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Recovering Tax Revenue: How to Prepare for a General Motors, Chrysler or Auto Supplier Bankruptcy

Presented by:
G. Alan Wallace
Douglas J. Austin

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Presenters:



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Potential Bankruptcies

- General Motors
- Chrysler
- Auto Suppliers

Bankruptcy Alternatives

- Chapter 11 Reorganization
 - Trustee or debtor-in-possession
 - Some or all assets may be sold
- Chapter 7 Liquidation
- Chapter 15 Cross-border filing

Real and Personal Property Tax Claims

- Pertinent dates
 - Taxes assessed on December 31st
 - Tax lien created July 1st and December 1st
- Type of claim depends on
 - Tax day
 - Lien day
 - Date of bankruptcy filing

Types of Claims

- Secured
 - First lien on property
- Unsecured Priority
 - No lien
 - 8th Priority status
- Administrative Expense
 - 2nd Priority Status

Secured Claims

- Tax lien in existence prior to bankruptcy filing
 - Example: May 1st filing, all unpaid 2007 and 2008 taxes are secured claims
 - Example: July 2nd filing, all unpaid 2007, 2008, and July 2009 taxes are secured claims
- Lien attaches to debtor's property
 - Real property
 - Personal property

Unsecured Priority Tax Claims

- Taxes assessed and due without lien status as of the bankruptcy filing date
 - Example: May 1st filing, July and December 2009 taxes unsecured
- Eighth priority
- Payment depends on assets available to pay higher priority unsecured claims, including all administrative expense claims

Converting Unsecured to Secured

- Automatic Conversion
- Post-filing Acceleration
- Jeopardy Assessments

Automatic Conversion

- Automatic stay exception allows creation of property tax lien post filing
- Lien will automatically arise on lien day
- Both real and personal property
- Amount of lien converted to secured claim

Post-filing Acceleration

- Act 143 of 1995 (MCL 211.40a) and other tax acts, e.g., 198 of 1974 (MCL 207.551 *et seq.*)
- Filing of bankruptcy is grounds for acceleration
- Recorded affidavit required
- Both real and personal property
- Taxes immediately due and payable and a lien is created

Jeopardy Assessments

- ❑ Act 55 of 1956 (MCL 211.691 *et seq.*)
- ❑ Only personal property
- ❑ Pre or post-bankruptcy
- ❑ Ability to collect taxes must be in jeopardy
- ❑ Recorded affidavit required
- ❑ Taxes immediately due and payable and a lien is created

Administrative Expenses

- All taxes assessed during the bankruptcy proceeding
- Example: May 1st filing, all 2010 taxes are an administrative expense
- Second priority in the bankruptcy

Alternative Methods of Taxation

- Taxes other than real or personal property ad valorem taxes
- Each specific tax statute should be analyzed
- Procedures and claims may differ
- Example: Act 198 (IFT)

Filing of Claims

- Secured claims and unsecured priority claims must be filed timely
 - In most cases, a claim for an administrative expense need not be filed, but may be advisable to do so
- Court will determine bar date for all claims
- Amending claims during the bankruptcy proceeding

Agreements and Tax Certificates

- Development and tax incentive agreements
 - Possible executory contracts
 - Possible rejection or assumption by debtor
 - Possible assignment to third party
- Tax Certificates
 - Possible asset of the bankruptcy estate
 - Court may order assignment of certificate
 - Municipal/STC approval

Negotiating Tax Payments

- Possible negotiation of reduced tax liability for immediate payment

Tracking Bankruptcy Proceedings

- Notice of Bankruptcy by mail
- On-line filing matrix
- Accessing on-line bankruptcy docket
 - Possibly thousands of filings per case
 - Crucial to monitoring deadlines and filings on daily basis
- Obtain schedules of assets and liabilities

Plastech/LDM Bankruptcy

- Over 4,800 filings with the bankruptcy court
- By the time notice was received hundreds of filings had occurred and needed to be reviewed
- Daily review and analysis of filings
- Review of asset and liability schedules
- Stalking Horse Agreement/asset purchase agreement
- Direct discussions with counsel for debtor and buyer regarding tax liabilities

Representation

- Municipalities should consider retaining counsel
- Familiarity with the interplay between MI property tax law and federal bankruptcy law is crucial

Place of Filing

- Out of State Bankruptcy:
 - Michigan attorneys can review and evaluate filings and provide advice as needed
 - Out of state counsel may be necessary for hearings out of state
 - Alternatively, MI counsel may be admitted to conduct hearings out of state.
 - Cost factors
 - SCG affiliate

Summary

- Importance of recovering as much tax revenue as possible in the shortest period of time
- Type of claim must be ascertained
- Appropriate claim must be timely filed and amended as necessary
- Bankruptcy proceeding must be monitored closely on daily basis to protect municipality's rights

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