

**TITLE 11 - BANKRUPTCY**  
**CHAPTER 11 - REORGANIZATION**  
**SUBCHAPTER III - POSTCONFIRMATION MATTERS**

**§ 1146. Special tax provisions**

(a) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(b) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

- (1) the date on which such governmental unit responds to the request under this subsection; or
- (2) 270 days after such request.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2641; Pub. L. 98–353, title III, § 517, July 10, 1984, 98 Stat. 388; Pub. L. 109–8, title VII, § 719(b)(3), Apr. 20, 2005, 119 Stat. 133.)

**Historical and Revision Notes**

**legislative statements**

Section 1146 of the House amendment represents a compromise between the House bill and Senate amendment.

Special tax provisions: reorganization: The House bill provided rules on the effect of bankruptcy on the taxable year of the debtor and on tax return filing requirements for State and local taxes only. The House bill also exempted from State or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. The House bill also authorized the bankruptcy court to declare the tax effects of a reorganization plan after the proponent of the plan had requested a ruling from State or local tax authority and either had received an unfavorable ruling or the tax authority had not issued a ruling within 270 days.

The Senate amendment deleted the rules concerning the taxable years of the debtor and tax return filing requirements since the Federal rules were to be considered in the next Congress. It broadened the rule exempting transfers of securities to include Federal stamp or similar taxes, if any. In addition, the Senate amendment deleted the provision which permitted the bankruptcy court to determine the tax effects of a plan.

The House amendment retains the State and local rules in the House bill with one modification. Under the House amendment, the power of the bankruptcy court to declare the tax effects of the plan is limited to issues of law and not to questions of fact such as the allowance of specific deductions. Thus, the bankruptcy court could declare whether the reorganization qualified for taxfree status under State or local tax rules, but it could not declare the dollar amount of any tax attributes that survive the reorganization.

**senate report no. 95–989**

Section 1146 provides special tax rules applicable to Title 11 reorganizations. Subsection (a) provides that the taxable period of an individual debtor terminates on the date of the order for relief, unless the case has been converted into a reorganization from a liquidation proceeding.

Subsection (b) requires the trustee of the estate of an individual debtor in a reorganization to file a tax return for each taxable period while the case is pending after the order for relief. For corporations in chapter 11, the trustee is required to file the tax returns due while the case is pending (sec. 346 (c)(2)).

Subsection (c) exempts from Federal, State, or local stamp taxes the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan. This subsection is derived from section 267 of the present Bankruptcy Act [section 667 of former title 11].

Subsection (d) permits the court to authorize the proponent of a reorganization plan to request from the Internal Revenue Service (or State or local tax authority) an advance ruling on the tax effects of the proposed plan. If a ruling is not obtained within 270 days after the request was made, or if a ruling is obtained but the proponent of the plan disagrees with the ruling, the bankruptcy court may resolve the dispute and determine the tax effects of the proposed plan.

Subsection (e) provides that prepetition taxes which are nondischargeable in a reorganization, and all taxes arising during the administration period of the case, may be assessed and collected from the debtor or the debtor's successor in a reorganization (see sec. 505(c) of the bill).

### **house report no. 95-595**

Section 1146 of title 11 specifies five subsections which embody special tax provisions that apply in a case under chapter 11 of title 11. Subsection (a) indicates that the tax year of an individual debtor terminates on the date of the order for relief under chapter 11. Termination of the taxable year of the debtor commences the tax period of the estate. If the case was converted from chapter 7 of title 11 then the estate is created as a separate taxable entity dating from the order for relief under chapter 7. If multiple conversion of the case occurs, then the estate is treated as a separate taxable entity on the date of the order for relief under the first chapter under which the estate is a separate taxable entity.

Subsection (d) permits the court to authorize the proponent of a plan to request a taxing authority to declare the tax effects of such plan. In the event of an actual controversy, the court may declare the tax effects of the plan of reorganization at any time after the earlier of action by such taxing authority or 270 days after the request. Such a declaration, unless appealed, becomes a final judgment and binds any tax authority that was requested by the proponent to determine the tax effects of the plan.

### **Amendments**

2005—Pub. L. 109-8 redesignated subsecs. (c) and (d) as (a) and (b), respectively, and struck out former subsecs. (a) and (b) which read as follows:

“(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

“(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.”

1984—Subsec. (c). Pub. L. 98-353, § 517(a), struck out “State or local” before “law imposing a stamp tax”.

Subsec. (d)(1). Pub. L. 98-353, § 517(b), substituted “or” for “and”.

### **Effective Date of 2005 Amendment**

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

### **Effective Date of 1984 Amendment**

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.