

N.D.A.G. Letter to Renner (April 4, 1990)

April 4, 1990

Mr. Jerry Renner
Kidder County State's Attorney
Steele, ND 58482

RE: Application of Property Tax Payments During 11 U.S.C. ch. 12 Proceedings

Dear Mr. Renner:

Thank you for your January 11, 1990, letter in which you inquire whether property tax payments received on behalf of a chapter 12 bankruptcy debtor must be applied pursuant to N.D.C.C. § 57-20-21.1 or according to a chapter 12 bankruptcy plan. It is my opinion that the payments must be applied according to the provisions of the bankruptcy Plan.

The filing of a bankruptcy petition creates an estate. 11 U.S.C. § 521. The estate of a chapter 12 debtor includes all legal and equitable interest of the debtor at the commencement of the case as well as property acquired after the filing of a petition for relief. 11 U.S.C. § 1207. Once an estate is created, the United States Bankruptcy Court has exclusive jurisdiction over the disposition of all property included in the estate. 28 U.S.C. § 1334; 28 U.S.C. § 157.

All creditors of the chapter 12 debtors are required to comply with the provisions of the bankruptcy code so that an orderly disposition of the debtor's property can take place. 11 U.S.C. § 1201.

The county treasurer becomes a creditor of the debtor to the extent that property taxes are delinquent on the debtor's property. Therefore, the county treasurer must comply with the provisions of the chapter 12 plan. 11 U.S.C. § 1222 provides that a chapter 12 plan ". . . must provide for the full payment, in deferred cash payments of all claims entitled to priority under section 507 . . ." 11 U.S.C. § 1222(a)(2). Delinquent property taxes are included under section 507. 11 U.S.C. § 507(1)(7)(B). Therefore, payments for delinquent property taxes may be made over the three year term of the plan and the debtor has the right to designate where the payments will be applied as long as the designation complied with the plan.

I hope this answers your questions.

Sincerely,

Nicholas J. Spaeth

cv