

**FREQUENTLY ASKED QUESTIONS CONCERNING
CHAPTER 13 DEBTORS' INCOME TAX REFUNDS**

(Revised 2-22-10)

- Q** Will I get my IRS Refund now that I am in Chapter 13?
- A** If: (1) you do not owe IRS any back taxes, and (2) you have filed all tax returns that are currently or previously due, IRS will send your refund to you.
- Q** What if I do owe IRS for back taxes or have not filed all my tax returns that are currently or previously due?
- A** IRS will send your refund to the Chapter 13 Trustee, unless IRS elects to offset a pre-petition refund (keep it and apply it to any back taxes you may owe to IRS).
- Q** Will I receive any notice if IRS offsets my refund or sends it to the Chapter 13 Trustee?
- A** Yes, IRS will send you and your attorney a written notice telling you what they have done.
- Q** What happens to my IRS refund if it is sent to the Chapter 13 Trustee?
- A** The first \$2,000.00 of each tax year's IRS refund will be sent to you by the Trustee, unless the Trustee elects to apply all or a portion of the first \$2,000.00 to any Chapter 13 plan payment delinquency you may owe.
- Q** What happens to any IRS refund amount in excess of \$2,000.00 per tax year?
- A** Unless you get a court order from the Bankruptcy Judge directing otherwise, any excess above \$2,000.00 will be kept by the Trustee and paid pro rata to the allowed general unsecured claims in your case.
- Q** Why does the Trustee get to keep part of my refund to pay to unsecured claims?
- A** Because that is what all 6 of the Bankruptcy Judges in the Northern District of Texas have ordered in their General Order 2009-03 (on the court's website at <http://www.txnb.uscourts.gov>) which states:

“9. IRS REFUNDS.

“a. See Section 362(b)(26) of the Bankruptcy Code for setoff rights by the IRS.

“b. Unless otherwise ordered by the Court, the Trustee is hereby authorized to receive, endorse, deposit, and apply to any delinquency in a Debtor’s Chapter 13 case any IRS refund issued by the IRS after the Petition Date and before the final Payment is made under the Plan, or the case is converted or dismissed, up to \$2,000. Any portion of the first \$2,000 of any refund not so applied will be forwarded by the Trustee to the Debtor.

“c. Any IRS refund in excess of \$2,000 may be kept by the Trustee (to the extent of such excess) and paid pro rata to the Debtor’s allowed general unsecured creditors. In such event the Base Amount will be increased by such amount, and the Plan will be deemed modified accordingly.” (emphasis supplied)

Q Who do I contact if I have any further questions about my IRS refund?

A Your attorney’s office.

Q What if I have a problem getting in touch with my attorney’s office?

A Call the Trustee’s office and report the problem. The Trustee’s office will contact your attorney’s office and ask them to get in touch with you. The Trustee is not allowed to give you legal advice.

Q How long after I file my return will it be before any refund is sent?

A Because you are in Chapter 13 your refund is processed manually. It normally takes 16 weeks from the date you filed your tax return for IRS to process your refund.

Q How do I contact IRS to check on the status of my refund?

A You can call the Insolvency Office at (214) 413-5351 or 5352. Do not call the IRS toll free number or the IRS Service Center about your refund.

Q Can I write to or fax IRS?

A Yes. While you are in bankruptcy, the IRS mailing address and fax number are:

Internal Revenue Service
1100 Commerce Street, MC 5020 DAL
Dallas, Texas 75242
Fax: (214) 413-5243