



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

09-BK-139

February 16, 2010

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, DC 20544

Re: Preliminary Draft of Proposed Amendments to Federal Rule
of Bankruptcy and Criminal Procedure Published for
Comment August 2009

Dear Mr. McCabe:

This letter provides the comments of the Office of Chief Counsel, Internal Revenue Service, on the proposed amendments to subsection (e) of Rule 2003 and the related Committee Note. As a tax creditor filing thousands of proofs of claim every month in bankruptcy cases, the Internal Revenue Service has a vital interest in the proposed amendment.

We recommend revising the proposed amendments to Rule 2003(e) and Committee Note to require the presiding official to specify whether a meeting of the creditors under section 341 (341 meeting) is being held open pursuant to section 1308(b) to allow a taxpayer additional time to file a tax return, or adjourned for some other purpose under Bankruptcy Rule 2003.

The proposed amendment to Rule 2003(e) and Committee Note should be revised for two reasons. First, the proposed amendment to Rule 2003(e) and the Committee Note could cause debtors to believe that any adjournment of the 341 meeting extends the 1308 return-filing period. As explained below, a debtor only receives an extension of time to file tax returns under section 1308 if the trustee holds the 341 meeting open for that purpose. The proposed Rule and Committee Note may cause debtors to believe that any adjournment will extend the time to file tax returns under section 1308, and a debtor that misses the deadline to file tax returns could face the mandatory dismissal or conversion of the bankruptcy case under section 1307(e). Second, the notice of adjournment will not notify taxing authorities whether such an extension was granted and may result in the premature filing of motions to dismiss or convert unless it expressly states that the 341 meeting is being held open in order to extend the debtor's time to file tax returns. See *In re Cushing*, 401 B.R. 528 (B.A.P. 1st Cir. 2009).

Rule 2003(e) currently provides that the section 341 meeting of creditors may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice. The proposed amendment to Rule 2003(e) adds a

sentence requiring the official presiding over the meeting of creditors that is adjourned to promptly file a statement specifying the date and time to which the meeting is adjourned. The proposal would also add a sentence to the Committee Note stating that “when a meeting is adjourned or ‘held open’ as permitted by section 1308(b)(1) of the Bankruptcy Code in order to allow a debtor additional time in which to file a tax return with taxing authorities, the filing of this statement will also discourage premature motions to dismiss or convert the case under section 1307(e).” The proposed Committee Note equates the holding open of the 341 meeting under section 1308 with an adjournment for purposes of Rule 2003(e). Since the proposed rule does not require that the notice specify whether the adjournment was granted to extend the due date for returns under section 1308, it could lead debtors to believe that any adjournment of the section 341 meeting would qualify as holding the meeting open for purposes of section 1308.

The Bankruptcy Rules currently provide for “adjournment,” whereby the official presiding at the 341 meeting has broad discretion to continue the meeting as necessary. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 created the concept of “holding open” the 341 meeting by adding section 1308. Section 1308(a) requires that by the day before the section 341 meeting any debtor required to file a tax return under applicable nonbankruptcy law shall file all tax returns for the previous four years. Should the debtor fail to timely file any required tax return, the court is required either to dismiss the case or convert it to a case under chapter 7. Section 1308(b)(1) allows the trustee to “hold open” the meeting of creditors for a reasonable period of time “to allow the debtor an additional period of time to file any unfiled returns.” The time to file tax returns under section 1308 is only extended when the 341 meeting is held open for the purpose of allowing the debtor to file unfiled returns. While the trustee has broad discretion to adjourn the 341 meeting for other purposes, the trustee’s discretion to grant an extension for section 1308 purposes is limited. Section 1308(b)(1) prohibits the trustee from granting an extension for more than 120 days, or until the return is due under nonbankruptcy law. The express language of section 1308(b)(1) and the limits it places on the trustee’s discretion to hold open the 341 meeting under section 1308 show that an adjournment for some purpose other than the granting of an extension to file returns will not have the effect of granting such an extension. By not drawing a distinction between general adjournments and adjournments that hold the 341 meeting open for purposes of section 1308, the proposed amendment and Committee Note would cause debtors to assume incorrectly that any adjournment of the 341 meeting extends the period to file tax returns.

In addition, without an express statement in the notice of adjournment as to whether or not the meeting is being held open for purposes of section 1308, taxing authorities may be led to file premature motions to dismiss or convert. It is impractical for taxing authorities to be represented at the many thousands of 341 meetings held in Chapter 13 cases, and reviewing the minutes of those 341 meetings would pose a substantial administrative burden that the statement of the presiding official, as contemplated by the proposed amendment, was intended to render unnecessary.

Given the dire consequences to a debtor's bankruptcy case if the debtor fails to file returns as required in section 1308, and administrative difficulties facing taxing authorities in monitoring section 1308 extensions, we recommend that the proposed amendment to Rule 2003 and the Committee Note be revised to require a trustee to identify any adjournment to hold open the 341 meeting for purposes of section 1308 as follows:

(e) ADJOURNING AND HOLDING OPEN MEETINGS. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned. In chapter 13 cases, if a meeting is being held open pursuant to section 1308(b), the statement shall so specify and state the date and time to which the meeting is held open for that purpose.

COMMITTEE NOTE

Subdivision (e). Subdivision (e) is amended to require the presiding official to file a statement ~~after the adjournment of a meeting of creditors or equity security holders designating the period of the adjournment when the meeting is being adjourned or being held open for purposes of section 1308(b).~~ The presiding official is the United States trustee or the United States trustee's designee. This requirement will provide notice to parties in interest not present at the initial meeting of the date and time to which the meeting has been continued. ~~When a meeting is adjourned or "held open" as permitted by § 1308(b)(1) of the Code in order to allow a debtor additional time in which to file a tax return with taxing authorities, the filing of this statement when a meeting is held open will also discourage premature motions to dismiss or convert the case under § section 1307(e).~~

Thank you for the opportunity to submit comments on behalf of the Office of Chief Counsel, Internal Revenue Service. Questions regarding this submission should be directed to attorney Shannon Brophy of this office at (202) 622-3620.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Butler".

Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)