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The Farmer and the Tax Man:

The Scope of the Tax Forgiveness Provision in Chapter 12 Bankruptcy

Hall v. United States, 132 S. Ct. 1882 (2012)

DAVID A. MARTIN*

I. INTRODUCTION

Jason and Jodi LeGassick were a young couple in their early thirties who lived with their five children on land that had been in their family for generations.¹ Since they were teenagers, the LeGassicks made their living together by dairy farming.² Despite their innovation and experience, the farm became unprofitable.³ Debts accumulated, banks threatened foreclosure, and the couple filed for bankruptcy under Chapter 12.⁴ After filing, the couple proposed the sale of their land to facilitate payment of their debts.⁵ The sale produced approximately \$81,000 in tax obligations.⁶ By contrast, the couple's income totaled \$107,000 annually.⁷ The LeGassicks filed their plan with the court, but because of the burdensome tax obligations, the court refused to confirm their reorganization plan and dismissed the couple from Chapter 12 proceedings.⁸ As a result, the couple lost their land, their home, and the only livelihood they had ever known.

* B.S., Boise State University 2009; J.D., University of Missouri School of Law 2012. A great thanks to Professor Cecil, who introduced me to the wonders of bankruptcy and tax law, for her valuable assistance not only with this Comment, but also throughout my time in law school and the beginning of my legal career. A special thanks to my case note editors, Kyle Gottuso and Joe Blumberg, who also made this Comment possible.

1. Brief for Amici Curiae Professors Neil E. Hart et al. in Support of Petitioners at 9, *Hall v. United States*, 132 S. Ct. 1882 (2012) (No. 10-875), 2011 WL 3821043, at * 9 [hereinafter Brief for Amici Curiae Professors Neil E. Hart et al.].

2. *Id.*

3. *Id.*

4. *Id.* at *10.

5. *Id.*

6. *Id.*

7. *Id.*

8. Although these statements do not reflect what happened to the LeGassicks, as stated *supra*, many other debtors have suffered a similar fate. See 145 CONG. REC. S764 (daily ed. Jan. 20, 1999) (statement of Sen. Grassley), available at <http://www.gpo.gov/fdsys/pkg/CREC-1999-01-20/pdf/CREC-1999-01-20.pdf>.

Without the benefit of tax forgiveness afforded by Bankruptcy Code (Code) section 1222(a)(2)(A), this unfortunate tale would have been the fate of the LeGassicks.⁹ Section 1222(a)(2)(A) allows a debtor to discharge certain tax obligations in Chapter 12 bankruptcies upon the completion of his reorganization plan.¹⁰ In reality, section 1222(a)(2)(A) allowed the bankruptcy court to confirm the LeGassicks' payment plan and the couple did not lose their farm.¹¹ If the LeGassicks complete their plan, the tax obligations from the sale of their farm will be discharged in full.¹²

Unfortunately, the benefits of section 1222(a)(2)(A) enjoyed by the LeGassicks are not available to all farmers. While the LeGassicks enjoyed the Eighth Circuit's broad interpretation of the provision, the Ninth and Tenth Circuits severely restrict the reach of section 1222(a)(2)(A) and thereby allow the Internal Revenue Service (IRS) a veto over the bankruptcies of farmers hoping to sell assets to preserve their livelihood.¹³ The IRS, a primary proponent and beneficiary of this line of decisions, convinced federal circuit courts to adopt a restrictive interpretation of section 1222(a)(2)(A) in spite of convincing legislative intent to the contrary.¹⁴ Much of the IRS's success is attributable to the noticeable lack of statutory clarity, combined with the complexity of the Code.¹⁵

In *Hall v. United States*, the Supreme Court of the United States granted certiorari upon the petition of debtors from the Ninth Circuit and resolved the circuit split in favor of the IRS.¹⁶ Faced with the familiar task of statutory interpretation, the opinion of the Supreme Court will inevitably affect economically distressed farmers nationwide. A primary concern of the Court was that an incorrect statutory interpretation would leave the Code in shambles because of the interdependency of its provisions.¹⁷

Because *Hall* primarily addresses issues of statutory interpretation, Part II of this Comment will outline the statutory background of the two statutes primarily at issue in the circuit split.¹⁸ Next, Part III of this Comment will survey the diverging circuit decisions concerning the interpretation and scope

9. See Brief for Amici Curiae Professors Neil E. Hart et al., *supra* note 1, at *11-12.

10. 11 U.S.C. § 1222(a)(2)(A) (2006).

11. See Brief for Amici Curiae Professors Neil E. Hart et al., *supra* note 1, at *10.

12. See *id.*; 11 U.S.C. § 1222(a)(2)(A).

13. See *Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236, 1244 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012); *United States v. Hall*, 617 F.3d 1161, 1164 (9th Cir. 2010), *aff'd*, 132 S. Ct. 1882 (2012).

14. *Hall*, 617 F.3d at 1167.

15. See *id.*

16. See *Hall v. United States*, 132 S. Ct. 1882, 1883 (2012).

17. See *id.* at 1187.

18. See *infra* Part II.

of section 1222(a)(2)(A).¹⁹ Then, Part IV will examine and, to the extent possible, resolve the arguments of the parties.²⁰ Part V will outline the Supreme Court decision.²¹ Finally, Part VI will consider proposed amendments to increase clarity and prevent future statutory interpretation disputes.²²

II. STATUTORY BACKGROUND

The laws of bankruptcy and taxation are primarily statutory. A principal canon of statutory construction requires courts to attempt to discern the legislature's intent when enacting the statute.²³ To accomplish this task, courts first look to the plain meaning of existing statutory text, but unfortunately, ambiguity is inherent in the English language, and commonly, one can find multiple "plain meanings."²⁴ If the plain meaning rule does not resolve the issue of legislative intent, it may be resolved by canons of interpretation²⁵ or contextual logic.²⁶ In addition, courts often examine the particular circumstances surrounding the inception of a statute, including prior law and legislative history.²⁷

The focus of this Comment involves the statutory interplay between bankruptcy and tax law. Accordingly, it is helpful to consider the background of the statutes most directly at issue. First, this Part will discuss the considerations historically and currently afforded to farmers under bankruptcy law. The discussion will begin with the treatment of farmers in early American bankruptcy and continue until the implementation of today's Chapter 12. This Part will then provide the background and analysis of section 1222(a)(2)(A). Second, because the statutes are central to the IRS's arguments concerning section 1222(a)(2)(A), this Part will discuss the statutory background of Internal Revenue Code (IRC) sections 1398 and 1399.

19. See *infra* Part III.

20. See *infra* Part IV.

21. See *infra* Part V.

22. See *infra* Part VI.

23. See *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) ("The starting point in discerning congressional intent is the existing statutory text").

24. *Id.*; see, e.g., *id.* at 536.

25. *In re Smale*, 390 B.R. 111, 114 (Bankr. D. Del. 2008) ("If the statute is ambiguous, the Court must use other canons of statutory construction, including legislative history where available, to determine the purpose of the statute.").

26. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340-41 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

27. See *Lamie*, 540 U.S. at 539.

A. Bankruptcy

As with many other aspects of American law, the beginnings of American bankruptcy can be traced to early English law.²⁸ When the English Parliament passed the first bankruptcy act in 1542, consumer credit and debt were considered immoral.²⁹ The legislative act was “quasi-criminal in nature” and labeled debtors as “offenders.”³⁰ In stark contrast to the current bankruptcy system, only creditors could invoke the act and no provisions provided debtors with the financial relief of discharge.³¹ However, the English eventually changed their outlook on the morality of bankruptcy and passed a new act in 1705, which removed the criminal characterization of debtors and provided for discharge of debtor obligations under limited circumstances.³² The legal commentator William Blackstone observed the evolving trend when he stated that “the laws of bankruptcy are considered as laws calculated for the benefit of trade, and founded on the principles of humanity as well as justice: and to that end they confer some privileges, not only on the creditors, but also on the debtor or bankrupt himself.”³³

Under this more forgiving legal atmosphere, the United States emerged as a sovereign nation.³⁴ During the nineteenth century, in response to various national economic concerns, Congress enacted three controversial bankruptcy acts that focused on providing liquidation for the benefit of creditors with little attention to the needs of debtors.³⁵ Though short-lived, these acts made notable contributions to the field, including voluntary bankruptcy proceedings and the introduction of reorganization proceedings.³⁶

28. *Sexton v. Dreyfus*, 219 U.S. 339, 344 (1911) (“We take our bankruptcy system from England, and we naturally assume that the fundamental principles upon which it was administered were adopted by us when we copied the system, somewhat as the established construction of a law goes with the words where they are copied by another state.”).

29. David S. Kennedy & R. Spencer Clift, III, *An Historical Analysis of Insolvency Laws and Their Impact on the Role, Power, and Jurisdiction of Today’s United States Bankruptcy Court and its Judicial Officers*, 9 J. BANKR. L. & PRAC. 165, 169 (2000).

30. *Id.* at 168-69.

31. *Id.* at 169.

32. *Id.* at 169-70.

33. *Id.* at 170 (quoting 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 472 (1765)).

34. *Id.*

35. John C. Anderson & Rex D. Rainach, *Farmer Reorganizations Under the New Bankruptcy Code*, 28 LOY. L. REV. 439, 444 (1982).

36. Kennedy & Clift, *supra* note 29, at 171-73.

1. Bankruptcy and Farmers

Near the turn of the twentieth century, the United States passed its first permanent bankruptcy act against the backdrop of the rising tide of commercial interest in the American economy and politics.³⁷ The Bankruptcy Act of 1898 is considered by many to be the foundation of modern bankruptcy law.³⁸ It established many elements that remain essential to the current bankruptcy system, including the fresh start principle, inclusion of both involuntary and voluntary proceedings, the allowance of exemptions, and the ability to recover fraudulently transferred assets.³⁹ The act was also the first to provide different and more lenient rules for farmers by exempting them from involuntary proceedings.⁴⁰ The rationale for specialized consideration of farmers was to prevent creditors from forcing farming operations into liquidation after and to protect farmers from unpredictable fluctuations of commodity prices.⁴¹

The necessity of specialized treatment for farmers again became apparent during the Great Depression. In 1933, Congress added section 75, entitled “Relief for Farmers,”⁴² which enabled bankruptcy courts to confirm composition or extension agreements for farmers’ debts.⁴³ Section 75 was rendered largely ineffective, however, because creditors were permitted to veto debtor plans.⁴⁴ The Frazier-Lemke Act of 1934⁴⁵ revitalized section 75

37. *Id.* at 175.

38. *Id.*

39. *Id.*

40. Mike Lowry, Note, *A New Paint Job on an ‘85 Yugo: BAPCPA Improves Chapter 12 but Will It Really Make a Difference?*, 12 DRAKE J. AGRIC. L. 231, 237 (2007).

41. Jerome M. Stam & Bruce L. Dixon, *Farmer Bankruptcies and Farm Exits in the United States, 1899-2002*, AGRIC. INFO. BULL. NO. 788 (U.S. Dep’t of Agric.), Mar. 2004, at 2-3, <http://www.ers.usda.gov/publications/aib788/aib788.pdf>.

42. Act of June 28, 1934, ch. 869, 48 Stat. 1289. (1934).

43. Steven Shapiro, Note, *An Analysis of the Family Farmer Bankruptcy Act of 1986*, 15 HOFSTRA L. REV. 353, 354 (1987); see also David P. Bart & Scott Peltz, *Rethinking the Concept of “Success” in Bankruptcy and Corporate Recovery*, AM. BANKR. INST. J., May 1998, at 33, 36 (“A composition agreement is a contractual agreement between the debtor and its creditors whereby the creditors discharge a portion or all of their claims against the debtor in exchange for payment of a lesser amount than what is actually owed. In contrast, under an extension agreement, only the payment terms are revised, thereby permitting the debtor to repay its obligations for a negotiated period of time.”).

44. Shapiro, *supra* note 43, at 353-54.

45. Frazier-Lemke Act of 1934, Pub. L. No. 73-486, 48 Stat. 1289, *invalidated* by *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935). The Supreme Court invalidated the act as an unconstitutional taking. *Louisville Joint Stock Land Bank*, 295 U.S. at 601-02 (“[W]e must hold [the 1934 Act] void; for the Fifth Amendment commands that, however great the nation’s need, private property shall not be thus taken even for a wholly public use without just compensation.”). How-

by installing mechanisms to impede the right of secured creditors to foreclose on farmland.⁴⁶ The 1934 amendment allowed debtors to retain possession of real property in bankruptcy and gave debtors the option to subsequently repurchase farmland at appraised values.⁴⁷ By 1950, the troubling economic times of the Great Depression had faded and section 75 expired on its own terms.⁴⁸

Following the expiration of section 75, Chapter 12 became the most appropriate vehicle for farmers seeking financial relief.⁴⁹ While seldom used due to the thriving economy of the mid-twentieth century, Chapter 12 afforded debtors the opportunity to restructure debt secured by real estate in lieu of forfeiting the property.⁵⁰ In effect, the chapter allowed debtors “to shift the risk of deflated land values to . . . creditors” and to retain land necessary for their livelihood, a concept continued in subsequent legislation.⁵¹

While the Act of 1898 and future amendments were implemented with the best of intentions, the application of the special provisions for farmers presented some difficulties, particularly with the threshold definition of what constituted a “farmer.”⁵² Prior to 1978, a farmer was defined as:

[A]n individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock

ever, Congress subsequently enacted a version of the Frazier-Lemke Act that was more favorable to creditors in 1935. Frazier-Lemke Act of 1935, Pub. L. No. 74-384, 49 Stat. 942 (codified as amended at 11 U.S.C. § 203 (1940)); *see also* Anna Gelpert & Adam J. Levitin, *Rewriting Frankenstein Contracts: Workout Prohibitions in Residential Mortgage-Backed Securities*, 82 S. CAL. L. REV. 1075, 1144-46 (2009) (“Compared with the original 1934 Frazier-Lemke Act, the 1935 version gave the debtor less time to buy back the farm for more money.”).

46. Anderson & Rainach, *supra* note 35, at 448.

47. *Id.* at 449; Shapiro, *supra* note 43, at 354 (“Under the [1934 amendment], if the creditor and farmer could not agree on a redemption plan, ‘the farmer was adjudged a bankrupt, but was given a moratorium of five to six years within which to buy back his property from the court and his creditors[.]’ During this moratorium, the farmer was allowed to keep his property in return for a ‘reasonable rental,’ and the farmer retained the exclusive right to redeem his property at its appraised value. What this meant was that the farmer could scale down his indebtedness, regardless of the encumbrances on it, to its depression-appraised value and redeem his property at that value, thereby forcing the creditor to assume the full brunt of the deflation in farm land values.”).

48. Anderson & Rainach, *supra* note 35, at 461.

49. *Id.*

50. *Id.* at 461-62, 464.

51. Shapiro, *supra* note 43, at 357.

52. *See id.*

products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations.⁵³

Cases illustrate the functional vagueness of the various threshold provisions, and attempts at application often led to costly litigation.⁵⁴

Despite the relatively progressive nature of the Bankruptcy Act of 1898, after nearly eighty years it became clear that the act suffered from procedural deficiencies concerning the limited jurisdiction of bankruptcy courts and the role of bankruptcy judges as administrators.⁵⁵ President Jimmy Carter signed the Bankruptcy Reform Act of 1978 as an attempt to rectify deficiencies of the previous act by expanding jurisdiction of bankruptcy courts, which allowed original jurisdiction over civil proceedings arising within bankruptcy cases and relieved bankruptcy judges from several administrative duties.⁵⁶ The 1978 act also afforded specialized protections for farmers; involuntary petitions could not be filed against farmers, nor could farmers be forced to convert to Chapter 7, which provides solely for liquidation, if the farmers filed voluntarily and sought reorganization under Chapter 11 or Chapter 13.⁵⁷ Further, states could opt out of federal exemptions.⁵⁸ Because the federal exemptions included caps, the new feature benefitted farmers in states that had no dollar caps on farming equipment exemptions.⁵⁹

The 1978 act redefined “farmer” as a “person that received more than [eighty] percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.”⁶⁰ For the first time, the scope of “farmer” was broadened to include partnerships and corporations.⁶¹ On the other hand, the threshold definition of “farmer,” though significantly

53. *Id.* at 357 n.29 (quoting 11 U.S.C. § 1(17) (1976)).

54. *Id.* at 357; *see, e.g.*, *First Nat'l Bank & Trust Co. of Bridgeport, Conn. v. Beach*, 301 U.S. 435 (1937) (holding that an individual who rented three-fourths of his farm to others for cultivation qualified as a farmer under section 75 of the Bankruptcy Act); *Jenkins v. Petitioning Creditor-Ray E. Friedman & Co.*, 664 F.2d 184 (8th Cir. 1981) (finding that borrowed funds do not count towards an individual's income in determining his status as a farmer); *Shyvers v. Sec.-First Nat'l Bank of L.A.*, 108 F.2d 611 (9th Cir. 1939) (holding that an individual who leases farmland to others for operation is not “personally engaged” in the farming and thus does not qualify as a farmer within the meaning of section 75).

55. *Kennedy & Clift, supra* note 29, at 177.

56. *Id.* at 178-79.

57. *Shapiro, supra* note 43, at 358-59.

58. *Id.* at 359.

59. *Id.*

60. *Id.* at 357-58 (quoting 11 U.S.C. § 1(17) (1982)).

61. *Id.* at 358.

altered, severely curtailed the applicability of the provisions.⁶² This amendment provided a formulaic definition to resolve the uncertainty surrounding previous definitions, but also rendered many intended beneficiaries ineligible for protections against involuntary proceedings and liquidation.⁶³

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) is Congress' most recent attempt at wholesale bankruptcy reform⁶⁴ and is currently in effect. The act primarily responded to the contention that consumers were abusing the bankruptcy system by a perceived "lack of personal financial accountability, the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system."⁶⁵ However, BAPCPA also made significant changes to chapters largely inapplicable to consumers, including chapters providing bankruptcy relief to family farmers and fishermen (Chapter 12), as well as corporations (Chapter 11), municipalities (Chapter 9), and cross-border insolvencies (Chapter 15).⁶⁶ Chapter 12 is discussed in greater detail below.

2. Chapter 12

a. Prelude

While the Bankruptcy Act of 1978 permitted some preferential treatment with respect to farmers, its drafters failed to anticipate the economic circumstances of the 1980s. In the early 1980s, the world faced a severe recession, and the American agricultural industry, affected heavily by embargos, inflation, increased supply and decreased demand, and massive amounts of secured debt incurred by farmers during the preceding decade, was no exception.⁶⁷

During this period, financially distressed farmers seeking to avoid liquidation were forced to choose between Chapter 11 and Chapter 13 bankruptcy proceedings, only to discover that neither chapter was well suited for their specialized needs. Debtors seeking relief under Chapter 13 quickly realized that the drafters designed the chapter for consumers, not farmers.⁶⁸ Low debt ceilings – capped at \$100,000 for unsecured debt and \$350,000 for secured debt – prevented many farmers from meeting threshold requirements for Chapter 13 eligibility.⁶⁹ Additionally, because Chapter 13 provided relief

62. *See id.*

63. *Id.*

64. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, § 1501, 119 Stat. 23 (2005).

65. H.R. REP. NO. 109-31(I), at 1 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89.

66. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 §§ 401-11, 501-02, 801-02, 1501, 119 Stat. 23.

67. Shapiro, *supra* note 43, at 360-61.

68. *Id.* at 362.

69. *Id.*

only for individuals, farms operating under a partnership agreement or a corporate charter were also ineligible.⁷⁰ Beyond the screening effect of the threshold requirements, the provisions of Chapter 13 proved to be irreconcilable with the financial situation of most farmers. For instance, Chapter 13's requirement that debtors have a regular stream of income is incompatible with the "seasonal nature of farming."⁷¹ Providing yet another obstacle, Chapter 13 required repayment plans to be filed within fifteen days of a petitioner's filing date, which was unreasonable given farmers' lack of regular income.⁷² Finally, Chapter 13 failed to provide relief for debt secured by a debtor's principal residence, which farm lenders often demanded as collateral.⁷³

In the absence of Chapter 12, most farmer bankruptcies took place under Chapter 11.⁷⁴ Though generally more amenable to farmers than Chapter 13 due to its lack of stringent threshold requirements and longer plan filing periods, Chapter 11 was rendered largely ineffective by the economic crisis in the 1980s.⁷⁵ During the crisis, many farmers' assets were over-encumbered by liens and security interests, leaving farmers with very few assets to use to secure financing for necessary operating expenses.⁷⁶ Adequate protection for retained collateral in particular provided a formidable obstacle to farmers seeking relief under Chapter 11, because the requirement was interpreted to extend to lost opportunity costs, which required farmers to make interest payments on the market value of collateral.⁷⁷ As a secondary barrier, creditor claims concerning lack of adequate protection often pervaded Chapter 11 proceedings and exhausted the farmers' resources.⁷⁸ Further, debtors lost opportunities to remove parties in interest and to liquidate unnecessary assets, because the bankruptcy code failed to allow trustees to sell unessential but encumbered farming assets.⁷⁹ Finally, while Chapter 11's filing period for repayment plans greatly exceeded Chapter 13's period of fifteen days, the time constraint remained a practical impediment to relief for farmers under Chapter 11.⁸⁰ Assuming a debtor could form a plan during the filing period, Chapter 11 permitted each class of creditors to veto debtors' proposed plans.⁸¹ Compounding the farmers' difficulties, when the filing period

70. *See id.*

71. *Id.* at 363.

72. *Id.*

73. *Id.*

74. *Id.* at 364.

75. *Id.* at 363-65. Compare 11 U.S.C. § 109(d) (Supp. II 1978), with 11 U.S.C. § 109(e) (Supp. II 1978).

76. Shapiro, *supra* note 43, at 364.

77. *Id.*

78. *Id.*

79. *Id.* at 366.

80. *Id.* at 363, 365.

81. *Id.* at 365 (citing 11 U.S.C. § 1129(a) (1982)).

elapsed, courts could confirm creditor plans unfavorable to a debtor, thereby thwarting the reorganization efforts of many farmers.⁸²

b. Temporary Chapter 12

In response to the growing recognition of bankruptcy issues unique to farmers,⁸³ the Family Farmer Bankruptcy Act of 1986 passed as an amendment to the 1978 act.⁸⁴ The Family Farmer Bankruptcy Act created Chapter 12, which was designed to give bankrupt family farmers a greater opportunity to reorganize and retain ownership of farmland.⁸⁵ It “offer[ed] family farmers the important protection from creditors that bankruptcy provides while, at the same time, preventing abuse of the system and ensuring that farm lenders receive a fair repayment.”⁸⁶ Closely modeled after Chapter 13, the new chapter removed several provisions considered inappropriate for family farmers.⁸⁷

The new legislation provided for bankruptcy provisions applicable only to family farmers, but unlike Chapter 13, Chapter 12 also allowed partnerships or corporations to qualify under its provisions.⁸⁸ The Chapter 12 requirements for eligibility as an individual included a percentage test, similar to the definition of “farmer” provided in the Bankruptcy Act of 1978.⁸⁹ However, the new requirements put a greater emphasis on percentage of debt, rather than percentage of income, and provided that as of the date of filing, individuals must have at least eighty percent of their debts arising out of a farming operation.⁹⁰ Income remained a factor for eligibility, but the threshold percentage fell from eighty percent to fifty percent.⁹¹ Corporations and partnerships qualified if family held more than fifty percent of outstanding stock or equity in the entity and no stock of the entity was publicly traded.⁹² Chapter 12 eligibility further required that “eighty percent of an entity’s assets . . . be related to debtor farming operation[s,]” and required that eighty

82. *Id.* (citing *Jasik v. Conrad (In re Jasik)*, 727 F.2d 1379 (5th Cir. 1984)).

83. H.R. REP. NO. 99-958, at 48 (1986), reprinted in 1986 U.S.C.C.A.N. 5246, 5249.

84. Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1986).

85. H.R. REP. NO. 99-958, at 48 (1986), reprinted in 1986 U.S.C.C.A.N. 5246, 5249.

86. *Id.*

87. *Id.*

88. Shapiro, *supra* note 43, at 369-70 (citing 11 U.S.C. § 101(17)(B) (Supp. 1987)).

89. *Id.* at 369 (citing 11 U.S.C. § 101(17)(A) (Supp. 1987)).

90. *See id.*

91. *Id.* at 357-58, 369.

92. *Id.* at 370 (citing 11 U.S.C. § 101(17)(B) (Supp. 1987)).

percent of an entity's debts "arise from debtor farming operations."⁹³ The debt limit for both individuals and entities was capped at \$1,500,000.⁹⁴

The new chapter also remedied several other recurring issues plaguing farmers attempting to file under Chapter 13. For instance, the new chapter added a separate provision for adequate protection to remove the requirement of lost opportunity cost payments to secured creditors.⁹⁵ Addressing yet another concern, the chapter provided bankruptcy trustees with power to sell encumbered farm assets without permission of lien holders, which allowed farmers to liquidate their equity in unnecessary assets.⁹⁶ Additionally, adjustments to the filing provisions increased the palatability of bankruptcy for farmers.⁹⁷ The statute increased the filing period for plans to ninety days, but also granted power to courts to extend the filing period if "substantially justified."⁹⁸ Finally, decreasing creditor control over the bankruptcy process, Chapter 12 differed from other chapters by allowing only voluntary filings by debtors and permitted courts to confirm reorganization plans submitted by debtors over creditors' objections.⁹⁹

c. Permanent Implementation

Unlike the current version of Chapter 12, the Family Farmer Bankruptcy Act was an experimental mechanism to combat the plight of farmers during the contemporaneous economic crisis and was drafted with a seven-year sunset provision.¹⁰⁰ Originally set to expire in 1993, Chapter 12 was extended eleven times with minimal changes prior to its permanent implementation.¹⁰¹ While the extensions were intended to benefit farmers, the piecemeal nature of the legislation subjected the industry to occasional gaps between the effective dates of extensions and caused sporadic availability and uncertainty.¹⁰² Although a Congressional consensus had been reached several years prior to enactment of the permanent chapter, legislators seeking general bankruptcy reform sought to use the implementation of a permanent Chapter 12 as lever-

93. *Id.* (citing 11 U.S.C. § 101(17)(B) (Supp. 1987)).

94. *Id.* at 369-70.

95. *Id.* at 370 (citing 11 U.S.C. § 1205 (Supp. 1987)).

96. *Id.* at 371 (citing 11 U.S.C. § 1206 (Supp. 1987)).

97. *Id.*

98. *Id.* (quoting 11 U.S.C. § 1221 (Supp. 1987)) (internal quotation marks omitted).

99. *Id.* at 371-72 (citing 11 U.S.C. §§ 1221, 1225(b)(1)(A) (Supp. 1987)).

100. H.R. REP. NO. 99-958, at 48 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

101. *See* Stam & Dixon, *supra* note 41, at iii; Family Farmer Bankruptcy Relief Act of 2004, Pub. L. No. 108-369, §§ 1-2, 118 Stat. 1749 (2004).

102. Lowry, *supra* note 40, at 243; *see also* Susan Schneider, *Bankruptcy Reform: Changes to Chapter 12 – Adjustment of Debts of a Family Farmer*, 2005 ARK. L. NOTES 113, 113 (2005).

age to gather votes of representatives of farming districts.¹⁰³ After some political maneuvering, Congress enacted the permanent implementation of Chapter 12 as a component of BAPCPA, effective July 1, 2005.¹⁰⁴

While the previous extensions changed little from the original Chapter 12, the BAPCPA amendments made several significant changes, including expansion of eligibility, modification of tax priorities, prohibition of retroactive assessment of disposable income, extension of protections afforded to domestic obligations, as well as a myriad of other alterations and additions affecting all chapters.¹⁰⁵ The current version of Chapter 12 affords debtors greater accessibility by increasing the maximum debt limit from \$1,500,000 to \$3,237,000.¹⁰⁶ Unlike previous versions of Chapter 12, the debt limit is indexed for inflation every three years by the Judicial Conference of the United States.¹⁰⁷ In 2010, the Judicial Conference adjusted the debt limit from \$3,237,000 to \$3,792,650.¹⁰⁸ Chapter 12 retained the requirement that a percentage of debt must be related to farming operation, but the percentage was decreased from eighty percent to fifty percent.¹⁰⁹ The eligibility provisions retain the requirement that fifty percent of debtor income must be related to farming operation, but under the new amendments, debtors may also qualify if fifty percent of income from the second and third taxable years preceding the year of filing is related to farming operation.¹¹⁰ Finally, family fishermen can qualify for Chapter 12 proceedings subject to more stringent conditions.¹¹¹

Another major modification introduced by the BAPCPA amendments is the prohibition of retroactive assessment of disposable income.¹¹² Concerning Chapter 12 and 13 bankruptcies, the provisions state that prior to confirmation of a plan, trustees and unsecured creditors may object if a plan sub-

103. Schneider, *supra* note 102, at 113-14.

104. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1001, 119 Stat. 23 (2005).

105. See *infra* notes 106-20 and accompanying text.

106. Schneider, *supra* note 102, at 114 (citing 11 U.S.C. § 101(18)(A), (B) (2006)).

107. *Id.* at n.14; see 11 U.S.C. § 104(b).

108. *Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(A) of the Code*, FEDERAL REGISTER, <https://www.federalregister.gov/articles/2010/02/25/2010-3807/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code>.

109. Schneider, *supra* note 102, at 114 (citing 11 U.S.C. § 101(18)).

110. *Id.* at 114-15 (citing 11 U.S.C. § 101(18)).

111. *Id.* at 115 (“[F]amily fisherman are defined and afforded Chapter 12 eligibility. This definition mirrors the original requirements contained in the definition of family farmer. Family fisherman do not receive the expanded eligibility criteria that is afforded to family farmers but remain subject to the pre-reform income and debt standards in place for family farmers.” (citing 11 U.S.C. § 101(19A) (2006))).

112. 11 U.S.C. § 1229(d)(2).

mitted by a debtor does not provide for all of a debtor's "projected disposable income."¹¹³ Prior to BAPCPA, courts interpreted the term "projected disposable income" in Chapter 12 proceedings to allow for creditors and trustees to object to discharge on grounds that a debtor's actual income exceeded income projected in his plan.¹¹⁴ By contrast, in Chapter 13 cases, courts interpreted the same term to limit objections to pre-confirmation, forcing use of plan modification actions to address subsequent increases in a debtor's income.¹¹⁵ As farmers neared the end of the bankruptcy process, the discrepancy caused difficulty by creating the onerous task of accounting for income and expenses occurring during the life of a plan and further costly litigation, which effectively eliminated the opportunities for a fresh start and continued viability of farming operations.¹¹⁶

Congress enacted three new provisions to rectify the problems caused by this discrepancy.¹¹⁷ First, BAPCPA amendments provide that a plan may not be modified "to increase the amount of any payment due before the plan as modified becomes the plan," which allows creditors to raise the amount due only on payments due after modification of a plan.¹¹⁸ Additionally, the amendments further limit modification by stating that a plan may not be modified by anyone other than a debtor "to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month."¹¹⁹ Finally, reemphasizing the underlying policy of preservation and continuation of debtors' farming operations, the BAPCPA provisions restrict modification of a plan "in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed."¹²⁰

d. 11 U.S.C. Section 1222(a)(2)(A)

The BAPCPA amendments, particularly 11 U.S.C. section 1222(a)(2)(A), also remove priority status from certain tax obligations.¹²¹ The background of this provision begins with *In re Specht* and the efforts of Senator Chuck Grassley and ends with the enactment BAPCPA.

113. *Id.* §§ 1225(b)(1)(B), 1325(b)(1)(B).

114. Schneider, *supra* note 102, at 117 (citing *Rowley v. Yarnall*, 22 F.3d 190, 192-93 (8th Cir. 1994)).

115. *Id.* (citing *Anderson v. Saterlee (In re Anderson)*, 21 F.3d 355, 357-58 (9th Cir. 1994); *In re Bass*, 267 B.R. 812, 817-18 (Bankr. S.D. Ohio 2001)).

116. *Id.* at 117-18.

117. *Id.* at 118-19.

118. 11 U.S.C. § 1229(d)(1).

119. *Id.* § 1229(d)(2).

120. *Id.* § 1229(d)(3).

121. *Id.* § 1222(a)(2)(A). For the definition of priority, see *infra* note 148 and accompanying text.

Although unreported, *In re Specht*¹²² is noteworthy both because the case provides an example of the particular plight of farmers during the bankruptcy process addressed by the provision and because the case inspired a proposal by Senator Chuck Grassley that eventually led to implementation of section 1222(a)(2)(A).¹²³ John and Carol Specht were farmers seeking relief under Chapter 12.¹²⁴ The Spechts proposed their plan to the bankruptcy court for confirmation.¹²⁵ The Farm Service Agency, one of the Spechts' creditors, objected to the plan because it failed to acknowledge tax consequences arising from the transfer of eighty acres of land.¹²⁶ The Spechts argued that the transfer was a discharge of indebtedness excludible from gross income under the IRC.¹²⁷ However, the court adhered to precedent and found gain in the amount of \$150,000 includible in the Spechts' taxable income.¹²⁸ Among other factors, the tax liability played a role in the court's conclusion that the Spechts' plan was not feasible.¹²⁹ The court declined to extend the plan filing period, found unreasonable delay, and dismissed the case.¹³⁰

The Spechts' bankruptcy lawyer brought the issue to the attention of Senator Grassley, a senator from Iowa, a state where economics and politics are heavily influenced by agricultural considerations.¹³¹ While many politicians must be informed of constituent concerns, Senator Grassley has an inside track as a self-proclaimed family farmer who attempts to bring his "real-life experience as a family farmer to farm policy."¹³²

In 1999, Senator Grassley proposed passage of Safeguarding America's Farms Entering the Year 2000 Act (Safety 2000), which advocated for changes that were later implemented with BAPCPA, including making Chap-

122. *In re Specht*, 1997 Bankr. N.D. Iowa No. 96-21022-DU, available at http://www.ianb.uscourts.gov/content/sites/default/files/decisions/19970409-pk-John_Specht.html.

123. Brief of Amici Curiae Donald W. Dawes and Phyllis C. Dawes in Support of Petitioners at 33, *Hall v. United States*, 132 S. Ct. 1882 (2012) (No. 10-875), 2011 WL 3821040, at *33 [hereinafter Brief for Amici Curiae Donald W. Dawes and Phyllis C. Dawes]; see also 145 CONG. REC. S764 (daily ed. Jan. 20, 1999) (statement of Sen. Grassley).

124. *In re Specht*, 1997 Bankr. N.D. Iowa No. 96-21022-DU, at ¶ 2.

125. *Id.*

126. *Id.* ¶ 3.

127. *Id.* ¶ 14.

128. *Id.* ¶¶ 14-15 (citing *Gehl v. Comm'r*, 102 T.C. 784, 790 (1994), *aff'd*, 50 F.3d 12 (8th Cir. 1995) (unpublished)).

129. *Id.* ¶¶ 15-16.

130. *Id.* ¶ 20.

131. Brief for Amici Curiae Donald W. Dawes and Phyllis C. Dawes, *supra* note 123, at *33; see also *Iowa Information*, SENATOR CHUCK GRASSLEY OF IOWA, <http://grassley.senate.gov/iowa/index.cfm> (last visited Nov. 20, 2012) (emphasizing the importance of agriculture in Iowa).

132. *Biography*, SENATOR CHUCK GRASSLEY OF IOWA, <http://www.grassley.senate.gov/about/Biography.cfm> (last visited Nov. 20, 2012).

ter 12 permanent and expanding its eligibility requirements.¹³³ As a response to issues presented by *In re Specht*, Senator Grassley also included a provision that recognized the reality that “farmers often face a crushing tax liability if they need to sell livestock or land in order to reorganize their business affairs.”¹³⁴ Because tax claims were given priority in bankruptcy, farmers were required to pay tax liability in full over the life of their plans, which rendered many plans infeasible.¹³⁵ In effect, pre-BAPCPA bankruptcy law gave the IRS veto power over farmers’ attempts at reorganization.¹³⁶ The provision in the original Safety 2000 proposal effectively denied veto power by removing priority of certain taxes and generally remained intact until it was codified by BAPCPA.¹³⁷

Though many farmers may have benefitted from immediate passage of the initial proposal, the necessity for repeated proposals provides a rich legislative history for discerning the legislature’s intended purpose and application of the provision, which may be used as guidance for judicial interpretation. For instance, in a plea for support for Safety 2000, Senator Grassley explained that the proposed provision “reduces the priority of capital gains tax liabilities for farm assets sold as a part of a reorganization plan” and has “the . . . effect of allowing cash-strapped farmers to sell livestock, grain, and other farm assets to generate cash-flow when liquidity is essential to maintaining a farming operation.”¹³⁸ Senator Susan Collins, an advocate for inclusion of family fishermen in Chapter 12, conveyed a similar understanding of the provision, stating that “[t]he [C]hapter 12 debtor is also given the freedom to sell off parts of his or her property as part of a reorganization plan.”¹³⁹ Although Senator Grassley proposed the revision on many occasions, his explanation remained consistent, shown by the senator’s statement made on the eve of passage of the BAPCPA amendments that “[t]he bill lets farmers in bankruptcy avoid capital gains tax. This is very important because it will free up resources to be invested in farming operations that otherwise would go down the black hole of the Internal Revenue Service.”¹⁴⁰ Shortly thereafter, in April 2005, the tax priority provision was signed into law.¹⁴¹

The valiant efforts of Senator Grassley finally culminated in the tax priority provision’s placement in section 1222, which generally provides the

133. 145 CONG. REC. S764 (daily ed. Jan. 20, 1999) (statement of Sen. Grassley).

134. *Id.*

135. *Id.*

136. *See id.*

137. *Id.*; Brief of Amici Curiae Donald W. Dawes and Phyllis C. Dawes, *supra* note 123, at 38.

138. 145 CONG. REC. S11093 (daily ed. Sept. 21, 1999) (statement of Sen. Grassley).

139. 147 CONG. REC. S2155 (daily ed. Mar. 12, 2001) (statement of Sen. Collins).

140. 151 CONG. REC. S1857 (daily ed. Mar. 1, 2005) (statement of Sen. Grassley).

141. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, § 1001, 119 Stat. 23 (2005).

parameters of a Chapter 12 repayment plan.¹⁴² Subsection (b) of section 1222 provides an illustrative list of options debtors may use in a plan,¹⁴³ while subsection (a) outlines minimum requirements that must be satisfied for plan confirmation.¹⁴⁴ Briefly, under a Chapter 12 plan, debtors must permit trustees control and supervision over future income to the extent that income is necessary to fund a plan.¹⁴⁵ Like Chapter 13, subsection (a) also provides that debtors generally must provide for full payment of any claims entitled to priority under section 507.¹⁴⁶

However, unlike Chapter 13, Chapter 12 provides another exception to full payment of priority claims, stating, in relevant part:

The plan shall . . . provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless . . . the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge.¹⁴⁷

Claims by governmental units, usually arising due to unpaid taxes, are afforded priority, which means that such claims are granted favorable treatment that varies with respect to the applicable bankruptcy chapter.¹⁴⁸ In Chapter 11, 12, and 13 proceedings, most priority unsecured claims are either expressly nondischargeable or must be paid in full throughout the life of a plan.¹⁴⁹ Without section 1222(a)(2)(A), tax obligations arising from the sale of farm assets would fall under section 523(a)(1)(A), which denies discharge of a tax claim “of the kind and for the periods specified” in the Section 507 provisions generally awarding priority to tax claims.¹⁵⁰ However, section 1222(a)(2)(A) expressly provides that “the claim shall be treated as an unsecured claim that is not entitled to priority under section 507 . . . if the debtor receives a discharge.”¹⁵¹ In contrast with most priority unsecured claims, most general unsecured claims are discharged after successful completion of

142. 11 U.S.C. § 1222 (2006).

143. *Id.* § 1222(b).

144. *Id.* § 1222(a).

145. *Id.* If classes are used, debtors must treat each claim or interest within a particular class equally unless the holder of a claim agrees otherwise. *Id.* § 1222(b)(1).

146. *Compare id.* § 1222(a)(4), with *id.* § 1322(a)(2) (Supp. 2011).

147. *Id.* § 1222(a)(2)(A) (2006).

148. *Id.* § 507(a)(8) (Supp. 2011).

149. *Id.* §§ 1129(a)(9)(B), 1222(a)(2), 1228(a)(2), 1322(a)(2), 1328(a)(2) (2006).

150. *Id.* § 523(a)(1)(A).

151. *Id.* § 1222(a)(2)(A).

a plan, which frees a debtor of all legal responsibility for the debt.¹⁵² Because section 1222(a)(2)(A) removes both priority and nondischargeability from tax claims arising as a result of disposition of farm assets used in debtors' farming operation, Chapter 12 debtors are permitted to discharge tax claims that would otherwise be nondischargeable or paid in full during the life of a plan.¹⁵³

B. Tax

It is important to note that section 1222(a)(2) applies by its own terms solely to claims that would otherwise receive priority under the bankruptcy provisions.¹⁵⁴ Specifically, two provisions award priority to tax liabilities. First, section 507(a)(8) grants priority to certain taxes arising prior to the filing of a bankruptcy petition, or pre-petition.¹⁵⁵ Section 1222(a)(2) undisputedly applies to claims receiving priority under section 507(a)(8).¹⁵⁶ Second, section 507(a)(2)(A) grants priority to administrative expenses allowed under section 503(b),¹⁵⁷ which includes any tax "incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."¹⁵⁸ The bankruptcy estate arises upon commencement of a bankruptcy case, which occurs when debtors or creditors in Chapter 7 or 11 proceedings file a bankruptcy petition.¹⁵⁹ Accordingly, taxes incurred by an estate are necessarily incurred post-petition.

152. *Id.* §§ 1228(a)(1), 1328(a).

153. *See id.* § 1222(a)(2)(A); *see also* *Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236, 1238 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012) ("As unsecured claims, the taxes would be entitled to no priority, paid only to the extent funds might be available after priority claims were satisfied, and any remaining unpaid portion would be eligible for discharge."); *United States v. Hall*, 617 F.3d 1161, 1162 (9th Cir. 2010), *aff'd*, 132 S. Ct. 1882 (2012) ("Thus debtors may well treat certain claims owed to a governmental unit arising from the sale of farm realty as payable in less than full, and dischargeable.").

154. *In re Dawes*, 652 F.3d at 1238.

155. 11 U.S.C. § 507(a)(8) (Supp. 2011).

156. *See In re Dawes*, 652 F.3d at 1242 ("Yet under our interpretation of § 503(b), income taxes incurred as a result of the *pre-petition* disposition of certain farm assets are eligible for § 1222(a)(2)(A)'s generous rule allowing them to be treated as unsecured claims, compromised, and discharged."); *Hall*, 617 F.3d at 1163 ("Indeed, there is no dispute that section 1222(a)(2)(A) allows chapter 12 debtors to treat *taxes* incurred by selling farm assets *before* the filing of a bankruptcy petition as payable in less than full and dischargeable").

157. 11 U.S.C. § 507(a)(2) (Supp. 2011).

158. *Id.* § 503(b)(1) (2006).

159. *Id.* § 541(a) ("The commencement of a case under section 301, 302, or 303 of this title creates an estate.").

The issue then becomes whether an estate incurs *any* taxes, an issue of interpretation where reasonable minds may disagree. Proponents of the view that section 1222(a)(2)(A) does not apply to post-petition taxes find support in the IRC.¹⁶⁰ Particularly, the IRC bases its argument on two complementary statutes, both signed into law under the Bankruptcy Tax Act of 1980.¹⁶¹ First, IRC section 1398 treats bankruptcy estates of individual debtors under Chapter 7 and 11 as separate taxable entities, imposing additional tax requirements, but also affording debtors certain tax benefits.¹⁶² Second, IRC section 1399 expressly disallows creation of separate taxable entities or application of the special rules to bankruptcy estates of any other debtor.¹⁶³

1. Prelude to IRC Sections 1398-99

Though the Bankruptcy Tax Act of 1980 included several other important provisions,¹⁶⁴ the portions relevant to the IRS's arguments in *Hall* essentially codified the established stance of the IRS towards bankruptcy debtors prior to the adoption of the act.¹⁶⁵ In short, legislative action became necessary because of disputes between federal courts and the IRS concerning whether the stance taken by the IRS was appropriate.

Prior to 1980, the IRS's stance was in response to the interplay between the following established principles of law: 1) upon commencement of bankruptcy proceedings, title to all property belonging to a debtor is vested in the bankruptcy estate;¹⁶⁶ and 2) gross income includes only income over which a

160. See *In re Dawes*, 652 F.3d at 1240; *Hall*, 617 F.3d at 11664 (“The Internal Revenue Code provides that a chapter 12 estate cannot incur taxes.”); *Knudsen v. I.R.S.*, 581 F.3d 696, 710 (8th Cir. 2009) (“[T]he government’s argument [is] that post[-]petition income taxes cannot be ‘incurred by the estate’ because a bankruptcy filing under Chapter 12 does not create a separate taxable entity under 26 U.S.C. § 1399 of the IRC.”), *abrogated by* *Hall v. United States*, 132 S. Ct. 1882 (2012).

161. Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, 94 Stat. 3389 (1980).

162. I.R.C. § 1398 (2006).

163. I.R.C. § 1399.

164. See Bankruptcy Tax Act of 1980, 94 Stat. at 3389. Other important provisions include the treatment of discharge of indebtedness for taxpayers in bankruptcy or insolvent taxpayers, and G reorganization. *Id.* §§ 2, 4.

165. James I. Shepard, *The Bankruptcy Tax Act and the Bankruptcy Code: A Study with Reference to the Distressed Farm Economy*, 1986 ANN. SURV. BANKR. L. 5 (1986) (“The Treasury Department took the position that the bankruptcy estate was a taxable entity, separate from the individual. With the addition of [sections] 1398 and 1399 to Title 26, the separate entity rules were codified providing a comprehensive statutory treatment of these issues, as well as on the question of the treatment of the allocation of tax attributes between the estate and the debtor.”).

166. Sydney Krause & Arnold Y. Kapiloff, *The Bankrupt Estate, Taxable Income and the Trustee in Bankruptcy*, 34 FORDHAM L. REV. 401, 407 (1966) (“Apparently, the rationale of the Treasury Department in applying Subchapter J principles to bank-

taxpayer has complete dominion.¹⁶⁷ Creation of a bankruptcy estate removed debtors from complete dominion over income produced by estate assets, which meant that taxable income held by estates could not be taxed to debtors.¹⁶⁸

In recognition of this issue, the IRS took the position that the bankruptcy estates of individual and partnership debtors were separate taxable entities and that “income of a bankrupt partnership's estate, like that of a bankrupt individual's estate, should be taxed as income of an estate under section [641] of the [IRC].”¹⁶⁹ The IRS mandate provided for calculation of estate income tax under section 641, which generally “[applied] to the taxable income of estates or of any kind of property held in trust,”¹⁷⁰ and also required trustees to file fiduciary income tax returns on behalf of estates.¹⁷¹ In addition to duties imposed on trustees, the IRS required that debtors file individual income tax returns for post-petition income not attributable to estates.¹⁷²

However, court decisions were not always consistent with the IRS's position.¹⁷³ For instance, some courts held that because of lack of statutory support, trustees in liquidation proceedings were not required to file income tax returns for bankruptcy estates, which thwarted collection efforts of the IRS.¹⁷⁴ By contrast, courts also held that in liquidation proceedings trustees

rupt estates is founded on the premise that legal title to the bankrupt's property vests by operation of law in the trustee.”).

167. *Comm'r v. Indianapolis Power & Light Co.*, 493 U.S. 203, 209 (1990) (“In determining what sort of economic benefits qualify as income, this Court has invoked various formulations. It has referred, for example, to ‘undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.’” (quoting *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955))).

168. H.R. REP. NO. 96-833, at 20 n.2 (1980) (“The rationale for generally treating the individual debtor and the bankruptcy estate as separate entities is that the individual may obtain new assets or earn wages after transfer of the pre-bankruptcy property to the trustee and thus derive income independent of that derived by the trustee from the transferred assets.”); Rev. Rul. 68-48, 1968-1 C.B. 301 (“The basis for this conclusion is that the intervention of the status of bankruptcy into the affairs of both an individual and a partnership creates an entity separate and apart from the individual or partnership bankrupt.”).

169. Rev. Rul. 68-48, 1968-1 C.B. 301 (quoting I.R.S. Gen. Couns. Mem. 24617 (1939)).

170. I.R.C. § 641(a) (2006).

171. Rev. Rul. 68-48, 1968-1 C.B. 301.

172. Krause & Kapiloff, *supra* note 166, at 407.

173. See GRANT W. NEWTON & GILBERT D. BLOOM, *BANKRUPTCY & INSOLVENCY TAXATION* 24-25 (1991).

174. *Preston v. United States (In re 4100 N. High Ltd.)*, 3 B.R. 232, 238 (Bankr. S.D. Ohio 1980) (“[N]either the Bankruptcy Act nor the Internal Revenue Code as worded in 1975 and 1976 imposed or levied federal income tax upon bankruptcy estates of either individuals or partnerships.”); *In re Siehl*, Bankr. No. 55648, 1975 WL 778, at *6 (S.D. Ohio Dec. 23, 1975) (“[A]n estate in bankruptcy is not the kind

were liable for all federal income taxes incurred by an estate, pursuant to 28 U.S.C. section 690, which provides that any court officer or agent who conducts business under court authority is liable for resulting taxes.¹⁷⁵ A similar dispute arose concerning reorganization proceedings when courts further undermined the IRS by holding that individuals in bankruptcy proceedings did not create separate taxable entities and that there was no requirement that trustees file fiduciary tax returns.¹⁷⁶

2. Sections 1398 and 1399

In 1980, Congress enacted the Bankruptcy Tax Act due to a notable lack of “statutory rules governing the tax treatment of debt discharge in bankruptcy and insolvency,” which caused much “confusion and controversy.”¹⁷⁷ In particular, sections 1398 and 1399 were implemented to rectify the ongoing conflict concerning the creation of a separate taxable entity for bankruptcy estates.¹⁷⁸

Section 1398 provides rules relating to tax treatment of estates created by individual debtors under Chapters 7 and 11.¹⁷⁹ The section treats bankruptcy estates as separate taxable entities and instructs trustees filing a fiduciary return both to include in gross income any income to which an estate is entitled under Title 11 and to compute tax liability for estates in the same manner as individuals.¹⁸⁰ Debtors may also elect to split their taxable year in the year of filing into two taxable years, one running from the first day of the year until the day before filing and the second running from the day of filing until the end of the original taxable year.¹⁸¹ This election allows tax liabilities already accrued to be treated as pre-petition debt, which can be paid from

of estate or trust upon which the Congress imposed income tax liability by enactment of Section 641 of the Internal Revenue Code.”).

175. *In re 4100 N. High Ltd.*, 3 B.R. at 239 (“Under the plain and unambiguous words of [section] 960, he is subject to all taxes which would have been applicable to the business if it had been conducted by an individual or corporation.”); *see also* 28 U.S.C. § 960(a) (2006).

176. *In re Lister*, 177 F. Supp. 372, 373 (E.D. Va. 1959) (“Certainly it is true that two taxable entities are not created under a Chapter XI proceeding, where before only one had existed.”); *CHM Co. v. Comm’r*, 68 T.C. 31, 37 (1977) (“The language of the Bankruptcy Act itself further supports the view that neither the filing of chapter petitions nor the appointment of a receiver creates a separate and distinct entity.”).

177. 126 CONG. REC. H12461 (daily ed. Dec. 13, 1980) (statement of Rep. Ullman).

178. NEWTON & BLOOM, *supra* note 173, at 25.

179. I.R.C. § 1398(a) (2006).

180. *Id.* § 1398(c)(1), (e)(1).

181. *Id.* § 1398(d)(2)(A).

debtors' bankruptcy estates.¹⁸² Additionally, section 1398 allows tax-free transfers of assets between debtors and their estates but requires that such transferred assets retain certain tax attributes.¹⁸³

By contrast, section 1399 contains a sole provision stating that, "[e]xcept in any case to which section 1398 applies, no separate taxable entity shall result from the commencement of a case under Title 11 of the United States Code."¹⁸⁴ The section denies the requirements and benefits of section 1398 to bankruptcy estates of corporations, partnerships, or estates arising under Chapters 12 or 13. The rationale for this dichotomy between the estates of Chapter 12 and 13 debtors and Chapter 7 and 11 debtors is that Chapter 12 and 13 debtors retain control over estate assets – making a separate taxable entity unnecessary.¹⁸⁵

Accordingly, sections 1398 and 1399 provide a dichotomy for tax treatment of the various bankruptcy estates of individual debtors. Individual debtors proceeding under Chapters 7 and 11 retain the requirement of filing individual income tax returns, but trustees must file separate returns on behalf of bankruptcy estates and pay taxes from income earned by estates. By contrast, individual debtors filing under Chapters 12 and 13 proceedings have sole responsibility for a single filing and for payment of taxes on estate income.

III. THE CIRCUIT DECISIONS

In *Knudsen v. I.R.S.*, the Eighth Circuit held that the bankruptcy provision extended to post-petition governmental claims.¹⁸⁶ However, the Ninth Circuit in *United States v. Hall*¹⁸⁷ and the Tenth Circuit in *In re Dawes*¹⁸⁸ followed the reasoning of arguments propounded by the IRS concerning the

182. *In re Fleming*, 277 B.R. 751, 755 (Bankr. S.D. Ohio 2002) ("If the election is made, the debtor's federal income tax liability for the first short taxable year becomes an allowable claim against the bankruptcy estate as a claim arising before the bankruptcy filing. Accordingly, the tax liability for that first short taxable year becomes collectible from the estate, depending on the availability of estate assets.").

183. I.R.C. § 1398(f), (g), (i).

184. *Id.* § 1399.

185. H.R. REP. NO. 96-833, at 20 n.2 (1980) ("In a chapter 13 case, however, both future earnings of the debtor and exempt property may be used to make payments to creditors, and hence the bankruptcy law does not create the same dichotomy between after-acquired assets of the individual debtor and assets of the bankruptcy estate as in chapter 7 or chapter 11 cases.").

186. *Knudsen v. I.R.S.*, 581 F.3d 696 (8th Cir. 2009), *abrogated by* *Hall v. United States*, 132 S. Ct. 1882 (2012).

187. *United States v. Hall*, 617 F.3d 1161 (9th Cir. 2010), *aff'd*, 132 S. Ct. 1882 (2012).

188. *Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012).

effect of IRC section 1399 and held that the bankruptcy provision did not extend to post-petition claims. This Part will discuss these three circuit decisions preceding the Supreme Court of the United States' grant of certiorari to interpret section 1222(a)(2)(A).

A. *Knudsen v. I.R.S*

The Knudsens, pig farmers and owners of 160 acres of Iowa farmland, filed bankruptcy under Chapter 12.¹⁸⁹ In their reorganization plan, the Knudsens proposed the sale of machinery, equipment, and 120 acres of land to facilitate paying their creditors.¹⁹⁰ Prudently, “the Knudsens asserted that the taxes arising from [the] post-petition sales [qualified] for treatment as an unsecured claim under [section] 1222(a)(2)(A).”¹⁹¹ As a party in interest, the IRS objected to the plan, arguing that the benefits of the provision were limited to claims that received priority under section 507, and that post-petition tax claims did not qualify.¹⁹² The bankruptcy court ruled in favor of the Knudsens on the issue, and the district court affirmed, causing the IRS to seek appellate review with the Eighth Circuit Court of Appeals.¹⁹³

In the IRS's attempt to persuade the Eighth Circuit that section 1222(a)(2)(A) did not apply to the Knudsens' sale, it argued that Chapter 12 plans are not binding on the holders of post-petition claims.¹⁹⁴ The IRS first pointed to section 1227(a), which provided that a confirmed plan is binding only on the debtor and “creditors.”¹⁹⁵ Because “‘creditor’ is defined as an ‘entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor,’”¹⁹⁶ a holder of a post-petition claim is not a “creditor,” and therefore, cannot be bound by a Chapter 12 plan confirmed under section 1222.¹⁹⁷

Replying to the IRS's arguments, the court found that section 1222 does not mention “creditors,” but refers to “claims,” defined as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”¹⁹⁸ The court also held that section

189. *Knudsen*, 581 F.3d at 700.

190. *Id.* at 701.

191. *Id.*

192. *Id.*

193. *Id.* at 701-03.

194. *Id.* at 704.

195. *Id.* at 705.

196. *Id.* at 704 (quoting 11 U.S.C. § 101(10)(A) (2006)). An “order for relief . . . refers to the commencement of a . . . case” under [s]ection 301 or 302. NORTON BANKRUPTCY LAW AND PRACTICE DICTIONARY OF BANKRUPTCY TERMS § O20 (3d ed. 2011).

197. *Knudsen*, 581 F.3d at 705.

198. *Id.* (quoting 11 U.S.C. § 101(5)(A)).

507(a)(2) grants priority to section 503(b) claims, which may include post-petition taxes incurred by an estate.¹⁹⁹ Accordingly, the court concluded that post-petition taxes incurred by a Chapter 12 estate fell within the purview of section 1222(a)(2)(A) and that accepting the IRS's argument would "[fail] to take into consideration the specific language of [the statute]."²⁰⁰

Next, the IRS turned to the doctrine of sovereign immunity and stated that while section 106 included an abrogation of sovereign immunity of governmental units with respect to several provisions, including section 1227, the Code failed to include such an abrogation for section 1222.²⁰¹ Because of the protections of sovereign immunity, the IRS argued that governmental units could be affected by the provisions of section 1222 only to the extent that they were bound by the contents of the plan as "creditors" under section 1227, which rendered section 1222(a)(2)(A) inapplicable to post-petition tax claims.²⁰² In response, the court reiterated that whether one is a "creditor" is irrelevant under the plain language of section 1222(a)(2)(A).²⁰³ In further support of its position, the court noted that section 106 contained an express waiver of sovereign immunity with respect to section 503, the provision allowing for priority of post-petition claims for taxes incurred by an estate.²⁰⁴

Finally, to determine whether the Knudsens' claim qualified as a section 503(b) priority claim, the court addressed the issue of whether post-petition taxes could be "incurred by the estate."²⁰⁵ Relying on section 1399 of the IRC, the IRS proffered that the lack of a separate taxable entity for Chapter 12 bankruptcies meant that Chapter 12 estates could incur no taxes.²⁰⁶ Rebutting the IRS once again, the court referred to section 1222(a)(2)(A) to establish that claims must have priority to qualify under the provision.²⁰⁷ Turning to section 503, the court stated that the Code afforded priority for "any tax . . . incurred by the estate, whether secured or unsecured."²⁰⁸ Citing a string of persuasive authority, the court decided that the phrase "incurred by the estate" equated to "incurred post[-]petition."²⁰⁹ Discounting the IRS's reliance on

199. *Id.* at 706.

200. *Id.* (quoting *Dawes v. Nazar (In re Dawes)*, 415 B.R. 815 (Bankr. D. Kan. 2009), *rev'd sub nom. Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012)).

201. *Id.* at 707.

202. *Id.*

203. *Id.* at 707-08.

204. *Id.* at 708.

205. *Id.* (quoting 11 U.S.C. § 503(b)(1)(B)(i) (2006)).

206. *Id.* at 710; Brief for the Appellant at 49-50, *Knudsen*, 581 F.3d 696 (No. 08-2820), 2008 WL 6896023.

207. *Knudsen*, 581 F.3d at 707-08.

208. *Id.* at 708 (quoting 11 U.S.C. § 503(b)(1)(B)(i)).

209. *Id.* at 708-09 (citing *W. Va. State Dep't of Tax & Revenue v. I.R.S. (In re Columbia Gas Transmission Corp.)*, 37 F.3d 982 (3d Cir. 1994); *In re Baltimore Ma-*

provisions from the IRC, the court found that the provisions of the Code provide that estates exist for purposes of bankruptcy, and that the property sold by the Knudsens fell within the ambit of their Chapter 12 estate.²¹⁰ In conclusion, the court affirmed the judgment of the district court, holding that “[section] 1222(a)(2)(A) applies to the post[-]petition sale of farm assets,” and instructed the bankruptcy court to confirm the Knudsens’ reorganization plan.²¹¹

B. *United States v. Hall*

The Ninth Circuit was faced with similar issues in *United States v. Hall*,²¹² which was argued and decided less than a year after *Knudsen*. Specifically, upon the timely appeal of the IRS, the court decided the issue of “whether and to what extent debtors must pay federal income tax on the gain from the sale of their farm during bankruptcy proceedings.”²¹³

Chapter 12 debtors Lynwood and Brenda Hall proposed a plan providing for the sale of their farm to facilitate the payment of their creditors.²¹⁴ The court sustained the IRS’s objection that the plan failed to provide for \$29,000 in capital gains tax generated by the sale.²¹⁵ The IRS objected again when the Halls amended their plan for treatment of the tax as an unsecured claim, and the court also sustained.²¹⁶ After the district court reversed the ruling of the lower court, the IRS appealed its decision to the Ninth Circuit Court of Appeals, arguing the district court had erred.²¹⁷

Despite the fact that the Halls’ arguments closely resembled and relied on those presented in *Knudsen*,²¹⁸ the IRS persuaded the Ninth Circuit to reject the reasoning of the Eighth Circuit.²¹⁹ Relying on section 1399 of the IRC, the Ninth Circuit decided that “[s]ince the [C]hapter 12 estate is not a taxable entity, the [C]hapter 12 estate cannot ‘incur’ a tax.”²²⁰ The court conceded that taxes incurred by the estate are necessarily incurred post-petition,

rine Indus., Inc., 344 B.R. 407 (Bankr. D. Md. 2006); *In re Pub Dennis of Cumberland, Inc.*, 142 B.R. 38 (Bankr. D.R.I. 1992)).

210. *Id.* at 709-10.

211. *Id.* at 710, 719.

212. *United States v. Hall*, 617 F.3d 1161 (9th Cir. 2010), *aff’d*, 132 S. Ct. 1882 (2012).

213. *Id.* at 1162.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* at 1164 (“The Halls primarily rely on *Knudsen v. IRS*, 581 F.3d 696 (8th Cir. 2009), in which chapter 12 debtors proposed a plan to sell farmland and farm equipment to fund their reorganization.”).

219. *Id.* at 1166.

220. *Id.* at 1163.

but found fault with the notion that taxes incurred by an estate were equivalent to taxes incurred post-petition, providing colorful commentary that “just because all apples are fruits does not mean all fruits are apples.”²²¹ Establishing that taxes incurred by an estate were merely a subset of taxes incurred post-petition, the court found *Knudsen* unpersuasive.²²²

The Halls also pointed to the *Knudsen* language, stating that section 503(b) referred to bankruptcy estates and elaborated that the IRC “should not be used to ‘frustrate’ the . . . Code.”²²³ Again denying the Eighth Circuit’s reasoning, the court responded that the Code failed to provide authority that Chapter 12 bankruptcy estates have “the inherent ability to incur taxes.”²²⁴ The court justified its reliance on the IRC by finding that the United States Code must be interpreted “as a whole” and that courts must “assume that Congress is aware of existing law when it passes legislation.”²²⁵ The court also held that because cross-referencing led the court to its conclusion, the plain language of the provision was not controlling.²²⁶

Departing from *Knudsen*, the Halls next presented legislative history relating to section 503(b) and section 1222, including statements from Senator Grassley, one of the main proponents of BAPCPA alterations to Chapter 12.²²⁷ Focusing on the fact that the statements proffered by the Halls preceded enactment of section 1222(a)(2)(A) by a number of years, the court heeded the Supreme Court of the United States’ warning concerning “[attribution of] the views of one Congress to another Congress” and declined to read legislative history into the statute.²²⁸ Accordingly, the Ninth Circuit held that section 1222(a)(2)(A) did not apply to the sale proposed by the Halls in their Chapter 12 plan, reversed the district court’s ruling and upheld the IRS’s objection.²²⁹

C. *In re Dawes*

Donald and Phyllis Dawes developed a troubled history with the IRS due to their repeated failures to pay taxes.²³⁰ The IRS sought and received a

221. *Id.* at 1165.

222. *Id.* at 1164-65.

223. *Id.* at 1165 (emphasis omitted).

224. *Id.* at 1166.

225. *Id.* (quoting *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990)) (internal quotation marks omitted).

226. *Id.*

227. *Id.* at 1166-67 (citing S. REP. NO. 95-989, at 66 (1970), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5852; 145 CONG. REC. S764 (daily ed. Jan. 20, 1999) (statement of Sen. Grassley)).

228. *Id.* at 1167.

229. *Id.*

230. *Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236, 1238 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012).

judgment against the Dawes.²³¹ However, before execution of the judgment, the Dawes declared bankruptcy under Chapter 12.²³² With permission from the bankruptcy court, the Dawes consummated a post-petition sale of farmland, which created additional tax liability.²³³ Subsequently, the Dawes submitted a plan in which they proposed to treat the tax claim as unsecured pursuant to section 1222(a)(2)(A).²³⁴ The IRS objected to the tax treatment, but both the bankruptcy and district courts rejected its argument, resulting in an appeal by the IRS to the Tenth Circuit Court of Appeals.²³⁵

Making a familiar argument, the Dawes postulated that section 507 affords priority to section 503(b) claims, which include taxes incurred by estates, and thus permitted the Dawes to downgrade the claims of the IRS in accordance with section 1222(a)(2)(A).²³⁶ The court began by examining the plain language of section 503(b) and determined that “one who has ‘incurred’ an expense is *liable* for it.”²³⁷ Next, the court explained that the entity liable for payment of a tax is the entity that incurred it.²³⁸ Noting that the bankruptcy law often relies on federal income tax law, the court found relevant authority in section 1399 of the IRC, and concluded that “in Chapter 12 and 13 bankruptcies, the *debtor* – not the bankruptcy estate – bears the sole responsibility for filing and paying post-petition federal income taxes.”²³⁹ Accordingly, despite the admitted “markings of bankruptcy” surrounding the transaction creating the liability, the court decided that the resulting tax of the Dawes’ post-petition sale was incurred by the Dawes and not by their estate.²⁴⁰

The Dawes implored the court to follow the reasoning of the *Knudsen* decision, which equated “tax incurred by the estate” with “tax incurred during bankruptcy,” but the court declined.²⁴¹ The court replied that applicability of section 503(b) depended on which entity incurred the particular tax liability rather than when the tax liability was incurred, and that the conflation of the two concepts by the Eighth Circuit was “irreconcilable with the plain language of [section] 503(b).”²⁴² Additionally, the court surmised that if the drafters of the provision “had wanted to focus on *when* the tax was incurred

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.* at 1238-39.

237. *Id.* at 1239.

238. *Id.*

239. *Id.* at 1240.

240. *Id.*

241. *Id.*

242. *Id.* at 1240-41.

rather than *by* whom – [they] surely knew how to do so,” and provided several illustrative examples.²⁴³

The court also supported its conclusion by enumerating the difficulties that would be created by the Eighth Circuit’s jurisprudence. First, drawing upon similarities between Chapter 12 and 13 proceedings and the tax treatment of the respective estates, the court described a Chapter 13 provision that allowed “the government the *option* of having the post-petition taxes incurred by the debtor treated as part of the bankruptcy proceeding and dealt with in the reorganization plan.”²⁴⁴ The court reasoned that the reading of section 503 prescribed by the Dawes would render the Chapter 13 provision pointless.²⁴⁵ Next, the court stated that the Dawes’ reading also led to the conclusion that “the bankruptcy estate would . . . be responsible for paying *state* income taxes incurred during bankruptcy,” a conclusion directly controverted by section 346(b), which required assignment of liability in bankruptcy between debtors and estates for state and local income taxes to follow the assignment provided by federal law.²⁴⁶ Consequently, in light of the statutory canon that a “statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant,” the court declined to adopt *Knudsen*.²⁴⁷

Finally, the court dismissed legislative history supporting the Dawes’ position, declaring the proffered evidence as unresponsive and declining “to engage in the sort of ‘psychoanalysis of Congress’ the Supreme Court has repeatedly warned against.”²⁴⁸ Siding with the Ninth Circuit, the court held in favor of the IRS and reversed the decisions of the lower courts.²⁴⁹ Prior to the resolution of *Dawes*, the Halls appealed their case to the Supreme Court of the United States.²⁵⁰ On June 13, 2011, the Court granted certiorari to resolve the circuit split.²⁵¹

IV. THE ARGUMENTS OF THE PARTIES

While the members of the Supreme Court of the United States likely share some of the individual concerns of the parties, the Halls’ case presents

243. *Id.* at 1241 (citing various provisions from 11 U.S.C. § 503 (2006)).

244. *Id.*

245. *Id.* at 1241-42 (referring to 11 U.S.C. § 1305(a)(1)).

246. *Id.* at 1242.

247. *Id.* at 1242-43 (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

248. *Id.* at 1243-44 (quoting *United States v. Pub. Utils. Comm’n of Cal.*, 345 U.S. 295, 319 (1953) (Jackson, J., concurring)) (citing S. REP. NO. 95-989, at 66 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5852, 1978 WL 8531; 145 CONG. REC. S764 (daily ed. Jan. 20, 1999) (statement of Sen. Grassley)).

249. *Id.* at 1244.

250. *Petition for a Writ of Certiorari, Hall v. United States*, 131 S. Ct. 2989 (2011) (No. 10-875), 2010 WL 5535748.

251. *Hall*, 131 S. Ct. 2989.

issues unique to the judicial branch. During oral arguments, the Court announced its concern that adopting the Halls' position might have an undesired and unexpected impact on the Code's inner workings due to the complexity and interdependency of the Code provisions.²⁵² Another concern of the Court was that adoption of the IRS's interpretation could frustrate the will of the legislature, because the interpretation leaves the provision with perplexingly minimal "practical value."²⁵³ Although the Court ultimately sided with the IRS, it can be reasonably assumed that the Court first searched for a solution that would have both given effect to legislative intent and avoided wreaking havoc on other statutory law.

To find such a solution, the Court needed to find sufficient evidence of legislative intent, while also contemplating potential irreconcilable conflicts between statutory provisions. In the absence of compatible solutions, the Court would have been left with little choice but to adopt the limiting interpretation of the IRS. An analysis of the substance and validity of the arguments presented by the parties to the Court reveals that such a solution would have been possible. This Part will provide an overview and analysis of the arguments presented to the Supreme Court of the United States by the Halls and the IRS, respectively.

A. *The Debtors*

The Halls' primarily argued that the legislature, in enacting section 1222(a)(2)(A), intended to transform the tax consequences arising from post-petition dispositions of farm assets into unsecured claims. To support the argument, the Halls relied on the plain language of the statute, the legislative history of the provision, and the practical effect of the interpretation of the provision proffered by the IRS.

1. Plain Language

The Halls' found support in the plain language of section 1222(a)(2)(a).²⁵⁴ The provision refers to "claims,"²⁵⁵ defined by the Code as "right[s] to payment."²⁵⁶ By contrast, the related definition of "creditor" is defined as an entity holding a pre-petition claim.²⁵⁷ If Congress intended for "claims" to be limited to pre-petition debts, then most of the definition for

252. See Transcript of Oral Argument at 15, *Hall v. United States*, 132 S. Ct. 1882 (2012) (No. 10-875), 2011 WL 5930687, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/10-875.pdf.

253. *Id.* at 31-32.

254. Brief for Petitioners at *10-22, *Hall*, 132 S. Ct. 1882 (No. 10-875), 2011 WL 3706112.

255. 11 U.S.C. § 1222(a)(2)(A) (2006).

256. *Id.* § 101(5)(A).

257. *Id.* § 101(10)(A).

“creditor” would be superfluous. It is axiomatic that the judiciary generally disfavors interpretations rendering statutory language superfluous.²⁵⁸ Accordingly, where provisions of the Code use “claims,” it is more likely that the Court will construe the drafters’ intended application for such provisions to include both pre-petition and post-petition debts.

The language of section 503, particularly the phrase “incurred by the estate,” also supported the Halls’ position.²⁵⁹ While the Code does not define the term “estate,”²⁶⁰ several Code provisions use “estate” in a way that clearly refers to bankruptcy estates.²⁶¹ The fact that there is no shortage of provisions using “estate” to refer to bankruptcy estates stands in sharp contrast to the single provision identified by the IRS that uses “estates” to refer to separate taxable entities.²⁶²

Notably, the phrase “incurred by the estate” found in section 503 arose from judicial construction of prior bankruptcy acts. First, in *Nicholas v. United States*, the Supreme Court found that taxes incurred during the post-petition, pre-confirmation period were administrative expenses and were afforded first priority under a predecessor of section 503(b).²⁶³ A few years later, Congress codified the sentiment expressed in *Nicholas* during the passage of the Bankruptcy Act of 1978.²⁶⁴ Subsequently, in *United States v.*

258. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 724 (2011) (“Interpreting the statute to require a threshold determination of eligibility ensures that the term ‘applicable’ carries meaning, as each word in a statute should.”).

259. Brief for Petitioners, *supra* note 254, at *15.

260. See 11 U.S.C. § 101.

261. For instance, section 541 creates a bankruptcy estate upon the commencement of a case, and brings practically all property of debtors owned at the time of filing into the estate. 11 U.S.C. § 541; *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992) (“When a debtor files a bankruptcy petition, all of his property becomes property of a bankruptcy estate.”). Another provision broadens Chapter 12 estates to include “all property of the kind specified in [section 541] . . . after the commencement of the case but before the case is closed.” 11 U.S.C. § 1207(a).

262. Brief for the United States at 35-37, *Hall v. United States*, 132 S. Ct. 1882 (2012) (No. 10-875), 2011 WL 4352236, at *35-37.

263. 384 U.S. 678, 687-88 (1966) (“[T]axes incurred during the arrangement period are expenses of the Chapter XI proceedings and are therefore technically a part of the first priority under s (64)a(1)”); Brief for Petitioners, *supra* note 254, at *17.

264. H.R. REP. NO. 95-595, at 193 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6153, 1977 WL 9628 (“In addition to the general tax priority provided under law and under H.R. 8200, certain other taxes are entitled to priority. Taxes arising from the operation of the estate after bankruptcy are entitled to priority as administrative expenses. H.R. 8200 makes no change in this policy, and codifies the result.”); S. REP. NO. 95-989, at 66 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5852, 1978 WL 8531 (“In general, administrative expenses include taxes which the trustee incurs in administering the debtor’s estate, including taxes on capital gains from sales of property by the trustee and taxes on income earned by the estate during the case. Interest

Noland, the Court's position remained constant when it reiterated that under section 503, a post-petition tax "should receive the priority of an administrative expense."²⁶⁵ *Noland* is particularly significant for two reasons. First, *Noland* was decided well after the rise of the Bankruptcy Tax Act,²⁶⁶ second, the debtors in *Noland* were corporate debtors and thus outside the purview of the Bankruptcy Tax Act and section 1398.²⁶⁷ Thus, *Noland* implies that post-petition taxes can be administrative expenses in the absence of a separate taxable entity.²⁶⁸ Upon the enactment of BAPCPA, the wording of section 503 remained substantially similar to that of the 1978 act.²⁶⁹

The IRS retorted that *Nicholas* and *Noland* dealt with corporate debtors rather than individual debtors.²⁷⁰ It found the distinction significant in light of the fact that the estate of a corporate debtor can be liable for post-petition taxes despite exclusion under sections 1398 and 1399 and the fact that the Halls were individual debtors.²⁷¹ It argued that corporate debtors can incur taxes under section 6012(b)(3), which requires a bankruptcy trustee to file federal income tax returns for such debtors.²⁷² In short, the IRS argued that the taxes in *Nicholas* and *Noland* were incurred by the estate by way of section 6012, and thus, the Halls' reliance on the cases was misplaced.²⁷³

In essence, the IRS equated the duty of a trustee to file an income tax return for a bankrupt corporation to the estate incurring tax liability. The IRS's view would permit Chapter 12 corporate debtors to benefit more from section 1222(a)(2)(A) than individual Chapter 12 debtors.²⁷⁴ However, accepting the argument as true produces a result with little rationale and an unintended incentive for Chapter 12 individual or partnership debtors to incorporate. Additionally, upon closer review of *Nicholas* and *Noland*, section 6012 may not be as relevant to section 503 as the IRS suggested. First, in *Noland*, no reference to section 6012 is made throughout the opinion.²⁷⁵ Even more

on tax liabilities and certain tax penalties incurred by the trustee are also included in this first priority.").

265. 517 U.S. 535, 541 (1996).

266. The Bankruptcy Tax Act was passed in 1980. Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, 94 Stat. 3389 (1980). *Noland* was decided in 1996. *Noland*, 517 U.S. 535.

267. *Noland*, 517 U.S. at 536.

268. Brief for Petitioners, *supra* note 254, at *16-17.

269. Compare 11 U.S.C. § 503(b)(1)(B)(i) (2006), with 11 U.S.C. § 503(b)(1)(B)(i) (Supp. 1978).

270. Brief for the United States, *supra* note 262, at *29-30.

271. *Id.* at 26.

272. I.R.C. § 6012(b)(3) (2006).

273. Brief for the United States, *supra* note 262, at *29-30.

274. See I.R.C. § 6012(b)(3); Brief for the United States, *supra* note 262, at *22-23 (stating that a duty to file a tax return on behalf of the estate means that the estate incurs taxes).

275. See *United States v. Noland*, 517 U.S. 535 (1996).

convincingly, *Nicholas* does discuss section 6012.²⁷⁶ However, it does so in a section separate from the preceding section discussing whether post-petition taxes were administrative expenses and does so explicitly as a separate issue.²⁷⁷ In effect, *Nicholas* shows that the Court was aware of section 6012 yet declined to find the provision relevant in establishing an administrative priority. Finally, while the Code does refer to section 1398,²⁷⁸ providing some basis for the argument that section 1398 was incorporated into the Code, no such reference is made to section 6012.²⁷⁹

The plain language of section 1222(a)(2)(A) and section 503 supports the conclusion that post-petition taxes are administrative expenses. Further, to the extent that section 503 is ambiguous, there is substantial context provided by other Code provisions and Supreme Court case law to support the position of the Halls and the conclusion that section 1222(a)(2)(A) provides relief to farmers from post-petition taxes.

2. Legislative History

Next, the Halls relied on the statements of the intended purpose of the provision provided by Senator Grassley, which are replete throughout the legislative history.²⁸⁰ From early 1999 until the passage of BAPCPA, the record reflects his tenacious and consistent efforts to assist farmers in avoiding the plight of the Spechts.²⁸¹ During the same period, “no legislative history” concerning the provision existed to directly support the position of the IRS – “that [s]ection 1222(a)(2)(A) was intended to apply only to pre[]petition” dispositions.²⁸²

The IRS responded by noting that the legislative history provided by the debtors was merely evidence “as to what one legislator thought that this [provision] would do.”²⁸³ However, the relevant legislative history is not as limited as the IRS suggests. Senator Susan Collins was also on record speaking about the issue.²⁸⁴ On other occasions, other members of Congress signed and approved writings of Senator Grassley concerning the function of the provision.²⁸⁵ The IRS also argued that reference to legislative history was inappropriate because “the Bankruptcy Code provisions at issue” were unambiguous “when read together with the pertinent provisions of the [IRC]” and

276. *Nicholas v. United States*, 384 U.S. 678, 693 n.27 (1966).

277. *Id.* at 693.

278. 11 U.S.C. § 346; I.R.C. § 1398.

279. *See* 11 U.S.C. § 346.

280. Brief for Petitioners, *supra* note 254, at *23-28.

281. *See supra* notes 133-41 and accompanying text.

282. Brief for Petitioners, *supra* note 254, at *26.

283. Transcript of Oral Argument, *supra* note 252, at 31.

284. *See supra* note 139 and accompanying text.

285. Brief for Petitioners, *supra* note 254, at *26.

that floor statements are unreliable.²⁸⁶ Even stipulating the truth of that contention, the IRS's argument merely assumed that the Code *should* be read together with the IRC. It is precisely that assumption that is ambiguous and renders reference to legislative history appropriate.

The IRS also contended that floor statements were unreliable and "views of one Congress ordinarily should not be attributed to another."²⁸⁷ The consistency and repetition contained in the relevant legislative history effectively rebuts the IRS's argument based on the bare assertion that floor statements are unreliable.²⁸⁸ To support the IRS's argument concerning the attribution of views from one Congress to another, it relied on two Supreme Court decisions: *Massachusetts v. EPA* and *Doe v. Chao*.²⁸⁹ In *Massachusetts v. EPA*, the Court refused to consider post-enactment legislative statements during the interpretation of the Clean Air Act.²⁹⁰ In *Doe v. Chao*, the Court declined to consider certain pre-enactment legislative history concerning the Privacy Act of 1974.²⁹¹ However, the *Chao* court consulted other legislative history to reach that decision.²⁹² In particular, the Court found it relevant that the omitted legislative history supported the legislative intent for a statutory mechanism that was subsequently and intentionally deleted from the final draft.²⁹³ While the Court occasionally expresses reluctance to attribute the views of one Congress to another, such concern is misplaced in light of the fact that legislative history relied on by the Halls was not post-enactment, nor was there any contradictory legislative history.

Finally, the IRS stated that the available legislative history did not expressly address whether post-petition taxes were administrative expenses in Chapter 12 bankruptcies.²⁹⁴ Even if there was no support in BAPCPA or Chapter 12's legislative history for the contention that post-petition taxes are administrative expenses, the legislative history from the Bankruptcy Act of 1978 evidenced intent to codify the common law treatment of post-petition taxes as administrative expenses.²⁹⁵ Section 503 became the vehicle for this codification and remained largely unchanged despite extensive BAPCPA amendments.²⁹⁶ While the legislative history is sparse concerning the me-

286. Brief for the United States, *supra* 262, at *31-32.

287. *Id.* at *32 (citing *Massachusetts v. E.P.A.*, 549 U.S. 497, 529-530 (2007)).

288. See *supra* notes 133-41 and accompanying text.

289. Brief for the United States, *supra* 262, at *32.

290. 549 U.S. at 529-30.

291. 540 U.S. 614, 626-27 (2004).

292. *Id.* at 622-23.

293. *Id.* at 622 ("This inference from the terms of the Commission's mandate is underscored by drafting history showing that Congress cut out the very language in the bill that would have authorized any presumed damages.").

294. Brief for the United States, *supra* note 262, at *32.

295. *Supra* note 264 and accompanying text.

296. See *supra* notes 264-69 and accompanying text.

chanics of section 1222(a)(2)(A), even less support existed in the legislative history to strengthen the position of the IRS.²⁹⁷

Though there are times when the consideration of legislative history is wholly inappropriate, it is difficult to argue convincingly that the legislative history of section 1222(a)(2)(A) in this matter was either irrelevant or unreliable. Concededly, other factors may also prove relevant and may even carry greater relative weight than legislative history. However, in the instant case, there is little reason to dismiss the pertinent legislative record.

3. Practical Effect of the IRS's Interpretation

Finally, to further illustrate legislative intent, the Halls' indicated that adopting the IRS's interpretation would substantially limit the practical effect of section 1222(a)(2)(A).²⁹⁸ The term "pre-petition" denotes the period ending immediately prior to filing bankruptcy petitions,²⁹⁹ and the term "post-petition" refers to the period beginning immediately after such filings.³⁰⁰ Accordingly, while one might assume that the IRS's interpretation would only limit the effect of the provision to pre-petition transactions, upon closer review, the IRS's interpretation was substantially more constraining.

The additional constraint is a result of case law and responsive legislation that culminated to extend pre-petition taxes to those incurred beyond the date of filing to the end of the taxable year in which the filing occurred. Prior to BAPCPA, dissension among the circuits arose over interpreting a former version of the provision.³⁰¹ The conflict centered on the treatment of tax

297. Brief for Petitioners, *supra* note 254, at *26.

298. *Id.* at *32-33.

299. See *Mo. Dep't of Revenue v. L.J. O'Neill Shoe Co. (In re L.J. O'Neill Shoe Co.)*, 64 F.3d 1146, 1148 (8th Cir. 1995) (stating that "pre[-]petition income" was income of debtors earned before the date of bankruptcy filing).

300. See *id.* (stating that "post[-]petition income" was income of debtors earned after the date of bankruptcy filing).

301. See *In re Hillsborough Holdings Corp.*, 116 F.3d 1391, 1395-96 (11th Cir. 1997) (interpreting section 507(a)(7)(A)(iii) "to address taxes derived from pre[-]petition events 'not assessed before, but assessable . . . after, the commencement of the case'"); *In re L.J. O'Neill Shoe Co.*, 64 F.3d at 1150-51 (finding that subsection (iii) "can be read . . . to address only pre[-]petition taxable activity or events"); *Pac.-Atl. Trading Co. v. United States (In re Pac.-Atl. Trading Co.)*, 64 F.3d 1292, 1301 (9th Cir. 1995) (holding "that a tax on income should be treated as 'incurred' on the last day of the taxable period").

claims arising from the year that bankruptcy petitions were filed,³⁰² commonly referred to as the “straddle year.”³⁰³

Before the revision of section 507(a)(8), the parsing of the prior version resulted in ambiguity concerning whether tax claims arising during the straddle year were pre-petition or post-petition, and, relatedly, whether such claims were administrative expenses or lower priority claims.³⁰⁴ The relevant portion of the provision states that claims for income tax “not assessed before, but assessable, under applicable law or by agreement, after the commencement of the case” were entitled to seventh priority (now eighth).³⁰⁵ By its plain language, the provision awarded seventh priority to claims for taxes not only during the straddle year but also during all subsequent post-petition years, as each subsequent year’s tax was “assessable, under applicable law . . .

302. *In re L.J. O’Neill Shoe Co.*, 64 F.3d at 1148 (“The particular question presented here is whether the portions of MDOR’s corporate income tax claims that relate solely to the income of the debtors earned before the date they filed for bankruptcy (‘pre[-]petition income’) qualify as administrative expense claims under 11 U.S.C. § 503(b)(1)(B)(i).”).

303. Brief for Petitioners, *supra* note 254, at *29.

304. The pre-revision version stated:

- (7) Seventh, allowed unsecured claims of governmental units, only to the extent that such claims are for-
 - (A) a tax on or measured by income or gross receipts-
 - (i) for a taxable year ending on or before the date of filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;
 - (ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or
 - (iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after the commencement of the case.

11 U.S.C. § 507(a)(7) (1988), *amended by* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, 119 Stat. 23 (2005).

After BAPCPA, certain familial obligations became first priority and preexisting priority categories were downgraded accordingly. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 119 Stat. 23.

305. 11 U.S.C. § 507(a)(7) (1988).

. after the commencement of the case.”³⁰⁶ The IRS and federal courts reached a consensus on the absurdity of the plain language interpretation, because it would remove all income taxes from the higher priority afforded by administrative expense status.³⁰⁷

Realizing that the courts would be forced to go against plain language, the IRS argued that the provision should be interpreted as referring to “taxes that were assessable both before and after the filing,”³⁰⁸ which would characterize all claims for taxes during the straddle year as administrative expenses.³⁰⁹ Most courts rejected the IRS’s view as without merit based upon findings that the section 507(a)(7) primarily dealt with pre-petition claims, and that the administrative expense provision explicitly excluded them from the scope of section 507(a)(7).³¹⁰ Rather than adopting the IRS’s self-serving interpretation, the courts adopted an interpretation that split claims for taxes incurred during the straddle year; taxes incurred post-petition were treated as administrative expenses, and taxes incurred pre-petition were afforded lower priority.³¹¹

While courts were reluctant to adopt the IRS’s view, Congress was not, and altered the provision with the passage of BAPCPA.³¹² The revision

306. *Id.*

307. See *In re Hillsborough Holdings Corp.*, 116 F.3d 1391, 1395-96 (11th Cir. 1997) (“The Government asserts that we cannot adhere to the statute’s plain language because its application leads to ‘absurd’ results. For example, a plain reading of ‘not assessed before, but assessable after’ would also exclude from administrative priority the portion of the year’s tax that Debtors did pay, i.e., the portion attributable to income earned during the post[-]petition period Similarly, the plain reading would exclude from administrative priority the income taxes for tax years that both begin and end post[-]petition.”).

308. *In re Hillsborough Holdings Corp.*, 116 F.3d at 1395 (internal quotations omitted).

309. Brief for Petitioners, *supra* note 254, at *29.

310. See *In re Hillsborough Holdings*, 116 F.3d at 1395; *Mo. Dep’t of Revenue v. L.J. O’Neill Shoe Co.* (*In re L.J. O’Neill Shoe Co.*), 64 F.3d 1146, 1151 n.6 (8th Cir. 1995); *Pac.-Atl. Trading Co. v. United States* (*In re Pac.-Atl. Trading Co.*), 64 F.3d 1292, 1303 (9th Cir. 1995).

311. *In re Hillsborough Holdings*, 116 F.3d at 1395-96 (“We believe that subsection (iii) can be read, like the other subsections of 507(a)(7)(A) to address only *pre[-]petition taxable activity or events.*” (citing *In re L.J. O’Neill Shoe Co.*, 64 F.3d at 1151)); *In re Pac.-Atl. Trading Co.*, 64 F.3d at 1304 (“[W]e hold that PATCO’s 1988 income tax liability for income earned prior to the granting of the order for relief and the appointment of the Trustee on October 31, 1988 does not qualify as an administrative expense.”).

312. The relevant provision states:

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for –

changed the parsing of the provision to provide a clear indication of legislative intent for excluding taxes incurred during the straddle year from eighth priority,³¹³ which allowed for them to be characterized as administrative expenses.³¹⁴ In sum, the BAPCPA revision of section 507(a)(8) permits only taxes incurred during a tax year that has ended prior to the filing of the petition to be eighth priority claims.

Notably, section 1398(d)(2) of the IRC alleviates the impact of the narrow section 507(a)(8) characterization for individual Chapter 7 and 11 debtors by allowing bifurcation of the tax year in which a bankruptcy petition is filed.³¹⁵ The bifurcation allows income taxes incurred in that tax year to become priority claims, which must be paid to the extent that funds are available in liquidation proceedings.³¹⁶ Section 1398(d)(2) benefits debtors by allowing liquidation funds to satisfy tax liabilities that would otherwise survive the bankruptcy proceedings, rather than general unsecured claims, which

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition –

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of –

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case.

11 U.S.C. § 507(a)(8) (Supp. 2011) (emphasis added).

313. Brief of Petitioners, *supra* note 254, at *30; *see also* H.R. REP. NO. 109-31(I), at 43 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 115, 2005 WL 832198 (“Under current law, certain expenses and the priority of claims reduce the funds that would otherwise be available to pay tax liens on property. The act would increase the priority of those liens in certain circumstances against certain expenses and claims, thereby making it more likely that funds would remain available to cover tax obligations.”).

314. *See* 11 U.S.C. § 503(b)(1)(B)(i) (2006) (stating that administrative expenses cannot be “a tax of a kind specified in section 507(a)(8) of this title”).

315. I.R.C. § 1398(d)(2)(A) (2006).

316. *See* 11 U.S.C. §§ 507(a)(8), 726(a)(1).

are typically dischargeable.³¹⁷ Unfortunately, Chapter 12 debtors are precluded from the use of section 1398(d)(2).³¹⁸

To illustrate the effect of the provision on Chapter 12 debtors, assume that Debtor, a calendar year taxpayer and a Chapter 12 debtor, files his bankruptcy petition on November 1, 2010. Section 507(a)(8) limits pre-petition status, and thus, eighth priority, to claims for taxes incurred during 2009 and prior years, because taxes for subsequent years are not taxes “for a taxable year ending on or before the date of the filing of the petition.” Conversely, a claim for tax incurred during 2010 is considered a post-petition claim. Accordingly, if Debtor was a Chapter 12 family farmer in a jurisdiction that has adopted the IRS’s interpretation of section 1222(a)(2)(A), Debtor would have been required to sell farm equipment on or before December 31, 2009, or 305 days prior to filing, for the taxes to qualify as pre-petition and for Debtor to benefit from section 1222(a)(2)(A).

The effect of the straddle year presents numerous problematic consequences. First, farmers that file in the second half of a tax year may have already paid their income taxes, rendering section 1222(a)(2)(A) useless. Second, without the help of legal advice, the disposition of farm equipment well in advance of filing of a bankruptcy petition could only occur as a matter of happenstance. Finally, even farmers who are aware of the limited effect of the provision would have difficulty taking advantage of it given the dire straits that face most individuals considering bankruptcy. For example, by filing their petition for bankruptcy, the Halls sought the refuge of the automatic stay to delay the foreclosure on their farm.³¹⁹ Had the Halls waited until the next year to file for bankruptcy, the Halls would have lost their farm in a foreclosure sale. Further, valuable equity in the farm would be lost for the payment of other creditors, because the urgent nature of foreclosure sales outside of the bankruptcy court’s supervision results in the likelihood that such sales would result in less than market value prices.³²⁰ Such results are not only disastrous for debtors, but also violate a fundamental purpose of bankruptcy: fair and orderly distribution to creditors.³²¹ Because of its limited practical application, the IRS’s interpretation is difficult to reconcile with the very enactment of section 1222(a)(2)(A).

317. *See id.* §§ 523(a)(1)(A), 727(b).

318. I.R.C. §§ 1398(a).

319. Brief of Petitioners, *supra* note 254, at *32.

320. *Id.*

321. S. REP. NO. 95-989, at 49 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836, 1978 WL 8531 (“The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor’s property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor’s assets prevents that.”).

The IRS attempted to rebut this argument by pointing to a few examples of debtors who benefitted from the use of section 1222(a)(2)(A) even under the IRS's limited interpretation.³²² The IRS also contended that if Congress had intended to incorporate into the provision the meaning offered by the Halls, it did so incorrectly.³²³ In particular, the IRS pointed to section 1305 as a potential model, which states in relevant part:

(a) A proof of claim may be filed by any entity that holds a claim against the debtor –

(1) for taxes that become payable to a governmental unit while the case is pending

(b) . . . a claim filed under subsection (a) of this section shall be allowed or disallowed under section 502 of this title . . . the same as if such claim had arisen before the date of the filing of the petition.³²⁴

However, the IRS failed to address the issues presented by using the framework of section 1305 to carry out the purposes of section 1222(a)(2)(A). First, the functions of section 1305 and section 1222(a)(2)(A) as interpreted by the Halls are far from identical. Section 1305 allows government entities to file claims in Chapter 13 cases for taxes that arise not only post-petition but also those arising post-confirmation.³²⁵ In their Supreme Court brief, the Halls' arguments limited the operation of section 1222(a)(2)(A) to the post-petition and pre-confirmation period.³²⁶ Second, borrowing from section 1305 is necessary only if post-petition taxes are not administrative expenses. Certainly, Congress could take section 1305 and adapt the language to meet its section 1222(a)(2)(A) needs by changing "while the case is pending" to "up until the plan is confirmed." However, in doing so, Congress would be making a tacit concession that post-petition taxes are not administrative ex-

322. Transcript of Oral Argument, *supra* note 252, at 32.

323. *Id.* at 45-46.

324. 11 U.S.C. § 1305 (2006).

325. See *In re King*, 217 B.R. 623, 626 (Bankr. S.D. Cal. 1998) (holding that dismissal of Chapter 13 debtor for failure to pay post-confirmation taxes was appropriate); *In re Bennett*, 200 B.R. 252, 254 (Bankr. M.D. Fla. 1996) (same).

326. Brief for Petitioners, *supra* note 254, at *41 ("The case before the Court does not concern post[-]petition earnings that arguably vested back in the individual debtor upon plan confirmation. It concerns taxes incurred on account of the disposition before plan confirmation of real property that was clearly part of the bankruptcy estate, and the capital gains income tax that arose pre[-]confirmation on account of that transaction.").

penses, which would upset Supreme Court precedent and may result in unintended and unanticipated consequences elsewhere in the Code.³²⁷

In sum, the Halls' argument that section 1222(a)(2)(A) applied to claims for post-petition taxes was supported by the language of both sections 503 and 1222. In particular, the Halls provided evidence that section 503 was intended to codify prior case law characterizing post-petition taxes as administrative expenses.³²⁸ Legislative history also lends credibility to the Halls' contentions,³²⁹ and although there are many potential issues when relying on legislative history for statutory interpretation, such issues are inapplicable to the case at hand. Finally, the Halls' argument was further enhanced by the impractical implications of accepting the IRS's interpretation as true.³³⁰

B. The Internal Revenue Service

The majority of the IRS's arguments against the characterization of post-petition taxes as priority claims in Chapter 12 cases are based on the premise that the United States Code and the Bankruptcy Code must be read as a whole. First, the IRS argued that section 1222(a)(2)(A) does not apply to administrative expenses under section 507(a)(2), including post-petition taxes.³³¹ If true, the argument would render section 1222(a)(2)(A) inapplicable to post-petition taxes because no Code provision other than section 507(a)(2) affords post-petition taxes the requisite priority. Second, the IRS argued that even if section 1222(a)(2)(A) applies to administrative expenses, post-petition taxes in Chapter 12 cases are not administrative expenses.³³² Similarly, the acceptance of this argument would render section 1222(a)(2)(A) inapplicable to post-petition taxes.

1. Section 1222(a)(2)(A) Inapplicable to Administrative Expenses

The IRS contended that section 1222(a)(2)(A) did not apply to administrative expenses and pointed to several Code sections to support its position, including sections 1222, 1226, 1227, and 1305. First, the IRS argued that section 1222(a)(2)'s plain language made it inapplicable to administrative

327. *See id.* ("Given the multi-year nature of an individual's plan, courts have analyzed the postconfirmation status of debtor earnings and income tax liability in various ways, with the majority concluding that only property necessary to plan implementation is property of the estate after plan confirmation and protected by the automatic stay, and the remainder vests back in the debtor." (citing *Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333, 1340 (11th Cir. 2000); *Heath v. U.S. Postal Serv.* (*In re Heath*), 115 F.3d 521, 524 (7th Cir. 1997)).

328. *See supra* Part IV.A.2.

329. *See supra* Part IV.A.2.

330. *See supra* Part IV.A.3.

331. Brief for the United States, *supra* note 262, at *7-8.

332. *Id.* at *8-11.

expenses.³³³ Section 1222(a)(2) dictates that a Chapter 12 plan must provide for the full payment of all claims entitled to priority and allows an exception for certain “claim[s] owed to a governmental unit.”³³⁴ The IRS noted that section 1222(a)(2)(A) uses the word “claims,” and makes reference to section 507.³³⁵ Section 507(a) grants priority to ten categories of “expenses and claims.”³³⁶ Nine of the categories concern types of debts that arise pre-petition, and consistently throughout section 507(a), these categories of debts are referred to as “claims.”³³⁷ One category, section 507(a)(2), refers to administrative “expenses” and describes a category of debt that necessarily arises post-petition including “taxes incurred by the estate.”³³⁸ The IRS found the dichotomy of section 507(a) significant in the interpretation of section 1222(a)(2), arguing that the dichotomy between “expenses” and “claims” drawn in section 507(a) and the reference made by section 1222(a)(2) to section 507 can only mean that section 1222(a)(2)(A) also adopts that dichotomy.³³⁹ Thus, the fact that the plain language of section 1222(a)(2)(A) affords special treatment to “claims” means that section 1222(a)(2) cannot be interpreted to afford special treatment to post-petition taxes.³⁴⁰

The Code defines a “claim” as a “right to payment” and does not define “expenses.”³⁴¹ To its credit, the IRS provided legislative history from the Act of 1978 evidencing intent to create a dichotomy between “claims” and “expenses” in section 507.³⁴² On the other hand, both parties agreed that the Code is inconsistent and often refers to administrative expenses as claims.³⁴³ Further weakening the arguments of the IRS, no legislative history indicated intent to incorporate that dichotomy into section 1222(a)(2)(A).³⁴⁴ Ultimately, although the IRS’s argument was not completely without merit, inconsistency in the Code robbed the argument of much of its persuasive value.

Next, the IRS contended that section 1226(b)(1) indicates that administrative expenses are to be paid outside of the plan,³⁴⁵ which is relevant because section 1222 only applies to claims covered by Chapter 12 plans.³⁴⁶ Section 1226(b)(1) states that, “[b]efore or at the time of each payment to

333. *Id.* at *13-15.

334. 11 U.S.C. § 1222(a)(2)(A) (2006).

335. Brief for the United States, *supra* note 262, at *13.

336. 11 U.S.C. § 507(a).

337. *Id.* § 507(a)(1), (3)-(10).

338. *Id.* §§ 503(b)(1)(B)(i), 507(a)(2) (Supp. 2011).

339. See Brief for the United States, *supra* note 262, at *13-14.

340. See *id.* at *14.

341. 11 U.S.C. § 101(5)(A) (2006).

342. Brief for the United States, *supra* note 262, at *14 (citing S. REP. NO. 95-1106 (1978)).

343. Compare *id.*, with Transcript of Oral Arguments, *supra* note 252, at 16.

344. See Brief for Petitioners, *supra* note 254, at *26.

345. Brief for the United States, *supra* note 262, at *15-17.

346. *Id.* at *16; see 11 U.S.C. § 1222.

creditors under the plan, there shall be paid . . . any unpaid claim of the kind specified in section 507(a)(2) of this title.”³⁴⁷ The argument is that if administrative expenses are separate from a Chapter 12 plan, then section 1222(a)(2)(A) cannot remove priority from administrative expenses.³⁴⁸ To the contrary, the IRS argued, the provision has the effect of granting “super-priority” over other priority claims because the administrative expenses must be paid before other claims in the Chapter 12 plan.³⁴⁹

The IRS failed to recognize that section 1226(b)(1) and section 1222(a)(2)(A) can and should be read together harmoniously. The differences in the words used in each provision are significant. While section 1222(a)(2)(A) refers to “claims entitled to priority under section 507,”³⁵⁰ section 1226(b)(1) refers to “claim[s] of the kind specified in section 507(a)(2).”³⁵¹ Section 1226(b)(1) uses that language rather than the language of section 1222(a)(2)(A) to purposefully signify that section 1226(b)(1) claims are not claims entitled to priority under section 507(a)(2), but instead are merely claims “of the kind.”³⁵² Such claims are merely “of the kind” because section 507(a)(2) claims are limited to pre-confirmation expenses,³⁵³ and section 1226(b)(1) deals solely with post-confirmation expenses.³⁵⁴ Thus, under this reading of the statutory language, administrative expenses are not dealt with under section 1226(b)(1), and there is no conflict with the interpretation of section 1222(a)(2)(A) proposed by the Halls.

Similarly, the IRS asserted that according to section 1227, a Chapter 12 plan is binding only on “creditors,”³⁵⁵ which is defined as an “entity that has a claim against the debtor that arose at the time of or before the order for relief.”³⁵⁶ Section 1227 stands in contrast to section 503(a), which provides that “[a]n *entity* may timely file a request for payment of an administrative expense.”³⁵⁷ The IRS’s contention was that if Chapter 12 plans bind only creditors and section 1222 concerns the contents of a Chapter 12 plan, then the provisions of section 1222 bind only creditors.³⁵⁸ The IRS also contended

347. 11 U.S.C. § 1226(b)(1).

348. Brief for the United States, *supra* note 262, at *15-16.

349. *Id.* at *16.

350. 11 U.S.C. § 1222(a)(2).

351. *Id.* § 1226(b)(1).

352. *Id.*

353. *Supra* notes 314-15, 326-28 and accompanying text.

354. See 7 WILLIAM L. NORTON, JR., NORTON BANKRUPTCY LAW & PRACTICE § 135:10 (3d ed. 2012) (“If the Chapter 12 plan is confirmed, Code § 1226(b)(1) requires that “[b]efore or at the time of” each plan payment to creditors, there must be paid any unpaid claim specified in Code § 507(a)(2), which includes administrative expenses allowed under § 503(b) and fees or charges against the estate.”).

355. Brief for the United States, *supra* note 262, at *12-13.

356. See 11 U.S.C. §§ 101(10)(A), 1227.

357. *Id.* § 503(a) (emphasis added).

358. Brief for the United States, *supra* note 262, at *12-13.

that creditors are defined by the Code as entities with pre-petition claims, and administrative expenses are only incurred post-petition; therefore, section 1222(a)(2) cannot remove priority from post-petition taxes.³⁵⁹

The Halls conceded this point but also offered a contradictory one.³⁶⁰ Section 1228(a) states that after a debtor completes all payments under a plan, “the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503.”³⁶¹ The debts categorized under section 503 would be administrative expenses.³⁶² Accordingly, the Code contemplates that administrative expenses, which are by definition post-petition, are provided for within the plan and discharged near the end of the bankruptcy proceedings.

While the Supreme Court has the power to strike down inherently contradictory statutes, it is reluctant to do so if plausible harmonious interpretations exist.³⁶³ Thus, it is important to note that the IRS misstated the effect of section 1227. While section 1227 fails to mention that a plan may be binding on post-petition claim holders, it also does not expressly limit the binding power of the plan to creditors and other enumerated entities.³⁶⁴ Therefore, to adopt the position that the plan is also binding on some post-petition claim holders would not be inconsistent with section 1227. By contrast, section 1228 affirmatively indicates that post-petition claims are accounted for in the plan and may be discharged.³⁶⁵ Significantly, adoption of the IRS’s position that the plan was not binding on post-petition claim holders would directly contradict section 1228.

Finally, according to the IRS, the effect of section 1222(a)(2)(A) was called into question by section 1305,³⁶⁶ which provides that “[a] proof of claim may be filed by any entity that holds a claim against the debtor . . . for taxes that become payable to a governmental unit while the case is pending,” and that such claims are allowed “the same as if such claim had arisen before the date of the filing of the petition.”³⁶⁷ In other words, section 1305 permits post-petition taxes that become due while a Chapter 13 case is pending to be treated as pre-petition claims, which brings claims for post-petition taxes within the purview of Chapter 13 plans. Like its Chapter 12 counterpart,

359. *Id.*

360. Reply Brief for Petitioners at 4, *Hall v. United States*, 132 S. Ct. 1882 (2012) (No. 10-875), 2011 WL 4957383, at *4.

361. 11 U.S.C. § 1228(a).

362. *Id.* § 507(a)(2) (Supp. 2011).

363. *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int’l, Inc.*, 534 U.S. 124, 143-44 (2001) (“[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.” (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974))).

364. *See* 11 U.S.C. § 1227 (2006).

365. *See id.* § 1228.

366. Brief for the United States, *supra* note 262, at *37-39.

367. 11 U.S.C. § 1305(a)(1), (b).

section 1322(a)(2) states that a Chapter 13 plan shall fully provide for priority claims.³⁶⁸ Emphasizing the fact that Chapter 12 was modeled after Chapter 13, the IRS argued that if the language of Chapter 12 was interpreted to mean that a plan provides for the payment of post-petition taxes, then the identical language of Chapter 13 rendered section 1305 meaningless.³⁶⁹

A key distinction between the Halls' interpretation of section 1222(a)(2)(A) and section 1305 is that section 1305 covers post-confirmation tax claims, while the Halls only argued that section 1222(a)(2)(A) applied to post-petition pre-confirmation claims.³⁷⁰ Assuming that post-petition pre-confirmation taxes are not already appropriately included within confirmed plans, then adopting the Halls' interpretation would still preclude post-confirmation taxes referenced by section 1305. Accordingly, the IRS's argument that adopting the Halls' interpretation would render section 1305 meaningless is without merit.

2. Chapter 12 Estate Cannot Incur Taxes

The IRS buttressed its argument that section 1222(a)(2)(A) does not apply to administrative expenses with the argument that claims for post-petition taxes incurred in a Chapter 12 bankruptcy are entirely outside of the bankruptcy proceedings.³⁷¹ The IRS argued that "estate" referred to by section 503(b) is equivalent to "separate taxable entity," as defined by the IRC.³⁷² Sections 1398 and 1399 of the IRC create a dichotomy of bankruptcy debtors whereby a separate taxable entity is created for the bankruptcy estates of individual Chapter 7 and 11 debtors.³⁷³ However, for all other debtors, "no separate taxable entity" is created.³⁷⁴ The IRS argued that because there is "no separate taxable entity" for Chapter 12 debtors, and because a separate taxable entity must exist for a tax to be "incurred by the estate," then post-petition taxes in Chapter 12 cases cannot be priority claims.³⁷⁵ The IRS elaborated that claims for post-petition taxes are collected outside of Chapter 12 bankruptcy proceedings.³⁷⁶

The Halls disagreed with the contention that taxes "incurred by the estate" must be incurred by a separate taxable entity.³⁷⁷ Instead, the Halls ar-

368. *Id.* § 1222(a)(2); *id.* § 1322(a)(2) (Supp. 2011).

369. Brief for the United States, *supra* note 262, at *39; Transcript of Oral Argument, *supra* note 252, at 48 ("[Y]ou could just rip that page out of the code and throw it away if you accept Petitioners' reading.").

370. See *supra* note 325 and accompanying text.

371. Brief for the United States, *supra* note 262, at *9.

372. *Id.* at 22-23.

373. I.R.C. §§ 1398(a), 1399 (2006).

374. See I.R.C. § 1399.

375. Brief for the United States, *supra* note 262, at *11.

376. *Id.* at *17.

377. See Brief for Petitioners, *supra* note 254, at *8-9.

gued that the IRC is relevant to determine the amount of tax liability and the manner in which tax returns are filed while the Code controls the distribution of bankruptcy estate funds.³⁷⁸ Section 1398 provides that certain bankruptcy estates are taxable entities separate from debtors while other bankruptcy estates and debtors are single taxable entities.³⁷⁹ The Halls surmised that even if Chapter 12 debtors and bankruptcy estates were not separate taxable entities, the function of section 1398 is to separate them from debtors for tax purposes.³⁸⁰ However, because the bankruptcy estate exists whether or not a separate taxable entity, the estate can incur taxes regardless of the impact of section 1398.³⁸¹

The IRS also argued that section 346 incorporated sections 1398 and 1399 and supported its interpretation of the phrase “incurred by the estate.”³⁸² In the 1978 act, section 346 foreshadowed sections 1398 and 1399 by expressly creating “separate taxable entit[ies]” for individual Chapters 7 and 11 debtors and not for Chapter 13 debtors.³⁸³ However, unlike sections 1398 and 1399 and largely due to Congressional inter-committee politics, section 346 limited this treatment to state and local income taxes.³⁸⁴ A few years later, Congress passed the Bankruptcy Tax Act, extending the treatment to federal income taxes.³⁸⁵ With the BAPCPA amendments, rather than setting out rules for the determination of treatment of state and local income taxes, Congress reworded the provision to mirror the treatment of state and local income taxes to reflect the treatment of federal taxes provided by the IRC.³⁸⁶

Section 346 materially differs from section 503, because section 346 expressly refers to the IRC and section 503 does not.³⁸⁷ Additionally, while section 346 uses “separate taxable entity” and “estate” interchangeably, it expressly deals with situations where the estate is in fact a separate taxable entity from the debtor.³⁸⁸ Accordingly, conflation of the terms is more sensible in section 346 than in section 503 where there is no such context. Finally, despite the IRS’s interpretation of the provision, nothing in section 346 precludes the possibility that an estate that is not a separate taxable entity could incur a tax.³⁸⁹

378. *Id.* at *8.

379. I.R.C. §§ 1398, 1399.

380. *See* Brief for Petitioners, *supra* note 254, at *8-9.

381. *See id.* at *8.

382. Brief for the United States, *supra* note 262, at *37.

383. H.R. REP. NO. 95-595, at 276 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6233, 1977 WL 9628.

384. Brief for the United States, *supra* note 262, at *35-36.

385. *Id.* at *36.

386. *Id.* at *36-37.

387. *Compare* 11 U.S.C. § 346 (2006), *with* 11 U.S.C. § 503.

388. 11 U.S.C. § 346.

389. *See id.*

V. *HALL V. UNITED STATES*A. *Majority Opinion*

On June 13, 2011, the Supreme Court of the United States granted certiorari to resolve the circuit split concerning whether under Chapter 12 governmental claims arising post-petition from sales of farm assets shall be treated as unsecured pursuant to 11 U.S.C. section 1222(a)(2)(A).³⁹⁰ On May 14, 2012, the Court handed down its decision.³⁹¹

The Court found the interpretation of section 503(b) central to the resolution of the case.³⁹² In a 5-4 opinion, authored by Justice Sotomayor, the Court adopted the meaning of “incurred by the estate” proffered by the IRS.³⁹³ The plain meaning doctrine provided the framework of the Court's decision.³⁹⁴ The Court defined “incur[red]” as to “suffer or bring on oneself (a liability or expense).”³⁹⁵ The Court then reasoned that for tax to be incurred by an estate, the estate must be liable for that tax.³⁹⁶ Next, the Court looked to section 1398 and section 1399, which provide that estates are liable for taxes in Chapter 7 and 11 cases, but that individuals are liable in Chapter 12 and 13 cases.³⁹⁷ Accordingly, the Court concluded that post-petition taxes are not incurred by the estate in Chapter 12 bankruptcies.³⁹⁸

The Court also found that Code provisions have addressed whether an estate is separately taxable since the inception of the Code.³⁹⁹ The Court first looked to section 346, a provision included in the original Code, which provided that estate income is taxed to the estate in Chapters 7 or 11 bankruptcies and to the debtor in Chapter 13 bankruptcies.⁴⁰⁰ The Court noted that, two years later, Congress extended the framework of section 346 to federal taxes with sections 1398-99 in the Bankruptcy Tax Act of 1980.⁴⁰¹ Finally, the Court observed that Congress changed the wording of section 346 with BAPCPA to “crystallize[] the connection between the Bankruptcy Code and the IRC.”⁴⁰² The court found it persuasive that section 346 ties the treatment of state and local tax liability to the IRC's treatment of federal tax liability

390. See *Hall v. United States*, 131 S. Ct. 2989 (2011) (mem.).

391. *Hall v. United States*, 132 S. Ct. 1882 (2012).

392. *Id.* at 1886.

393. *Id.* at 1887-90.

394. *Id.* at 1887.

395. *Id.* (quoting BLACK'S LAW DICTIONARY 836 (9th ed. 2009)).

396. *Id.*

397. *Id.*

398. *Id.* at 1893.

399. *Id.* at 1887.

400. *Id.*

401. *Id.* at 1888.

402. *Id.*

rather than expressly assigning state and local tax liability to estates and debtors.⁴⁰³

Additionally, the Court found that courts, commentators, and the IRS have consistently concluded that in Chapter 13 bankruptcies, post-petition income taxes are not “incurred by the estate.”⁴⁰⁴ The Court looked to section 1305(a)(1), which provides that claims may be filed for taxes that become payable while a Chapter 13 case is pending.⁴⁰⁵ The Court determined that the option provided by Chapter 13 to collect post-petition taxes implies that such taxes would not otherwise be collectible in Chapter 13 plans.⁴⁰⁶ Because of the similarities between Chapters 12 and 13, the Court found that the absence of a corollary to section 1305(a)(1) meant that Chapter 12 plans could not provide for the payment of post-petition taxes.⁴⁰⁷

The Halls argued that the term “incurred by the estate” referred to the timing of the tax rather than which entity is liable for the tax.⁴⁰⁸ The Court rejected the notion that because “all taxes ‘incurred by the estate’” are “necessarily incurred post[-]petition” that all taxes post-petition are incurred by the estate.⁴⁰⁹ The Halls further argued that an estate incurs tax if it is “payable out of estate assets,” and because debtors’ income is included in the estate, the tax must necessarily be paid from property of the estate.⁴¹⁰ The Court remained unconvinced, reasoning that Chapter 12 debtors remain liable for filing a return and paying the tax.⁴¹¹ Relying on the purposeful distinction made in the Code between the tax liabilities incurred to debtors and estates, the Court also found unconvincing the concept that the estate and debtor are merged for purposes of Chapter 12.⁴¹²

The Halls further supported their interpretation of “incurred by the estate” with legislative history and case law.⁴¹³ However, the Court found that the legislative history could be read consistently with the Court’s interpretation.⁴¹⁴ The Court dismissed the case law as inapposite, because the cases proffered by the debtors involved corporate debtors, rather than individual debtors, reasoning that the Code often treats corporate debtors differently.⁴¹⁵

Finally the Court turned to the legislative history of section 1222(a)(2)(A) and recognized that Congress intended the provision to provide

403. *Id.* at 1889.

404. *Id.* at 1889-90.

405. *Id.* at 1890.

406. *Id.*

407. *Id.* at 1890-91.

408. *Id.* at 1891.

409. *Id.*

410. *Id.*

411. *Id.* at 1892.

412. *Id.* at 1891-92.

413. *Id.* at 1892.

414. *Id.*

415. *Id.*

“robust [financial] relief” to farmers rather than the paltry relief afforded to farmers under the Court's interpretation.⁴¹⁶ However, the Court found the mechanism chosen by Congress failed “to enable post[-]petition income taxes to be collected in the Chapter 12 plan in the first place.”⁴¹⁷ Reluctant to upset established bankruptcy concepts, the Court concluded that “if Congress intended [to treat post-petition liabilities as dischargeable], it did not so provide in the statute.”⁴¹⁸

B. Dissenting Opinion

The dissent, authored by Justice Breyer, maintained that the language of the Code could be interpreted consistently with the objective of section 1222(a)(2).⁴¹⁹ Justice Breyer contended that Congress could not have intended the result reached by the majority, relying on Senator Grassley's floor statements.⁴²⁰ Because a Chapter 12 estate and debtor are a single entity, Justice Breyer found that the fact that a debtor incurs post-petition taxes could mean that the estate also incurs post-petition taxes and that such an interpretation remained consistent with common English.⁴²¹

Justice Breyer next addressed the majority's discussion of the dichotomy between corporate and individual debtors.⁴²² He found no reason to distinguish between taxes incurred by individual and corporate debtors and aptly noted that the majority's reasoning implied that “the treatment of post[-]petition taxes in Chapter 12 proceedings turns on whether the debtor happens to be a corporation.”⁴²³

Justice Breyer also found the majority's discussion concerning the “adverse consequences” of adopting the Halls' interpretation to be lacking.⁴²⁴ He determined that the majority's reading failed to consider the conceptual problem of excluding social security, Medicare, and other employee taxes from Chapter 12 bankruptcy proceedings.⁴²⁵ He recognized the similarities of Chapter 12 and 13 bankruptcies, but noted many relevant distinctions, including the length of time between filing and plan confirmation and the lack of a Chapter 12 analogue to section 1305.⁴²⁶ Finally, Justice Breyer noted that adopting the Halls' interpretation would merely “limit the scope of ... [sec-

416. *Id.* at 1893.

417. *Id.*

418. *Id.*

419. *Id.* at 1894 (Breyer, J., dissenting).

420. *Id.* at 1896-97.

421. *Id.* at 1898.

422. *Id.* at 1899.

423. *Id.*

424. *Id.*

425. *Id.*

426. *Id.* at 1900.

tion] 1305” to post-confirmation tax liabilities rather than rendering the provision superfluous.⁴²⁷

Justice Breyer concluded by noting that the arguments of both parties presented plausible interpretations, but that only the Halls’ interpretation would permit the effect of section 1222(a)(2)(A) intended by Congress.⁴²⁸ As a final note, Justice Breyer stated that it is “important that courts interpreting statutes make significant efforts to allow the provisions of congressional statutes to function in the ways that the elected branch of Government likely intended and for which it can be held democratically accountable.”⁴²⁹

VI. PROPOSED AMENDMENTS TO INCREASE STATUTORY CLARITY

Since the beginning of the twentieth century, bankruptcy law in the United States has sympathized with the unique economic circumstances of farmers, and most recently, the BAPCPA amendments altered Chapter 12 to provide even greater protections to bankrupt farmers.⁴³⁰ Specifically, Congress enacted section 1222(a)(2)(A) with the intent that it would remove veto power from the IRS over farmer bankruptcies.⁴³¹ By contrast, the Bankruptcy Tax Act of 1980 was enacted to resolve confusion concerning the tax treatment of bankrupt and insolvent taxpayers.⁴³² In particular, sections 1398-99 concern administration of bankruptcy estate taxation.⁴³³

The purposes of these statutes are not inherently conflicting and it is unlikely that their drafters intended substantial interplay between them. Yet in direct contravention of legislative intent, the effect of the IRS’s arguments is that sections 1398-99 fatally frustrate the purpose of section 1222(a)(2)(A).⁴³⁴ The IRS continued to challenge the effect of section 1222(a)(2)(A) with numerous debtors at the trial level and eventually led to the Supreme Court of the United States’ grant of certiorari.⁴³⁵

427. *Id.* at 1900-01.

428. *Id.* at 1901.

429. *Id.* at 1903.

430. *See supra* Part II.A.1.

431. *See supra* Part II.A.2.d.

432. *See supra* notes 177-78 and accompanying text.

433. *See supra* Part II.B.2.

434. Reply Brief for Petitioners, *supra* note 360, at *14-15 (“The Government claims that under its constricted view of Section 1222(a)(2), that provision ‘provides meaningful relief to debtors,’ while admitting that taxes incurred due to farm asset sales within the entire year of a bankruptcy filing as well as all post-petition sales would not be covered under the 2005 amendments to Section 507(a)(8). The practical effect is not just a ‘somewhat smaller’ range of tax debts entitled to the priority-stripping treatment.” (citations omitted)).

435. *See, e.g.*, *Hall v. United States*, 131 S. Ct. 2989 (2011); *In re Dawes*, 382 B.R. 509 (Bankr. D. Kan. 2008), *aff’d*, 415 B.R. 815 (D. Kan. 2009), *rev’d*, 652 F.3d 1236 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012); *In re Gartner*, No. BK06–

The relative success of the IRS was largely a function of statutory clarity. While the majority of the IRS's arguments were rebuttable, it is no small task to come to any reasonable conclusion when dealing with complex statutory compilations. The Supreme Court should have sided with the debtors, but despite the outcome of the decision, it remains that several statutory provisions of the Code enabled the efforts of the IRS in convincing the Court. This Part will introduce several proposed amendments with explanations of how each would have resolved the instant case and of how each fits within the framework of existing law. First, this Part will propose an amendment to the definition of "claim" that would expressly include administrative expenses claims.⁴³⁶ Second, this Part will propose that the Code include "administrative expenses" as a defined term.⁴³⁷ Next, this Part will propose a change to section 1222(a) that would expressly allow Chapter 12 plans to bind holders of administrative expenses claims.⁴³⁸ Then, this Part will propose language for section 503(b)(1)(B) that more appropriately reflects the historical treatment of administrative expenses.⁴³⁹ Finally, this Part will discuss the combined effect of the proposed amendments.⁴⁴⁰

A. The Term "Claim"

The definition of claims should include administrative expense claims. The definition proposed by this Comment reads as follows: "§101(5) The term "claim" means-- (A) right to payment, *including administrative expenses*, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; . . ."

The parties in *Hall* agreed on the inconsistency of the Code's usage of "claims" and "expenses."⁴⁴¹ However, with respect to section 1222(a)(2)(A), the parties failed to agree on whether claims included administrative ex-

40422-TLS, 2008 WL 5401665 (Bankr. D. Neb. Dec. 29, 2008); *In re Schilke*, 379 B.R. 899 (Bankr. D. Neb. 2007), *aff'd sub nom.* Knudsen v. I.R.S., 581 F.3d 696 (8th Cir. 2009), *abrogated by* Hall v. United States, 132 S. Ct. 1882 (2012).

436. *Infra* Part VI.A.

437. *Infra* Part VI.B.

438. *Infra* Part VI.C.

439. *Infra* Part VI.D.

440. *Infra* Part VI.E.

441. Brief for the United States, *supra* note 262, at *14 ("To be sure, Congress has not rigorously adhered to that terminological distinction, since some Bankruptcy Code provisions refer to administrative expenses as 'claims'"); Transcript of Oral Argument, *supra* note 252, at 16 ("There are numerous provisions of the Bankruptcy Code that refer to administrative expenses as claims, including 1226.").

penses⁴⁴² or whether the legislature intended to exclude administrative expenses when it chose “claims.”⁴⁴³ Countervailing evidence on each side further frustrates efforts of interpretation. The IRS supported its argument with legislative history from the Act of 1978 evidencing an intended dichotomy with respect to section 507 and its cross-reference to section 1222(a)(2)(A).⁴⁴⁴ Alternatively, the Halls flagged several provisions evidencing apparent conflation of the terms.⁴⁴⁵ The inclusion of administrative expenses in the definition of claims facilitates resolution of this ambiguity.

Beyond resolving ambiguity, the effect of this alteration is modest. As indicated by the Halls, several provisions currently conflate the terms.⁴⁴⁶ Importantly, the two terms are not equated, but administrative claims merely become a subset of claims. This result is sensible because the broad definition of claims, as it stands, arguably includes “administrative expenses.”⁴⁴⁷ However, the proposed amendment would remove any future argument that the drafters’ use of the word “claims” shows intent to exclude administrative expenses.

B. The Term “Administrative Expense”

The term “administrative expense” is not currently defined within the Code. The definition proposed by this Comment defines the term as “an expense incurred during the administration of the estate.” While the definition appears circular and uninformative, the lack of a definition spurred the IRS’s argument. By muddling the distinction between post-confirmation and post-petition, this term’s ambiguity enabled the IRS’s arguments concerning section 1305. By defining administrative expense in relation to the pertinent phase of the bankruptcy proceedings, the proposed amendment distinguishes between post-petition and post-confirmation by emphasizing the administration period. Because post-petition would include both post-confirmation and administration, no future argument could be made that plans providing for administrative expenses would render ineffective provisions allowing for plans to provide for post-petition claims.

In support of the proposed amendment, recall that section 1226(b)(1) implicitly recognizes the distinction between administrative expenses and

442. Reply Brief for Petitioners, *supra* note 360, at *13 (“The notion that Congress intended to refer to all these subsections of Section 507 and not refer to 507(a)(2) is implausible.”).

443. Brief for the United States, *supra* note 262, at *14 (“The reference in Section 1222(a)(2) to ‘claims’ under Section 507, rather than to ‘expenses and claims’ under Section 507, is thus consistent with the understanding that a Chapter 12 plan is limited to pre-petition debts.”).

444. *Id.*

445. Brief for Petitioners, *supra* note 254, at *14.

446. *Id.*

447. *Id.* at *14-15.

post-confirmation expenses in light of the dichotomy presented by section 1222(a)(2)(A).⁴⁴⁸ If Congress intended section 1226(b)(1) to apply to administrative expenses, it would have referred to “claims entitled to priority under section 507(a)(2)” rather than “claim[s] of the kind specified in section 507(a)(2).”⁴⁴⁹ Because section 507(a)(2) expressly deals with administrative expenses, section 1226(b)(1) must be referring to something else: post-confirmation expenses.⁴⁵⁰ The murkiness of “administrative expenses” allowed the IRS to convincingly misconstrue section 1226(b)(1) as a mechanism to pay all administrative expenses under Chapter 12 proceedings.

While administration of estates may vary from chapter to chapter, administration can only last as long as estates exist.⁴⁵¹ With respect to Chapters 12 and 13, the bankruptcy estate ceases to exist after plan confirmation when property vests to the debtor.⁴⁵² As stated by the Halls, “[t]he caveat to that principle is that a plan can provide for the estate to continue,” which may lead to further administrative expenses.⁴⁵³ While these cases are unusual, the administration period may persist indefinitely, and perhaps prudence dictates creation of a new term, or revival of an old one for the period between filing and confirmation to proscribe further ambiguity.⁴⁵⁴ As a final note, while the proposed definition is broadly phrased, section 503 and its cross-references remain the primary mechanism for what administrative expenses may be considered allowable claims.

C. Who is Bound by a Chapter 12 Plan

Section 1227(a) should be amended to reflect that Chapter 12 plans are binding on holders of administrative expense claims. The definition proposed by this Comment reads as follows:

§ 1227(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, *each holder of a claim entitled to priority under section 507(a)(1)(C) or (2)*, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, *such holder of a*

448. See *supra* notes 323-25 and accompanying text.

449. See *supra* notes 350-54 and accompanying text.

450. See *supra* notes 350-54 and accompanying text.

451. See Reply Brief for Petitioners, *supra* note 360, at *10-11 (“As a general principle, the bankruptcy estate and administrative expense period end at plan confirmation.”).

452. *Id.*; see also 11 U.S.C. §§ 1227(b), 1327(b) (2006).

453. Reply Brief for Petitioners, *supra* note 360, at *10.

454. See Brief for Petitioners, *supra* note 254, at *17 (“The ‘arrangement period’ under Chapter XI is the equivalent of the post[-]petition/pre-confirmation period under the current Bankruptcy Code.” (citing *Nicholas v. United States*, 384 U.S. 678, 687-88 (1966))).

claim entitled to priority under section 507(a)(1)(C) or (2), such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such holder of a claim entitled to priority under section 507(a)(1)(C) or (2), such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

The IRS's arguments capitalized on the current statute by recognizing that section 1227(a) referred only to "creditors," or pre-petition claim holders.⁴⁵⁵ Because the IRS was not a "creditor," it argued that it could not be bound by Chapter 12 plans or by section 1222(a)(2)(A) with respect to its post-petition claim.⁴⁵⁶

However, Chapter 12 plans are required to provide fully for the payment of all claims entitled to priority under section 507.⁴⁵⁷ In turn, section 507(a)(1)(C) and section 507(a)(2) grant priority to administrative expenses.⁴⁵⁸ Accordingly, confirmed Chapter 12 plans must provide for the payment of administrative expenses.⁴⁵⁹ If every other holder of a claim addressed in a confirmed plan is bound by that plan, then the holder of an administrative expense claim should also be bound. The proposed amendment uses language from sections 1222 and 1227 to increase the clarity of this conclusion.

The proposed amendment also properly distinguishes between section 1226(b)(1) post-confirmation claims and administrative expenses by referring to "claims entitled to priority" rather than "claims of a kind entitled to priority."⁴⁶⁰ The retained dichotomy permits section 1226(b)(1) to remain the primary mechanism for payment of post-confirmation expenses.⁴⁶¹

D. What Taxes are Considered Administrative Expenses

The term "incurred by the estate" should be clarified. The definition proposed by this Comment reads as follows: "§ 503(b)(1)(B) any tax-- (i) incurred *during administration* of the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title;"

455. See *supra* notes 355-59 and accompanying text.

456. See *supra* notes 355-59 and accompanying text.

457. 11 U.S.C. § 1222(a)(2) (2006).

458. 11 U.S.C. § 507(a)(1)(C).

459. Reply Brief of Petitioners, *supra* note 360, at *4-5 ("Major bankruptcy treatises explain that all priority claims, including administrative expense claims, must be provided for in Chapter 12 plans (subject to the exception at issue here), and may be deferred instead of paid in cash at confirmation as required in Chapter 11 cases.").

460. See *supra* notes 350-54 and accompanying text.

461. See *supra* notes 350-54 and accompanying text.

The ambiguity created by section 503(b) facilitated the argument that post-petition taxes of Chapter 12 debtors were handled entirely outside bankruptcy proceedings.⁴⁶² The IRS cleverly tied the concept of separate taxable entities to an inquiry of whether certain bankruptcy estates incur tax.⁴⁶³ As a result, section 503(b) provided the centerpiece for the IRS's appellate briefs as well as acquiescent opinions from the Ninth and Tenth Circuits.⁴⁶⁴ The proposed amendment would prevent similar arguments.

For Chapter 12 proceedings, the proposed amendment would have a different effect on income taxes depending on whether such taxes were incurred pre-petition, post-petition but pre-confirmation, or post-confirmation. First, section 507(a)(8) affords eighth priority to income taxes for years ending prior to filing.⁴⁶⁵ For such income taxes, section 503(b) is irrelevant.

Second, section 507(a)(2) through section 503(b) affords second priority for income taxes incurred during administration.⁴⁶⁶ For these income taxes, section 503(b) is relevant.⁴⁶⁷ Under the proposed amendment, tax from sales of farming equipment during administration could be characterized as a section 503(b) tax, because such tax was incurred during administration.

Unfortunately, one limitation of section 1222(a)(2)(A) is that no tax is incurred until the end of the taxable year.⁴⁶⁸ For income taxes to be incurred

462. See *supra* notes 373-76 and accompanying text.

463. See *supra* notes 373-76 and accompanying text.

464. See *Dawes v. Dawes (In re Dawes)*, 652 F.3d 1236, 1239-40 (10th Cir. 2011), *cert. denied*, 132 S. Ct. 2429 (2012) (“To determine who has ‘incurred’ a tax, then, we must ask *who* is liable for paying it. And to answer that question we must look to the relevant tax authority And there, in Title 26, the answer is plain. In individual Chapter 7 and 11 bankruptcies, the trustee is charged with filing a separate return on behalf of the bankruptcy estate and paying from that estate any resulting taxes.”); *United States v. Hall*, 617 F.3d 1161, 1163 (9th Cir. 2010), *aff’d*, 132 S. Ct. 1882 (2012) (“Which, of course, raises the question whether the post-petition tax on the sale of the farm at issue in this case was ‘incurred by the estate.’ We are satisfied that the answer is no. The Internal Revenue Code provides that a chapter 12 estate cannot incur taxes.”); Brief for the United States, *supra* note 262, at *22 (“The determination whether an income tax is ‘incurred by the estate’ depends in part on the nature of the debtor and on the chapter of the Bankruptcy Code under which relief is sought.” (internal citations omitted)).

465. 11 U.S.C. § 507(a)(8) (Supp. 2011).

466. *Id.* § 507(a)(2).

467. *Id.*

468. *Pac.-Atl. Trading Co. v. United States (In re Pac.-Atl. Trading Co.)*, 64 F.3d 1292, 1300 (9th Cir. 1995) (“We are persuaded that it is equally apparent from these statements that, in the absence of an explicit definition, Congress intended for a tax on income to be considered ‘incurred’ on the last day of the income period.”); *Interco Inc. v. Mo. Dep’t of Revenue (In re Interco Inc.)*, 143 B.R. 707, 712 (Bankr. E.D. Mo. 1992) (“As explained above, the legislative history of the Bankruptcy Code suggests that for priority purposes, a tax is incurred on the last day of the taxable period.”).

during administration, the tax year must end during administration.⁴⁶⁹ Further, it is difficult to justify that the effect of section 1222(a)(2)(a) should extend beyond administration.⁴⁷⁰ Accordingly, if no taxable year ends during administration, then section 1222(a)(2)(A) does not apply. Fortunately, this barrier may be practically circumvented, as studies have shown that the median time for Chapter 12 administration is approximately eight months⁴⁷¹ and that the vast majority of such administrations persist for approximately two years.⁴⁷²

However, there is little reason that debtors who have short or poorly timed administrations should be denied the benefits of section 1222(a)(2)(A). The issues caused by the fact that taxes are incurred only at the end of the taxable year have been addressed in a similar context by section 1398(d)(2) of the IRC. Section 1398(d)(2) permits debtors to truncate their taxable years, which allows tax obligations accrued up to the date of filing to become pre-petition claims and brings such obligations under the jurisdiction of the bankruptcy court.⁴⁷³ Similarly, a provision modeled after section 1398(d)(2) could be added to extend the reach of section 1222(a)(2)(A) to tax obligations by allowing debtors to truncate their taxable year prior to confirmation and thus incur taxes during the administration.

Finally, section 1226(b)(1), through section 507(a)(2), provides that post-confirmation administrative expenses must be paid before other plan payments are made.⁴⁷⁴ However, considering the purpose of section 1305 is to bring post-confirmation income taxes within Chapter 13 proceedings, it is illuminating that Chapter 12 has no corollary.⁴⁷⁵ The proposed amendment limits the reach of section 1226(b)(1) by allowing only taxes incurred during the administration as section 507(a)(2) claims. While section 1222(a)(2)(A)'s reach could be extended with additional amendments, Senator Grassley drafted the provision with concern primarily about the IRS's power to veto plans during confirmation hearings.⁴⁷⁶ Further, the *Hall* debtors argued only for this limited effect.⁴⁷⁷ Accordingly, the fact that income taxes incurred post-confirmation are outside Chapter 12 proceedings and the reach of section 1222(a)(2)(A) is enforced by the proposed amendment.

aff'd sub nom. Mo. Dep't of Revenue v. L.J. O'Neill Shoe Co. (*In re* L.J. O'Neill Shoe Co.), 64 F.3d 1146, 1148 (8th Cir. 1995).

469. See *In re Pac.-Atl. Trading Co.*, 64 F.3d at 1300.

470. See Brief for Petitioners, *supra* note 254, at *41 (declining to argue that Section 1222(a)(2)(A) should extend to post-confirmation taxes).

471. Brief for Amici Curiae Professors Neil E. Hart et al., *supra* note 1, at *5.

472. *Id.* at *33.

473. See *supra* notes 181-82, 315-18 and accompanying text.

474. 11 U.S.C. § 1226(b)(1) (2006).

475. See *supra* notes 404-07 and accompanying text.

476. See *supra* notes 133-37 and accompanying text.

477. See *supra* note 326 and accompanying text.

The proposed amendment clarifies but does not alter other chapters. But for Section 1305 bringing post-confirmation taxes squarely within the purview of Chapter 13 proceedings, the analysis remains much the same for Chapter 13.⁴⁷⁸ For individual Chapter 7 debtors, section 1398 creates separate taxable entities.⁴⁷⁹ Post-petition income tax of the debtor is beyond bankruptcy jurisdiction,⁴⁸⁰ where tax incurred during administration of estate property is properly granted second priority for purposes of liquidation.⁴⁸¹

E. Effect of Proposed Amendments

The above-proposed amendments clarify the traditional aspects of bankruptcy law and address issues unforeseen by the drafters of section 1222(a)(2)(A). If these amendments are adopted, then future similar arguments by the IRS will be far easier to rebut. First, debtors will be able to show that taxes occurred during bankruptcy administration are priority claims with much greater ease.⁴⁸² Second, debtors will be able to show that such claims may be included in their reorganization plans and that these plans are binding on those holding such claims without regard to whether or not the holders of the claims are “creditors.”⁴⁸³ Third, the IRS will be unable to use section 1398 to frustrate section 1222(a)(2)(A), because the inquiry of whether a tax is an administrative expense will be clearly controlled by when a tax is incurred, rather than which entity incurred it.⁴⁸⁴

Concerning substantive changes in the law, the effect of the proposed amendments is minimal. As the drafters intended, section 1222(a)(2)(A) allows family farmers filing under Chapter 12 to sell farm assets during the administration period in order to facilitate greater financial flexibility and a

478. See 11 U.S.C. § 1305.

479. I.R.C. § 1398(a) (2006).

480. *In re Haedo*, 211 B.R. 149, 152 (Bankr. S.D.N.Y. 1997) (“If the debtor makes the election, the tax liability attributable to the pre[-]petition year constitutes a priority claim against the estate; but if he does not, the entire liability for the year of the bankruptcy filing is a claim against the debtor but is not collectible from the estate.”).

481. *In re Trowbridge*, 74 B.R. 484, 485 (Bankr. E.D. Pa. 1987) (“In general, post[-]petition property taxes, (as well as certain other taxes), are treated as an administrative expense liability of the estate under section 503(b)(1)(B) and allowed as a first distribution priority pursuant to 11 U.S.C. § 507(a)(1).”); *Lambdin v. Comm’r* (*In re Lambdin*), 33 B.R. 11, 12 (Bankr. M.D. Tenn. 1983) (“This type of post[-]petition tax is classified as an administrative expense under 11 U.S.C. § 503(b)(1)(B) and has a first priority in payment from property of the estate, along with all other administrative expenses, pursuant to 11 U.S.C. § 507(a)(1).”).

482. See *supra* Part VI.A, B.

483. See *supra* notes Part VI.C.

484. See *supra* notes Part VI.D.

more feasible plan.⁴⁸⁵ The Code treats the resulting tax obligations as general unsecured claims, which are not required to be paid fully under reorganization plans and may be discharged upon successful completion of the plan.

VII. CONCLUSION

In *Hall*, the Supreme Court of the United States held in favor of the IRS with a decision that contravenes legislative intent and frustrates the efforts of Senator Grassley. The IRS will retain a veto over economic actors sensitive to the ebb and flow of weather and commodity prices and invaluable in our society as providers of sustenance. Even if the Court had held in favor of the Halls, legislative reform towards statutory clarity would remain a meaningful issue for the law of bankruptcy. While *Hall* centers on a single provision, the issues of interpretation faced by the Supreme Court may have significant ramifications throughout the Code affecting substantial numbers of future debtors. In the tumultuous economic times of today, bankruptcy continues to be an important institution allowing financially struggling citizens a clean slate. While the BAPCPA amendments are far from a model of clarity, one can only hope that educators, practitioners, courts, and legislators can work in harmony to improve bankruptcy law with a concerted effort towards illumination of vagueness, elimination of inconsistencies, and integration of sound policy.

485. See *supra* Part II.A.2.d.