BANKRUPTCY

Legal Base

Title 11 of the United States Code, commonly referred to as the Bankruptcy Code, was enacted by Congress in 1978, and is the uniform federal law for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts.

On April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was signed, and became Public Law 109-8. BAPCPA made substantial changes to the Bankruptcy Code that apply to cases filed on or after October 17, 2005. The revisions, among other changes, that impact child support enforcement by the state IV-D agency are:

- Define a 'domestic support obligation';
- Allow some enforcement of support orders during bankruptcy proceedings;
- Give domestic support obligations first priority in distribution of available funds, after Trustee administrative fees;
- Instruct bankruptcy trustees to provide appropriate written notice and certain information:
  - to an obligee of the right to use the services of a state child support agency where the obligee resides; and
  - to the obligee and state IV-D child support agency of the bankruptcy proceedings, of the claim for a domestic support obligation, and of the granting of a discharge; and
  - to the obligee and state IV-D child support agency, at the time of discharge, of the debtor's last known address, of the last known name and address of the debtor's employer, and of the name of each creditor holding a debt that is not discharged or holding a debt that was reaffirmed.
- Allow the obligee and the IV-D child support agency to request the debtor's last known address from a creditor holding a debt that is not discharged or that is reaffirmed and the creditor will not be held liable for disclosing this information.

In bankruptcy cases filed prior to October 17, 2005, the state IV-D child support agency may not certify for tax offset or credit reporting, initiate income withholding, or suspend a license in a case in which the noncustodial parent or his/ her spouse has filed for bankruptcy under Chapter 7, 11,12, or 13 of Title 11 of the United States Code unless the automatic stay under Section 362 of the

Bankruptcy Code has been lifted or is no longer in effect and the obligation was not included in the plan.

A debt owed under state law to a state or municipality that is in the nature of support is not released by discharge in bankruptcy under Title 11 of the United States Code. Bankruptcy does not preclude entry and enforcement of orders established after the bankruptcy is filed.

Definitions

Automatic stay: an injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

Bankruptcy: a legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the following chapters of the Bankruptcy Code.

Chapter 7: liquidation of a debtor's nonexempt property and the distribution of the proceeds to creditors; trustee is appointed to take over property to sell/turn into money.

Chapter 11: mostly used by businesses, although it is available to individuals whose debts exceed Chapter 13 limitations; the debtor may continue to operate the business, but creditors and the Court must approve the debt repayment plan; if a trustee is appointed, the trustee takes control of the business and property.

Chapter 12: like Chapter 13, but only for family farmers or family fishermen.

Chapter 13: debt rehabilitation and reorganization, rather than liquidation; the debtor usually can keep property, but must earn wages or have some other source of regular income and agree to pay part of income to creditors; the Court must approve a repayment plan and budget; trustee is appointed to collect payments from the debtor, pay creditors, and make sure the debtor lives up to the terms of the repayment plan.

Claim: creditor's assertion of a right to payment from the debtor or the debtor's property.

Discharge: a debtor's release from personal liability for certain debts known as dischargeable debts and prevents the creditors owed these debts from taking any action against the debtor to collect the debts.

Domestic Support Obligation: a debt for alimony, child support, or maintenance accruing either before or after the bankruptcy is filed, and it includes interest, amounts assigned to a government agency but not amounts assigned involuntarily to a non government agency; non dischargeable even if the debtor is unable to pay such debts; exempt property is now liable

for such debts, and cannot be avoided by a preferential transfer.

Motion to Lift the Automatic Stay request by a creditor to allow the creditor to take action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

Pre-BAPCPA Procedures for Handling Bankruptcy Cases

Continue to process bankruptcy cases filed before October 17, 2005 according to the current policy re-issued below.

Tax Offset: A case must not be submitted for tax offset as long as a bankruptcy order is in effect, unless the automatic stay has been lifted. If the child support worker is aware of a case in which the noncustodial parent or his/her spouse has filed for bankruptcy, the child support worker must immediately refer the case to the staff attorney and suppress the noncustodial parent's case(s) from the tax offset process.

The child support worker may not be aware that the noncustodial parent or his/her spouse has filed bankruptcy until the pre-offset notice or an intercept has been made. If the child support worker is made aware that a bankruptcy has been filed and a tax collection is received, as long as the date of receipt is before the date the bankruptcy was filed, the collection will be processed. If the child support worker is aware that a bankruptcy has been filed prior to a tax offset collection being received, remove the arrearage and allow METSS to process a deletion. Once the deletion is recorded to ACTN, re-enter the arrearage, immediately refer the case to the staff attorney and suppress the tax offset process on the case(s).

License Suspension: If the noncustodial parent is in bankruptcy, his/her license should not be suspended. If the license(s) is inadvertently suspended, the staff attorney must check the bankruptcy order to determine the type bankruptcy filed. If the bankruptcy is a Chapter 11,12, or 13, a request for reinstatement must be made by entering that day's date on APLD in the reinstatement/agreement date field, or petition the court for relief from the automatic stay and/or submit a motion for bad faith. The license will not be reinstated if the noncustodial parent is in Chapter 7 bankruptcy, unless so ordered by the court or the staff attorney decides the license(s) is property of the estate.

Credit Bureau Reporting: If the noncustodial parent filed for Chapter 7 bankruptcy, he/she is reported to the credit reporting agencies unless so ordered by the court. If the noncustodial parent is in Chapter 11, 12, or 13 bankruptcy, he/she is not reported to the credit bureau. After reviewing the bankruptcy order to determine the type of bankruptcy filed and it is determined that the noncustodial parent filed for Chapter 11, 12, or 13, the child support worker must enter a case narrative on CONT to document ACTN, and the child support supervisor must enter the "hold submission" on the CRDT screen. The noncustodial parent will not be

reported to the credit bureau unless the automatic stay has been lifted or the bankruptcy has been discharged.

Income Withholding: Do not start income withholding on a case(s) if the noncustodial parent has filed for bankruptcy. If income withholding is in process and the child support worker is made aware that the noncustodial parent has filed bankruptcy, terminate income withholding and immediately refer the case to the staff attorney to lift the automatic stay. Automatic income withholding must be suppressed on EXCL until relief from the automatic stay is granted by the court or the bankruptcy is discharged.

{NOTE: When the bankruptcy order expires or the automatic stay is lifted, set ticklers to remove all suppressions placed on case(s).}

Procedures for Handling Bankruptcy Cases Effective October 17, 2005

Effective October 17, 2005 with the implementation of the BAPCPA, some enforcement actions are to continue on a case(s) if the noncustodial parent has filed for bankruptcy. Therefore, it is important that the date of the bankruptcy filing be determined.

Section 214 of the BAPCPA states the exceptions to an automatic stay in domestic support obligation proceedings and includes: (1) establishment of paternity; (2) establishment or modification of an order; (3) withholding of income for payment; (4) suspension of drivers' licenses and professional licenses; (5) reporting of overdue support owed to certain consumer reporting agencies; (6) interception of tax refunds; and (7) enforcement of medical obligations. Refer all other enforcement actions not excluded to the attorney to file a motion to lift the automatic stay.

BAPCPA requires the bankruptcy trustee to provide the IV-D agency and custodial parent a notice when bankruptcy claims are established and discharged. At the time of discharge, the notice will provide the last known address of the debtor (noncustodial parent), the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged or reaffirmed. If the debtor is a noncustodial parent in an open child support case(s), the child support worker will continue enforcement actions on the case(s) as indicated above, and initiate any appropriate actions based on the information provided. If a custodial parent contacts the child support enforcement office upon receipt of a notice from the bankruptcy trustee and no open case is located, explain the application for services process (See Volume VI, Section B).

BANKRUPTCY

Legal Base

The state IV-D agency may not certify for tax offset, initiate income withholding, or suspend a license in a case in which the noncustodial parent or his or her spouse has filed for bankruptcy under Chapter VII, XI, XII, or XIII of Title 11 of the United States Code unless the automatic stay under Section 362 of the Bankruptcy Code has been lifted or is no longer in effect and the obligation was not included in the plan.

A debt owed under state law to a state or municipality that is in the nature of support is not released by discharge in bankruptcy under Title 11 of the United States Code.

Definition

Bankruptcy is a federal law (11 USCA) for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts.

Chapter 7 Bankruptcy is a liquidation proceeding and involves the collection and distribution to creditors of all the debtor's non-exempt property by the trustee in the manner provided by the Act.

Chapter 11 Bankruptcy is designed for business reorganizations, although it is available to individuals whose debts exceed Chapter 13 limitations.

Chapter 12 Bankruptcy closely parallels the procedures and scope of Chapter 13 Bankruptcies and is designed for family farmers whose debts exceed Chapter 13 limitations.

Chapter 13 Bankruptcy differs from Chapter 7 Bankruptcy in that the debtor looks to rehabilitation and reorganization, rather than liquidation, and the creditor looks to future earnings of the debtor, rather than property held by the debtor to satisfy the claims. It is available to individuals who have regular income and whose debts do not exceed $250,000 in unsecured debts and $750,000 in secured debts.

Procedures for Handling Tax Offset in Bankruptcy Cases

A case must not be submitted for tax offset as long as a bankruptcy order is in effect, unless the automatic stay has been lifted. If the child support worker is aware of a case in which the noncustodial parent or his/her spouse has filed for bankruptcy, the child support worker must immediately refer the case to the staff attorney and enter an "X" in the tax offset bypass field on APPD.CASE. **Set a tickler to remove the "X" from the tax offset bypass field when the bankruptcy order expires or the automatic stay is lifted.**

The child support worker may not be aware that the noncustodial parent or his or her spouse has filed bankruptcy until the pre-offset notice or an intercept has been made. If the child support worker is not aware that a bankruptcy has been filed and a tax offset collection is received, as long as the date of receipt is before the date the bankruptcy was filed, the collection will be processed. If the child support worker is aware that a bankruptcy has been filed prior to a tax offset collection being received, remove the arrearage and allow METSS to process a deletion. Once the deletion is recorded to ACTN, re-enter the arrearage, immediately refer the case to the staff attorney and enter an "X" in the tax offset bypass field on APPD.CASE. **Set a tickler to remove the "X" from the tax offset bypass field when the bankruptcy order expires or the automatic stay is lifted.**

Bankruptcy does not preclude entry and enforcement of orders established after the bankruptcy is filed. When a bankruptcy case is referred to the staff attorney, he or she must take immediate steps to have the automatic stay lifted for child support. Once the stay has been lifted the attorney will refer the case to the county child support worker to initiate all appropriate enforcement remedies.

Procedures for Handling License Suspension in Bankruptcy Cases

If the noncustodial parent is in bankruptcy, his/her license should not be suspended. If the license(s) is inadvertently suspended, the staff attorney must check the bankruptcy order to determine the type bankruptcy filed. If the bankruptcy is a Chapter 11, 12 or 13, a request for reinstatement must be made by entering that day's date on APLD in the reinstatement/agreement date field, or petition the court for relief from the automatic stay and/or submit a motion for bad faith. The license will not be reinstated if the noncustodial parent is in Chapter 7 bankruptcy, unless so ordered by the court or the staff attorney decides the license(s) is property of the estate.

Procedures for Handling Credit Bureau Reporting in Bankruptcy Cases

If the noncustodial parent is in Chapter 11, 12, or 13 bankruptcy, he/she is not reported to the credit bureau. After reviewing the bankruptcy order to determine the type bankruptcy filed and it is determined that the noncustodial parent filed for Chapter 11, 12 or 13, the child support worker must make a case narrative entry on CONT and the child support supervisor must enter the "hold submission" code on the CRDT screen. The noncustodial parent will not be reported to the credit bureau unless the automatic stay has been lifted or the bankruptcy has been discharged.

If the noncustodial parent filed for Chapter 7 bankruptcy, he/she is reported to the credit bureau unless so ordered by the court.