

OFFICE OF THE CHAPTER 13 TRUSTEE
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Richard V. Fink, Trustee

FREQUENTLY ASKED QUESTIONS REGARDING TAX REFUNDS

- 1. If my client's refunds total less than \$3,500 and the plan does not provide for the turnover to the trustee, and my client wishes to retain all or a portion of the refunds, what needs to be in the letter to the trustee?**

The letter should include: Who, What, Where, Why, and How

- a. Who**
 - i. My client requires this because....**
 - ii. My client's child, "X" requires this because....**
- b. What**
 - i. Be specific**
 - 1. A "hot water heater" not "home repairs"**
 - 2. An "MRI" not "medical expenses"**
 - ii. Look at previous requests and do not request the same items each year unless your client can provide a cogent explanation as to why he needs another new mattress, or another set of tires for the same vehicle**
- c. Where**
 - i. "Acme Car Repairs" in "Paris, MO"**
 - ii. "X Hardware" in "Moscow, MO"**
- d. Why**
 - i. Explain why this is a reasonable and necessary expense**
 - ii. Explain why it affects the health, safety, welfare of your client or the structural integrity of your client's property**
 - iii. Explain why it can't wait until your client completes the Chapter 13**
 - iv. Explain why it will not affect the unsecured, non-priority claimants, e.g., "this is a 100% plan and the plan payments are current and the plan will complete timely"**
- e. How**
 - i. Mail the letter to the trustee's office, not his lockbox**
 - ii. Provide documentation such as estimates**
 - iii. Explain why the item is not already included in Schedule J**
 - iv. Be reasonable**

1. A new mattress might be a reasonable and necessary expense
 2. But, a \$4,000 mattress is not likely a reasonable and necessary expense
2. My client's refunds total more than \$3,500 and my client wishes to retain all or a portion of the refunds, what needs to be in the motion filed with the Court?

The motion should include: Who, What, Where, Why, and How

 - a. Who
 - i. My client requires this because....
 - ii. My client's child, "X" requires this because....
 - b. What
 - i. Be specific
 1. A "hot water heater" not "home repairs"
 2. An "MRI" not "medical expenses"
 - ii. Look at previous requests and do not request the same items each year unless your client can provide a cogent explanation as to why he needs another new mattress, or another set of tires for the same vehicle
 - c. Where
 - i. "Acme Car Repairs" in "Paris, MO"
 - ii. "X Hardware" in "Moscow, MO"
 - d. Why
 - i. Explain why this is a reasonable and necessary expense
 - ii. Explain why it affects the health, safety, welfare of your client or the structural integrity of your client's property
 - iii. Explain why it can't wait until your client completes the Chapter 13
 - iv. Explain why it will not affect the unsecured, non-priority claimants, e.g., "this is a 100% plan and the plan payments are current and the plan will complete timely"
 - e. How
 - i. File the motion with the Court and serve the appropriate parties.
 - ii. Provide documentation such as estimates
 - iii. Explain why the item is not already included in Schedule J
 - iv. Be reasonable
 1. A new mattress might be a reasonable and necessary expense
 2. But, a \$4,000 mattress is not likely a reasonable and necessary expense.
3. What other information should be provided

Any documentation which supports the expense is helpful, e.g., a repair estimate, a letter from the physician or dentist. This should be attached either the letter (\$3500 or less) or to the motion (\$3,500.01 or more).

- 4. If my client pro-rated their estimated refunds and included that amount in their Schedule I and it is approximately accurate, why are you asking for my client's tax returns?**

The trustee may want to review your client's tax returns to assure compliance with §1325(a)(4), or to check that the refunds are not significantly in excess of the amount pro-rated.

- 5. If my client's refunds total \$500 or less, why are you asking for the tax returns?**

Again, the trustee may want to check that the tax refunds are less than \$500.

- 6. Do I need to send or file a copy of the tax return to the Court?**

No, unless the Judge requests it. However, it may be something you wish to introduce into evidence if a hearing is set on your client's motion.

- 7. If my client exempted the refund on Schedule C, do I need to file a motion or do a letter request to retain?**

It depends. If the refund is for the filing year; if it was disclosed; if it approximates what was disclosed; and if the plan covers it under the "best interest of creditors test," §1325(a)(4), no motion would be necessary. In subsequent years, the issue rotates to disposable income, §1325(b).

- 8. What if the plan provides for the refund to be turned over to the trustee?**

Turn it over to the trustee. Don't make a letter request. Don't file a motion with the Court unless the plan provides for "the refunds to be turned over to the trustee, absent other order of the Court."