

New Bankruptcy Law

*By Jim Wagenmann, CPA
JWagenmann@wmdco.com*

The 2005 Bankruptcy Act (officially known as The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) was signed into law in April and is intended to curb perceived abuses in the bankruptcy process. However, the bill makes it more difficult for individuals to get a fresh start in life, especially those individuals whose financial difficulties were caused by an unanticipated illness, loss of employment, or other catastrophe. The changes enacted in the bill become effective October 17, 2005. Until then, the existing bankruptcy rules still apply. Therefore, it may be advantageous for some individuals to consider filing for bankruptcy protection sooner than later.

The new rules are complex, but some of the more pertinent provisions are summarized below. If you, or someone you know, have severe financial problems, consider contacting a bankruptcy attorney as soon as possible to determine the best course of action to take, debt workout or bankruptcy protection. If bankruptcy is recommended, you will need to determine the appropriate time to file.

Under current law, delinquent taxes can be discharged if enough time has elapsed from the date the tax return with unpaid taxes was due (three years), or the date the Internal Revenue Service assessed additional taxes (240 days). If the debtor has no assets with which to pay the taxes, in many cases the taxes could be discharged. Future income was not a factor in paying creditors.

There will be a new "means-test" under the bill to determine a debtor's ability to pay creditors (including the Internal Revenue Service) from future earnings. The ability to pay is determined by comparing the debtor's average monthly income for the preceding six months (excluding social security payments but including a spouse's income, even if the spouse is not filing for bankruptcy unless the spouses are separated) against allowable expenses, which include: taxes (income and employment), health insurance, out-of-pocket medical expenses, term life insurance premiums, disability insurance premiums, payments for disabled family members, limited cost of private school for children under 18 years of age, limited amount of charitable contributions, alimony, child support and the Internal Revenue Service's standards in determining housing, food, clothing and transportation costs. These standards are used by the IRS to determine the acceptability of an offer in compromise or the amount of monthly payments under an installment agreement in cases of delinquent taxes. If there is excess disposable income, the Bankruptcy Court will determine the monthly payments required, which will be payable over five years.

One piece of good news is that the new law created statutory exemptions for employee benefits plans (qualified retirement plans, traditional and Roth individual retirement accounts, governmental and exempt organization retirement plans, and tax-favored annuities). The protection from creditors is limited to \$1,000,000, adjusted for inflation.

Please contact us if you have questions or if you need a recommendation for legal counsel.

Jim Wagenmann, CPA is a member of the accounting firm Watkins, Meegan, Drury & Co., LLC in Bethesda, MD. He has in excess of thirty years experience in the areas of tax, employee benefits, estate and trust planning, as well as financial planning. He is the technical source for the firm in these areas. Jim can be reached at (301) 654-7555 or email at JWagenmann@wmdco.com.