

The University of Texas School of Law

34th Annual Jay L. Westbrook Bankruptcy Conference

Top 10 Tips when Dealing with Taxes

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Role of Tax in Bankruptcy Transactions

- Tax is an Important Element in Developing the Plan
 - Cash income taxes affect Enterprise Value and Exit Financing
 - Favorable tax attributes may be important assets
 - Post-emergence operating projections affect the tax analysis
- Bankruptcy tax provisions provide both structural alternatives and express elections that provide tax planning choices
- A quantitative analysis is necessary to evaluate these tax choices and demonstrate value to stakeholders

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2

The Tax End Game – Corporate Debtors

- In-court restructuring makes available certain favorable COD and ownership change tax rules, which offer increased flexibility and may enhance post-emergence tax efficiency
- Preserving tax attributes may increase enterprise value because the post-reorganization tax profile of the company (e.g., amount of leverage) may be dramatically different than in recent years
- Evaluation of restructuring alternatives is essential, including §382(l)(5), §382(l)(6), tax-free reorganizations, taxable asset sales (e.g., Section 363 sales), and other strategic transactions (e.g., Bruno's)

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3

The Tax End Game – Non-Corporate Debtors

- In-court restructuring tax rules are less favorable/workable for non-corporate debtors
- Preservation of tax attributes may not be a significant consideration with non-corporate debtors
- Pre-restructuring steps should be considered to mitigate the effect of less favorable tax rules

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4

Primary Tax Issues in Bankruptcy Transactions

- Income from cancellation of indebtedness (COD)
 - Amount
 - Location
 - Timing
 - Eligibility for exclusion from taxable income
- Reduction of tax attributes with respect to Excluded COD
 - NOLs, tax credits, and asset basis
- Limitations on availability of corporate tax attributes following change in ownership on emergence

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5

Overview of Tax Considerations in Debt Restructurings

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6

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