



## Federal Tax ADVISORY ■

**MAY 1, 2020**

### Tax Determinations in Bankruptcy

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A wave of bankruptcies is expected to come out of the current economic situation and with them will come tax issues. For example, corporations that wish to reorganize will be very interested in preserving their net operating losses and maximizing their use after a change of ownership in the bankruptcy. But whether those wishes come true depends on many difficult issues in the federal income tax laws. And they are only a few of the state and federal tax issues that can arise in bankruptcies.

Aside from determinations of prepetition tax claims in the bankruptcy, the bankruptcy judge's tax powers are somewhat unclear. For that reason, the taxing authority is highly likely to resist determination of a tax issue in the bankruptcy in an adversary proceeding by the debtor or related persons against the tax collector.

The IRS in particular has been very resistant to tax determinations in the bankruptcy courts. It is likely to raise constitutional defenses as well as statutory defenses under the Bankruptcy Code and to object to the jurisdiction of the court.

It is possible, however, to obtain tax determinations from the bankruptcy courts. Some powers are specially provided by the Code. For example, a trustee or debtor in possession can file a post-petition return without payment and demand a quick up or down from the tax collector. If the tax collector disagreed with the position taken in the return, the bankruptcy judge can determine if the return is correct.

Alston & Bird has devoted substantial attention to these issues and can assist, not only with bankruptcies in general but also with the many tax issues involved.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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