

"We might be looking to finalize those regs this calendar year, if possible," Hicks said. It is hoped that final regs would cover basis and timing issues and simplify the allocation rules. Hicks said he expects the final regs will implement many of the comments received from the American Bar Association and the New York State Bar Association. ■

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Bankruptcy Deadline Looms for Those With AMT/ISO Problems

By Warren Rojas — wrojas@tax.org

Caught between mounting alternative minimum tax debts and the implementation of more creditor-friendly bankruptcy rules, incentive stock option (ISO) holders are deciding whether to give up and file bankruptcy or to wait for a political reprieve.

Several AMT/ISO activists with ties to the Reform AMT initiative (<http://www.reformamt.org>) and the Coalition for Tax Fairness (<http://www.fair-iso.org>) told Tax Analysts they are weeks away from declaring bankruptcy — a decision made all the more pressing by the Bankruptcy Abuse Prevention and Consumer Protection Act (P.L. 109-8) President Bush signed into law on April 20, 2005.

Under the existing bankruptcy statutes, qualified debtors can generally discharge their outstanding liabilities and start over with a clean slate. Once the new law takes effect October 17, debtors will face a much more stringent means test, and creditors — including the IRS — will have greater authority to tap into future earnings.

"For ISO/AMT victims who timely filed a non-fraudulent tax return for tax years 2000 or 2001, the IRS tax liability is dischargeable . . . however, the IRS retains its liens on the debtor's property, meaning that the IRS can only go after the debtor's assets, which are subject to the tax liens on the date bankruptcy is filed," said Robert L. Sommers, a San Francisco attorney who deals with AMT/ISO issues. "Under the new law, in general, future earnings and asset are subject to those tax liens."

After watching the IRS reject her second offer in compromise, Angela Hartley, a San Diego resident with a \$400,000 federal tax bill, said bankruptcy might be her last remaining option.

'Either way I will lose everything I've been able to put together my whole working life,' Hartley said.

"Either way I will lose everything I've been able to put together my whole working life," Hartley said. "But the bankruptcy would at least prevent me from having to lose my future income as well."

Others are still hoping lawmakers can help by enacting a languishing AMT/ISO plan.

The bipartisan AMT Credit Fairness Act of 2005 (H.R. 3385) — a proposal advanced this spring by House Ways and Means Committee member Sam Johnson, R-Texas — would allow taxpayers with outstanding AMT credits (four years or older) to

claim the greater of either 20 percent of the stored-up credits or \$5,000 per year in refund relief. The bill would also require corporations that provide ISOs as compensation to furnish workers who exercise any of those options with a Form 1099-like declaration of their expected tax liability by January 31 of the following year.

Johnson's latest AMT/ISO proposal has drawn the support of over two dozen House lawmakers from both parties, including 10 fellow taxwriters. (For the bill, see *Doc 2005-15589* or *2005 TNT 140-36*.)

'People from Capitol Hill to anywhere and everywhere all hands down agree this is wrong, it's terribly wrong. Yet here we stand,' Speltz said.

One Reform AMT member with almost \$3 million in back taxes, penalties, and fines remains wary of bankruptcy, but said financial reorganization could provide temporary help.

"At least I can buy some time to continue to work on the legislation," the Reform AMT member said. "I hope we get the legislation through. That's the holy grail."

A Ways and Means Committee aide declined to speculate on the status of Johnson's package, saying only that the taxwriting committee's agenda "continues to be in flux."

A Johnson aide said only, "We'll try to get it done this year."

Running Out of Time

Ron Speltz, a Reform AMT member from Cedar Rapids, Iowa, said many AMT/ISO activists remain optimistic that Congress will take notice soon.

"There's hope, absolutely. But they don't call it an act of Congress for nothing," he said.

Speltz said he has paid about \$90,000 of AMT tax for year 2000, but still owes another \$139,000 and has a lien on his home. The Tax Court refused to overturn the IRS rejection of his offer in compromise (see *Doc 2005-6065* or *2005 TNT 56-6*), and he is now awaiting action from an appeals court.

According to Speltz, everyone from the initial IRS auditor who reviewed his 2001 tax bill to National Taxpayer Advocate Nina E. Olson appears disturbed by the apparent inequity of the AMT/ISO treatment, but they remain quick to defer to Congress for a solution.

"People from Capitol Hill to anywhere and everywhere all hands down agree this is wrong, it's terribly wrong. Yet here we stand," he said.

Hartley said most of the individuals still affected by the AMT/ISO problem "have just about run the course of all of the things that we're trying to work out with the IRS."

Hartley said that although she can still claim control of her home and the last vestiges of a retirement account, she has been unable to broker an agreement with the IRS because of the compounding penalties.

"The payment program for this amount is almost a nonstarter," she said. "It grows faster than the amount of payments that I could make."

Hartley believes the only way she'll be able to make a dent in her IRS debt would be to reclaim her outstanding AMT credits faster.

"If there was a way to reasonably return that to me in a few years rather than stretch it out over the next 70 years, that would be an option to pay off at least a majority of this," she said, adding that Congress should move quickly on H.R. 3385.

"We're not looking for anybody to recover the losses that we made on these investments. All we're looking for is an equitable return of the credit that's owed us so we don't have to face bankruptcy and ruin," she said.

Another Reform AMT supporter said the Speltz decision was a blow to the AMT/ISO movement. The AMT/ISO activist was even more worried that hurricanes Katrina and Rita have doomed any chance the Johnson relief bill had this fall.

"It's like winning the antilottery," the Reform AMT member said. ■