

Employee Relations

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Employee Benefits

Spend Now, Spend Later: New Protections for Retirement Account Assets in Bankruptcy

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Early last year, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the act).¹ Although this legislation was designed to address bankruptcy abuse and fraud, and to enact administrative reform, such as increasing the number of bankruptcy judges and streamlining procedures, the act contains several important pension reform provisions. Most of the provisions of the act became effective with respect to bankruptcy filings made on or after October 17, 2005.

Generally, the act strengthens the requirements which must be met in order for a debtor to discharge all of his or her debts in bankruptcy. For example, the act prevents individuals with income above certain limits from receiving a complete discharge of debts altogether. The act also contains several provisions which affect both individual and business bankruptcy filings with respect to employee benefits. Under the act, retirement plans and funds governed by certain sections of the Internal Revenue Code (the Code), such as a qualified retirement plan, traditional IRA, or Roth IRA, are exempt from inclusion in an individual debtor's bankruptcy estate. However, the exemption for IRAs and Roth IRAs is generally

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subject to an inflation adjusted \$1 million cap (qualified plan rollovers and related earnings are excluded for purposes of calculating the cap). In addition, the act clarifies the protections applicable to business owners who participate in a plan that does not cover common law employees.

The act also excepts amounts withheld from a debtor's paycheck for repayment of plan loans from the automatic stay provisions of the Bankruptcy Code, and excepts such loans from discharge in bankruptcy. The act also exempts certain education individual retirement accounts, known as Coverdell education savings accounts, and qualified state tuition programs from property of the bankruptcy estate, if the designated beneficiary is the debtor's child or grandchild. The new provisions explicitly allow an individual debtor to continue making contributions to certain retirement accounts and health insurance plans regulated by state law.

With respect to employer bankruptcies, an employer who serves as a plan administrator must continue serving in such capacity, unless a trustee is serving in the bankruptcy proceeding and can take over the role of administrator. This provision helps to prevent plans from being abandoned during and after the bankruptcy. Furthermore, the act prohibits employers from paying certain retention bonuses and making severance payments to "insiders," such as corporate officers and directors, unless the payments are approved by the bankruptcy court. In addition, employers engaged in a Chapter 11 bankruptcy, which allows business debtors to reorganize and continue operations, are limited in their ability to modify or terminate retiree health and welfare benefits either during or within six months prior to commencing bankruptcy proceedings.

Most importantly for plan sponsors, the act resolves several issues faced by plan sponsors and other plan fiduciaries under previous law. For example, although some retirement funds were considered exempt under previous law, the new amendments to the Bankruptcy Code eliminate uncertainty regarding whether IRAs and certain other types of retirement accounts are protected from inclusion in the bankruptcy estate. In addition, plan sponsors can also continue to collect on loans made to a participant from, for example, a 401(k) plan, without wondering whether the repayments will have to be reversed after the fact.

This column provides a brief overview of the bankruptcy law provisions applicable to employee benefit plans and the amendments to existing law which were included in the act. There are many exceptions to the general bankruptcy rules described below. Plan sponsors or other fiduciaries to an employee benefit plan who wish to apply these rules to a specific situation should consider seeking legal advice. However, this column will assist such plan sponsors and fiduciaries in spotting issues related to bankruptcy filings of both plan participants and employers who sponsor benefit plans, and contrast the new provisions of the act with prior bankruptcy law.

Application of Bankruptcy Law to Employee Benefit Plans

In order to understand the recent revisions to bankruptcy law, it is necessary to have a basic understanding of the types of bankruptcy available to individual debtors and business entities. Generally, individual debtors can file for two types of bankruptcy: Chapter 7 and Chapter 13. The primary difference between the two options lies in whether the debtor's pre-bankruptcy debts are completely extinguished by the bankruptcy.

Bankruptcy Crash Course

In a Chapter 7 "liquidation" bankruptcy proceeding, all of a debtor's assets are "collected" in the bankruptcy estate, which will be distributed to creditors of the debtor in payment of their claims. Certain exemptions apply which protect some of the debtor's property from

being included in the bankruptcy estate; for example, the debtor's home is usually exempt from inclusion. At the close of a Chapter 7 bankruptcy, all of a debtor's previous debts are usually discharged. To the extent that an exemption applies to a debtor's assets, the assets do not become part of the bankruptcy estate and will not be liquidated as part of the discharge process.

In contrast, in a Chapter 13 bankruptcy, the debtor's pre-petition assets are "reorganized" through a plan devised by the bankruptcy court. The debtor's post-filing income earned during the length of the plan (usually, either three or five years) is used to pay some or all of the debtor's pre-filing debts. In developing a repayment plan, the bankruptcy court must determine what expenses of the debtor are essential, and allocate all remaining "disposable income" after the payment of such expenses to payment of pre-petition debts, through the reorganization plan.

A business can also sell all of its assets, distribute the proceeds to its creditors, and cease its operations through a Chapter 7 bankruptcy, or reorganize its debts and seek economic rehabilitation under a Chapter 11 bankruptcy. As with individuals, the primary distinction is whether some of the debtor's pre-bankruptcy debts remain after the bankruptcy proceeding. However, a Chapter 11 bankruptcy is the obvious choice where the business plans to continue operations in its current form after the bankruptcy has ended. US Airways and United Airlines are two prominent companies which have emerged from a Chapter 11 bankruptcy in recent years.

Once a bankruptcy petition is filed, an automatic stay is imposed on a debtor's assets, which prohibits, among other things, collection of debts against the debtor, exercise of control or possession over the debtor's property, and enforcing judgments or creating liens against the debtor or his or her property. The automatic stay essentially freezes the debtor's assets at a point in time, and allows the parties to determine the debtor's assets and an equitable plan for dividing the bankruptcy estate, or reorganizing the debtor's pre-bankruptcy debts. As discussed above, certain of the debtor's assets, such as an individual's residence and retirement plan assets, are generally exempt from inclusion in the bankruptcy estate. However, pushes for bankruptcy reform have encouraged Congress to significantly scale back the protections offered to individual debtors through such exemptions and automatic stay protections.

When an individual debtor who is an employee files for bankruptcy, several important questions arise. If the employee currently contributes to the company's health and retirement plans, does the automatic stay require the company to cease making payroll deductions for those benefits? If the employee is currently repaying a loan received from one of the company's qualified retirement plans through payroll deductions, must those contributions cease as well? Also, if the employee's creditors claim an interest in the employee's retirement accounts, can the company release those assets to the employee's bankruptcy estate? The anti-alienation rules of the Code and the Employee Retirement Income Security Act of 1974 (ERISA) generally prohibit the assignment or alienation of the employee's interest in a qualified retirement plan, subject to certain exceptions. However, as described below, employers who sponsor benefit plans and other plan fiduciaries have often been forced to guess at the appropriate course of action with respect to many benefit plan issues, under the law in existence prior to the act.

Protections Available to ERISA Plans Prior to the Act

Under previous law, an individual's assets held in a traditional, employer sponsored retirement plan, such as a pension plan or 401(k) plan, were protected from the broad reach of the bankruptcy court. However, the protections extended to other retirement accounts, and rights of an employer to collect on plan loans or make other payroll deductions after a

bankruptcy filing, remained unsettled and often depended on the location where a bankruptcy filing occurred.

For example, let's assume that Marcy, a participant in the Wickets and Widgets Corporation 401(k) Plan, borrowed \$15,000 from the plan on April 1, 1997. All of the terms of the loan, such as its repayment term, complied with the requirements for plan loans under ERISA and the Code. On February 1, 1999, the plan administrator of the Wickets and Widgets plan received notice that Marcy is involved in a bankruptcy proceeding. Therefore, the plan administrator had to determine whether to continue collecting repayments on the loan. Arguably, the automatic stay provisions of the Bankruptcy Code would require the plan administrator to stop making payroll deductions for the purpose of loan repayments, in the absence of any exceptions to the automatic stay. However, if the bankruptcy filing occurred on December 1, 1998, the plan administrator was potentially in contempt of the automatic stay when it continued to collect repayments after that time, even though the plan administrator had no knowledge of it until February 1 of the following year. Thus, the plan administrator was potentially liable for repayment of all collections made on Marcy's loan once the automatic stay arose. In addition, in the absence of clear statutory authority or guidance from the Department of Labor and the Internal Revenue Service, the plan administrator was faced with a great deal of uncertainty with respect to the applicability of the automatic stay on a prospective basis and whether to continue collecting repayments on Marcy's loan.

A fiduciary is obligated under ERISA to follow the terms of its plan and to protect the assets of the plan. In addition, the deemed distribution rules of Code Section 72(p) are generally not suspended by an automatic stay.² Therefore, application of the automatic stay provisions to a participant in bankruptcy may inadvertently cause the participant to experience a taxable event. An overly cautious plan administrator would potentially breach his or her fiduciary duties and cause the participant to experience an unnecessary taxable event. However, failure to recognize the automatic stay could potentially be viewed as contempt and draw the plan administrator into bankruptcy litigation. To add problems to the mix, in many cases, such as the example involving Marcy above, the cost of litigating the plan's interest would likely outweigh the value of the outstanding loan.

Significant questions existed under prior law regarding application of the anti-alienation rules of the Code and ERISA in the context of a bankruptcy filing. As stated above, the Code and ERISA both prohibit the assignment or alienation of a participant's interest in a qualified retirement plan. Therefore, both intentional and inadvertent assignment of a participant's benefit is generally prohibited, with certain exceptions. For example, a participant's interest in his or her retirement plan may be assigned under a qualified domestic relations order.

In *Patterson v. Shumate*,³ the Supreme Court held unanimously that a participant's interest in an ERISA pension plan was not reachable by the participant's creditors in a bankruptcy proceeding. Plan assets were deemed to be excluded from the bankruptcy estate, because the Bankruptcy Code exempts from the estate any beneficial interest in a trust not subject to assignment under applicable nonbankruptcy law. The decision resolved a split in the lower federal courts, which had resulted in varying treatment of retirement plan assets, depending on the jurisdiction in which the bankruptcy case was filed.

Although *Patterson* set the stage for many bankruptcy cases involving ERISA plan participants, uncertainty existed after *Patterson* regarding the type of retirement accounts entitled to protection in a bankruptcy proceeding. Primarily, because the Supreme Court based its decision on ERISA's anti-alienation provision, without referencing the Code's identical provision, it was unclear whether certain governmental plans, church plans, and nonqualified plans not subject to ERISA, as well as assets held in an IRA, were also entitled to protection from the bankruptcy laws. In the Supreme Court's recent decision in *Rousey v. Jacoway*,⁴ the protection extended to funds held in a traditional IRA was finally resolved, when the Court held that such funds are indeed protected from inclusion in the bankruptcy estate.

Unfortunately, the Court's decision did not address whether Roth IRAs would be similarly protected, leaving additional questions unresolved.

As a result of this lack of clarity, the treatment of plan assets in bankruptcy has varied widely in the past. Before the Supreme Court's *Rousey* decision, a participant in a traditional IRA who was located in one area of the country might have been protected by the rulings of its federal circuit courts, while a participant living elsewhere would not have been covered by the same protections. As another example, in the Third and Sixth Circuits, which include Michigan, Ohio, Tennessee, Kentucky, Pennsylvania, New Jersey, and Delaware, courts have ruled that repayment of plan loans is not necessary for the maintenance or support of a debtor, for purposes of crafting a repayment plan in a Chapter 13 bankruptcy.⁵ Therefore, an employer who continued to deduct plan loan repayments in these states risked having to reverse such repayments, and participants in such plans were forced to default on loans, even though it would result in adverse tax consequences. In contrast, a district court in the Second Circuit allowed complete repayment of a retirement plan loan in the context of a Chapter 13 repayment plan.⁶ In some cases, courts have looked to whether repayment of a loan is an express condition of a debtor's continued employment.⁷ Many states have enacted statutes designed to address the protection of retirement plan assets in a bankruptcy proceeding; however, this still results in differing treatment based on a debtor's location.

Yet another discrepancy in treatment arose in the context of business owners, who are generally not covered by ERISA's protections if the only "employees" of the business are the owner and his or her spouse. Although the Supreme Court held in *Yates v. Hendon*,⁸ that the working owner of a business was protected under ERISA's anti-alienation rules if the retirement plan in question covers one or more employees other than the business owner and her spouse, the status of funds held in a plan which did not cover additional individuals remained in question after this decision.

Protection of Plan Assets After the Act

Effective October 17, 2005, a much wider scope of plan assets will be protected in a bankruptcy proceeding, because the act clearly extends protection to plans other than those governed by ERISA's anti-alienation provision. The new rules apply to pension, profit sharing and stock bonus plans, employee annuities, IRAs, Roth IRAs, deferred compensation plans for government and tax-exempt organizations, and other plans or trusts to the extent that they are exempt from taxation under Code Sections 401, 403, 408, 408A, 414, 457, or 501(a). However, the exemption is limited to the first \$1 million in IRA assets (excluding for purposes of the \$1 million limit amounts rolled over from qualified plans, plus earnings on those amounts).

Exemptions from the Bankruptcy Estate

Through the act, Congress clearly intended to expand protections to retirement funds which may not have existed under prior bankruptcy law. The Bankruptcy Code includes a broad range of a debtor's assets in his or her "bankruptcy estate." The purpose of these provisions is to account for all of a debtor's assets and to ensure that such assets are spread equitably among creditors. If an asset is not exempt from inclusion in a debtor's bankruptcy estate, the asset will be subject to division among creditors. The act amends the Bankruptcy Code to permit a debtor to exclude retirement funds that are exempt from taxation under Sections 401, 403, 408, 408A, 457, and 501(a) of the Code. These Code Sections cover qualified retirement plans, tax-favored annuities, traditional IRAs, Roth IRAs, multiemployer plans, and plans sponsored by governmental or other tax-exempt organizations. The exemption

also covers certain direct transfers and rollovers made to a retirement fund, and extends the exemption to apply to state bankruptcy law provisions. Clarifying that IRAs are protected from inclusion in the bankruptcy estate encourages individuals to rollover amounts from a qualified retirement plan to an IRA after termination of employment.

In order for the exemption to apply, the account or fund must have received a favorable determination from the IRS, which is effective as of the date that a bankruptcy case is commenced. In addition, retirement funds will be exempt, even if the plan does not have a favorable determination letter in effect, if the debtor can demonstrate that no prior unfavorable determination has been made by a court or the IRS, and the plan is in substantial compliance with any applicable requirements of the Code. If a plan fails to be in substantial compliance with the Code, a debtor may still be able to claim retirement funds as exempt if he or she is not materially responsible for such failure. For example, a debtor who has no control over whether his employer's 401(k) plan has met the qualification requirements of the Code would not be prevented from using the new exemption to protect his 401(k) funds. However, employers cannot manipulate the new protections to permit exemption of their own assets, where the employer has not attempted to comply with the Code's qualification requirements applicable to a plan.

A \$1 million cap, adjusted periodically to reflect inflation, is imposed on the exemption applicable to assets held in a traditional IRA or Roth IRA, excluding amounts attributable to a rollover contribution and any earnings on such amounts. For example, amounts earned by a debtor while employed by a corporation, and later rolled over to an IRA, as well as any earnings on such rollover, would be excluded in determining the assets covered by this cap, presumably because these amounts would be protected if retained in a qualified plan. The act provides that the cap may be increased, if required "in the interests of justice." Only time will tell what facts and circumstances will be used, if any, by bankruptcy courts, to determine whether the cap should be adjusted, to protect the interests of a debtor.

Under the act, funds placed in an education IRA, frequently referred to as a Coverdell education account, will not be considered property of the bankruptcy estate, if placed in the account at least 365 days before filing of the bankruptcy case. In order for this provision to apply, the account must designate a child, stepchild, grandchild, or step-grandchild of the debtor, including a legally adopted or foster child under certain circumstances, as the designated beneficiary of the educational IRA. Similar protections are extended to amounts contributed to a qualified state tuition plan. The exemption for educational accounts and qualified state tuition plans is subject to several exceptions and conditions.

Notably, the bankruptcy law amendments do not apply to all funds placed in a tax-favored vehicle, such as health savings accounts and medical savings accounts. But, other than the act's protections for education accounts and certain state tuition plans, the act's employee benefits protections extend primarily to retirement plans. However, other rules applicable to employer bankruptcies prohibit inequitable modifications to a retiree health and welfare plan, and allow an employee who has filed bankruptcy to continue making contributions to a health plan that is regulated by state law.

Plan Loans and Plan Contributions

The act amends the automatic stay provisions of the Bankruptcy Code, which generally require payments that a debtor would otherwise be required to make, such as credit card payments, to be automatically suspended upon commencement of a bankruptcy proceeding. The new law clarifies that, after a debtor has filed for bankruptcy, an employer may continue to withhold funds from the debtor's income for repayment of a loan from a pension, profit-sharing, stock bonus, or other employer-sponsored qualified retirement plan, annuity, IRA (including Roth IRAs), and certain church, governmental, and exempt organi-

zation plans. The loan must meet the requirements of ERISA or the Code, such as limits on the total value of a participant's outstanding loan balances, length of the loan's repayment term (generally, five years, unless the loan is used to acquire a principal residence of the participant), and level amortization of payments over the term of the loan.

The act further amends the Bankruptcy Code to exempt the same type of plan loans from being discharged in bankruptcy. In other words, a qualified plan loan will not be dismissed through the bankruptcy process, and the debtor can continue to repay funds borrowed from his or her retirement plan prior to the bankruptcy. In addition, in a Chapter 13 bankruptcy, in which debts are "reorganized," the reorganization plan cannot materially alter the terms of a plan loan. Without these provisions, amounts required to repay a plan loan might be considered "disposable income," rather than amounts necessary for the maintenance and support of the debtor, and the debtor would not be allowed to continue repaying loans to his or her plan account.

Contributions made to certain retirement plans, deferred compensation plans, and tax-deferred annuities, as well as funds withheld from a debtor's income as contributions to health insurance plans regulated by state law, are also excluded from the bankruptcy estate, and are not considered "disposable income" for purposes of bankruptcy law. Therefore, if these exceptions apply, a debtor can continue making such contributions. Although not included in the employee benefit plan provisions, separate amendments to the rules for developing a Chapter 13 repayment plan indicate that a debtor may be allowed to continue making reasonable payments for the purpose of health insurance, health savings accounts (although flexible spending arrangements are not specifically referenced by these provisions), and disability insurance. All of these provisions clarify many open questions that existed for plan sponsors under prior law.

Employer Bankruptcies

In the business bankruptcy context, upon filing of an employer bankruptcy, if the employer was serving as the administrator of an employee benefit plan, within the meaning of ERISA, the employer must continue serving in that capacity, unless a trustee is serving in the bankruptcy proceeding. Where there is a trustee, the new legislation requires the trustee to perform the debtor's plan administration obligations (or the obligations of an entity designated by the debtor). The purpose of these provisions is to reduce the number of "orphan plans" resulting from employer bankruptcies. An "orphan plan" is a plan that has been effectively abandoned by its sponsor and all other fiduciaries authorized to act on its behalf. Plans, particularly small ones, are frequently abandoned in the context of a bankruptcy or other difficult economic conditions.

The act also limits the ability of employers involved in a bankruptcy to make certain retention and severance payments to employees, unless authorized to do so by the bankruptcy court. An employer that has filed for bankruptcy is not permitted to pay retention bonuses to an "insider," unless it can prove that the bonus is essential to keep the insider from accepting another job involving equal or greater compensation, and the insider's services are necessary for the survival of the business. In order for the exception to apply, the employee must have received a legitimate job offer from another employer. In addition, even where a retention bonus is permitted, the amount of the bonus cannot exceed certain limits. Similarly, the amount of severance payments made to insiders cannot exceed set limits, and are only permitted if they are part of a program that is applicable to all full-time employees. Furthermore, the act prohibits payments made for obligations that are outside the ordinary course of the employer's business and are not justified by the facts and circumstances surrounding the payment, including transfers made to, or obligations incurred for, the benefit of certain individuals hired after the date a bankruptcy petition is applied.

For purposes of the bankruptcy provisions, an “insider” includes a director or officer of the debtor, a person in control of the debtor, a general partner of the debtor or a partnership in which the debtor is a general partner, and affiliates of the debtor.⁹

The act also prevents a Chapter 11 debtor from making certain modifications to retiree health and welfare benefits. An employer cannot modify such benefits while a bankruptcy case is pending, unless the bankruptcy court appoints a committee of retired employees to act as a representative of such retirees, and either the committee or the court authorizes the proposed modifications. In addition, employers cannot evade these requirements by modifying or terminating retiree health benefits within six months before filing bankruptcy. The bankruptcy court has the power to retroactively reinstate benefits amended in this way, unless it determines that the modification is equitable. This change became immediately effective, with respect to any bankruptcy cases commenced on or after April 21, 2005.

Practical Application of the New Rules

It is important to note that, with respect to bankruptcy cases commenced prior to October 17, 2005, the previous rules applicable in individual jurisdictions may apply. Therefore, plan sponsors should still proceed with caution in ignoring an automatic stay which would have applied before that date. To the extent that a bankruptcy proceeding began before October 17, 2005, it remains to be seen whether courts will extend the protections of the act to Roth IRAs or other retirement accounts that were not specifically enumerated by previous Supreme Court guidance. However, the act provides much needed certainty for all bankruptcy filings made on or after October 17, 2005.

For example, for bankruptcies filed on and after October 17, 2005, it is clear that assets held in a qualified pension, profit sharing or stock bonus plan, employee annuity covered by Code Section 403, traditional IRA, Roth IRA, and certain other plans sponsored by government and tax-exempt organizations are exempt from inclusion in a debtor’s bankruptcy estate. With respect to the other provisions of the act, assume that Howard is a participant in the Paper Clips Corporation 401(k) Plan, and also contributes to Paper Clips’s group health plan, long-term disability plan, life insurance plan, flexible spending arrangement, and prepaid legal plan. Howard took out a loan against his individual account in the 401(k) Plan on January 1, 2005, and later filed for bankruptcy on December 10, 2005. On December 15, 2005, the plan administrator was notified of Howard’s bankruptcy. The plan administrator is not required to suspend payroll deductions from Howard’s salary, made for the purpose of repaying his plan loan. In addition, the loan will not be subject to discharge in Howard’s bankruptcy.

Paper Clips may also continue to deduct contributions from Howard’s pay with respect to its 401(k) Plan and group health plan. Although the act does not specifically address this point, one would assume that the act would not allow Howard to raise his 401(k) plan contribution from 3 percent of his pay to 5 percent of his pay. In addition, Howard may be permitted to continue making reasonable contributions to a disability insurance plan, if he is engaged in a Chapter 13 bankruptcy proceeding. The act does not appear to provide authority for Howard to continue contributing to, or for Paper Clips to continue making deductions for, its flexible spending arrangement, life insurance plan, or prepaid legal assistance plan. Because the type of health and welfare plans for which an employee may continue making contributions is unclear under the act, employers should take care and consider seeking legal counsel when deducting amounts related to any health or welfare plan, other than a traditional group health plan regulated by state law. Presumably, this includes a separate group dental plan sponsored by an employer, if the plan is subject to regulation under state law.

In order for retirement plan assets to be exempt from inclusion in a debtor’s bankruptcy estate, the plan must have received a favorable determination letter from the IRS, which is

effective as of the date that the debtor's bankruptcy case is commenced. As noted above, there are certain exceptions to this rule, which would apply if the individual seeking to protect his or her plan assets from the bankruptcy estate has no control over whether the plan has met the qualification requirements of the Code. The IRS recently revised its determination letter procedures to establish a staggered filing system for determination letter applications. To the extent the exceptions to this rule do not apply, a determination letter received under the IRS's prescribed filing schedule should be deemed to meet the favorable determination requirements of the statute.

Conclusion

The act answers many questions which both individuals hoping to protect their retirement plan assets and fiduciaries with respect to such plan assets have had regarding the interaction of bankruptcy law and the protections available to plan assets under ERISA and the Code. In addition, the act imposes new restrictions on employers who sponsor retirement and retiree health plans, as well as employers who offer certain retention bonuses and severance pay arrangements.

Notes

1. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (2005).
2. See *Williams v. Commr*, T.C. Summary Op. 2004-57 (stating plan participant's bankruptcy filing did not create an exception to the general rules regarding plan loans and application of a 10 percent penalty to early withdrawal of retirement plan assets).
3. *Patterson v. Shumate*, 504 U.S. 753 (1992).
4. *Rousey v. Jacoway*, 544 U.S. 320 (2005).
5. See, e.g., *In re Anes*, 195 F.3d 177 (3d Cir. 1999); *Harshbarger v. Pees*, 66 F.3d 775 (6th Cir. 1995); *In re Herndon*, 289 B.R. 629 (Bankr. E.D. Mich. 2003).
6. See *In re Buchferer*, 216 B.R. 332 (Bankr. E.D.N.Y. 1997).
7. See, e.g., *In re Johnson*, 241 B.R. 394 (Bankr. E.D. Tex. 1999); *In re Nation*, 236 B.R. 150 (Bankr. S.D.N.Y. 1999); *In re Delnero*, 191 B.R. 539 (Bankr. N.D.N.Y. 1996).
8. *Yates v. Hendon*, 541 U.S. 1 (2004).
9. See 11 U.S.C. § 101(31).

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