-Petition Income as Property of the Estate in an Individual Debtor Chapter 11 Case and Tax Disclosure in Chapter 11*, 13 AM. BANKR. INST. L. REV. 701, 701 (2005) (declaring governmental taxing authorities the "major winners" in the 2005 Act).

27. *See* 1 SOMMER, *supra* note 25, at 287–88. Effective April 1, 2010, eligibility requirements for chapter 13 filers limit a debtor to no more than $360,475 in unsecured liquidated debt and $1,081,400 in secured liquidated debt. 11 U.S.C. § 109(e) (2010); U.S. BANKR. COURT E.D. VA., AUTOMATIC ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS IN THE BANKRUPTCY CODE AND OFFICIAL BANKRUPTCY FORMS (2010), *available at* www.vaeb.uscourts.gov/FILES/20100401_adj.pdf. The eligibility requirements are readjusted for inflation every three years. *See* 11 U.S.C. § 104(b) (2006); 1 SOMMER, *supra* note 25, at 308.

years.[28] Those funds are then distributed to repay creditors' claims "provided for" in the plan.[29]

Although over the course of the repayment period, secured claims must be fully repaid,[30] if the estate is unable to fully compensate a debtor's unsecured liabilities, courts allow the pro rata compensation of these claims.[31] As a limiting rule, however, individual debtors must propose to repay unsecured creditors at least as much as they would have received if the debtor's assets had been liquidated.[32] These rules apply to the repayment of priority unsecured income tax claims as well.[33]

The trustee decides if the plan is feasible given the debtor's ability to pay[34] and whether it is confirmable.[35] The court sets a meeting of the creditors and a bar date by which creditors must present proofs of claims.[36] The claims are generally allowed, unless a party in interest objects.[37] Although this process is rather rigid, the Code provides bankruptcy filers with the flexibility to design the plan, including the distribution of claims, as they see fit. These plans are endorsed by the bankruptcy trustee prior to court approval of the plan at a confirmation hearing.[38]

Once confirmed, a chapter 13 plan is res judicata over all claims for which the plan provides, thereby binding all debtors and creditors to its provisions.[39] For the duration of the plan, the debtor hands over his disposable income to the trustee, who compensates creditors' claims with

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28. *See* 11 U.S.C. § 1325(b)(2), (b)(4).

29. *Id.* §§ 1325(a)(5), 1302(b)(3). Creditors are those who have a claim against a debtor or his estate that arose before or when the debtor filed a bankruptcy petition. *Id.* § 101(10). Claims, as described more fully below, are defined broadly as rights to payment and embrace even a debtor's remote or contingent obligations. *See id.* § 101(5); H.R. REP. NO. 95-595, at 309 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266; *infra* Part I.D.1.

30. *See* 11 U.S.C. §§ 362–64; Lucian Arye Bebchuk & Jesse M. Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy: Further Thoughts and a Reply to Critics*, 82 CORNELL L. REV. 1279, 1281 (1997).

31. *In re* Penn-Mahoning Mining, Inc., 45 B.R. 51, 52 (Bankr. M.D. Pa. 1984); *see also* C. RICHARD MCQUEEN & JACK F. WILLIAMS, TAX ASPECTS OF BANKRUPTCY LAW AND PRACTICE § 8:16 (3d ed. 1997, updated June 2010).

32. 11 U.S.C. § 1325(a)(4); David G. Epstein, *What Happens During a Chapter 13 Bankruptcy Case?*, *in* UNDERSTANDING THE BASICS OF BANKRUPTCY & REORGANIZATION 501, 506 (2006) (PLI Comm. L. & Practice, Course Handbook Ser. No. 9087, 2006).

33. *See infra* Part I.D.2.a.

34. 11 U.S.C. §§ 1325(a)(6), 1302(b), 704(a)(4).

35. Epstein, *supra* note 32, at 505.

36. 11 U.S.C. § 501. The bar date is the deadline for filing claims. Claims for most creditors must be filed within ninety days of the first scheduled meeting of the creditors. The claims of taxing authorities benefit from a more generous deadline. FED. R. BANKR. P. 3002(c); 7 NORTON & NORTON, *supra* note 2, § 146:8, at 146-32, 146-38 to 146-40; *see also* 11 U.S.C. § 1322(b).

37. 11 U.S.C. § 502(a). In a chapter 13 proceeding, a "party in interest" refers to the trustee, the debtor, and the creditors (who may object to the claim of another creditor). *See* 4 COLLIER ON BANKRUPTCY ¶ 502.02[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2009); *see also* Kowal v. Malkemus (*In re* Thompson), 965 F.2d 1136 (1st Cir. 1992); *In re* Grassgreen, 172 B.R. 383 (M.D. Fla. 1994); *In re* Simon, 179 B.R. 1, 6–7 (Bankr. D. Mass. 1995).

38. 11 U.S.C. §§ 1324, 1322(b).

39. *Id.* § 1327(a); *see also* 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1327.01.

deferred payments over time.[40] The chapter 13 case can end in three ways: (1) the case is dismissed for cause or by the debtor's choice;[41] (2) the case is converted into a chapter 7, 11, or 12 proceeding;[42] or (3) the debtor completes the plan and any remaining debts—including the unsecured priority tax claims provided for in the plan—are discharged.[43]

A plan "provides for" a claim if the plan either deals with or refers to a claim; actual payment or benefit to the creditor is not necessary.[44] Effectively, a chapter 13 plan may provide for a claim even if the trustee does not allocate any of the debtor's disposable income toward satisfying that debt. In the income tax context, this can occur if a taxing authority's proof of claim was filed after the bar date or otherwise disallowed.[45] This characteristic of chapter 13 plans plays a marked role in the dischargeability of tax claims in the cases discussed in Part II.[46]

Chapter 13 can be an attractive alternative to liquidation for a number of reasons. From a creditor's perspective, a debt repayment plan could provide more compensation for unsecured claims than a sale of non-exempt assets.[47] Debtors also benefit, by retaining non-exempt property while protecting cosigners to their debt.[48] Moreover, the "superdischarge" provision in chapter 13 proceedings is more generous than the chapter 7 discharge.[49] Of particular relevance to this Note, priority unsecured income

40. 11 U.S.C. § 1326(a)–(b).

41. *Id.* § 1307.

42. *Id.*; *see also id.* §§ 706, 1112, 1208.

43. *Id.* § 1328; *see also id.* §§ 523–24.

44. *See* Lawrence Tractor Co. v. Gregory (*In re* Gregory), 705 F.2d 1118, 1122 (9th Cir. 1983); MCQUEEN & WILLIAMS, *supra* note 31, § 10:13.

45. MCQUEEN & WILLIAMS, *supra* note 31, § 10:13.

46. *See infra* Parts I.D.2.c, II.

47. William C. Whitford, *Has the Time Come To Repeal Chapter 13?*, 65 IND. L.J. 85, 102 (1989); *see also* 11 U.S.C. § 1325(a)(4).

48. Whitford, *supra* note 47, at 94.

49. *Compare* 11 U.S.C. § 727, *with id.* § 1328. The superdischarge is subject to a debtor's good-faith attempt to repay creditors to the extent possible. Robert J. Bein, *Subjectivity, Good Faith and the Expanded Chapter 13 Discharge*, 70 MO. L. REV. 655, 656 (2005). Certain debts, including obligations arising out of some willful and malicious torts, settlement debts for marital property, and debts outstanding from a previous bankruptcy case, are not dischargeable. 11 U.S.C. § 1328(a). In addition, changes implemented by the BAPCPA narrowed the scope of chapter 13's discharge. *See* 1 SOMMER, *supra* note 25, at 307. The chapter 13 superdischarge no longer discharges taxes that should have been withheld and must be repaid, debts related to a debtor's fraudulent behavior or willful tax evasion, and debts incurred just prior to filing for bankruptcy. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.); *see also* 11 U.S.C. § 1328 (general chapter 13 discharge provision, which when speaking to nondischargeability of certain debts, incorporates by reference § 507(a)(8)(C) (trust fund taxes), § 523(a)(1)(B)–(C) (willful tax evasion), and § 523(a)(2)–(4) (fradulent behavior and recently incurred debts)). Moreover, an individual who benefitted from a chapter 13 discharge in the preceding two years or a chapter 7, 11, or 12 discharge in the preceding four years is now precluded from receiving another superdischarge. *Id.* § 1328(f).

tax claims that normally must be fully repaid may be discharged if they were improperly filed.[50]

Despite the potential benefits to both debtors and creditors alike, chapter 13 reorganization remains a long and arduous process.[51] That may explain why, in spite of congressional attempts to direct potential bankruptcy filers to chapter 13,[52] individuals who seek to liquidate their assets continue to far outnumber those who opt to reorganize.[53] The next section builds on this brief overview of chapter 13 by describing some of the general policy rationales implicated by chapter 13 and the additional considerations presented when the creditor is a taxing authority.

B. Bankruptcy Policies

In its modern incarnation, the Bankruptcy Code is widely acknowledged to further two goals: (1) compensate creditors equitably, and (2) provide filers with a clean financial slate—the debtor's fresh start.[54] Among creditors, holders of unsecured claims in particular stand to benefit from a chapter 13 proceeding. A bankruptcy case can increase the collective value

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50. *See supra* text accompanying notes 39–46; *see also In re* Elstien, 238 B.R. 747, 756 (Bankr. N.D. Ill. 1999) ("If the plan provides for a debt, but the creditor fails to file a claim, the underlying debt will not be paid but will be discharged."); *In re* Rothman, 76 B.R. 38, 41 (Bankr. E.D.N.Y. 1987) (finding tax claim dischargeable even if tax agency did not know the value of the claim before the bar date passed); 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1328.02[2].

51. *See* 11 U.S.C. § 1322(d) (describing the duration of a chapter 13 repayment plan as ranging from three to five years); *see also* Jean Braucher, *Getting Realistic: In Defense of Formulaic Means Testing*, 83 AM. BANKR. L.J. 395, 397–98 (2009) (noting that the chapter 13 completion rate has historically hovered around thirty-three percent (citing NAT'L BANKR. REVIEW COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS 90 (1997); Scott F. Norberg and Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 476 (2006); William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy As Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, 68 AM. BANKR. L.J. 397, 410–11 (1994))).

52. Congress, worried in part that some debtors who could repay their creditors might file under chapter 7 in order to avoid doing so, implemented needs-based reforms, among others, in hopes of increasing the "rate of repayment to creditors." *See* H.R. REP. NO. 109-31, pt. 1, at 11–12 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 98–99.

53. *See* ABI Press Release, *supra* note 10 (demonstrating that during the first six months of 2010, nearly twenty-seven percent of consumer debtors filed under chapter 13 while seventy-three percent filed under chapter 7). The number of chapter 13 filers still exceeded 208,000 in the first six months of 2010. *Id.*; Am. Bankr. Inst., *Quarterly Non-Business Filings By Chapter (1994–2010)* (2010), *available at* http://www.abiworld.org/AM/AMTemplate.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=58410 (last visited Oct. 23, 2010).

54. *See, e.g.*, *In re* Stewart, 290 B.R. 302, 306 (Bankr. E.D. Mich. 2003); *In re* Robertson, No. 697-61956, 2000 WL 33716977, at *2 (Bankr. D. Or. Jan. 7, 2000); *In re* Cason, 190 B.R. 917, 927 (Bankr. N.D. Ala. 1995); 1 SOMMER, *supra* note 25, at 19; 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1101 (Fred B. Rothman 1991) (1833); TABB & BRUBAKER, *supra* note 24, at 73; Gregory L. Germain, *Income Tax Claims in the Year of Bankruptcy: A Congressionally Created Quagmire*, 59 TAX LAW. 329, 331 (2006). *But see* Eric A. Posner, *Should Debtors Be Forced into Chapter 13?*, 32 LOY. L.A. L. REV. 965, 972 (1999) (providing an economic context for bankruptcy and describing two purposes of relevant law: "minimize the cost of credit" and "provide insurance against income shocks").

of the debtor's assets while reducing externalities, differences in recoveries, and administrative costs.[55] In its concern for creditors, Congress differentiates government-agency creditors from ordinary creditors. Recognizing that taxing authorities serve as involuntary creditors to tens of millions of individuals,[56] the Code includes language that provides greater leeway to these government organizations.[57] This preference is evident in the later bar date for claims submitted by a governmental unit[58] and the elimination of an administrative requirement that facilitates repayment of certain tax claims.[59] These provisions illustrate the special emphasis that Congress places on compensating the tax agency-creditor in a chapter 13 case.

Despite the obvious detriment to creditors when courts discharge an individual's debts, the fresh-start policy has been entrenched in bankruptcy law ever since the Supreme Court described the Code as providing "the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."[60] A former debtor's post-discharge productivity can be valuable;[61] bankruptcy laws, in turn, appreciate these post-discharge social gains more than binding debtors indefinitely to their creditors.[62] Bankruptcy scholarship has justified this policy in various ways.[63]

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55. Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 YALE L.J. 857, 859–68 (1982).

56.

> Since tax authorities are creditors of practically every taxpayer . . . tax collection rules for bankruptcy cases have a direct impact on the integrity of the Federal, State and local tax systems. . . . To the extent that debtors in a bankruptcy are freed from paying their tax liabilities, the burden of making up the revenues thus lost must be shifted to other taxpayers.

S. REP. NO. 95-989, at 14 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5800.

57. *See, e.g.*, 11 U.S.C. § 503(b)(1)(D) (2006) (waiving the filing requirement for governmental agencies that seek repayment of their second priority administrative expenses); *id.* § 1305(a) (allowing government agencies to file postpetition claims for taxes); *id.* § 502(b)(9) (extending the bar date for proofs of government tax claims); FED. R. BANKR. P. 3002(c) (same).

58. Ordinary creditors must generally submit a proof of claim within ninety days of the first meeting of the creditors; the bar date for claims submitted by a governmental organization is 180 days, a deadline that courts may further extend for cause. FED. R. BANKR. P. 3002(c); *see also* 11 U.S.C. § 502(b)(9).

59. 11 U.S.C. § 503(b)(1)(B) describes that administrative priority claims include postpetition taxes incurred by the estate. Congress amended that provision to clarify that "a governmental unit shall not be required to file a request for the payment of an expense . . . as a condition of its being an allowed administrative expense." 11 U.S.C. § 503(b)(1)(D).

60. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

61. *See* THOMAS L. FRIEDMAN, THE LEXUS AND THE OLIVE TREE 367 (1999) (noting, within a discussion about crises triggered by bad lenders and bad borrowers, "You want people to take advantage of leverage. You want people to take risks—even crazy risks. This is how fledgling enterprises get funded and either go bankrupt or turn into Microsoft").

62. Lee Dembart & Bruce A. Markell, *Alive at 25? A Short Review of the Supreme Court's Bankruptcy Jurisprudence, 1979–2004*, 78 AM. BANKR. L.J. 373, 376 (2004).

63. *See, e.g.*, Kenneth Ayotte, *Bankruptcy and Entrepreneurship: The Value of a Fresh Start*, 23 J.L. ECON. & ORG. 161 (2006) (looking at the debtor's fresh start in an entrepreneurial context); Dembart & Markell, *supra* note 62, at 376 ("As a country, we not only acknowledge failure, but accommodate it, and calculate that the societal gains from

Although the Code hopes to address all of a debtor's claims in bankruptcy, when the creditor of a contested claim is a taxing authority, the implications for third parties further complicate the calculus. On one hand, the public has a social interest in ensuring that all taxpayers pay their taxes.[64] On the other hand, while the Code's accommodation of the Internal Revenue Service (IRS) and other taxing authorities may benefit taxpayers, this occurs at the expense of other non-governmental creditors.[65] Priority status and permissive filing deadlines combine to leave ordinary creditors and especially those with unsecured claims further down the distribution chain.

The challenge for courts adjudicating bankruptcy proceedings is to properly balance the inherently conflicting interests of creditors and debtors.[66] This Note revisits these policies when considering the consequences of declaring contested income taxes a dischargeable prepetition claim or a nondischargeable postpetition claim.[67]

C. The Bankruptcy Estate

As part of the Bankruptcy Tax Act of 1980,[68] the tax code began to apply special rules to the bankruptcy estates of individual filers under chapters 7 and 11. When an individual files a petition under chapter 11 or chapter 7, the Code treats the subsequently created bankruptcy estate as a separate taxable entity.[69] The Internal Revenue Code (IRC) allows these debtors to make a short-year election, which treats the debtor's taxable year as two separate taxable years, one ending the day before the bankruptcy begins and the other beginning on the date the case commences.[70] That election,

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returning debtors to society to be productive outweigh the gains to creditors from keeping debtors in bondage."); Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393 (1985) (using a normative model to justify the bankruptcy discharge).

64. S. REP. NO. 95-598, at 14 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5800. The Internal Revenue Service (IRS) estimates that the gross tax gap, the difference between what taxpayers legally owe and what they pay on time, was $345 billion for the 2001 taxable year. Even after accounting for late but voluntary payments and IRS enforcement actions, the estimated net tax gap for the same year was $290 billion, over seventy percent of which the IRS attributes to the individual income tax. OFFICE OF TAX POLICY, U.S. DEP'T OF THE TREASURY, A COMPREHENSIVE STRATEGY FOR REDUCING THE TAX GAP 5 (2006). The majority of federal revenue derives from individual income tax, which is then spent on various programs including Social Security, Medicare, national defense, education, and transportation, among others. *See* Fact Sheet on the Economics of Taxation, U.S. DEPARTMENT OF THE TREASURY, http://www.ustreas.gov/education/fact-sheets/taxes/economics.shtml (last visited Oct. 23, 2010).

65. *See* Gregory Germain, *Discharging Income Tax Liabilities in Bankruptcy: A Challenge to the New Theory of Strict Construction for Scrivener's Errors*, 75 UMKC L. REV. 741, 755–56 (2007) (describing how debtors who invoke the assessable-within-240-days priority rule for income tax liability can reduce funds available to compensate unsecured creditors).

66. Energy Res. Co. v. IRS (*In re* Energy Res. Co.), 871 F.2d 223, 230 (1st Cir. 1989) (noting that the Code's twin purposes are "often conflicting"), *aff'd* 495 U.S. 545 (1990).

67. *See infra* Part III.B–C.

68. Pub. L. No. 96-589, 94 Stat. 3389.

69. I.R.C. § 1398 (2006).

70. *Id.* § 1398(d)(2)(A).

among other things, allows debtors to allocate their tax burden corresponding to income earned postpetition to the bankruptcy estate.[71] The estate for chapter 13 filers, however, resembles that of corporations and partnerships filing under chapter 11: all are excluded from opting to apply this short-year election.[72] The legislative history behind the short-year election suggests that it was meant to benefit individuals,[73] making the exclusion of chapter 13 filers slightly puzzling. After all, only individuals (or couples) may file under chapter 13.

Then again, the chapter 13 estate is functionally different from the estate in chapters 7 or 11. Bankruptcies under chapters 7 or 11 allocate a debtor's prepetition property to the bankruptcy estate while preserving postpetition property in the individual.[74] The chapter 13 estate is more ambitious. It encompasses not only all of the property noted in Code § 541 but also the debtor's property and earnings acquired while the case is pending.[75] In particular, the debtor entrusts a designated portion of his income to the bankruptcy trustee for the duration of the case.[76] As a result, the chapter 13 bankruptcy estate has no separate taxable identity[77]—an operative distinction acknowledged by the legislative history.[78]

In light of this history, courts are reluctant to allow chapter 13 debtors to make a short-year election absent an expression of congressional intent, a decision that complicates the treatment of petition-year income tax liability for debtors who file under chapter 13.[79] Given the Code's distinguished

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71. Jacob L. Todres, *Corporate Bankruptcy: Treatment of Filing Year Income Tax—A Suggested Approach*, 9 AM. BANKR. INST. L. REV. 523, 550 (2001). Postpetition tax incurred by the estate garners second priority administrative status. *See* 11 U.S.C. § 507(a)(2).

72. *See* I.R.C. § 1399; MCQUEEN & WILLIAMS, *supra* note 31, § 6.10.

73. S. REP. NO. 96-1035, at 5 (1980), *reprinted in* 1980 U.S.C.C.A.N. 7017, 7020 ("[T]he bill [for the Bankruptcy Tax Act of 1980] generally gives an individual debtor an election to close his or her taxable year as of the day the bankruptcy case commences.").

74. *See* 11 U.S.C. § 541 (describing preserved property).

75. *See* MCQUEEN & WILLIAMS, *supra* note 31, § 6:09. *Compare* 11 U.S.C. § 1306 (noting that, in addition to § 541 property, property in the chapter 13 estate includes all specified property acquired "after the commencement of the case but before the case is closed, dismissed, or converted" and "earnings from services performed"), *with id.* § 541 (listing property assumed by the estates in all voluntary, joint, and involuntary banckruptcy cases).

76. 11 U.S.C. § 1306(a)(2).

77. S. REP. NO. 96-1035, at 4 (1980), *reprinted in* 1980 U.S.C.C.A.N. 7017, 7020 ("[N]o separate taxable entity is created by commencement of a bankruptcy case in which the debtor is an individual in a case under chapter 13 . . . .").

78. *See id.* at 25, *reprinted in* 1980 U.S.C.C.A.N. 7017, 7040 n.2 (rationalizing the different treatment of estates because chapter 13 debtors may continue to earn income and apply those assets toward repaying creditors).

79. *See In re* Wilkoff, No. 09-34354, 2001 WL 91624, at *7–9 (Bankr. E.D. Pa. 2001) (holding that the entire balance of a petition-year income tax claim was an unsecured postpetition claim without priority status); *In re* Michaelson, 200 B.R. 862, 866 (Bankr. D. Minn. 1996) (applying circuit precedent established in the context of corporate bankruptcy to a chapter 13 case when recognizing eighth priority for the petition-year taxes attributed to the period before filing for bankruptcy); Germain, *supra* note 54, at 393–97. Because the Code views the bankruptcy estates in corporate chapter 11 and individual chapter 13 cases similarly, courts' treatment of corporate bankruptcies can be instructive. For a discourse on the judicial struggle to analyze petition-year tax liability in a corporate chapter 11 context,

discharge practices for prepetition and postpetition claims, chapter 13 filers unable to truncate their tax year may be forced to litigate the status of petition-year and pre-petition-year tax liability.[80]

D. Treatment of Claims in Chapter 13

A combination of provisions in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure governs the process by which claims are included in a chapter 13 debt repayment plan. In the cases described in Part II, the central disagreement between the debtor and the creditor-tax agencies is whether income tax claims that had been improperly filed by the creditor were postpetition claims within the meaning of § 1305(a).[81] Because the chapter 13 superdischarge permits the discharge of certain claims that would ordinarily qualify for priority[82] (but only if they arose prepetition), courts may discharge improperly filed prepetition tax claims once the debtor completes his bankruptcy plan.[83] By contrast, postpetition claims are generally non-dischargeable.[84] In the narrow factual circumstances addressed by the courts in Part II, the ruling on claim status effectively determined the dischargeability of the claim.[85] Part I.D provides the statutory background needed to classify and distinguish taxes owed during the prepetition and postpetition periods, and it serves as a foundation for the subsequent discussion.

1. Defining Claims in Bankruptcy Proceedings

When Congress passed the Bankruptcy Reform Act of 1978,[86] it broadly defined "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."[87] Congress affirmed that the expansive language reflected its intent, remarking that "all legal obligations of the debtor, no matter how remote or

see Graham Stieglitz, *Stuck in the Middle Again! How To Treat Straddle-Year Income Taxes in a Corporate Chapter 11 Reorganization*, 9 AM. BANKR. INST. L. REV. 467 (2001) (describing various arguments proposed by the courts to reconcile a corporation's petition-year tax liability); Todres, *supra* note 71, at 553 (proposing a solution to the tension between treatment of corporate petition-year tax liability by the Bankruptcy and Internal Revenue Codes).

80. *See, e.g.*, United States v. Ripley (*In re* Ripley), 926 F.2d 440 (5th Cir. 1991); *In re* Ryan, 78 B.R. 175 (Bankr. E.D. Tenn. 1987); *In re* Rothman, 76 B.R. 38 (Bankr. E.D.N.Y. 1987).

81. *See infra* Part II.

82. *See infra* Part I.D.2.a, Part I.D.3.a.

83. *See infra* text accompanying notes 123–36.

84. *See infra* text accompanying notes 165–70.

85. *See infra* Part II.A (for the *Ripley* context), Part II.B (for the *Joye* context).

86. Pub. L. No. 95-598, 92 Stat. 2549.

87. 11 U.S.C. § 101(5)(A) (2006); *see also* Thomas E. Plank, *Bankruptcy and Federalism*, 71 FORDHAM L. REV. 1063, 1104 (2002). The Code also considers the "right to an equitable remedy for breach of performance" to be a claim. 11 U.S.C. § 101(5)(B).

contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court."[88]

Both the Code and the accompanying legislative history demonstrate that claims include contingent claims that have not yet accrued before the case commenced.[89] This definition is significant. Tax claims can be contingent but valid prepetition claims based on a debtor's statutory duty to pay taxes, even if a taxing authority has yet to make a formal assessment after the filing date.[90]

The Code distinguishes between prepetition claims, which arise before the debtor files his bankruptcy petition, and postpetition claims, which arise after.[91] Consequently, most courts' discussions of § 1305 depends on whether a provision that applies solely to postpetition claims should be applied to the tax claim at issue or, in short, whether a claim was indeed a postpetition claim.[92] A court's ruling that a claim arose prepetition could prove fatal to a creditor's attempt to recover it.

The following discussion provides an overview of prepetition claims and postpetition claims, and the priority, filing, and discharge provisions that apply to each. Part I.D.2 describes the Code provisions and Rules that apply to prepetition claims, while Part I.D.3 provides a parallel discussion for claims that arise postpetition.

2. Prepetition Claims

Though not explicitly defined in the Code, prepetition claims are those that are incurred and owed before a debtor files his bankruptcy petition.[93] In addition, one part of the Code, § 502(i), states that certain debt—tax claims incurred by a debtor prepetition but that "arise" after the filing date—should be treated as prepetition claims.[94] This has been interpreted to mean that "only taxes incurred by the debtor prepetition but not becoming due and payable until after the petition is filed" are essentially prepetition claims under this statute.[95] The general rule asserts that a tax liability incurred during the prepetition period is *not* a postpetition claim "even though a return of or payment on such tax claim is not due until after

88. H.R. REP. NO. 95-595, at 309 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266.

89. *See id.*; *see also* 11 U.S.C. § 101(5) (defining "claim").

90. *See* Goldston v. United States (*In re* Goldston), 104 F.3d 1198 (10th Cir. 1997).

91. *Compare infra* Part I.D.2 (describing Code's treatment of prepetition claims), *with infra* Part I.D.3 (describing Code's treatment, or lack thereof, for postpetition claims).

92. *Compare* Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070 (9th Cir. 2009) (holding § 1305 was inapplicable to what it determined was a prepetition claim), *with* United States v. Ripley (*In re* Ripley), 926 F.2d 440 (5th Cir. 1991) (finding claim arose postpetition and thus, § 1305 applied).

93. *See* BLACK'S LAW DICTIONARY 1301 (9th ed. 2009) ("Occurring before the filing of a petition (esp. in bankruptcy).").

94. *See* 11 U.S.C. § 502(i) ("A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) . . . shall be allowed . . . or disallowed . . . the same as if such claim had arisen before the date of the filing of the petition.").

95. *See* 4 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 502.10[2].

the petition is filed."[96] This statement appears to reference pre-petition-year tax liability. However, when part, but not all, of a claim was incurred before the petition was filed, creditors and debtors may contest the status of that petition-year claim.

a. Priority

All chapter 13 plans must propose to fully compensate the holders of priority claims unless the creditor agrees otherwise.[97] The standard for creditor agreement tends to vary by court.[98] Section 507 of the Code determines whether a claim merits priority status, an outcome that determines the order of claim repayment.[99] Income tax claims usually receive eighth priority if: (1) including extensions, a return for the taxes was due in the three years preceding the filing date (essentially, a three-year statute of limitations);[100] (2) the taxing agency assessed the tax within 240 days of the petition-filing date;[101] or (3) the tax was assessable postpetition.[102] Based on the statute, most income taxes, except those that are "stale," qualify as a priority claim.[103] Thus, in most cases, a debtor's

96. *Id.* ¶ 502.10[1], at 502-73.

97. *See* 7 NORTON & NORTON, *supra* note 2, § 146:12, at 146-59 to 146-60. That mandate emerged in the 2005 Amendments, where Congress eliminated some of the benefits of filing under chapter 13. Just a few of these changes include limiting the breadth of the chapter 13 superdischarge, 11 U.S.C. § 1328(a); creating additional administrative and payment obligations, 11 U.S.C. §§ 521, 1308, 1326(a); and adding restrictions for debtors that refile or convert to chapter 7, 11 U.S.C §§ 362(c)(3)–(4), 348(f). *See also* 1 SOMMER, *supra* note 25, at 287.

98. *See* 7 NORTON & NORTON, *supra* note 2, § 149:4, at 149-12 to 149-13 nn.4–5 (listing cases). Some courts deem a creditor's failure to object as "agreement" while others require an express agreement by the creditor. *Compare In re* Puckett, 193 B.R. 842 (Bankr. N.D. Ill. 1996) (failure to object at confirmation, or to appeal a confirmation order, precludes a later challenge to chapter 13 plan), *and In re* Hebert, 61 B.R. 44 (Bankr. W.D. La. 1986) (creditor's failure to object to a plan's treatment of its claim constitutes assent to such treatment), *with In re* Smith, 212 B.R. 830 (Bankr. E.D. Va. 1997) (failure to object to plan is insufficient to meet consent requirement), *and In re* Northrup, 141 B.R. 171 (N.D. Iowa 1991) (requiring an "express affirmation of consent").

99. 11 U.S.C. § 507.

100. *Id.* § 507(a)(8)(A)(i). As noted in the Code's legislative history, the Internal Revenue Code (IRC) provides taxing authorities with "three years to pursue delinquent debtors . . . . If a debtor files bankruptcy before that three-year period has run, the taxing authority is given a priority in order to compensate for its temporarily disadvantaged position." H.R. REP. NO. 95-595, at 190 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6150. This history, which recognizes that taxing authorities are involuntary creditors, provides perspective for the three-year statute of limitations for income tax claims when determining eighth priority status. 4 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 507.11[1][b].

101. 11 U.S.C. § 507(a)(8)(A)(ii).

102. *Id.* § 507(a)(8)(A)(iii).

103. *See id.* § 507(a)(8); *see also* Geoff Giles, *The New Bankruptcy Law: Bad News for Debtors, Worse News for Lawyers*, 13 NEV. LAW. 8, 8 (2005) (using the phrase "stale taxes"); Carl M. Jenks, *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Summary of Tax Provisions*, 79 AM. BANKR. L.J. 893, 899–901 (2005) (describing the BAPCPA changes to the priority status of stale tax claims).

bankruptcy plan should fully provide for income tax claims accorded priority status in the chapter 13 plan.[104]

b. Filing Rules

All claims must be filed within the time frame designated by the Code and Rules. Although the Code only notes that a creditor "may" file a proof of claim,[105] the Federal Rules of Bankruptcy Procedure create an explicit requirement.[106] Rule 3002(c) decrees that, for ordinary creditors, a proof of claim must be filed within ninety days of the first meeting of the creditors.[107]

Prepetition claims submitted by governmental entities, however, benefit from a more flexible standard. Governed by the exception in Rule 3002(c)(1), governmental units generally may submit a proof of claim within 180 days and still be timely.[108] Moreover, if a debtor files his tax return after the 180-day governmental filing deadline has passed, the taxing authority may file a proof of claim within sixty days of the date on which the debtor filed his return.[109] Finally, courts will provide taxing authorities additional time to file a proof of claim if they show "cause." Essentially, Rule 3002(c) treats proof of tax claims uniquely because the government's deadline for submitting its claim should be relative to when the debtor submits his return.[110] Notwithstanding these accommodations, if a claim is filed late, it will be disallowed.[111]

Despite being timely filed, a claim may be disallowed for a variety of other reasons.[112] In addition, courts may disallow claims for reasons hinging on bankruptcy-specific policies, such as claims for postpetition interest,[113] certain employment claims,[114] and damages derived from a dispute over leased property.[115]

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104. 11 U.S.C. § 1322(a)(2).

105. *See* 11 U.S.C. § 501.

106. FED. R. BANKR. P. 3002(a) ("An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed . . . ."). Rule 3002(a) excepts certain claims from the filing requirement: claims filed before a case is converted to chapter 7, see FED. R. BANKR. P. 1019(3), and claims filed on behalf of the creditor by a debtor, trustee, guarantor, surety, endorser, or other co-debtor from the proof of claim requirement, see FED. R. BANKR. P. 3004–05.

107. FED. R. BANKR. P. 3002(c).

108. *Id.* 3002(c)(1).

109. *Id.*

110. *See id.*

111. 11 U.S.C. § 502(b)(9) (2006); TABB, *supra* note 19, at 489, 491.

112. Substantive non-bankruptcy reasons could include the lack of an enforceable claim (which could be due to usury, material breach, or the expiration of the statute of limitations, among others). 4 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 502.03[2][b][ii], at 502-22 to 502-23 (usury); TABB, *supra* note 19, at 488.

113. 11 U.S.C. § 502(b)(2); TABB, *supra* note 19, at 488–89.

114. 11 U.S.C. § 502(b)(7); TABB, *supra* note 19, at 490–91.

115. 11 U.S.C. § 502(b)(6); TABB, *supra* note 19, at 489–90.

Although Rule 3002 requires a creditor to file a proof of claim, the standard for what constitutes "proof" is quite low.[116] A writing that demonstrates both a debt against the estate and an intent to hold the estate liable will be accepted if fair and filed with the bankruptcy court.[117] Moreover, although prepetition creditors are responsible for submitting proofs of their claims, if a creditor fails to do so before the bar date, the debtor or the trustee may do so on the creditor's behalf.[118] In fact, unless disputed, contingent or unliquidated prepetition claims are "deemed" filed if a debtor or the bankruptcy trustee lists the claim on the schedule filed with the court.[119]

Reflecting the Code's effort to make bankruptcy as comprehensive as possible for individual debtors, the Code inclusively admits claims in a chapter 13 plan: absent an objection by a "party in interest,"[120] a claim will be "deemed allowed."[121] While priority status increases the odds that a claim in bankruptcy will be repaid, not even priority tax claims can survive an agency's failure to file a timely proof of claim.[122] As a result, any uncertainty or ambiguity regarding a government agency's timeline for submitting a proof of claim can lead to the incongruous results emerging from the courts.

c. Dischargeability

Properly classifying tax claims is essential to determining their dischargeability. According to the Code, in most cases, both secured claims

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116. *See In re* Boehm, 255 B.R. 686 (Bankr. E.D. Ky. 2000) (declaring that the IRS's "penalty" claim did not require supporting documentation to constitute valid proof of claim); United States v. Braunstein (*In re* Pan), 209 B.R. 152 (D. Mass. 1997) (holding that, by submitting IRS Form 4340, the IRS had provided presumptive proof of a valid tax assessment and sufficient proof of a claim).

117. Pizza of Haw., Inc. v. Shakey's, Inc. (*In re* Pizza of Haw., Inc.), 761 F.2d 1374, 1381 (9th Cir. 1985); *In re Pan*, 209 B.R. at 155.

118. 11 U.S.C. § 501(c). In a chapter 13 proceeding, it is in the debtor's interest to include as many claims as possible.

119. 4 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 501.01[3][c].

120. In a chapter 13 proceeding, the "party in interest" includes the trustee, the debtor, and creditors, who may in limited circumstances object to the claim of another creditor. *See id.* ¶ 502.02[2]. Although the bankruptcy trustee is the "primary spokesman" for all creditors in a bankruptcy case, when the trustee does not act or a creditor's rights are directly affected by a claim, the creditor may voice his objection. *Id.* ¶ 502.02[2][d]; *see also* Kowal v. Malkemus (*In re* Thompson), 965 F.2d 1136 (1st Cir. 1992); *In re* Simon, 179 B.R. 1, 6–7 (Bankr. D. Mass. 1995).

121. 11 U.S.C. § 502(a).

122. *See, e.g.*, *In re* Miller, 90 B.R. 317 (Bankr. E.D. Tenn. 1988) (refusing to allow the IRS to file a late amendment of proof of penalty claim in a chapter 13 case); *In re* Burrell, 85 B.R. 799 (Bankr. N.D. Ill. 1988) (refusing to recognize the IRS's undersecured and unsecured income tax claims in a chapter 13 case because, despite proper notice, the Service did not file a proof of claim before the bar date); *In re* Ryan, 78 B.R. 175 (Bankr. E.D. Tenn. 1987) (discharging four years of prepetition tax debt because the IRS failed to file a proof of claim); *In re* Rothman, 76 B.R. 38, 41 (Bankr. E.D.N.Y. 1987) (discharging prepetition taxes for which the New York State Tax Commission did not file an amended proof of claim); Richards v. United States (*In re* Richards), 50 B.R. 339 (Bankr. E.D. Tenn. 1985) (discharging a tax penalty claim entitled to priority status because it had been filed late).

and priority claims should be fully repaid under the chapter 13 plan.[123] However, prepetition claims that were not included in the plan yet were entitled to priority status may be discharged.[124] This can occur when a creditor does not submit a timely proof of claim[125] or agrees to accept less than full compensation through the debt repayment plan.[126] Instances of debtor misconduct—including failure to file a tax return, fraud, or willful tax evasion—will make a tax claim nondischargeable.[127]

One of the benefits for the chapter 13 filer is the "superdischarge," the broadest discharge of debts available in the Code.[128] When debts in a bankruptcy proceeding are discharged, the debtor is no longer obliged to repay that debt, and the creditor is prohibited from trying to recoup its loss.[129] In a chapter 7 liquidation, priority tax liabilities are among the laundry list of debts excepted from discharge.[130]

By contrast, the chapter 13 superdischarge extinguishes a greater range of prepetition debt, including certain income tax claims entitled to priority.[131] This is apparent upon reading the exceptions to discharge provision alongside the two statutes it incorporates by reference, Code § 507(a)(8)—the priority provision—and Code § 1328(a)—the chapter 13 discharge provision. Priority unsecured income tax claims in chapter 13 are only nondischargeable under a chapter 13 hardship discharge;[132] the provision is not applicable to debtors who faithfully complete their repayment plans.[133]

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123. *See* 11 U.S.C. § 1322(a)(2) (declaring that the default recovery for § 507 priority claims is full compensation); *id.* § 1325(a)(5) (outlining terms of recovery for secured creditors, essentially, the face value of the claim or the property securing the claim).

124. *See supra* note 122 (describing cases where tax claims entitled to priority were not allowed in a chapter 13 proceeding).

125. *See* 11 U.S.C. §§ 1328(a), 502(b)(9).

126. *See* 7 NORTON & NORTON, *supra* note 2, § 149:4, at 149-12 to 149-13 n.5 (listing cases).

127. *See* 11 U.S.C. §§ 1328(a)(2), 523(a)(1)(B)–(C).

128. See *supra* note 49 and accompanying text for a more detailed description of what the superdischarge accomplishes and how BAPCPA pared down the provisions of this discharge.

129. 11 U.S.C. § 524(a)(2). Note, however, that although a creditor may not actively pursue the debtor to have its claim repaid, the debtor may, of his own volition, choose to repay that debt. *See id.* § 524(f).

130. *Id.* § 727(b) (incorporating by reference the exceptions to discharge in § 523); *id.* § 523(a)(1)(A) (stating that a chapter 7 discharge will not discharge taxes specified in 507(a)(8)—essentially, eighth priority unsecured tax claims).

131. *See id.* § 1328(a). Some forms of debt, for example, domestic support obligations, remain nondischargeable despite the superdischarge. *Id.* § 523(a)(5).

132. *Id.* § 1328(b)–(c) (describing the chapter 13 hardship discharge and noting that such discharge does not discharge claims "of a kind specified in section 523(a) of this title"); *id.* § 523(a)(1)(A) (excepting from the 1328(b) hardship discharge those tax claims specified in § 507(a)(8)); *id.* § 507(a)(8) (delineating tax claims entitled to eighth priority); *see also* MCQUEEN & WILLIAMS, *supra* note 31, § 10:12. A hardship discharge is appropriate for a debtor who failed to complete the repayment plan due to circumstances beyond his control. 11 U.S.C. § 1328(b).

133. *Id.* § 523(a) (omitting any mention of the traditional chapter 13 superdischarge in § 1328(a) when excepting eighth priority income tax liability from bankruptcy discharges under specified sections of the Code).

The combined reading of the statutes leads to the conclusion that prepetition income tax claims are dischargeable, for example, if they were improperly or untimely filed yet scheduled by the debtor or the trustee in the bankruptcy plan.[134] As described earlier, courts have discharged a debtor's prepetition tax debt when a taxing agency failed to meet the filing deadlines.[135] These circumstances lead parties to litigate the dischargeability of tax debt, even for claims entitled to priority.[136]

3. Postpetition Claims

The Code treats claims differently depending on whether they arose prepetition or postpetition. Unfortunately, as some commentators have noted, many bankruptcy provisions do not expressly address how a chapter 13 bankruptcy should treat claims that arise postpetition.[137] This silence perpetuates confusion regarding postpetition claims, especially since the Code permits the chapter 13 debtor to, in certain circumstances, allocate some of his disposable income to repay postpetition claims.[138] Contrary to the Code's permissive treatment of prepetition claims, postpetition claims are allowed only in limited instances. According to § 1305:

> Filing and allowance of postpetition claims.
>
> (a) A proof of claim may be filed by any entity that holds a claim against the debtor—
>
> (1) for taxes that become payable to a governmental unit while the case is pending; . . .
>
> (b) Except as provided in subsection (c) of this section, a claim filed under subsection (a) of this section shall be allowed or disallowed . . . the same as if such claim had arisen before the date of the filing of the petition.[139]

Section 1305 only accommodates two sorts of claims: (1) taxes that become payable during the pending bankruptcy, and (2) certain consumer debt.[140] Only the first is relevant to this Note. The language of this statute, and in particular, that of § 1305(a)(1), will inform courts' analyses as to when a tax claim is properly classified as a postpetition claim.

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134. *See id.* § 1328(a).

135. *See supra* note 122.

136. *See infra* Part II.A–B and accompanying text.

137. *See* 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶¶ 1305.01–1305.02; 7 NORTON & NORTON, *supra* note 2, § 146:19, at 146-84 (noting that the Federal Rules of Bankruptcy Procedure provide inadequate guidance on filing postpetition claims).

138. *See* 11 U.S.C. § 1305.

139. *Id.*

140. Where possible, the holder of a claim for consumer debt should secure the trustee's approval before further indebting the chapter 13 filer; should the creditor fail to do so, the court may reject the postpetition claim for consumer debt. *See id.* § 1305(c).

a. Priority

As mentioned above, a debtor's chapter 13 plan must fully provide for tax claims accorded priority status in deferred payments for the duration of the plan term unless the tax agency agrees otherwise.[141] For chapter 13 filers, the Code is virtually silent regarding tax liability post-confirmation, mentioning postpetition tax claims only in the context of § 1305(a).[142]

The priority provision in § 507(a), however, suggests that postpetition income tax claims would not merit priority status, a conclusion confirmed by various courts.[143] Tax claims are mentioned in two of the priority provisions in Code § 507(a). Postpetition tax claims might be entitled to second priority under Code § 507(a)(2) if they were an administrative expense incurred by the estate.[144] This has been an issue when the contested tax liability is a petition-year claim. But, unlike other consumer bankruptcy proceedings, the chapter 13 case creates no separate taxable bankruptcy estate.[145] As at least some of the tax liability incurred during the petition-year is incurred by the debtor *before* the bankruptcy proceeding, it cannot properly be labeled an administrative expense of the bankruptcy estate.[146] Granted, § 507(a)(2) gives certain taxes "incurred by the estate" administrative claim status.[147] However, because the bankruptcy estate is not formed until the petition is filed, tax liability incurred before filing for bankruptcy is neither "incurred by the estate" nor an administrative expense.[148] The liability for such petition-year taxes lies with the debtor alone.[149]

Income tax claims can also secure eighth priority status under Code § 507(a)(8). However, "eighth-priority taxes are in some way attributable to the prepetition period."[150] Indeed, the statutory language appears to

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141. *See* 11 U.S.C. § 1322(a)(2); *supra* notes 97–104 and accompanying text.

142. Although chapter 12 has a section that describes "Special Tax Provisions," chapter 13 has no equivalent. *See* 11 U.S.C. § 1231.

143. *See* 7 NORTON & NORTON, *supra* note 2, § 146:12, at 146-61 to 146-65 ("As a general rule, postpetition claims under § 1305 for . . . taxes after the petition have been refused administrative expense status in Chapter 13 cases."); *see also In re* Gyulafia, 65 B.R. 913, 915 (Bankr. D. Kan. 1986) (holding that Code § 503 second priority administrative expense status was inapplicable to postpetition taxes in a chapter 13 case); *In re* Wright, 66 B.R. 125, 127 (Bankr. D. Kan. 1984) (finding that taxes incurred while chapter 13 case is pending do not receive administrative priority but must be treated as if claim had arisen prepetition, as in Code § 1305(b)).

144. *See* 11 U.S.C. § 503(b)(1)(B)(i) ("[T]here shall be allowed administrative expenses . . . including . . . any tax incurred by the estate . . . except a tax of a kind specified in section 507(a)(8)."); *id.* § 507(a)(2).

145. *See supra* Part I.C.

146. *See In re* Clayburn, 112 B.R. 434, 435 (Bankr. N.D. Ala. 1990) (discussing when a postpetition claim can be considered an administrative expense).

147. 11 U.S.C. § 507(a)(2).

148. *See id.* § 503(b)(1)(B)(i); Todres, *supra* note 71, at 547.

149. *See* 3 NORTON & NORTON, *supra* note 2, § 49:22, at 49-146 ("[C]onfirmation of the plan revests property of the estate in the debtor. Thus postconfirmation taxes are the liability of the reorganized debtor, not the estate [and] are not recoverable administrative expenses."); *see also supra* Part I.C and accompanying text.

150. 3 NORTON & NORTON, *supra* note 2, § 49:49, at 49-250.

preclude the consideration of any postpetition tax liability. As mentioned earlier, income tax claims may be entitled to eighth priority status if the taxes satisfy one of the three scenarios outlined in the statute.[151] Both the first and the second—a return was due in the three years prior to or the tax was assessed within 240 days of filing for bankruptcy—are backward looking requirements that exclude postpetition claims.[152] The final scenario—taxes were not assessed before filing chapter 13, but were assessable after the commencement of the case—tends to cover very old tax liability.[153] This usually includes taxes subject to audit or pending tax court litigation.[154] Each of these priority scenarios deals with taxes incurred prior to a chapter 13 filing and necessarily excludes postpetition claims for tax liability.

b. Filing Rules

Neither statutory language nor logic permits applying the prepetition rule for filing a proof of claim to those claims that emerge during a pending chapter 13 case.[155] Noting that no Bankruptcy Rule or Code provision governs the timing of postpetition claims, one commentator suggests that creditors may file proof of their postpetition claims any time after the filing date, so long as the court finds the timing of the claim reasonable.[156]

This Note addresses the issue of when taxes "become payable," within the meaning of § 1305(a)(1). Filing for bankruptcy conceptually bifurcates the taxable year into two periods: (1) the prepetition period—taxes incurred by income earned before the debtor filed his petition, and (2) the postpetition period—taxes incurred by income earned after filing for bankruptcy.[157] Because chapter 13 filers cannot make a short-year election,[158] courts are forced to adjudicate the status of petition-year tax liability.[159]

Although § 1305 provides a vehicle by which governmental entities can submit proofs of postpetition tax claims, the government is not obligated to

151. *See* 11 U.S.C. § 507(a)(8)(A); 3 NORTON & NORTON, *supra* note 2, § 49:50, at 49-252 to 49-258; *supra* notes 100–03 and accompanying text.

152. *See* 11 U.S.C. § 507(a)(8)(A)(i)–(ii); *see also* 3 NORTON & NORTON, *supra* note 2, § 49:50, at 49-253 to 49-254.

153. 11 U.S.C. § 507(a)(8)(A)(iii); *see also* 3 NORTON & NORTON, *supra* note 2, § 49:50, at 49-255.

154. 4 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 507.11[2][c].

155. *See* 7 NORTON & NORTON, *supra* note 2, § 146:19, at 146-84 to 146-85.

156. *See* 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1305.02 (noting that the Code appears to impose no deadline for the filing of postpetition claims).

157. *See* Germain, *supra* note 54, at 330.

158. I.R.C. §§ 1398(a), 1399 (2006) (Section 1399 precludes taxpayers—except those governed by § 1398—from creating separate taxable entities; the § 1398 rules apply only to individuals filing for bankruptcy under chapters 7 and 11 of the Code); *see supra* notes 69–78 and accompanying text.

159. *See* United States v. Ripley (*In re* Ripley), 926 F.2d 440 (5th Cir. 1991) (adjudicating chapter 13 debtors' petition-year tax liability); *In re* Ryan, 78 B.R. 175 (Bankr. E.D. Tenn. 1987) (same).

do so.[160] According to commentators, only the holder of a postpetition claim may file proof of that claim;[161] courts have agreed, holding that proofs of claim for postpetition tax liability submitted by the debtor or the bankruptcy trustee are invalid.[162] When a tax agency files a proof of claim, however, it does not necessarily follow that a court will unilaterally allow that claim. The debtor exercises control over the plan and may choose to exclude the postpetition claim from his repayment plan.[163] As applied, only by mutual consent of both the debtor and creditor can a postpetition claim be incorporated into a chapter 13 debt repayment plan.[164]

c. Dischargeability

The holder of a postpetition claim is faced with two options. First, the creditor may file a postpetition claim under § 1305 and, assuming the debtor includes the claim, recover under the chapter 13 plan.[165] The creditor, however, is not obligated to file a § 1305 claim. As a second option, the creditor may recover his debt independently against the debtor outside of the bankruptcy proceeding.[166] This second option is available because claims that become payable after the bar date are neither covered

160. *In re* Rothman, 76 B.R. 38, 40 n.1 (Bankr. E.D.N.Y. 1987) (noting that "[t]he option to file [under § 1305(a)(1)] and, thereby, to be paid under a plan lies with the taxing authority").

161. *See, e.g.*, 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1305.02 ("[O]nly the holder of this type of postpetition claim may file the claim and thereby choose to become involved in the chapter 13 case."); KEITH LUNDIN, CHAPTER 13 BANKRUPTCY § 302.1, at 302-8 (3d ed. 2000) ("[T]here is no provision of the Code or Rules authorizing the debtor or the trustee to file a proof of a postpetition claim. [With but one possible exception,] reported decisions addressing the question have concluded that only the holder of a postpetition claim can file proof of that claim." (internal footnotes listing cases omitted)); 7 NORTON & NORTON, *supra* note 2, § 146:19, at 146-83 to 146-84.

162. *See In re* Flores, 270 B.R. 203, 208–09 (Bankr. S.D. Tex. 2001) (holding that debtors in a chapter 13 proceeding with sales tax liability could file proof of claim for tax returns dated postpetition, claims for prepetition activity, and claims that were not timely filed); *In re Ryan*, 78 B.R. at 184 (holding that Code § 1305(a)(1) gave the IRS the option of collecting postpetition taxes from either the estate through the bankruptcy plan or directly from the debtors); Hester v. Powell (*In re* Hester), 63 B.R. 607, 612 (Bankr. E.D. Tenn. 1986) ("[P]ostpetition taxes can be discharged only by payment in full. Simply including them in the plan is not enough; they must also be paid.").

163. Because postpetition claims are allowed or disallowed in accordance with Code § 502, a party in interest (e.g., the debtor) can object to the inclusion of the claim in the debt repayment plan. *See* 11 U.S.C. §§ 502(a), 1305(b) (2006); *see also In re* Jagours, 236 B.R. 616, 619 (Bankr. E.D. Tex. 1999) ("A debtor is not required under the Code to treat [postpetition] claims."); 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1322.10 ("If the plan does not provide for postpetition claims, no such claims may be paid under the plan, even if a postpetition creditor files a claim. Although the debtor may choose to amend the plan to accommodate the postpetition claim, the debtor is not required to do so.").

164. *See In re* Holmes, 312 B.R. 876, 878 (Bankr. W.D. Tenn. 2004) ("In the absence of a plan amendment and the voluntary filing of a claim, the postpetition tax debt will not be dischargeable in this case."); LUNDIN, *supra* note 161, § 350.1 n.18, at 350-4 to 350-6 (listing a series of cases holding the same).

165. *See* 11 U.S.C. § 1305.

166. *See* 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1305.02.

by the plan nor subject to the chapter 13 superdischarge.[167] In practice, creditors have no incentive to file a proof of postpetition claim unless the debtor guarantees full repayment of that claim.[168] However, once a postpetition claim has been filed and provided for in the plan, unless of a kind excepted from discharge,[169] that claim is subject to chapter 13's generous discharge provisions.[170]

II. A PRESUMPTIVE SPLIT: *RIPLEY* AND *JOYE*

Viewed collectively, the concepts and statutory provisions described in Part I form the backdrop in front of which courts grapple with how best to classify claims. A court's declaration that a claim arose prepetition or postpetition can ultimately affect the dischargeability of a claim.[171] Postpetition claims are those that "become payable" while a bankruptcy case is pending.[172] However, there is no legal consensus as to the critical date when claims in a bankruptcy case "become payable." Although the subject of some disagreement among the bankruptcy courts,[173] only recently have the Courts of Appeals wrestled with the meaning of this phrase in Code § 1305(a).[174]

Part II of this Note presents the Fifth and Ninth Circuit decisions, respectively, which interpreted § 1305(a)(1) of the Bankruptcy Code differently. In 1991, the Fifth Circuit in *In re Ripley* held that tax claims "become payable" only after the tax return for that tax is due.[175] This Note refers to the application of this cutoff date (for when taxes "become payable" and should therefore be declared a postpetition claim) as the "tax-return rule." Nearly twenty years later, the Ninth Circuit in *In re Joye* interpreted the phrase "become payable" to mean that a claim becomes payable once it is capable of being paid—in short, after the end of the taxable year, for most individuals, December 31.[176] This Note refers to this more permissive standard as the "taxable-year rule." Applying these rules to the facts faced by each court, the *Ripley* and *Joye* courts issued divergent opinions about whether a particular income tax claim arose prepetition or postpetition.

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167. *See* 7 NORTON & NORTON, *supra* note 2, § 153:5, at 153-22 to 153-23.

168. 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1305.03[3].

169. *See* 8 *id.* ¶ 1305.03[2].

170. *See* 8 *id.* ¶ 1305.03[1]; 7 NORTON & NORTON, *supra* note 2, § 153:5, at 153-21 to 153-22.

171. This applies in particular when a claim was improperly filed by the creditor, or when the debtor or bankruptcy trustee scheduled the creditor's claim but did not adequately provide for it in the plan. *See supra* notes 44–45, 105–11.

172. *See* 11 U.S.C. § 1305(a) (2006).

173. *Compare infra* notes 223–25 and accompanying text, *with infra* note 226 and accompanying text.

174. *Compare infra* Part II.A, *with infra* Part II.B.

175. United States v. Ripley (*In re* Ripley), 926 F.2d 440, 448 (5th Cir. 1991).

176. Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1079 (9th Cir. 2009).

A. The Tax-Return Rule in United States v. Ripley (In re Ripley)

James Ripley, a self-employed oral surgeon, and his wife, Dianne, filed a chapter 13 petition in November 1987.[177] The IRC requires self-employed individuals who are not subject to income tax and Social Security withholdings to pay an estimated tax in quarterly installments.[178] The Ripleys failed to make any of these payments prior to filing for bankruptcy. The debt repayment plan they proposed included full payment of an estimated $21,000 priority claim held by the IRS; the IRS, however, never submitted a proof of claim within the bar date for governmental claims.[179] Only after the Ripleys filed their end-of-year tax return, in May 1988, did the IRS submit a proof of claim in the bankruptcy case, relying on § 1305(a) of the Bankruptcy Code.[180] Contending that the tax liability had "become payable" during the course of the bankruptcy proceeding, the IRS argued that their claim was a valid postpetition claim under § 1305(a)(1).[181] The Ripleys argued that their taxable year should be split. Though conceding that a quarter of the tax assessment—that which was incurred after the petition filing date—was indeed valid,[182] they also posited that three-fourths of the IRS's tax claim had become payable as the quarterly installments had become due and was therefore untimely filed.[183] Both the bankruptcy court and the district court found the Ripleys' argument to be persuasive.[184]

The Fifth Circuit rejected the reasoning of the lower courts. From the language of the statute, the court inferred that Congress's use of the phrase "become payable" referred to "those taxes that come due during the pendency of the case; in other words, taxes that have 'become payable' are those that *must be paid* now."[185] Highlighting parallels to other bodies of law, the Fifth Circuit also noted that commercial paper payable to the bearer "*must be paid* to the bearer or to the order of the person therein specified."[186]

As for whether the phrase might refer to taxes that a taxpayer was merely capable of paying, the Fifth Circuit disagreed because such a construction would contradict the traditional usage of the word "payable":[187] "justly due" or "legally enforceable."[188] Without elaborating further, the court declared that the only reasonable interpretation for when claims "become

177. *In re Ripley*, 926 F.2d at 441–42.
178. *See* I.R.C. § 6654 (1988).
179. *In re Ripley*, 926 F.2d at 442.
180. *Id.*; *see also* 11 U.S.C. § 1305(a) (2006).
181. *See In re Ripley*, 926 F.2d at 442.
182. *See id.* at 442 n.8.
183. *Id.*
184. *Id.* at 442–43.
185. *Id.* at 444. Despite reaching a different conclusion as to how the taxes should have been classified, the court agreed with the lower courts' conclusions that "payable" meant "due and owing." *See id.* at 444 n.14.
186. *Id.* at 444 (citing U.C.C. §§ 3-110, 3-111).
187. *Id.*
188. *Id.* (citing BLACK'S LAW DICTIONARY 1128 (6th ed. 1990)).

payable" within the meaning of § 1305(a) was when they became legally enforceable, which occurred once the tax return was due.[189] Applying the tax-return rule, the Fifth Circuit decided that the contested 1987 income tax claim became payable postpetition; effectively, it was a nondischargeable postpetition claim.[190]

It also relied heavily on IRC provisions to justify why taxes "become payable" and are legally enforceable once the tax return is due.[191] First, the IRC sets the time frame for paying taxes as "the time and place fixed for filing the return,"[192] a provision the Fifth Circuit found demonstrated the "annual nature of income . . . taxes."[193] Second, the IRC prohibits tax assessment until the tax return has been filed.[194] This limitation remains true even for self-employed filers who have failed to make the requisite quarterly payments.[195] In practice, a better way of describing the quarterly obligations would be as prepayments of tax, rather than payments of an assessed tax. Third, estimated income tax prepayments, such as those owed by the Ripleys, were also deemed payable on the due date for the tax return.[196] Fourth, although the IRS can impose a penalty for belated tax prepayments, it cannot demand immediate penalty payments from a taxpayer whose installment taxes are late.[197] Finally, the Fifth Circuit rejected the Ripleys' contention that, since the IRS could impose a penalty for underpayment of the installment as each quarterly due date passed, taxes "become payable" the day after the IRS imposes this penalty.[198] According to the court, "the fact that penalties are imposed for underpayment of installments does not alter either the annual nature of these taxes or the language of § 6151 [of the IRC]."[199] Noting that simply because "the installments are due at the end of each quarter does not mean that the tax itself is due at that time,"[200] the Fifth Circuit seemed to equate, or at least find highly interconnected, the concepts of tax assessment, the due date for the return, and when tax claims "become payable."

The Fifth Circuit also cited lower courts that had agreed that a tax return's due date best defines when taxes "become payable" under

189. *See id.*
190. *See id.* at 449.
191. *See id.* at 444–47.
192. I.R.C. § 6151 (2006).
193. *In re Ripley*, 926 F.2d at 444 ("'[W]hen a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed, and *shall pay such tax at the time and place fixed for filing the return.*'" (quoting I.R.C. § 6151 (1989))).
194. *Id.* at 445.
195. *Id.*
196. *Id.* at 447 (citing I.R.C. § 6513(b)(2) (1989)).
197. *Id.*
198. *Id.* (citing I.R.C. § 6654(a), (b) (1989)). Imposing a penalty payment is distinguished from demanding payment of the penalty imposed. *See id.*
199. *Id.*
200. *Id.*

§ 1305.[201] But the Ripleys contended that language in the Code, in particular § 547, suggested otherwise: "a debt for a tax is incurred on the day when such tax is last payable without penalty."[202] That provision lent credence to the view that their installment taxes became payable quarterly.[203] The court, however, explicitly differentiated the due dates of the quarterly payments from the due date of the tax itself,[204] and further concluded the Code provision was inapplicable because, when examined in context, the provision served only to identify what types of antecedent tax debt a bankruptcy trustee should not recover.[205]

The Fifth Circuit's conclusion and heavy reliance on the IRC has been replicated by other lower courts. For example, one court that also distinguished when installments and the actual taxes are due noted that "quarterly installment payments are merely prepayments, not payments of the tax itself."[206] This argument has merit, especially when considering that the quarterly tax payment is actually an estimated tax based on a taxpayer's earnings from the preceding year.[207] An individual's tax liability could fluctuate wildly from one year to the next,[208] justifying a decision to limit tax assessment until after the tax return has been submitted.[209] Moreover, tax obligations can change in the interim between the end of a taxable year and the date the tax return is due.[210] Yet in its sustained focus on IRC provisions that essentially bind a tax agency from acting until after a tax return has been filed, the Fifth Circuit did not consider that, in the bankruptcy context, a tax assessment is not a prerequisite to submit a proof of claim.[211]

Additionally, Code provisions seem to distinguish between when claims are "incurred" and when they "become payable," treating claims that have been incurred differently than those that have been assessed and due.[212] In

201. *Id.* at 445–46 (describing similar holdings by the courts in *In re Pennetta*, 19 B.R. 794 (Bankr. D. Colo. 1982), *In re Rothman*, 76 B.R. 38 (Bankr. E.D.N.Y. 1987), and *In re Ryan*, 78 B.R. 175 (Bankr. E.D. Tenn. 1987), while distinguishing the holding in *In re Miller*, 90 B.R. 317 (Bankr. E.D. Tenn. 1988), because it addressed an employer's FICA contributions, for which a tax return, and not merely an installment payment, is required on a quarterly basis).

202. 11 U.S.C. § 547(a)(4) (2006).

203. *In re Ripley*, 926 F.2d at 447.

204. *Id.*

205. *Id.* at 447–48; *see also* 11 U.S.C. § 547(a)(4).

206. *In re* Wilkoff, No. 98-34354, 2001 WL 91624, at *5 (Bankr. E.D. Pa. Jan. 24, 2001).

207. *See* I.R.C. § 6654(d) (2006) (noting that each quarterly payment should represent one-fourth of a taxpayer's estimated annual tax: the lesser of (1) ninety percent of the tax on the previous year's return, (2) ninety percent of the assessed tax for that year, or (3) one hundred percent of the tax shown on the preceding year's return).

208. Such fluctuation might occur when a taxpayer is unemployed in one year but not the other, receives a significant bonus in one year but not the other, or earns a commission-based salary.

209. *See In re Ripley*, 926 F.2d at 445 & n.18.

210. *See* Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1083 (9th Cir. 2009) (Graber, J., dissenting) (noting that deductible contributions that may lower the gross income tax base can be made until the tax return is due (citing 26 U.S.C. § 219(a), (f)(3) (2006))).

211. *See* Goldston v. United States (*In re* Goldston), 104 F.3d 1198 (10th Cir. 1997).

212. *Compare* 11 U.S.C. § 502(i), *with id.* § 1305(a).

the past, the IRS and other tax agencies have adopted the position that the full amount of tax liability incurred in a taxable period is imputed to the very last day of that period.[213] For debtors whose income taxes are keyed to the calendar year, this means that tax liability for an entire year would be incurred on December 31 of that year, the last day of the taxable period, even if it does not become payable until April of the following year.[214] Yet the Fifth Circuit's analysis seemed to conflate the meanings of when taxes become payable and when they are incurred,[215] even as it rejected the use of a taxable period's final date as the critical moment at which claims "become payable" within the meaning of Code § 1305.[216]

Another phrase prevalent in the IRC that could inform the discussion of when tax claims "become payable" is "due and payable."[217] Although the IRC does not define "due and payable," according to one court, such a debt is one that "is fixed and certain but the day appointed for its payment has not yet arrived."[218] That definition precludes the proposed moment at which the Fifth Circuit would declare claims to be payable: the tax return due date. On that date, the day for payment has indeed arrived, with taxes paid after that date subject to a penalty.[219]

In its analysis, the Fifth Circuit in *Ripley* appeared to defer to selected IRC provisions that emphasized a tax return's due date to construe the phrase "become payable" in § 1305(a) as a parallel provision of sorts. Certain IRC provisions, however, could just as plausibly be interpreted to conflict with a tax-return rule.[220] One court cautioned against over-relying on IRC provisions to inform the understanding of the Code, stating that "[w]ords used in the Bankruptcy Code do not necessarily mean what they might mean in the Internal Revenue Code."[221] Likewise, extrapolating prior judicial decisions where the IRC and the Code have intersected

213. *See* United States v. Hillsborough Holdings Corp. (*In re* Hillsborough Holdings Corp.), 116 F.3d 1391, 1394 (11th Cir. 1997) (IRS argues tax liability was incurred on the last day of the taxable period); Mo. Dep't of Revenue v. L.J. O'Neill Shoe Co. (*In re* L.J. O'Neill Shoe Co.), 64 F.3d 1146, 1148–49 (8th Cir. 1995) (state taxing authority asserts tax was incurred on final day of taxable period); Towers v. United States (*In re* Pac.-Atl. Trading Co.), 64 F.3d 1292, 1297 (9th Cir. 1995) (characterizing the government's position as advocating that the tax was incurred at the end of the taxable period in a corporate chapter 7 bankruptcy case); *see also* Stieglitz, *supra* note 79, at 477–78.

214. Stieglitz, *supra* note 79, at 478.

215. United States v. Ripley (*In re* Ripley), 926 F.2d 440, 447 (5th Cir. 1991) ("[T]he Ripleys seem to argue that the tax 'becomes payable' (i.e. 'is incurred') at the end of each quarter . . . .").

216. *Id.* at 444.

217. *Compare* scattered sections of I.R.C. (incorporating the language of "due and payable"), *with* 11 U.S.C. § 523(a)(16) (sole use of "due and payable" language in Bankruptcy Code appears in an exception to discharge for certain condo or homeowner association fees that become "due and payable after the order for relief").

218. *See* Beiger Heritage Corp. v. Montandon, 691 N.E.2d 1334, 1337 (Ind. App. 1998) (quoting BLACK'S LAW DICTIONARY 499 (6th ed. 1990)).

219. Once the tax return due date has passed, assuming one owes a tax, the IRC imposes a penalty of 5% of tax owed for each month a return is late and 0.5% of tax owed for each month the balance is outstanding. I.R.C. § 6651(a)(1)–(2) (2006).

220. *See supra* notes 212–19 and accompanying text.

221. Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 152 (B.A.P. 10th Cir. 1998).

reveals that, if the issue involves an important policy underlying bankruptcy legislation, courts will apply the Code despite clear, yet contrary, IRC provisions.[222]

The *Ripley* holding mirrored the conclusions of earlier bankruptcy court decisions,[223] and subsequent courts followed its lead in jurisdictions inside[224] and out of the Fifth Circuit.[225] Despite broad adherence to *Ripley*'s tax-return rule, the case has also been distinguished and criticized, suggesting that its reading of § 1305(a) is a source of real disagreement in the judiciary.[226] Part II.B discusses some of the main objections to the Fifth Circuit's reading, as discussed primarily by the Ninth Circuit.

B. The Taxable-Year Rule in Joye v. Franchise Tax Board (In re Joye)

Shelli Renee and Teresa M. Joye, like the Ripleys, sought to enjoin a tax agency from collecting taxes that they claimed had been discharged in their chapter 13 bankruptcy case.[227] The Joyes filed their chapter 13 bankruptcy petition on March 7, 2001, when their 2000 state tax returns were not yet due.[228] Their filings indicated that they owed the California Franchise Tax Board (Tax Board) an estimated priority claim of $10,000.[229] Although the Tax Board, like all scheduled creditors, was properly notified of the first meeting of creditors and the bar date for governmental claims, it did not file a proof of claim before that deadline.[230] The Joyes completed their chapter 13 plan, and the bankruptcy court discharged the outstanding debt that had been provided for by the plan.[231]

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222. *See* Stieglitz, *supra* note 79, at 516 ("Even though the IRC was as clear as possible, the bankruptcy court shifted the risk from the debtor to the IRS in basing its decision solely on the Bankruptcy Code. This is a strong indication that when a conflict between the Bankruptcy Code and the IRC exists and an important goal of bankruptcy could be implicated the Bankruptcy Code will win out." (citing United States v. Energy Res. Co., 495 U.S. 545 (1990))).

223. *See, e.g.*, *In re* Ryan, 78 B.R. 175 (Bankr. E.D. Tenn. 1987); *In re* Rothman, 76 B.R. 38 (Bankr. E.D.N.Y. 1987).

224. *See, e.g.*, *In re* Jagours, 236 B.R. 616 (Bankr. E.D. Tex. 1999).

225. *See, e.g.*, Savaria v. United States (*In re* Savaria), 317 B.R. 395 (B.A.P. 9th Cir. 2004); Henkel v. United States (*In re* Carpenter), 367 B.R. 850 (Bankr. M.D. Fla. 2006); *In re* Holmes, 312 B.R. 876 (Bankr. W.D. Tenn. 2004); *In re* Wilkoff, No. 98-34354, 2001 WL 91624 (Bankr. E.D. Pa. Jan. 24, 2001); Pullman Constr. Indus. v. United States (*In re* Pullman Constr. Indus.), 190 B.R. 618 (Bankr. N.D. Ill. 1996), *aff'd*, 210 B.R. 302 (N.D. Ill. 1997); Matravers v. United States (*In re* Matravers), 149 B.R. 204 (Bankr. D. Utah 1993).

226. *See, e.g.*, Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070 (9th Cir. 2009); *In re Dixon*, 218 B.R. 150; *In re* Flores, 270 B.R. 203 (Bankr. S.D. Tex. 2001); *In re* Jones, 164 B.R. 543 (Bankr. N.D. Tex. 1994).

227. *In re Joye*, 578 F.3d at 1072.

228. The Joyes filed their pre-petition-year tax return (for 2000 taxes) on October 15, 2001, and because California provides taxpayers filing personal income tax returns an automatic six-month extension, the court noted that the Joyes' return was timely filed. *Id.* at 1072–73.

229. *Id.* at 1072.

230. *Id.*

231. *Id.* at 1073.

Following that discharge, the Tax Board tried to collect the Joyes' unpaid income taxes from 2000.[232] The Tax Board claimed that the tax claim survived discharge for two reasons: it was a proper § 1305 postpetition claim or, in the alternative, barring the Tax Board from collecting on its debt would, due to constitutionally deficient notice, violate its right to due process.[233] The bankruptcy court ruled in favor of the Joyes under both theories, declaring the tax claim a prepetition claim discharged when the Joyes completed their chapter 13 plan.[234] The district court agreed that the taxes constituted prepetition debt, yet ultimately ruled in favor of the Tax Board so as not to deny it fundamental fairness under their inadequate notice argument.[235] When the Ninth Circuit finally considered the case, it too agreed that the taxes were a prepetition claim, but reversed on the second point and held that notice provided by scheduling the Tax Board as a creditor was constitutionally adequate.[236] Stating the Tax Board's reliance on § 1305 had been misplaced because the claim had "become payable" prepetition, the court affirmed the bankruptcy court's discharge.[237]

The Ninth Circuit began its analysis by turning to the language of § 1305 and acknowledged that courts had attributed different meanings to the term "payable."[238] After briefly conveying the Fifth Circuit's main arguments,[239] it explained why it found the reasoning advanced by the Bankruptcy Appellate Panel in *In re Dixon* to be more persuasive.[240] That panel had concluded that claims become "payable" before "the last permissible day for paying taxes," which was anytime after the end of the taxable year and before the tax return was due.[241] In support, the Ninth Circuit cited both the Code's efforts to broadly discharge a debtor's obligations,[242] as well as the Code's inclusive definition of "claim," a designation that included contingent claims.[243] To the Ninth Circuit, "payable" was a term that described a class of claims, and it represented a creditor's right to payment even if it had yet to mature (and was therefore not yet legally enforceable).[244]

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232. *Id.*
233. *Id.*
234. *Id.*
235. *Id.* According to the district court, merely scheduling the Tax Board as a creditor did not meet the requirements of "constitutionally adequate notice." *Id.*
236. *Id.* at 1081.
237. *Id.*
238. *Id.* at 1075 (quoting United States v. Ripley (*In re* Ripley), 926 F.2d 440, 444 (5th Cir. 1991) ("[T]axes that have 'become payable' are those that *must be paid* now."); Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 152 (B.A.P. 10th Cir. 1998) (claims for payable taxes "refer 'to a time before the last permissible day for paying taxes'")).
239. *See supra* Part II.A.
240. *In re Joye*, 578 F.3d at 1075.
241. *In re Dixon*, 218 B.R. at 152.
242. *In re Joye*, 578 F.3d at 1075 (citing *In re Dixon*, 218 B.R. at 152). *See generally* Bein, *supra* note 49; Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047 (1987).
243. *In re Joye*, 578 F.3d at 1075–76; *see also supra* notes 87–88 and accompanying text (defining "claim").
244. *In re Joye*, 578 F.3d at 1075–76.

After determining that the more inclusive concept of when claims "become payable" better embodied the Code's discharge policies, the Ninth Circuit turned its analysis to another Code provision, § 502(i).[245] Section 502(i) refers to certain tax claims "that [do] not arise" until after the bankruptcy proceeding has begun.[246] The Ninth Circuit determined that § 502(i) addressed a class of claims distinct from those covered by the postpetition claim-filing provision in § 1305(a).[247] According to the Ninth Circuit, § 502(i) refers to tax claims that, while wholly incurred prepetition, are not due until after filing the chapter 13 petition.[248] Section 1305(a), by contrast, deals with filing a proof of claim for taxes "*incurred* after the filing of the chapter 13 case."[249]

Considering both statutory construction and legislative history, the Ninth Circuit concluded that Code § 1305(a)(1) referred only to taxes the debtor incurred while the bankruptcy case was pending.[250] Disagreeing with the meaning of "become payable" advanced by the Fifth Circuit, the court in *Joye* held that the taxes at issue became payable once the taxable year for the contested taxes had ended.[251] Because the taxes became payable on January 1, 2001 *before* the Joyes filed for bankruptcy (on March 7, 2001), the court concluded that the tax liability was a dischargeable prepetition claim.[252] Thus, the Tax Board's failure to submit a timely proof of claim was fatal to its intended recovery.

The Ninth Circuit properly considered the relevance and implications of both § 502(i) and § 1305(a). A further distinction between the two provisions is the different terms applied by the statutes. Section 502(i) describes a tax claim that "*does not arise* until after the commencement of the case," while § 1305(a)(1) describes tax claims that "*become payable* to a governmental unit while the case is pending."[253] Furthermore, § 1305 uses the phrase "postpetition claims," a term absent in § 502(i).[254] Moreover, at least one commentator has noted that postpetition liabilities may only be addressed by the bankruptcy proceeding in accordance with § 1305(a).[255] Even a look at § 1305(b) seems to support the Ninth Circuit's

245. *Id.* at 1076. The Fifth Circuit in *Ripley* never addressed this provision in the Code. See *supra* note 94 and accompanying text for the text of the statute and commentary.

246. *See* 11 U.S.C. § 502(i) (2006). Section 502(i) applies only to those tax claims that would have been entitled to priority under Code § 507(a)(8), such as the income tax claims pertaining to this Note.

247. *In re Joye*, 578 F.3d at 1076.

248. *Id.* at 1076 (citing 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1300.71[10]).

249. *Id.* (citing Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 153 (B.A.P. 10th Cir. 1998)); *see also* S. REP. NO. 95-989, at 140 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5926.

250. *In re Joye*, 578 F.3d at 1076.

251. *Id.* at 1077 ("Thus, the Joyes could have technically determined and paid their year 2000 taxes on the day after the close of the corresponding calendar year. Although . . . not required to pay these taxes until [the tax return was due], their tax liability to the state for the year 2000 was nonetheless capable of being paid, and thus payable, as of January 1, 2001.").

252. *Id.*

253. *Compare* 11 U.S.C. § 502(i) (2006) (emphasis added), *with id.* § 1305(a)(1) (emphasis added).

254. *Compare id.* § 1305, *with id.* § 502(i).

255. *See* 8 COLLIER ON BANKRUPTCY, *supra* note 37, ¶ 1300.71[10].

holding; that subsection allows or disallows claims "the same as if such claim had arisen before the date of the filing of the petition."[256] That language seems to preclude applying § 1305 to those tax claims that were incurred before the chapter 13 petition was filed, including an income tax claim based entirely on income earned prepetition, even if the debtor filed a chapter 13 petition before the tax return for that claim was due.[257]

The Ninth Circuit concluded that, within the meaning of the Code, "become payable" is any time "before the last permissible day for paying taxes."[258] This understanding reinforces the Code's efforts to address debtors' obligations earlier in the proceedings, rather than later.[259] Likewise, the plain language of the statute could legitimately equate tax claims that "become payable" to be those that are "capable of being paid."[260] As a result, the Ninth Circuit decided that only those tax claims that had been *incurred* after the petition date could rightly qualify as a postpetition claim under § 1305(a).[261]

From a practical standpoint, the court decided that taxes "become payable" (are capable of being paid) after the end of the taxable year.[262] Taxpayers may calculate and pay their taxes anytime after December 31 even though no payment is required until April 15 of the following year.[263] Because the taxes at issue—the Joyes' tax liability from 2000—were "payable" before they filed for bankruptcy in March 2001, the court held that the scheduled tax claim was a prepetition claim discharged by the Tax Board's failure to submit a timely proof of claim and by the Joyes' faithful completion of their bankruptcy plan.[264]

As Part II illustrates, the courts in *Ripley* and *Joye* understand the phrase "become payable" very differently.[265] While acknowledging this difference, the courts' holdings may hinge on more than their interpretations of this phrase. Although the circuit courts dissected the meaning of "become payable," ultimately promulgating two distinct rules, those analyses actually occurred in different factual circumstances. Part III expands on this observation and considers whether this factual distinction, first acknowledged by the *Dixon* panel yet ignored by the court in *Joye*, is

256. 11 U.S.C. § 1305(b).

257. Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 152–53 (B.A.P. 10th Cir. 1998).

258. Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1075 (9th Cir. 2009) (quoting *In re Dixon*, 218 B.R. at 152).

259. *Id.* (citing *In re Dixon*, 218 B.R. at 152).

260. *Id.* at 1076 (quoting United States v. Ripley (*In re* Ripley), 926 F.2d 440, 444 (5th Cir. 1991)).

261. *Id.*

262. *Id.* at 1079.

263. Naturally, should the debtor-taxpayer benefit from additional extensions, payment could be timely even after the April 15 date.

264. *In re Joye*, 578 F.3d at 1079, 1081. The court also examined the constitutional adequacy of the notice provided to the Tax Board before deciding that scheduling creditors in a bankruptcy proceeding constituted proper notice, in spite of the burden it placed on the governmental agency. *Id.* at 1079–81.

265. *See supra* Part II.

significant.[266] Indeed, both the particular tax claim at issue and the petition-filing timeline may be more consequential than initially expected. Part III contemplates the applicability and impact of the tax-return and taxable-year rules given what are essentially two factually distinct scenarios.

III. A FACT-SENSITIVE APPROACH TO ANALYZING INCOME TAX CLAIMS IN CHAPTER 13 BANKRUPTCIES

Ripley, with its tax-return rule, and *Joye*, defending a taxable-year rule, illustrate more than conflicting methodologies: they exemplify the need to acknowledge and apply the small factual discrepancies on which a chapter 13 case can turn. The facts before both of these courts involved all of the following: (1) chapter 13 debtors who had completed their debt repayment plans, (2) taxing authorities whose claims would have been entitled to priority but for the fact that their proofs of claim were unfiled or filed late, (3) an income tax claim that was therefore subject to discharge if indeed it had been incurred prepetition, and (4) litigation regarding the status of that claim.[267]

Despite the parallels, where differences have emerged, the variations are significant. The Fifth Circuit ruled on income tax claims in the petition-year; the Ninth Circuit's holding dealt with income tax claims for the pre-petition year, when the taxpayer-debtor filed the chapter 13 petition before the tax return was due. As mentioned earlier, and worth repeating given their significant role in the upcoming discussion, these claims are not analogous.[268] A petition-year tax claim—like that in *Ripley*—reflects tax liability in the year the bankruptcy petition was filed; a pre-petition-year tax claim—such as the claim in *Joye*—represents tax liability in the year immediately preceding the petition-year.[269] This pivotal difference—the type of claim at issue before the courts—supports this Note's assertion in Part III that the rules advanced by the Fifth and Ninth Circuits should not be characterized as a circuit split.

To underscore this distinction, Part III.A introduces two hypotheticals: the "*Ripley* scenario" describes contested taxes in the petition-year, and the "*Joye* scenario" describes contested taxes for the pre-petition year.[270] Each hypothetical considers both the Fifth Circuit's tax-return rule and the Ninth Circuit's taxable-year rule to determine if a functional conflict exists, and if so, how best to resolve it.[271] To perform this analysis, Part III.B–C presents

266. Dixon v. IRS (*In re* Dixon), 218 B.R. 150, 151 (B.A.P. 10th Cir. 1998) ("[N]either [of] these cases . . . involved the sequence of events now before us: the Debtors' tax year ended, then the Debtors filed for bankruptcy, and then their return for the tax year became due. [In the other cases], the debtors filed for bankruptcy either before the end of the tax year or after the tax return was due.").

267. *See supra* Part II.

268. *See supra* notes 12–13.

269. It should be emphasized that "pre-petition-year," as the phrase is used throughout this Note, should not be confused with the broader bankruptcy term, "prepetition."

270. *See infra* Part III.A.

271. *See infra* Part III.B–C.

and employs a framework for analyzing future conflicts regarding the status of petition-year and pre-petition-year income tax claims in a chapter 13 bankruptcy proceeding.[272] This Note proposes that, when analyzing the pre-petition-year claims in a "*Joye* scenario" (but not in a "*Ripley* scenario" addressing petition-year tax liability), the petition-filing timeline is an important limiting constraint, which plays a role in classifying claims as either prepetition or postpetition.

Despite the possibility of viewing *Joye* and *Ripley* as factually distinct, in the sense that these courts have attributed different meanings to the phrase "become payable," the potential conflict at the circuit level begs a resolution. Ultimately, Part III concludes that, although both rules are functionally identical when applied to petition-year tax liability, the tax-return rule promulgated by the Fifth Circuit is overinclusive. For that reason alone, a taxable-year deadline could be the superior rule. In addition, however, while an actual conflict in legal approaches exists when applying the two rules in the "*Joye* scenario," the Ninth Circuit's taxable-year rule best embodies both the statutory intent and the bankruptcy policies reflected in the Code.

A. The Facts Matter: A Look At Petition-Filing Timelines

One conclusion resulting from these decisions is rather straightforward: § 1305 of the Bankruptcy Code can be read in two ways. First, tax claims may "become payable" when the tax return is due, as similar provisions in the IRC and the ultimate holding of the Fifth Circuit in *Ripley* would suggest.[273] Alternatively, tax claims may "become payable" upon the close of the taxable year, the reading proposed by the *Dixon* panel and seconded by the Ninth Circuit in *Joye*.[274] Because the rule applied can change the type of claim at issue and chapter 13 plans treat prepetition claims and postpetition claims differently,[275] a court's determination regarding this issue affects the dischargeability of contested tax liability. Although their readings of "become payable" may conflict, the holdings of the Fifth and Ninth Circuits may be reconciled by focusing on the factual differences underlying each ruling. This distinction is apparent in both the type of claim at issue and the petition-filing timeline.

When examining income tax liability in the chapter 13 context, parties can challenge either petition-year tax liability or pre-petition-year tax liability. Petition-year tax liability represents taxes for the year in which a debtor filed his chapter 13 petition. A close look at the facts of *Ripley* reveals that the tax claim at issue concerned petition-year tax liability. The Ripleys litigated the dischargeability of taxes on income earned during

272. *See infra* Part III.B–C.
273. *See supra* Part II.A.
274. *See supra* Part II.B.
275. *Compare supra* Part I.D.2.c (describing discharge provisions as they apply to prepetition claims), *with supra* Part I.D.3.c (establishing that postpetition claims are not dischargeable in the bankruptcy case and describing a creditor's options when holding a postpetition claim).

1987,[276] but they filed their bankruptcy petition in November 1987, *before* the end of the taxable year.[277] With two exceptions,[278] other courts whose conclusions are consistent with *Ripley* all share this key fact.[279] In each case, as in *Ripley*, the contested petition-year taxes were held to be a nondischargeable postpetition claim.[280]

This Note describes a chapter 13 case that addresses such petition-year tax liability as a "*Ripley* scenario." Consider, as an example, a debtor named Ron Ripper who files a chapter 13 bankruptcy petition on February 27, 2002. His 2002 income taxes form petition-year tax liability, which inevitably includes taxes on income earned both before and after filing for bankruptcy. Though entitled to priority for its claim, the IRS never submits a proof of claim for the petition-year taxes, and thus Ron's plan does not provide for income taxes incurred in 2002. Over the next three to five years, Ron Ripper completes his chapter 13 repayment plan as intended, and the court discharges all of his outstanding obligations.

In addition to the petition-year liability addressed in the "*Ripley* scenario," debtors can also contest the status of pre-petition-year tax liability, taxes owed in the year immediately preceding the filing year.[281] Where pre-petition-year taxes are concerned, *when* the debtor filed his chapter 13 petition plays a critical role in the analysis. The contrary rules promulgated by the Fifth and Ninth Circuits effectively create two subsets of bankruptcy cases in the pre-petition-year context. Under the first subset of cases, a chapter 13 debtor files his petition after the tax return for the pre-petition-year taxes were due, after April 15.[282] Since the bankruptcy petition was filed after the tax return was due, the tax would have been both

276. Although the Ripleys conceded that they incurred the final quarter of taxes after their petition date, they also sought to declare (and have discharged) the taxes incurred during the first three quarters of the year. *See* United States v. Ripley (*In re* Ripley), 926 F.2d 440, 442 (5th Cir. 1991).

277. *See id.*

278. *In re* Turner, 420 B.R. 711, 714–15 (Bankr. E.D. Mich. 2009) (applying a tax-return rule to pre-petition-year tax liability out of misplaced concern about impairing the rights of governmental entities and without acknowledging portions of Rule 3002(c)(1), which would have ameliorated this concern); *In re* Jagours, 236 B.R. 616, 618–19 (Bankr. E.D. Tex. 1999) (holding that, although an amended IRS claim that sought to add tax liability for the petition-year could be a valid postpetition claim, the debtor must first approve inclusion of the claim before the chapter 13 plan could be modified).

279. *See, e.g.*, Savaria v. United States (*In re* Savaria), 317 B.R. 395, 397, 402 (B.A.P. 9th Cir. 2004) (debtors filed for bankruptcy on December 31, 2002 and claim for 2002 taxes held to be a postpetition liability); *In re* Holmes, 312 B.R. 876, 877–78 (Bankr. W.D. Tenn. 2004) (debtor filed for bankruptcy on October 10, 2002 and claim for 2002 taxes held to be a postpetition claim); Matravers v. United States (*In re* Matravers), 149 B.R. 204, 205 (Bankr. D. Utah 1993) (debtor filed for bankruptcy on December 3, 1984 and claim for 1984 taxes held to be a postpetition liability); *In re* Ryan, 78 B.R. 175, 176, 183 (Bankr. E.D. Tenn. 1987) (debtor filed for chapter 13 in September 1981 and claim for 1981 taxes held to be a postpetition claim); *In re* Rothman, 76 B.R. 38, 39–40 (Bankr. E.D.N.Y. 1987) (debtor filed for chapter 13 on August 27, 1980 and year 1980 tax debt held to be a postpetition liability).

280. *See supra* notes 275–76.

281. Although pre-petition-year tax liability could technically represent taxes for any taxable year ending before the chapter 13 filing date, this Note uses the term to refer only to tax liability in the year immediately before the petition-year.

282. This April 15 date assumes no extensions apply.

fully incurred and fully owed before the chapter 13 case commenced.[283] It is a prepetition claim.

By contrast, the second subset of chapter 13 cases encompasses those debtors who file for bankruptcy after the end of the taxable year but before the tax return for the pre-petition-year tax claim was due. The Joyes litigated the dischargeability of tax liability for the year 2000, filing their chapter 13 petition on March 7, 2001, before their 2000 state tax return was due.[284] Thus, the facts of *Joye* fall within this second subset of cases addressing pre-petition-year tax liability.

This Note refers to the second subset of cases dealing with pre-petition-year tax liability as a "*Joye* scenario." For the purposes of this discussion, it is important to remember that not all pre-petition-year tax liability falls within a "*Joye* scenario"; this scenario only contemplates pre-petition-year income tax claims when the debtor filed his petition between January 1 and April 14, assuming no extensions apply. To illustrate, consider another debtor, Jack Joya who (like Ron Ripper) also files for chapter 13 on February 27, 2002. Note that the February 27 petition-filing date is both after the end of the 2001 taxable year yet before the 2001 tax return is due. The IRS files a proof of claim for the 2001 taxes after the bar date for governmental claims, despite receiving proper notice of the impending case. After Jack Joya completes his debt repayment plan (which did not provide for the tardily filed claim) and benefits from the chapter 13 discharge, the IRS challenges the validity of the discharge as it pertains to the 2001 taxes.

Both the "*Ripley* scenario" and the "*Joye* scenario" are merely hypotheticals, useful examples for understanding how certain types of tax liability might be contested in a chapter 13 case. These illustrations can also clarify how courts should approach income tax claims in consumer reorganizations. Part III.B–C examines the *Ripley* and *Joye* scenarios using a methodical approach absent in prior analyses and frames the courts' disagreement about when claims "become payable" as one aspect of analyzing the status of petition-year and pre-petition-year tax claims.

B. "Ripley *Scenario": What Split?*

Having presented the "*Ripley* scenario" and the "*Joye* scenario," the first step when analyzing the status of any income tax liability in a chapter 13 case is to determine under which scenario the tax claim falls. If the contested claim falls under a "*Ripley* scenario" and addresses petition-year tax liability, courts need only to determine when the claim "become[s] payable" within the meaning of § 1305(a)(1).[285] Should the taxes "become payable" at year's end or once the tax return is due? If the claim does "become payable" during the pending chapter 13 case, then it could be filed

283. *See supra* Part I.D.2.

284. Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1072 (9th Cir. 2009).

285. Unlike with pre-petition-year tax liability, the petition-filing timeline plays no role in the analysis because chapter 13 filers are not permitted to make a short-year election and split their taxable year.

postpetition under Code § 1305; if, however, the claim does not "become payable" during the pending case, then, by elimination, it must be a prepetition claim.

Regardless of whether the courts apply a tax-return or taxable-year rule, they should arrive at the same conclusion: the tax claim is best classified as a postpetition claim. This is true under either understanding of when claims "become payable." Moreover, at least among courts that have adjudicated petition-year tax liability, a consensus has emerged that this type of claim becomes payable postpetition.[286] Finally, although the Ninth Circuit has not examined a case on these facts,[287] it too would probably decide that the debt became payable postpetition. Applying the taxable-year rule in a "*Ripley* scenario," the tax liability for 2001 still is not "capable of being paid" on February 27 of that same year.[288] The claim would not "become payable" within the meaning of § 1305 until after the bankruptcy petition had been filed, on January 1, 2002. In short, the status properly accorded to tax claims for the petition-year is always that of postpetition debt and should be governed by the postpetition filing provision in Code § 1305.

Although the Fifth Circuit's decision arrived at a similar conclusion, its holding—that the tax return due date is dispositive to the analysis—should be subject to greater scrutiny. Indeed, while another court suggested that a taxable-year cutoff could be an appropriate alternative, it ultimately concluded (without discussion) that the tax-return rule was "more likely" preferable.[289]

Because it accomplishes no more and no less than a taxable-year cutoff, the tax-return rule is superfluous and therefore inferior. After December 31, a debtor who files a chapter 13 petition is no longer in a "*Ripley* scenario," which only contemplates petition-year tax liability. A taxable year has ended and to litigate tax liability for that same year, the claim no longer represents petition-year tax liability but tax liability in the year *before* filing for chapter 13, a pre-petition-year tax claim. If the debtor filed for chapter 13 between January 1 and April 14 of the subsequent taxable year, he falls squarely in a "*Joye* scenario";[290] on or beyond April 15, any taxes owed were both incurred and payable prepetition, a quintessential prepetition claim.[291]

The tax-return rule captures no additional claims that a taxable-year rule cannot. To the extent that it is functionally equivalent to a rule that finds

286. *See supra* note 279.

287. The court in *Joye* ruled on pre-petition-year tax liability.

288. *See supra* note 260 and accompanying text. The Ninth Circuit's application of the taxable-year rule extends beyond the chapter 13 context. *Cf.* Towers v. United States (*In re* Pac.-Atl. Trading Co.), 64 F.3d 1292 (9th Cir. 1995) (applying the same rule in a corporate chapter 7 case).

289. *In re* Holmes, 312 B.R. 876, 878 (Bankr. W.D. Tenn. 2004).

290. This range of dates assumes no automatic extensions are applicable and the debtor has not availed himself of outside extensions.

291. *See supra* Part I.D.2.

claims "become payable" once the taxable year ends, it is gratuitous.[292] Thus, a taxable-year cutoff for when claims "become payable" is most appropriate.

Effectively, all petition-year tax liability constitutes postpetition debt that cannot be discharged by the bankruptcy court unless it was provided for in the chapter 13 repayment plan.[293] The Code only allows taxing authorities to file proofs of postpetition income tax claims,[294] so tax agencies are not forced to monitor taxpayers' pending bankruptcy court deadlines under a looming threat of discharge. This highlights a point where the policies of the Bankruptcy Code collide[295]: that outcome favors both the tax agency and the public at the expense of chapter 13 filers.

Moreover, nondischargeability of a debtor's postpetition income tax debt also preserves the collective societal benefit of tax collection and government spending.[296] Assuming the tax agency acts to compel repayment of a tax claim, contested taxes would be repaid in one of two ways: as part of the bankruptcy plan (if the agency filed a proof of claim under § 1305(a)) or in a direct action against the debtor.[297]

Though it benefits both taxing authorities and the public, the unilateral ruling that an income tax claim becomes payable postpetition carries negative ramifications for the debtor. If the contested tax liability was indeed a postpetition claim, even a debtor's proactive efforts to include and pay off those taxes through his bankruptcy plan are futile.[298] Moreover, even upon completing the plan, the petition-year tax claim is nondischargeable.[299] This ruling deprives the debtor of a chance to pay this claim over time via the bankruptcy case, interfering with the Code's intent to deal with all of the debtor's legal obligations, "no matter how remote or contingent."[300]

Additionally, an inherent inequity in this determination makes a "*Ripley* scenario" problematic. Petition-year tax liability derives only in part from taxes incurred after filing for bankruptcy. Because chapter 13 filers may not make a short-year election,[301] postpetition income tax claims inevitably capture taxes representing at least one day of prepetition income. Indeed, in

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292. A precedent for applying a taxable-year cutoff to determine when a tax claim was "incurred by the estate" within the meaning of Code § 503(b)(1)(B)(i) exists for the purpose of identifying administrative expenses in a bankruptcy case. That case, however, lies beyond the scope of Code § 1305 because it dealt with a corporate chapter 7 liquidation. *See In re Pac.-Atl. Trading Co.*, 64 F.3d at 1300 (holding taxes are always incurred on the last day of the taxable year).

293. *See supra* note 167.

294. *See supra* notes 160–62 and accompanying text.

295. See *supra* Part I.B for a description of bankruptcy policies.

296. *See supra* note 64.

297. *See supra* notes 166–67 and accompanying text.

298. Only the creditor may submit proof of postpetition claim. *See supra* notes 160–61 and accompanying text.

299. *See supra* note 167 and accompanying text.

300. H.R. REP. NO. 95-595, at 309 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266; *see also supra* notes 87–88 and accompanying text.

301. *See supra* notes 69–78 and accompanying text.

extreme cases, up to 364 days of tax liability could be incurred before the debtor filed a chapter 13 petition.[302] That result departs from a goal adopted by the earliest incarnations of bankruptcy legislation: providing debtors with a fresh financial start.[303]

Though the Code's accommodations for a governmental taxing authority[304] are reasonable, they disadvantage debtors. But that is the hand dealt to courts that must adjudicate conflicts given a Code whose twin purposes are inherently in conflict.[305] Although applying this form of analysis to petition-year income tax claims favors creditors, the inequity to debtors may be tempered by how courts address pre-petition-year tax liability in a "*Joye* scenario."

*C. "*Joye *Scenario": In a Presumptive Circuit Split the Taxable Year Rules*

If a tax claim is a pre-petition-year tax liability as described in a "*Joye* scenario," courts should perform a two-step analysis that considers both the petition-filing timeline and when contested claims become payable.[306] First, courts should use the petition-filing timeline to distinguish between chapter 13 petitions filed on or after the tax return due date and those chapter 13 petitions filed before the tax return due date for the contested claim. The former are clearly prepetition claims incurred and due prior to filing for bankruptcy.

Next, the latter claims should be examined to see when they "bec[a]me payable." When performing this analysis in a "*Joye* scenario," the taxable-year and the tax-return rules yield different outcomes, resulting in a presumptive circuit split.[307] Applying the taxable-year rule leads to the conclusion that the tax claim was payable on January 1, 2002, before the chapter 13 petition was filed. That would make this particular debt a prepetition claim. Consequently, once Jack Joya completes the chapter 13 plan, the court would likely discharge the debt since prepetition tax liabilities in chapter 13 can be discharged for a creditor's failure to file a proof of claim.[308]

By contrast, when extending the tax-return rule to a "*Joye* scenario," the critical "become payable" date for calendar filers would generally be April 15. In a "*Joye* scenario," even though the entire tax liability was derived from income earned prepetition, it had not yet "become payable," and a court would see it as a postpetition claim. Because the tax return due date

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302. *See In re* Holmes, 312 B.R. 876, 878 (Bankr. W.D. Tenn. 2004).
303. *See supra* note 54, 60, and accompanying text.
304. *See supra* notes 57–59 and accompanying text.
305. *See supra* Part I.B and accompanying text.
306. Recall that a pre-petition-year tax claim only falls within a "*Joye* scenario" if the debtor files the chapter 13 petition between the end of the taxable year and before the relevant tax return is due.
307. The circuit split is only presumptive because the Fifth Circuit has not yet been faced with this particular fact pattern.
308. *See supra* notes 124–25 and accompanying text.

on which claims "become payable" has yet to pass, this would be seen as a nondischargeable postpetition debt.[309]

The legislative history behind § 1305 portrays subsection (a)(1) as a vehicle for introducing claims that both "become payable" and are incurred after filing for chapter 13.[310] That, however, seems to undercut the logic behind applying a tax-return rule in a "*Joye* scenario" to a pre-petition-year tax claim incurred entirely prior to the petition-filing date.

Moreover, *Ripley* arguments that advance an IRC-informed understanding of the Bankruptcy Code seem less persuasive outside the context of claims in the petition-year. For example, the assertion that the IRC reflects the "annual nature" of income taxes[311] could aptly describe fully-incurred pre-petition-year claims, regardless of whether the taxable-year or the tax-return rule applied. Likewise, any argument that taxes are merely an estimate and subject to change[312] may be germane when discussing petition-year income taxes, but is far less so once the taxable year ends. Finally, although deductions may be made until the tax return is due,[313] once the taxpayer submits that return, the taxing authority still may submit a proof of claim within sixty days to challenge or contest the amount declared.[314] Thus, even if this tax liability is treated as a prepetition claim, a taxing authority can file a timely response to the debtor's tax return ensuring an accurate collection.[315]

In cases that fall within a "*Joye* scenario," the crucial distinction is that *all* of the tax liability relates to income earned prepetition.[316] From a logical standpoint, § 1305, whose title informs that it applies to the "[f]iling and allowance of postpetition claims," should have no bearing on a tax claim that was incurred as a result of services rendered wholly during the prepetition period.[317] The counterargument—the tax, though incurred before the chapter 13 petition was filed was not payable until postpetition—has been rejected by at least one commentator.[318] If § 1305(a) were

309. *See supra* notes 165–67 and accompanying text.

310. *See supra* note 249 and accompanying text.

311. United States v. Ripley (*In re* Ripley), 926 F.2d 440, 444 (5th Cir. 1991).

312. *See supra* notes 207–10 and accompanying text.

313. Joye v. Franchise Tax Bd. (*In re* Joye), 578 F.3d 1070, 1083 (9th Cir. 2009) (Graber, J., dissenting).

314. *See supra* note 109 and accompanying text. Sixty days represents a minimum. If the time remaining from the initial 180-day governmental filing deadline exceeds sixty days, the longer timeline applies. *See* FED. R. BANKR. P. 3002(c).

315. FED. R. BANKR. P. 3002(c).

316. Compare this to the "*Ripley* scenario" described in Part III.A, where the petition-year tax liability was derived from income earned both prepetition and postpetition.

317. 11 U.S.C. § 1305 (2006); *see also* INS v. Nat'l Ctr. for Immigrants' Rights, 502 U.S. 183, 189 (1991) (noting that a statute's title "can aid in resolving an ambiguity in the legislation's text").

318. *See* Craig A. Gargotta, *Post-Petition Tax Compliance Under the Bankruptcy Code: Can the IRS Enforce Tax Collection After Bankruptcy Is Filed?*, 11 AM. BANKR. INST. L. REV. 113 (2003) (discussing post-petition tax compliance).

intended to function in this way, § 502(i) would be made superfluous.[319] The more logical conclusion is to read § 1305(a) as governing only those claims that "become payable" while the bankruptcy is pending, leaving § 502(i) to address priority-eligible tax claims that do "not arise until after the commencement of the case."[320] Such a construction would also explain why the *Ripley* court never considered 502(i) in its discussion; the petition-year tax claim at issue there was not of a type that was fully incurred prior to the date the chapter 13 petition was filed.

Common rules of statutory construction also support the distinct meanings attributed to § 1305 and § 502(i). When two statutes appear to conflict, courts "must read . . . statutes to give effect to each if [they] can do so while preserving their sense and purpose."[321] In applying this principle, when the allegedly conflicting laws were passed in the same session of Congress, as were Code § 502(i) and § 1305, this presumption is even stronger.[322] From a statutory perspective, the taxable-year rule more cohesively interacts with the Code's scattered provisions than the tax-return rule.

From a policy standpoint too, the taxable-year rule has advantages, though when compared to the policy arguments about petition-year tax liability, the incentives are now reversed. First, using this rule embraces the classic bankruptcy goal of providing debtors with a fresh start.[323] Especially in the context of the rigorous, prolonged chapter 13 case, the Code contemplates an inclusive superdischarge provision that rewards the debtor who elects to repay his debts over time.[324] A tax-return rule excludes pre-petition-year tax claims in a "*Joye* scenario" from this discharge, a ruling that seems to clash with the Code's broad chapter 13 discharge.

Second, by applying the debtor-favoring rule when the claim constitutes pre-petition-year tax liability, the taxable-year rule mollifies the disadvantage debtors experience when the challenged tax claim denotes petition-year tax liability. Unlike in a petition-year income tax (and therefore postpetition) claim scenario, the onus is on the taxing authority to act: if it sees something it dislikes, it must object to the claim[325] or file a proof of claim after the debtor submits his tax return.[326] These remedies allow taxing authorities to engage the bankruptcy court and protect the public's interests on a more flexible timeline.

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319. Section 502(i) addresses tax claims that merit eighth priority according to Code § 507(a)(8) but that "[do] not arise" until after the bankruptcy case begins. *See supra* note 94 and accompanying text.

320. 11 U.S.C. § 502(i); *see also supra* notes 94, 245–48 and accompanying text.

321. Watt v. Alaska, 451 U.S. 259, 267 (1981); YULE KIM, CRS REPORT FOR CONGRESS, STATUTORY INTERPRETATION: GENERAL PRINCIPLES AND RECENT TRENDS 26 (2008), *available at* http://www.fas.org/sgp/crs/misc/97-589.pdf.

322. Pullen v. Morgenthau, 73 F.2d 281, 283 (2d Cir. 1934); KIM, *supra* note 321, at 27.

323. *See supra* notes 54, 60–63 and accompanying text.

324. *See supra* note 49 and text accompanying note 128.

325. *See supra* note 37 and accompanying text.

326. *See supra* notes 109–10 and accompanying text.

Finally, despite what might be viewed as added responsibility, in fact, when the creditor is a taxing authority, applying a taxable-year rule leaves it not much worse off. A primary concern about tax agencies is the sheer number of taxpayers in bankruptcy and the tax agency's role as an involuntary creditor in the bankruptcy case.[327] Adherents may try to justify the tax-return rule by arguing that an available tax return would facilitate action by the taxing authority. But Congress wrote into the Code flexible filing provisions that favor governmental agencies.[328] At worst, a taxing authority's deadline to act is already keyed to when the debtor submits the return for the pre-petition-year tax; at best, the governmental agency can delay filing a proof of claim for as long as it can "show cause."[329] Asserting that "the taxing authority's rights may be routinely impaired through no fault of its own" is starkly misleading about the supposed breadth of injury apparent in a taxable-year rule.[330] Thus, although tax authorities still benefit from certain Code provisions, the greater emphasis appears to be on the debtor's fresh start.[331] Applying the taxable year rule to pre-petition-year tax liability in a "*Joye* scenario" reinforces that choice.

CONCLUSION

Courts adjudicating the dischargeability of income tax claims in a chapter 13 case should be mindful that the analysis is highly fact-specific. The circuits do disagree about the exact meaning of the phrase "become payable" within the meaning of Code § 1305. But, the Fifth Circuit's tax-return rule addressed only petition-year tax liability, while a pre-petition-year tax claim was at the heart of the Ninth Circuit's taxable-year rule. For that reason, the decisions should be characterized as rulings addressing two distinct sets of facts, rather than as a true circuit split. Consequently, the courts' respective holdings must be reapplied with care.

The method for determining the status of income tax claims in chapter 13 varies depending on whether it constitutes a claim for petition-year or pre-petition-year taxes. If the former, courts need only determine when claims "become payable" within the meaning of Code § 1305(a). If, however, the claims represent pre-petition-year taxes, courts should look first to the petition-filing timeline before analyzing the moment at which claims "become payable."

Should the courts' presumptive split become a legal actuality, the taxable-year rule, advocated by the Ninth Circuit, best embraces when taxes "become payable." In a "*Ripley* scenario" dealing with petition-year tax liability, the taxable-year rule is functionally equivalent to the tax-return rule, but superior because it is not unnecessarily broad. In a "*Joye*

327. *See supra* notes 56–57 and accompanying text.

328. *See supra* notes 109–10 and accompanying text.

329. FED. R. BANKR. P. 3002(c)(1).

330. *In re* Turner, 420 B.R. 711, 715 (Bankr. E.D. Mich. 2009); *see also In re* Senczyszyn, 426 B.R. 250, 254 n.1 (Bankr. E.D. Mich. 2010) (dismissing the notion that taxing authorities are prejudiced when taxes "become payable" at the end of a taxable year).

331. *See supra* note 54 and accompanying text.

scenario," which deals with pre-petition-year taxes and a debtor who files for bankruptcy between January 1 and April 14, the two rules lead to divergent results. Here too, however, the taxable-year rule is preferable because it corresponds with the statutory construction of other Code provisions and bankruptcy policies favoring a debtor's fresh financial start.