

From: Alice Whitten
Sent: Tuesday, February 16, 2010 5:12 PM
To:
Subject: Process for obtaining turnover of IRS Refunds in Excess of \$2000
Attachments: [Objection to notice of intent to disburse.doc](#)
[Notice of Intent to Disburse.doc](#)
[trustee's response to dbtr response to notice of intent to disburse.doc](#)

Greetings –

As has been discussed for the past few months, we are rolling out a new process for obtaining turnover from the Chapter 13 Trustee IRS Refunds in Excess of \$2000 (“Excess Funds”). Our goal with this process is to reduce the number of motions that are filed and heard by the Court, thus reducing the time the Debtor(s) and Debtor’s(s’) attorneys are required to be present for a hearing.

Step 1: Shortly after receipt of an IRS refund in excess of \$2000 in a case, the Trustee will file his\her Notice of Intent to Disburse (copy of form is attached). This notice advises all interested parties of the tax refund year and amount, and indicates that if no response is filed within twenty-one (21) days, the Trustee will proceed with raising the plan base and disbursing the Excess Funds.

Step 2: If the Debtor would like for the funds to be handled in a different manner, an Objection to the Notice of Intent to Disburse must be filed within that twenty-one (21) day period (copy of form of Objection is attached). The Objection should contain the information about which the Debtor(s) would testify if a motion were filed and he\she\they were to take the stand at a hearing. All relevant and pertinent information should be contained in the Objection and any exhibits attached. For example, if the Debtor is requesting the Excess Funds because they are needed to pay unexpected medical expenses – attach appropriately redacted copies of the medical bills or provide information in the affidavit as to the amount of the expenses incurred. By further example, if the Debtor is requesting the Excess Funds because they are needed to repair\acquire a vehicle – attached the repair bills or purchase price information or provide information in the affidavit as to the amount needed to repair or obtain the vehicle. If the exhibits are too voluminous; contain confidential information; or will be difficult to read when scanned in, the Debtor’s attorney should send those document separately via email to the appropriate Ch 13 Trustee’s Legal email box (i.e., whittenlegal@fwch13.com or trumanlegal@ch13ftw.com). Debtor’s attorneys should take care to ensure that they are linking the Objection to the original notice.

Step 3: Either the Trustee or the Staff Attorney will review the Request and within twenty-one (21) days of submission will file with the Court the Trustee’s Response to the Objection (copy of the form of the Response is attached). Within the Response, the Trustee will indicate one of the following:

- Additional information is needed before the Trustee can make a determination. Specific information will be requested in the Response. If the information is not provided within twenty-one (21) days, the Objection will be deemed denied and the funds will be disbursed as originally proposed.
- The Trustee is not opposed to the release of the Excess Funds. If no objections to the Trustee’s Response are filed within twenty-one (21) days of the Response filing, the Trustee would release the appropriate amount to the Debtor(s) and Debtor’s (s’) attorney.
 - Please note that the amount released to the Debtor will be reduced by \$200 and a check for that amount will be sent to Debtor’s (s’) attorney for the services related to the Request.
 - Please also note that the amount released may be further reduced by any amount necessary to bring the plan payments current. These amounts will be reflected on the Response filed with the Court.
- The Trustee is partially opposed to the release of the Excess Funds. The Response will reflect an amount which the Trustee will agree to. If no objections to the Trustee’s Response are filed

within twenty-one (21) days of the Response filing, the Trustee would release the appropriate amount to the Debtor(s) and Debtor's (s') attorney.

- Please note that the amount released to the Debtor will be reduced by \$200 and a check for that amount will be sent to Debtor's (s') attorney for the services related to the Request.
- Please also note that the amount released may be further reduced by any amount necessary to bring the plan payments current. These amounts will be reflected on the Response filed with the Court.
- The Trustee is opposed to the release, or wishes for the Court to make a final determination, the Excess Funds will not be released without an Order from Court. The attorney for the Debtor(s) can then make the determination of whether a motion to compel should be filed with the Court.

Step 4: If the Debtor(s) or Debtor's (s') attorney does not agree with the action\amount proposed on the Trustee's Response, a Motion to Compel Turnover must be filed within twenty-one (21) days, otherwise the Trustee will disburse the funds as indicated in the Response.

Attorneys for Debtors have the option of leaving any pending Motions to Compel Turnover on the docket or withdrawing the same, and requesting IN WRITING (email to the above referenced email addresses is sufficient) that the Trustee file his\her Notice from **Step 1** above.

We have worked closely with the Dallas Chapter 13 Trustee so that this process will be the same in both divisions. If you have questions regarding this new process, please contact both Alice and Tim so we can ensure everyone is aware of the questions or issues.

A copy of this email and the forms will be posted to both of our websites.

Thanks
Alice and Tim

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