

Chap 7..13

Bankruptcy Blotter



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THE PRUDENT PRACTITIONER— Obtaining Tax Information from the IRS

By Rosemary E. Williams*

The amendments to the Bankruptcy Code in BAPCPA substantially and substantively increased the amount of information which a debtor's attorney must gather and review before an individual case can be filed. Given the generally nondischargeable status given claims for past-due tax obligations,¹ the existence and amount of tax claims can be decisive on whether an individual debtor is eligible for relief under a rehabilitative or liquidation chapter of the Code. The debtor's representative will want to verify the existence,

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From the Editor

Coming soon in Version 9.0 are more contact fields to allow you to track all contact information for your client and creditors. Additionally, this information will be more readily available from the Case Explorer screen. We are sure you will like these new fields as well as the new Default Settings Wizard from which you can easily access and change some of the more common settings in Chap 7..13.

Keep those suggestions coming to West.Chap7dotdot13@ThomsonReuters.com.

Your Chap 7..13 Project Team

nature and amount of any federal tax claims which may be outstanding, or be sure there are no such claims, even if the debtor has paperwork on these points. Further, a debtor must provide copies of returns or transcripts of federal returns for at least the two tax years prior to the petition filing to the trustee. The debtor may not have these reports available, or may be unable to establish the filing, since the IRS does not in any way acknowledge the receipt of a tax return.

The painful way to verify and obtain necessary information, including copies of returns, is either to have the debtor obtain the information using the public telephone access numbers, requiring a phone hold time of at least an hour, and the mailing of the requested copies, or by request of the practitioner who has written authorization from the debtor—meaning the same wait times and, in addition, the time it takes for evidence of authorization to be sent to the IRS.

Fortunately for costs and sanity, there is an easy, low-cost way to accomplish the same objective within the space of less than an hour, including wait time, if the attorney² is admitted to practice before the Internal Revenue Service. The column this month describes this admission, along with the procedure necessary to obtain the desired CAF³ number evidencing admission.⁴

I. The Hotline

Anyone who has attempted to utilize public access to the IRS knows how frustrating and time-consuming it is, with a telephone tree to navigate and waits of an hour or more if an actual person is needed. Since requesting to view the tax return of another requires written evidence of authorization to do so, which must be delivered to the IRS before the request can be made, the wait can be even longer if the authority is not already in the IRS' possession. But a person who has been admitted to practice before the IRS, and has received a CAF number, is able to access the Practitioner's Priority Service. This service is a nationwide, toll-free hotline that provides access to professional support for admitted practitioners with account-related questions, including requests for copies of returns or transcripts. And here's the valuable thing. After navigating a short telephone tree, the hotline

(1-866-860-4259) is answered by a real person at any time between 8:00 AM and 5:00 PM *local* time. There is still a wait time, but at least it is limited to 15-20 minutes on average, worse on Mondays and Tuesdays (notices generally are delivered on the weekend), and when close to the return filing dates in mid-April or October. This service alone is worth obtaining admission.

Once phone contact is made, the power of attorney or other evidence of a right to review the confidential data on another's tax return can be transmitted to the IRS by fax during the call,⁵ and the requested data received by fax *during or immediately after* the call, although no more than 10 fax transmittals at a time may be authorized by the agent. Actual service, relatively prompt, efficient and timely.

If an attorney needs more than 10 transmittals, needs returns or transcripts after 5:00 PM, on a weekend or holiday, or simply doesn't want to receive or send by facsimile, the attorney may utilize the IRS' Online Tools for Tax Professionals. This is a suite of web-based products that allow for 24/7 access. This is **not** available to the general public. The attorney must register and complete an e-file application. There are FAQ and tutorials, plus a help desk, for all federal e-services. The website to initiate registration is <https://la2.www4.irs.gov/e-services/Registration/index.htm>. There is no fee. Reporting agents, including attorneys, can use this service to obtain delivery via secure email of transcripts or full returns.

Note: There are state "coordinators" where similar functions are available. The website for the list of state coordinators is <http://www.irs.gov/efile/article/0,,id=97558,00.html>.

When a call via the hotline is initiated, the agent answering the phone will provide a name and identification number. The practitioner should be prepared to make a record of this information, and to respond with the attorney's name and CAF number. The CAF number identifies the practitioner as admitted to practice before the IRS, while the agent's number identifies the person as a legitimate employee of the IRS. Once everyone's bona fides are shown, the practitioner should advise the agent that the power of attorney is prepared for facsimile transmission and ask for the number of the fax closest to the agent. The remainder of the communication

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will concern whatever information or other content is described in the power of attorney.

2. General practice before the IRS

Unless limited in a specific case by language in a power of attorney or be use of one of the limited forms of authorization described in this column, an attorney's admission to practice before the IRS includes anything related to:

- a. Communication with the IRS on behalf of a taxpayer regarding the taxpayer's rights, privileges or liabilities under laws and regulations administered by the IRS, including obtaining transcripts or copies of tax returns for the client;
- b. Representation of a taxpayer at conferences, hearings or meetings with the IRS; and
- c. Preparation and filing of documents with the IRS for a taxpayer.⁶

Specifically, with authorization under Form 2848 the attorney can represent the taxpayer in any meeting with the IRS, record the interview, sign an offer or a waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of a claim for a credit or refund, sign a consent to extend the statutory time period for assessment or collection of a tax, sign a closing agreement, and receive—but not endorse or cash—a refund check. If the attorney is to receive a refund check for the taxpayer, the taxpayer must initial that part of Form 2848 showing the name of the attorney as being designated to receive the refund check.

Note: Just furnishing information requested by the IRS, or appearing *as a witness* for the taxpayer is not practice. Anyone can do this. Further, commencement of litigation such as determination of an estate's tax liability by the Bankruptcy Court, or an objection to a proof of claim made by the IRS, does not require admission to practice before the IRS unless, for some reason, the litigation is transferred to that forum.

3. Authorization forms

A. Power of Attorney and Declaration of Representative

A natural person may represent him or herself in any matter concerning the IRS, but to appear through a representative, the taxpayer must provide a writing authorizing a representative and describing that representative's authority. If that authorization is unlimited,⁷ the representative generally can perform any act and obtain any information that the taxpayer could.

The IRS has a two-page form for unlimited representation, with instructions as to completion. A sample of this

form with some completion is included in Publication 947. The Form is numbered 2848 and is titled "Power of Attorney and Declaration of Representative. This form may be completed online and transmitted, printed or downloaded from <http://www.irs.gov/app/picklist/list/formsInstructions.html>, a site which contains all IRS forms. This form commonly is used for most representations, and can be routinely completed and signed by the client when a bankruptcy filing is under consideration.

Note: A power of attorney drafted separately from Form 2848 may be used as long as it otherwise meets the requirements, and has the content, of Form 2848. However, a separate power of attorney not on the IRS' own form has additional requirements to establish its veracity and effectiveness—not worth the bother unless it's all there is available.

B. Tax Information Authorization

Form 8821 is not to be used to request copies of tax returns, but authorizes the attorney to inspect and receive confidential information in any IRS office for matters specifically identified in the form. This is a much more limited authorization than Form 2848 and should be used only in narrow circumstances.

The difference between this form, and Form 2848 is that the power of attorney form allows the attorney to act on behalf of, and negotiate for, the taxpayer. The representative is thus an advocate for the taxpayer and may argue facts or law with the IRS. The appointee under a Tax Information Authorization is able to receive and provide information with the IRS for the purpose of resolving a tax account issue, but no other act other than the review of information for that specific purpose.

C. Other authorizations

Besides the two forms listed above, authorizations can be found in Form 706 for representatives of probate—not bankruptcy—estates; a Third-Party Designee (checkbox) authorization⁸ which has gradually been expanding and is now co-extensive with Form 8821; the Oral Disclosure Consent;⁹ and the Oral Tax Information Authorization (similar to the ODC, but permitting disclosure of information on a return). See <http://www.irs.gov/businesses/small/article/0,,id=107770,00.html> for a general discussion of the differences among these authorizations.

4. Obtaining admission to practice before the IRS

Any attorney who is not currently under suspension or disbarment from practice before the IRS, and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or of the

District of Columbia, may be admitted to practice before the IRS.¹⁰ A law student can receive permission to practice before the IRS under section 10.7(d) of IRS Circular 230. This classification includes and is really aimed at students who work in a Low Income Taxpayer Clinic or Student Tax Clinic Program.

A CAF number is assigned to a tax practitioner when a Form 2848 or Form 8821 is filed.¹¹ This number contains information that taxpayers have given the attorney as representative for the various account actions and information, but once assigned, does not change with subsequent filings.¹²

Admission questions and regulations are handled by the Office of Director of Practice.¹³ The Director of Practice acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; and performs other duties as are necessary or appropriate to carry out the functions under this part or as are prescribed by the Secretary of the Treasury, or his or her delegate.¹⁴

Any person authorized to practice before the IRS is subject to disciplinary proceedings and may be suspended or disbarred for violating any regulation governing practice before the IRS. The IRS' Office of Professional Responsibility describes what is conduct subject to discipline, including "disreputable" conduct.¹⁵

5. Preservation of the privilege

The confidentiality applicable to communications between an attorney and a client are equally applicable to similar communications between the taxpayer and the attorney when admitted to practice before the IRS. This protection is, however, limited to communications given in the context of tax advice in regard to a matter within the practitioner's authority. This does not mean that the privileges applicable to other communications are lost or waived; just that there is one which is specifically applicable to tax-related communications. For this additional privilege, the communication must be between the taxpayer and the attorney and relate to noncriminal tax matters before the IRS, or noncriminal tax proceedings in federal court by or against the United States.

Warning: This special privilege does not apply to written communications between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation, or if the communication involves the promotion of the direct or indirect participation of the corporation in a tax shelter.

This category of communication is well outside bankruptcy representation, but should be noted. Further, this privilege is not transferable to matters involving other government agencies.

6. A last word

Admission to practice before the IRS, even if for no use other than obtaining copies of transcripts or tax returns, costs almost nothing and saves hours otherwise wasted listening to a bland selection of music while waiting for a live person to answer for the IRS. The Prudent Practitioner's experience with this service has always been positive, with the agents answering the hotline helpful and courteous. Altogether a handy tool for practice, and one that no practitioner's toolkit should be without.

NOTES

1. 11 U.S.C.A. § 523(a).
2. CPAs, enrolled agents, enrolled actuaries and enrolled retirement plan agents can be admitted. Students in law school, or studying to become a CPA may be admitted with requirements in addition to those discussed in this article.
3. Central Authorization File. This is a number, similar to but longer than bar numbers, identifying the holder as an admitted practitioner to the IRS.
4. This column is heavily indebted to Timothy F. Schaffner, the Tax Partner for the CPA firm of Rupert & Associates in Austin, Texas as a font of knowledge about all things tax-wise, and the writers of IRS Publication 947 "Practice Before the IRS and Power of Attorney." The entire publication may be read or downloaded at www.irs.gov/pub/irs-pdf/p947.pdf, and includes samples of the most commonly used forms. In addition, the IRS' website at www.irs.gov is a treasure trove of information. Absent a specific citation to another authority, and comments drawn from the author's personal experience, the factual information in this column is taken from Publication 947 or the IRS' website for tax professionals.
5. The form can be filed electronically via the IRS website by clicking on the e-services—Online Tools for Tax Professions under the Tax Professionals tab on the IRS' general site at www.irs.gov. Depending on what you think of the security of this website and with due consideration to privacy rights for the taxpayer, most practitioners opt for use of a facsimile transmission.
6. For detailed information on practice before the IRS in areas beyond typical bankruptcy needs, see BNA's IRS Practice Advisor, available on Westlaw. IRS Practice Advisor has a lot of information organized by function, such as information needed to prepare and present an Offer in Compromise.
7. Persons such as the preparer of the return of another who has signed the return as preparer, but who do not qualify for admission to practice before the IRS, may appear as a representative for the limited purpose of matters relating to that specific return.
8. Effective January 1, 2004, the Third Party Designee (Checkbox) Authorization was expanded to be similar to the authority of a Form 8821. The designee may address any issue arising out of the tax return for a period not to exceed one year from the due date of the tax return. The designee may also receive written account information including transcripts upon request. Pub 4019 at <http://www.irs.gov/pub/irs-pdf/p4019.pdf> provides a quick ref-

erence of third party authorizations. The Third Party Designee (Checkbox) Authorization can co-exist with a Power of Attorney for the same tax and tax period.

9. The ODC allows the taxpayer to verbally establish an authorization for all types of open tax accounts, after receiving an IRS notice. The appointee can be any third party, including friends and family. The appointee may respond to the issue raised in the notice, ask questions, and provide information to the IRS. However, the ODC does not allow the appointee to receive any written information and does not allow the appointee to represent the taxpayer. The authorization is valid until the tax related issue is resolved. Nonetheless, if the taxpayer receives subsequent notices from the IRS, he/she must establish another authorization, even if it is for the same appointee. This type of authorization does not attach to the CAF file of the practitioner, and instead is appended to the taxpayer's file. The ODC can co-exist with Power of Attorney for the same tax and tax period.
10. 26 CFR 601.502(b)(1). In addition, Treasury Circular 230 provides the regulations governing practice before the IRS.
11. A list of all clients on a practitioner's CAF can be found on the IRS Freedom of Information web page at www.irs.gov/foia/index.html.
12. If you are a tax practitioner who has previously been assigned a CAF number, but cannot locate it, call the Practitioner Priority Service, who will mail your CAF number to you. There are 3 CAF Units: OAMC in Ogden, UT, fax (801) 620-4249; MAMC in Memphis, TN, fax (901) 546-4115; and PAMC in Philadelphia, PA (215) 516-1017 (international only). Taxpayer issues in states west of the Mississippi submit authorizations to OAMC; eastern, Arkansas and Louisiana to MAMC; international to PAMC.
13. 31 CFR 10.1(a).
14. 31 CFR 10.1(b).
15. This includes criminal convictions under the tax laws or any offense involving dishonesty or breach of trust; knowingly giving false or misleading information in connection with tax matters; willfully failing to file a tax return, evading or attempting to evade any federal tax, or participation in such acts; misappropriating or failing to properly and promptly remit funds received from clients for tax payments; directly or indirectly attempting to influence the official acts of IRS employees; being disbarred or suspended from practice by a state bar or any federal court; using abusive language, making false accusations or publishing malicious or libelous matters or contemptuous conduct; or giving a false opinion knowingly, recklessly or through gross incompetence.

Our Most Recent Release

Version 8.2, released on August 27, 2009, contains several new or revised chapter 13 plans and local forms and CM/ECF fixes, as well as compatibility with the latest version (3.3.2) of CM/ECF. We will release Version 8.3 on or before October 15, 2009, the effective date for the Census Bureau's revised state median family income figures.

Chap 7..13 Tips

How do I update Chap 7..13?

Chap 7..13 is updated several times a year. It is very important that you always use the most current version of the program. Within the software, four things routinely change: 1) forms (local or nationwide), 2) means test data, 3) state exemptions, and 4) changes to accommodate updates to the courts CM/ECF system. Updates to Chap 7..13 also often include programming enhancements and new features which make your practice easier.

Approximately once a year we issue a Chap 7..13 CD, or more frequently if necessitated by program enhancements. When you receive a CD, simply insert it into your computer and install the update following the on-screen instructions.

Each CD's version number is higher than the last one. The current CD is 8.0 and the next CD will be 9.0. Interim web releases have point numbers (the current version of the software is 8.2, and its predecessor was 8.1). The point number after the second decimal point indicates the current iteration of the web release and is mostly used for internal processes. So, if you have version 8.2.4, this means that it is the fourth iteration of version 8.2. You can verify the version you currently have installed by clicking on the Help drop down menu, then clicking on About.

The Receive Update Notification option is also located in the Help drop down menu. Just click on that option, which will open the Thomson Reuters Software Update notification page. Select Chap 7..13, insert your name and email address and click "Submit." You will then see a confirmation screen that says you are registered to receive notifications of future updates to the software program you selected.

These email notifications all contain information about the contents of the new web release and a link to our software download page. Click on the link, then click on "Get This Update" and follow the onscreen download instructions. To install the latest web release from within the program, click on the Help drop down menu, then click on Chap 7..13 Web Update Page. This will take you to the software download page. Be sure to close the program before you click on "Get This Update."

Email directly from Chap 7..13

Did you know that the new PDF Editor allows you to edit a document, save it, and then email it to a colleague or a client for review, all within the program? Just follow these simple steps:

1. Click on the printer icon in the Case Explorer Window;
2. Highlight the document you want to email, then click the Print button;
3. Click the Preview button;
4. If you'd like to edit the document (i.e. stamp "Draft," etc.), click the Edit button in the upper right-hand corner of the PDF Editor;
5. Make whatever edits you would like, then click the Save button;
6. Be sure that the Save the Documents Back to Chap 7..13 option is selected, name the document and click OK;
7. Close out of the PDF Editor, which will bring you back to the Print Reports screen. Select the custom document you just saved and click on the Print button, then the Preview button;
8. Click on the File drop down menu in the upper left-hand corner and choose the Send by Email option;

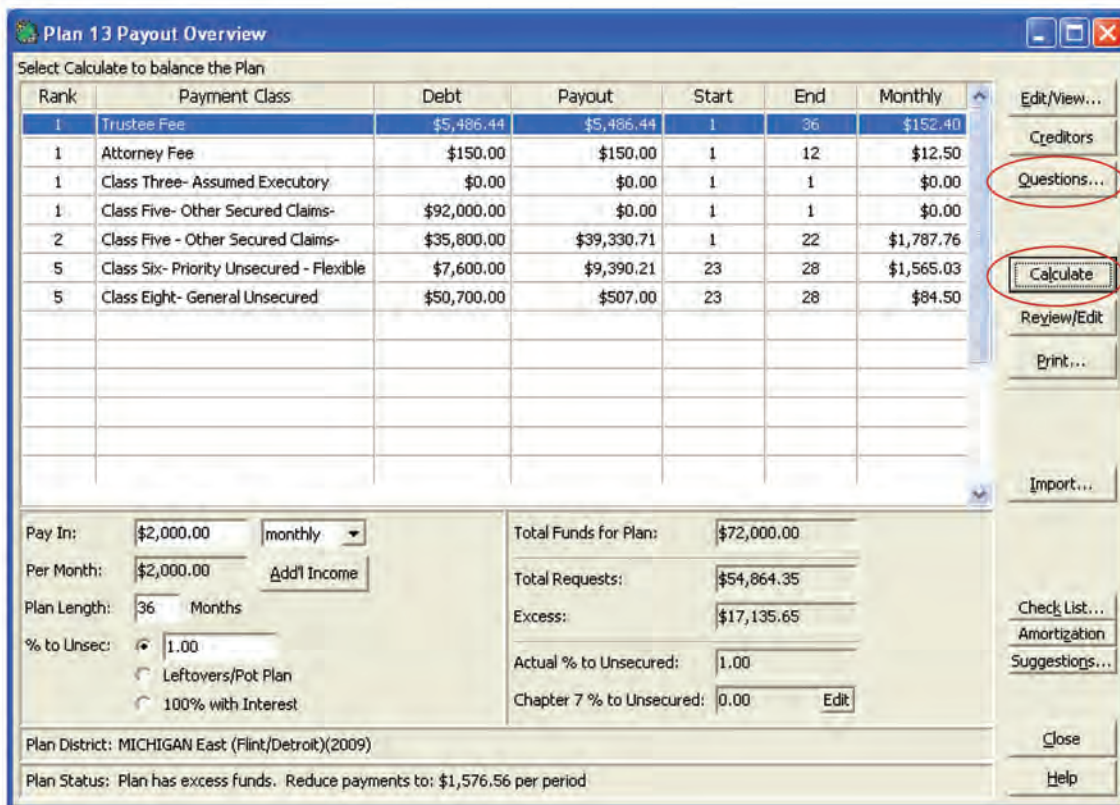
9. A new blank email message should appear with the custom document attached.

Why does my chapter 13 plan have a date in the nineteenth century?

Sometimes, as you are reviewing your chapter 13 plan, you will see a date of 12/31/1899. You may also notice that other answers inserted in the Questions Wizard are also not listed in your plan. You can get to the Questions Wizard by clicking on the Questions button on the Plan 13 Payout Overview screen.

After you answer the plan questions, you must recalculate the plan by clicking on the Calculate button. The plan will then be refreshed and will include changes to the date, as well as the answers to the questions in the Questions Wizard.

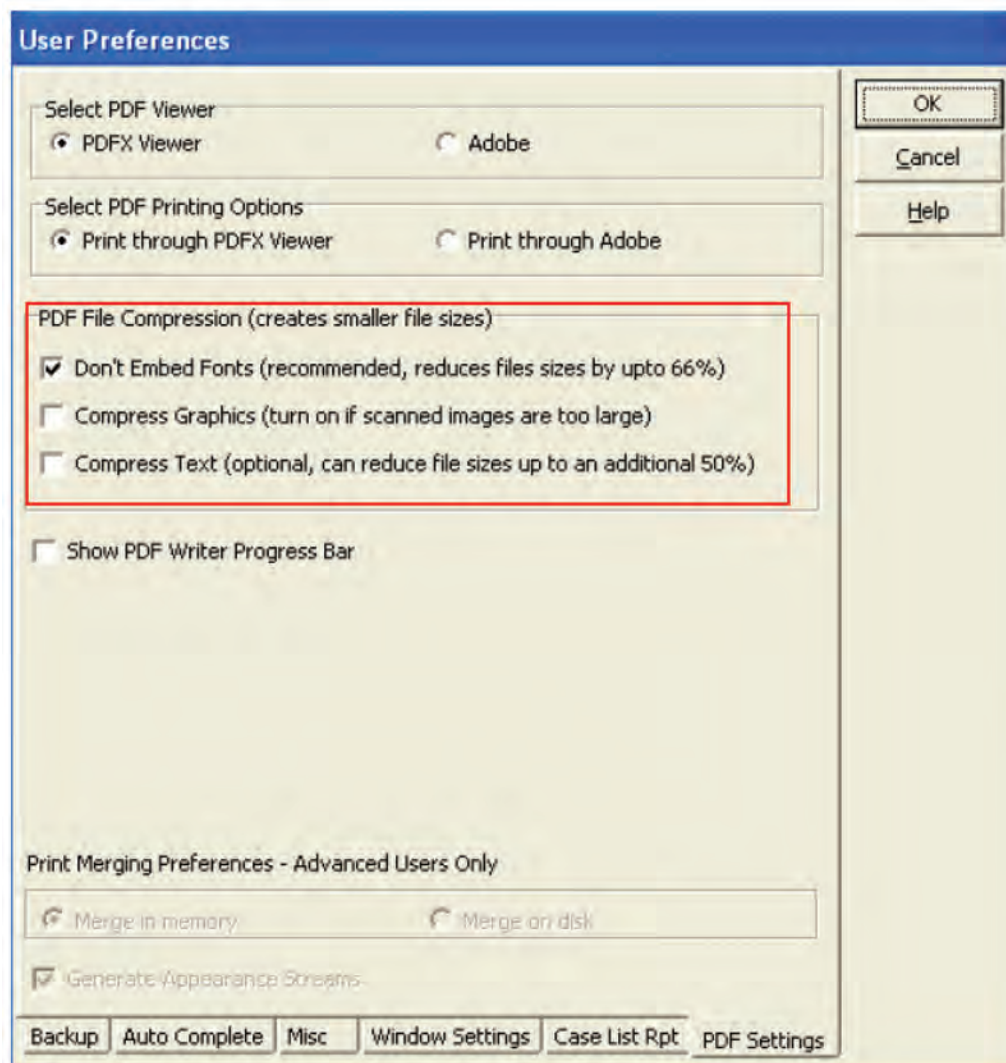
If you have not filled out a date field in the Questions Wizard, sometimes it will revert to "0" or the earliest date available which, of course, is "12/31/1899."



File Size Too Large?

Some courts file size requirements have gotten a bit more strict, so we have added a feature which will allow you to compress your PDFs to create smaller file sizes.

Just click on User Preferences in the File drop down menu, the click on the PDF Settings tab. You'll see the PDF File Compression section toward the middle of that window.



Reference Attorneys Offer Free Training on Chap7..13

Whether you are new to the Chap 7..13 Bankruptcy Filing Software or just looking for a refresher on the newest features, West reference attorneys are here to help. In addition to our regular content support, the reference attorneys offer free one-on-one training over the phone. Appointments are available in 30 or 60-minute increments and can be tailored to meet your schedule. Making an appointment is as simple as calling the support number below and requesting an appointment. We kindly request 24 hours advanced notice for training appointments.

As always, the reference attorneys are available for content support Monday-Friday, 8:00am-6:30pm Central time at 1-800-217-9378.

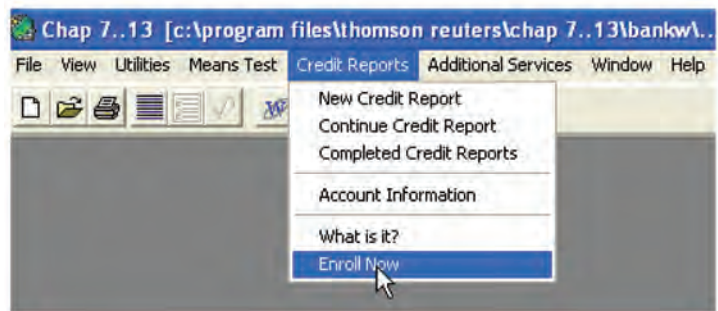
New Amendments to Time Computation Rules Effective 12/1/2009

The U.S. Bankruptcy Court for the District of Columbia has provided an excellent power-point presentation that clearly and concisely explains the new amendments to the time computation rules that go into effect on December 1, 2009. It's called "The Days of our Bankruptcy Court Lives, and you can find it (as of 9/3/2009) at http://www.dcb.uscourts.gov/files/Days_Bankruptcy_Court_Lives.pdf.

Suite Solutions News

Bankruptcy can be an investment for a healthy financial future. Show your clients the potential improvement that filing bankruptcy may have on their credit score. Suite Solutions tri-merged credit reports now include New Beginnings™ pre and post bankruptcy credit scores which illustrate your client’s current score and what is possible 15 months after discharge. New Beginnings™ can help assure your clients that they are making the right decision—it’s a simple way to provide relief to a consumer during the intimidating bankruptcy process.

To learn more about New Beginnings™, call Suite Solutions at (877) 311-1234, or to enroll as new member click on Credit Reports and Enroll Now in Chap 7..13 or visit www.asuitesolution.com.



DEBTOR INFORMATION		
Debtor: ROGER BTESTFILE		Co-Debtor:
Present Address:	1234 Milky Wy JTestCity, CA 99000	
Former Address:		
Request ID:	AJF3K-0915108	Report Date: 6/29/2009
NEW BEGINNINGS™ CREDIT SCORE		
With our New Beginnings Credit Scoring we can show you that there is light at the end of the tunnel. We show what the score is prior to filing; then what it could look like 15 months after the discharge and a clean payment history.		
Existing Credit Score	Estimated 15 Month Post Bankruptcy Credit Score	Net Effect
569	601	+32



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