TREATMENT OF REAL ESTATE TAXES IN A CHAPTER 13 PLAN

All of the courts in this district as well as the United States Supreme Court believe that an amount owed for county real estate taxes constitutes a bankruptcy claim and therefore is subject to the bankruptcy laws and to the jurisdiction of the bankruptcy court. As such, the state law rights of the county can be affected, modified, reduced, or eliminated under the federal bankruptcy laws. The bankruptcy laws are generally applied in the broadest sense to try to protect the orderly distribution of the debtor's property once a bankruptcy case is filed. In deciding federal bankruptcy law, the bankruptcy courts, while using state law for guidance on some issues, hold that federal law supersedes state law.

Unpaid Real Estate Taxes are a claim in Bankruptcy.

In section 101(5) of the Bankruptcy Code, a claim is defined as a "right to payment". The United States Supreme Court, in Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 111L.Ed.2d 66 (1991), decided that the right to payment can be can be solely against the debtor's property, even if it can't be enforced against the debtor personally. So even though a real estate tax can't be collected against the debtor personally, the ability of the county to collect the tax against the real property is sufficient to bring that amount under the bankruptcy laws. Under the case law from this district, a real estate tax claim is generally said to be a secured claim since the county asserts its claim against the debtor's real estate.

There are limitations what a county can do after a bankruptcy filing. First, it can no longer assess interest and penalties as to all outstanding taxes that are due and owing at the time the bankruptcy case is filed. Second, it cannot conduct a tax sale for any due and owing taxes as of the filing date.

Sold Real Estate Taxes.

The 7th Circuit's LaMont decision largely eliminated the controversy over treatment of sold taxes in Chapter 13 Plans.

Key points in LaMont:

1. The tax purchaser's interest is a secured claim that is modifiable in a debtor's Chapter 13 plan.

2. The bankruptcy code definition of "claim" is very broad, it is a right to payment or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment.

3. The Supreme Court of Illinois has explained, in the context of Illinois' Uniform Fraudulent Transfer Act, that a tax purchaser has no direct right to payment from the taxpayer, but rather the property tax code sets up an indirect right to payment mediated by the county. The procedure set forth in the code establishes a debtor / creditor relationship between the county and the landowner.

Therefore it is proper to redeem sold taxes by paying the County Clerk through the plan.

Sold taxes may be redeemed by payment to the County Clerk through a Chapter 13 plan as long as the case is filed before the end of the state law redemption period.

It is important to give notice to the tax buyer and include a provision in Section G stating that sold taxes are redeemed by payments to the County Clerk in Section E 3.1 and that no payment shall be made to Tax Buyer Inc. related to any claim for sold taxes related to Parcel Number xx-xx-xxx-xxx.

Du Page County

DuPage County clung to the paragraph titled "Other Considerations" in which the court writes: ... if the county clerk is unable to receive installment payments, he should inform the bankruptcy court, which may adopt another solution... The DuPage County Clerk objected to being paid in monthly instalments through the plan, Judge Cassling ruled in their favor in 14 B 46112 Cruz.

In most cases DuPage County will unwind the tax sale through the administrative sale in error procedures which places the responsibility for collecting the taxes with the County Treasurer and the Treasurer will file a proof of claim and accept payments through the plan.

In some cases the tax buyer will refuse to accept a sale in error and the sold taxes will have to be redeemed in a lump sum.

The DuPage County State's Attorney who handles bankruptcy related matters is:

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Confirmed Plan is binding on the County.

Section 1327 of the bankruptcy code states that upon confirmation, the plan becomes binding upon the debtor, the creditors, and the trustee. As long as the County was given proper notice they are bound by the treatment under the confirmed plan.

Contact information for all Collar County Treasurers and County Clerks including links to web sites with tax payment status can be found at www.lisle13.com under the link: Real Estate Taxes in Chapter 13.

TOP TEN KEYS TO DEALING WITH PROPERTY TAXES IN CHAPTER 13.

1. The Treasurer's office deals with property taxes until they have been sold. After the sale date the Clerk's office is responsible.

2. Always ask the debtor if there is an escrow for property taxes.

3. Always assume the taxes are in default if there is no escrow and give notice to the County Treasurer on Schedule D if there is no escrow. The taxes won't be sold if the county has notice.

4. Always give notice to the Treasurer, the Clerk and the Tax Buyer on Schedule D if there are sold taxes. The Clerk can give you the name and address of the Tax Buyer in less than a minute.

5. Check the status your self if there is no escrow. It takes one minute via internet or phone.

6. Specify the tax year(s) and the PIN on Schedule D and in the Plan.

7. Delinquent taxes must be provided for in the Plan. If the taxes are to be paid through the plan, do so in Section E 3.1, be sure to reference the tax year and the PIN. If direct by the debtor do so in **both** Plan section G and Schedule J.

8. Whether the taxes are paid through Plan Section E 3.1 or G, give them a high fixed payment and get them paid as soon as practical.

9. If the plan provides for payment of taxes that have been sold as well as taxes that have not been sold, provide for them separately in Plan section E 3.1 and make sure they are each clearly labeled.

10. If you don't have a tax bill you can search the Treasurer's web site by address.

NDIL Decisions of interest regarding property taxes:

Lyubomir Alexandrow v. Todd LaMont, et al; 7th Circuit Court of Appeals 13-1187, decided January 7, 2014. Sold taxes may be redeemed by payment to the appropriate taxing authority through the Chapter 13 plan.

In Re Kasco 378 B.R. 207, 211, 212-213 (2007) Tax purchaser is a creditor and its claim may be modified without regard to redemption under state law.

In Re Commings 02 B 42477 Judge Goldgar. Tax purchaser is a creditor and is bound by the terms of the confirmed plan that pays them as a secured creditor.

In Re Barton, 359 B.R. 681 (Bankr. N.D.Ill 2006) Automatic stay applies to a county, specifically in the assessment of interest and scheduling a tax sale. County is bound by the terms of the confirmed plan. County is subject to sanctions under section 362(k).

CDIL Decision of interest regarding property taxes:

Salta Group, Inc. v. McKinney, 380 B.R. 515 (C.D.Ill. 2008) Tax purchaser's claim may be paid over the life of the plan.