

CC-2004-033

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Change in Litigating Position
Application of Bankruptcy Code
§ 506(a) to Pension Plans Excluded
From the Bankruptcy Estate Under

Subject: Bankruptcy Code § 541(c)(2)

Upon incorporation
into CCDM

Cancel Date:

Purpose

This notice announces a change in the Service's litigating position concerning the application of Bankruptcy Code § 506(a) to pension plans that are excluded from the bankruptcy estate under Bankruptcy Code § 541(c)(2).

Discussion

Under section 506(a) of the Bankruptcy Code, a creditor with a lien on property of the estate holds a secured claim to the extent of the value of the creditor's interest in the estate's interest in such property. Section 541(a) provides that, upon the commencement of the bankruptcy case, an estate is created which consists of all legal or equitable interests of the debtor on that date. An exception to this rule is found in section 541(c)(2), which provides that restrictions on the transfer of a beneficial interest in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a bankruptcy case.

In *Patterson v. Shumate*, 504 U.S. 753 (1992), the Supreme Court determined that the anti-alienation clause required for ERISA compliance and tax qualification and contained in the debtor's plan constituted a restriction on transfer enforceable under "applicable nonbankruptcy law" within the meaning of section 541(c)(2). Accordingly, the Court held that the ERISA-qualified pension plan was excluded from the debtor's bankruptcy estate under section 541(c)(2).

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