LESSON 7

REORGANIZATION
(Chapter 11 Bankruptcy Code)

CONTENTS

I. INTRODUCTION

Generally, Chapter 11 is the business reorganization chapter of the Bankruptcy Code; it provides a means by which a financially distressed debtor may seek relief from its prepetition obligations while continuing its business operations. Typically, the bankruptcy is filed because one or more of the creditors began, or was likely to begin, enforced collection action against the debtor. Because of the automatic stay, the bankruptcy filing forestalls the collection action and provides the debtor with an opportunity to formulate a plan of reorganization that is in the best interests of the creditors and debtor.

Unlike Chapter 7 cases in which a trustee is always appointed, Chapter 11 allows

the debtor the opportunity to remain in control as the "debtor in possession" (DIP). At the outset of most Chapter 11 cases, secured creditors who are not optimistic about a successful reorganization will seek to have the stay lifted so they can collect their collateral or have their interests in the collateral "adequately protected." Whether and under what conditions the debtor will be able to retain the use of the collateral often sets the tone for the remainder of the bankruptcy case.

If the Chapter 11 debtor is successful in retaining its assets, it can attempt to formulate a plan of reorganization. This may mean restructuring the business or negotiating new financing. The debtor may need to borrow more money and will need court approval to do so. The debtor may also object to and litigate claims filed by its creditors. If the debtor is unable to propose a confirmable plan, other creditors may do so. If confirmation of a plan is not possible, the case will be dismissed or converted to a Chapter 7 case. When a Chapter 11 plan is confirmed, a corporate debtor receives a discharge of all preconfirmation debts unless the plan provides otherwise. If the debtor is an individual (not a partnership or corporation), the exceptions to discharge set forth in section 523 apply. Chapter 11 plans can and often do provide for the liquidation of the debtor's assets. If the debtor is not an individual, then the debtor typically will not receive a discharge in a liquidating case.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), effective for cases filed after October 17, 2005, made a number of changes to Chapter 11. Individuals in Chapter 11 are now treated much like they would be in Chapter 13; the property of the estate includes postpetition earnings and the discharge comes after the completion of payments. Small business debtors have additional restrictions. In all cases, the debtor's duty to file tax returns and pay postpetition taxes is explicit (the tax year in which the debtor files the petition is a postpetition year), and the case could be converted or dismissed if the debtor fails to do so.

II. ADMINISTRATION OF A CHAPTER 11 CASE

A. Debtor in Possession (DIP)

In drafting Chapter 11, Congress believed that most business failures were caused by depressed business cycles or market shifts rather than dishonest management or fraud. Congress also recognized that continuity of management increased the likelihood that a reorganization would succeed by eliminating the disruption and difficulties that result when a stranger to the business is suddenly put in control. Thus, an important characteristic of Chapter 11 is the presumption that the debtor's business will continue and the debtor will remain in control. See B.C. §§ 1107, 1108. A debtor who remains in control of the business (that is, when no trustee has been appointed) is called a "debtor in possession" or "DIP."

B.C. § 1101(1). The DIP is given all of the rights and powers of a bankruptcy trustee. The DIP is also required to perform most of the functions and duties of a Chapter 11 trustee. B.C. § 1107. The DIP may use or sell property of the estate in the ordinary course of business, but use or sale of property outside the ordinary course requires court approval. See B.C. § 363(b).

B. Committees

A consequence of the Chapter 11 model, which presumes the business will continue and the debtor will remain in possession, is that the prepetition management that could not prevent, or perhaps precipitated, the bankruptcy filing remains in control. But creditors have counterbalancing rights under Chapter 11, and the right to form creditors' committees is an important one. It would be unwieldy, if not impossible, for every creditor to keep a close eye on the debtor's operations, so section 1102(a)(1) directs the appointment of a committee of unsecured creditors by the U.S. Trustee "as soon as practicable" after the Chapter 11 order for relief. Additional committees, such as a committee of equity holders, may also be appointed. B.C. § 1102(a)(2). The committee of unsecured creditors is ordinarily composed of those creditors willing to serve who hold the seven largest unsecured claims that are representative of the claims against the debtor. B.C. § 1102(b)(1).

The powers of committees are quite extensive; they include the right to hire professionals that are paid by the estate, consult with the DIP concerning the administration of the reorganization case, and utilize broad investigatory powers. B.C. § 1103(c). Committees typically play an active role in the formulation of a reorganization plan. If a committee believes that the appointment of a trustee is necessary, it has standing to request that a trustee be so appointed by the Court. B.C. § 1103(c)(4).

Generally, a governmental unit is incapable of serving as a member of a committee since it is not a "person" as defined in section 101(41). The Government is therefore often excluded from accessing information that the committee may have. However, BAPCPA amended section 1102(b) to require committees to provide access to information and solicit the views of creditors who hold similar claims and are not on the committee. Section 1102(b) also provides that the committee could be subject to a court order compelling such disclosure. Thus, the Service will now be able to solicit or compel information from committees if it holds similar (general unsecured) claims. This allows the Service to participate in plan negotiations when it may otherwise have been excluded.

C. Chapter 11 Trustee or Examiner

Congress realized that it is typically in the best interests of the creditors for

prepetition management to remain in control of the business. But creditors may need the protection afforded by a trustee in some situations. For example, where the debtor's current management has engaged in dishonest or fraudulent practices, grossly mismanaged debtor's affairs, or abandoned the business. Accordingly, the Code allows a trustee to be appointed if necessary. B.C. § 1104(a). This section explains that the appointment of a trustee shall be made on request of a party in interest and after notice and a hearing, but such appointment will only be made for "cause," including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, or when such appointment is in the interests of creditors, equity security holders, and the estate.

The appointment of a Chapter 11 trustee to displace current management and run the debtor's business could jeopardize the business. Even if there is cause to suspect misconduct, the continuance of the debtor's present management may be essential to the successful continuation of the business. In such cases, the court could appoint an examiner to investigate the misconduct of management. B.C. § 1104(c). The appointment of an examiner is a much less disruptive alternative than the appointment of a trustee; an examiner does not take control of the debtor's business, but rather fulfills the purpose for which he was appointed, which can be narrowly defined. Thus, it is usually necessary to review the order appointing the examiner to gauge the scope of his or her duties. The standards for the appointment of an examiner are similar to the appointment of a trustee; appointment will be ordered where it is in the best interests of creditors, equity holders, and other interests of the estate.

D. Dismissal or Conversion

On request of a party in interest and for "cause," the court may dismiss a case or convert the case to another chapter based on the best interest of creditors and the estate. A non-exhaustive list of situations that constitute cause are found in section 1112(b)(4), including continuing loss or diminution of the estate in the absence of a reasonable likelihood of rehabilitation or material default with respect to a confirmed plan. BAPCPA expanded the grounds for conversion or dismissal to include situations in which the debtor failed to timely file and pay postpetition taxes or used cash collateral without authorization. BAPCPA also limited the bankruptcy court's discretion with regard to motions to convert or dismiss by requiring the court to convert or dismiss the case if cause is shown. But note that the debtor or another party in interest can avoid dismissal or conversion by establishing: (1) a confirmable plan will be filed within a reasonable period of time, (2) the debtor has a reasonable justification for the cause for conversion or dismissal, and (3) the cause will be cured in a reasonable time. B.C. § 1112(b)(2). BAPCPA also gave the bankruptcy court the option of appointing a trustee rather than converting or dismissing the case. B.C. § 1112(b)(1).

III. CHAPTER 11 PLAN CONFIRMATION PROCESS

A. Debtor's Exclusivity Period

Consistent with the Bankruptcy Code's focus on permitting the DIP to remain in control of its business, section 1121 gives the debtor the exclusive right to file a plan of reorganization for 120 days after the petition date. If the debtor's proposed plan is filed within the 120-day exclusivity period, the debtor is granted an additional 60-day exclusive period (for a total of 180 days) in which to obtain acceptance of the plan. The court may extend the 120-day or 180-day exclusive periods for cause, and prior to BAPCPA, courts did so liberally. BAPCPA amended section 1121 to curtail the bankruptcy court's discretion to extend the 120-day and 180-day exclusivity periods. The 120-day period may not be extended beyond 18 months after the date of the order for relief and the 180-day period may not be extended beyond 20 months. See also the small business debtor provisions discussed below, which provide different rules for smaller cases. If a trustee is appointed, or the 120-day period expires, the debtor loses the exclusive right to file a plan. Once the debtor's exclusive right to file a plan has expired, any party in interest may file a plan. If the debtor files a plan within the exclusivity period and the creditors do not accept the plan within the 180-day period, any party in interest may file a plan.

B. Disclosure Statement

A disclosure statement is filed with the plan of reorganization. Bankruptcy Rule 3016(b). The court must approve the disclosure statement before the debtor may solicit the creditors' votes on the plan. B.C. § 1125(b). The approval of the disclosure statement is based on whether or not it contains "adequate information." *Id.* Both the kind and form of the information are left to the court's discretion, guided by section 1125(a)(1): the information provided must be of a kind and in sufficient detail that would enable a hypothetical investor to make an informed judgment about the plan. *See, e.g.*, *In re Metrocraft Publishing Services, Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (providing a 19-item checklist of the kind of information to be included in the disclosure statement). Usually, the disclosure statement will set forth the recent history of the debtor, the reasons why the debtor filed a bankruptcy petition, and the measures the debtor has undertaken to reverse financial setbacks. The disclosure statement should also give a brief description of the plan of reorganization and the treatment given to the various creditors. The disclosure statement must also discuss the tax effects of the proposed plan as explicitly required by BAPCPA. B.C. § 1125(a)(1).

A hearing will be set to determine whether the disclosure statement should be approved. B.C. § 1125(b); Bankruptcy Rule 3017(a). Objections can be filed on

the basis that the information in the disclosure statement is misleading or incomplete. Often, it is best to raise objections to the plan at the disclosure statement stage; debtors and courts are more receptive when concerns are raised early.

C. Classification and Impairment of Claims

For the purpose of determining the treatment of the creditors and voting on the plan, the Bankruptcy Code requires the plan to group claims into classes of substantially similar claims and specify how each class will be treated (all creditors within the class are treated the same unless they agree otherwise). B.C. § 1122, 1123. Typically, each secured claim is grouped into a separate class, general unsecured claims are grouped into one or more classes, and equity holders are grouped into one or more classes. If the claims in any class are altered in any way, the class is considered "impaired." B.C. § 1124. Since the Bankruptcy Code specifies the treatment of priority claims, the holders of such claims do not vote on the plan and the plan does not need to classify them. B.C. § 1123(a)(1). If the plan does not provide for payment of priority claims, the Service should object to the plan because it cannot be confirmed by law. B.C. § 1129(a)(9)(C).

D. Contents of the Plan

In addition to classifying claims and specifying their treatment, section 1123(a)(5) also provides that the plan must provide an adequate means for the plan's implementation. Section 1123(b) specifies what a plan *may* do if the proponent so chooses. The plan may "impair" a class of claims (for example, pay less than the full amount of the claims). But a plan can do more than just reduce creditors' claims; Chapter 11 contemplates a forum wherein a complete restructuring of the debtor is possible. Thus, a plan may also provide for the assumption, rejection, or assignment of any executory contract, the settlement of claims, sale of the assets of the estate, and "include any other appropriate provision not inconsistent with" Title 11. B.C. § 1123(b)(6).

E. Acceptance and Voting

After the disclosure statement has been approved by order of the court, the proponent of the plan solicits votes in favor of the plan from creditors and interest holders who are impaired under the plan. Classes of creditors and interest holders who are unimpaired are deemed to have accepted the plan. B.C. § 1126(f). A class is deemed not to accept if it receives no property under the plan. B.C. § 1126(g). An impaired class of claims has accepted the plan if it is accepted by creditors holding at least two-thirds in amount and more than one-half in number of the allowed claims of those in the class who vote. B.C. § 1126(c). An impaired class of interests has accepted the plan if it is

accepted by those interest holders with two-thirds in amount of the allowed interests. B.C. § 1126(d).

After notice, the court will set a date for objections to the plan and for a hearing on confirmation. B.C. § 1128. If under the plan any part of the Service's claim is treated in a manner inconsistent with the Code or case law, the Service generally objects to confirmation of the plan. *See* CCDM 34.3.1.1.4(5)(b). For example, the Service should object if assignees of property of the estate are absolved of transferee liability. If the United States does not agree with the plan's treatment of its general unsecured claims, it could vote to reject the plan like any other creditor. The Secretary of Treasury is given the authority to accept or reject a plan on behalf of the United States. B.C. § 1126(a). This authority is delegated to Counsel unless another federal agency has a claim and an agreement of whether to accept or reject the plan cannot be reached. Follow the procedures outlined in CCDM 34.3.1.1.4(5)(e). The Service should both object to a plan and vote to reject a plan if the Service's general unsecured claims are treated worse than the claims of other general unsecured creditors. CCDM 34.3.1.1.4(5)(f).

F. Confirmation Requirements

B.C. § 1129(a) details sixteen requirements that must be satisfied for the court to confirm a plan. The requirements of particular importance to the Service are briefly described in this section.

Section 1129(a)(7) establishes the "best interest of creditors" test. Under this test, each holder of a claim or interest must either accept the plan or receive under the plan money or property of a value that is not less than the amount the class member would received in a Chapter 7 liquidation. Section 1129(a)(7) applies to each class; it therefore protects each creditor in the class from receiving less than it would under Chapter 7 regardless of the vote of the other creditors in the class. Thus, the distribution in a hypothetical Chapter 7 case serves as the baseline for Chapter 11 cases.

Section 1129(a)(9)(A) provides that claims for taxes entitled to priority under section 507(a)(2) (administrative expenses) are entitled to be paid in "cash equal to the allowed amount of such claim" on the effective date of the plan, unless the holder of the claim agrees to different treatment of its claim (which the Service rarely does). Section 1129(a)(9)(C) provides that unsecured prepetition taxes entitled to priority under section 507(a)(8) also must be paid in cash.

BAPCPA amended section 1129(a)(9)(C) to provide that priority tax claims must be paid in "regular installment payments in cash" plus postconfirmation interest over a period not later than 5 years after the date of the entry of the order for relief. The payment schedule may not be less favorable than the "most favored" nonpriority unsecured claim provided for in the plan, except for section 1122(b)

creditors. (Section 1122(b) permits the creation of a class of small claims for administrative convenience). Section 1129(a)(9)(D) now provides that if a secured tax claim would otherwise have had priority status (as an unsecured claim) under section 507(a)(8), such claim will receive cash payments in the same manner and over the same period as priority claims under subsection (C). BAPCPA also added section 511(a), which provides that the rate of interest on a tax claim shall be the rate determined under applicable nonbankruptcy law (*i.e.*, I.R.C. § 6621). Section 511(b) provides, however, that in the case of taxes paid under a confirmed plan, the rate shall be fixed at the rate determined as of the calendar month in which the plan is confirmed.

Section 1129(a)(11) forbids a court from confirming a plan if it is likely to be followed by a liquidation or the need for further financial reorganization. In other words, the plan must be feasible. (This requirement, however, does not apply to a liquidating Chapter 11 or a case in which further reorganization is provided for in the plan itself. Thus, there can be, and often are, liquidating Chapter 11 plans.) Also note that section 1129(d) provides that a plan may not be confirmed if its principal purpose is the avoidance of taxes. However, the Government bears the burden of proof, and it is difficult to show that tax avoidance is the plan's principal purpose.

G. Cram Down

The requirement of voting to confirm or reject the plan was designed to protect creditors' claims impaired by the plan. A plan cannot be confirmed unless each impaired class has accepted the plan. B.C. § 1129(a)(8). Section 1129(a)(10) contains a seemingly contradictory requirement; it provides that a plan may not be confirmed where more than one class of claims is impaired under the plan, unless at least one class of claims that is impaired has accepted it. The "cram down" rules in 1129(b) explain the contradiction. Section 1129(b)(1) states that, if all requirements of section 1129(a) are met except paragraph (8), the court shall nevertheless confirm the plan if it does not "discriminate unfairly" and is "fair and equitable," with respect to each impaired, dissenting class. Thus, a plan can be "crammed down" the throat of dissenting classes as long as one impaired class has voted to accept the plan. (Many debtors therefore try to artfully create classes so that one will accept the plan.)

The requirement that a plan not "discriminate unfairly" means that a dissenting class must be treated equally with respect to other classes of equal rank. Under the Code, "fair and equitable" means different things for secured and unsecured creditors. For secured creditors, it means that a plan must: (1) provide for the retention of the lien securing the claim and receipt of deferred cash payments of a present value equal to the allowed amount of the secured claim, (2) give the secured creditor the "indubitable equivalent" of the secured claim, or (3) provide for the sale of the collateral free and clear of the lien, with the lien attaching to the

proceeds. B.C. § 1129(b)(2)(A).

Under section 1129(b)(2)(B), a plan may satisfy the fair and equitable standard with respect to unsecured claims (including non-priority tax claims) in two ways. First, the plan may provide for full compensation to the dissenting class, with each creditor in the class receiving or retaining "property" of a present value equal to the allowed amount of the claim. Thus, unsecured creditors need not be paid in cash, but may receive reorganization securities. Second, the plan may provide that claims junior to the interest of the dissenting class will receive no property or payments. This means that prepetition equity holders should receive nothing unless unsecured creditors are paid in full.

H. Designation of Payments

In *United States v. Energy Resources*, 495 U.S. 545, 549-50 (1990), the Supreme Court held that a bankruptcy court has the authority to order the Service to apply plan payments made by a Chapter 11 debtor corporation first to its trust fund tax liability if the court determines that this application is necessary for the success of a reorganization plan. Under *Energy Resources*, debtors have the burden of establishing the necessity, rather than mere appropriateness, of the designation. Following *Energy Resources*, debtors often argue that designation of payments is necessary to retain the services of key personnel, who could be affected by the Service's assertion of the trust fund recovery penalty. In most cases, this argument is nonsensical; an officer of the debtor would actually have less incentive to further the debtor's reorganization once he is no longer liable for the debtor's taxes. Further, the designation of payments is not necessary even if it would provide some incentive because it is the Service's policy not to assess the responsible officer penalty while the debtor is making payments under a confirmed Chapter 11 plan. *See* IRM 1.2.14.1.3, Policy Statement 5-14.

I. Individuals

BAPCPA made several dramatic changes to make Chapter 11 individual cases similar to Chapter 13 cases, often adopting language from relevant Chapter 13 provisions. Under new section 1115, property of the estate includes postpetition property and earnings of the debtor. Section 1129(a)(15)(B) prohibits a court from confirming a plan if the debtor's projected disposable income, as defined in section 1325(b)(2), for a minimum of 5 years, is greater than the value of the property to be distributed under the plan. *See also* B.C. § 1123(a)(8). Under section 1127(e), upon the request of a party in interest, the amount or timing of the payments can be modified any time before completion of plan. Under section 1141(d)(5), there is a presumption that the discharge will not occur on confirmation of the plan when the debtor is an individual; the discharge occurs after completion of payments under the plan. As in Chapter 13, the court may

grant the debtor a hardship discharge after the debtor has made payments which total the amount that would have been paid in a Chapter 7 case, but only if modification of the plan is not practicable.

J. Small Business Cases

The small business provisions of Chapter 11, added in 1994, were designed to make small business cases less costly and allow them to move more quickly toward confirmation. “Small business” was generally defined in section 101(51C) as an entity engaged in business activities whose debts did not exceed $2,000,000. The small business provisions did not apply, however, unless the debtor made an election. Most eligible debtors chose not to elect to use the small business debtor provisions because the exclusivity and plan filing periods were shorter.

BAPCPA made a number of important changes to the small debtor provisions in an effort to prevent abuses of the bankruptcy system in small business cases. First, the small business provisions, and their shorter timeframes regarding the plan, are no longer elective but mandatory for all cases that fall within the definition of “small business debtor.” B.C. § 101(51D). Generally, a small business debtor continues to be defined as one engaged in business activities whose debts are less than $2,343,300, but only in cases where the U.S. Trustee has not appointed a committee of unsecured creditors or the court has determined that the committee is not sufficiently active and representative to provide effective oversight of the debtor.

BAPCPA added section 308 to require debtors in small business cases to file periodic reports on a number of matters, including whether the debtor has timely filed and paid postpetition tax obligations and other administrative claims. B.C. §§ 308(b) and 1116. If not, the debtor is required to explain how and at what cost it will remedy the failure. B.C. § 308(b)(4)(B).

Post-BAPCPA section 362(n) provides that the automatic stay will not apply in certain situations when the debtor is a small business debtor. Section 1116 added a number of additional duties for small business debtors, including the duty to timely file and pay postpetition taxes. Section 1121(e) was amended by BAPCPA to increase the small business debtor’s exclusivity period for filing a plan to 180 days after the order for relief. Note that this is greater than the period for other Chapter 11 debtors, who are only guaranteed a 120-day exclusivity period. But section 1121(e) now also provides that the plan and disclosure statement in small business cases must be filed within 300 days after the order for relief (there is no express time within which plans must be filed in other cases, though the exclusivity period may expire). The 180-day and 300-day periods may only be extended if the debtor can demonstrate: 1) that it is more likely than not that the court will confirm a plan within a reasonable period of time; 2) the

new deadline is set when the extension is granted; and 3) the extension is made before the existing deadline expires. B.C. §§ 1121(e)(3)(A)-(C). Note that failure to timely file or confirm a plan is a basis for conversion or dismissal. B.C. § 1112(b)(4)(J). BAPCPA also requires the court to confirm a plan that complies with the Bankruptcy Code and that is filed in accordance with section 1121(e) no later than 45 days after the plan was filed unless the time for confirmation is extended in accordance with section 1121(e)(3). B.C. § 1129(e).

Section 1125(f) allows the bankruptcy court in small business cases to determine that the plan itself provides adequate information so that a separate disclosure statement is not necessary. It also allows the court to approve a disclosure statement submitted on standard forms. B.C. § 1125(f)(2). (BAPCPA directed the creation of rules and official forms for small business cases.) The court continues to have the discretion to conditionally approve a disclosure statement subject to final approval after notice and hearing so that the acceptances or rejections of the plan may be solicited before the final hearing on the disclosure statement. The court also continues to have the discretion to combine the final hearing on the disclosure statement with the hearing on the plan.

IV. POSTCONFIRMATION MATTERS

A. Effect of Confirmation of the Plan

For non-individuals, the automatic stay generally ends when the plan is confirmed and the property revests in the debtor. A confirmed plan binds creditors whether or not their claims were impaired under the plan and whether or not the creditor accepted the plan. B.C. § 1141(a). Except as otherwise provided in the plan or the confirmation order, the confirmation of a plan vests all property of the estate in the debtor free and clear of all claims and interests of creditors. B.C. § 1141(b) and (c). Thus, it is important to ensure that a plan provides for the retention of the Service's secured status.

Prior to BAPCPA, the only difference between the Chapter 11 case of an individual and that of a corporation was that the exceptions to discharge section 523(a) applied to individuals. As detailed above, BAPCPA made the discharge in the Chapter 11 individual case similar to that in a Chapter 13 case--the property of the estate includes postpetition earnings and the discharge typically comes after the completion of payments. The automatic stay therefore remains in effect after confirmation, until the plan is completed and the debtor gets a discharge.

B. Discharge of a Reorganized Debtor

Unless the plan provides otherwise, a debtor is discharged from all debts that arose before the date of confirmation. B.C. § 1141(d). (Post-confirmation

liabilities should not be covered by the plan.) Thus, all pre-confirmation (not just prepetition) debts must be provided for in the plan. For example, if the plan does not provide for payment of a deficiency for an income tax year ending postpetition, but before the date of confirmation, the liability will be discharged even though it is not paid under the plan. Some action must be taken to assure the plan provides for potential tax claims, except for those arising post-confirmation. Corporate debtors in liquidating cases generally receive no discharge. B.C. § 1141(d)(3).

As explained above, BAPCPA made the discharge in the Chapter 11 individual case similar to that in a Chapter 13 case -- the property of the estate includes postpetition earnings and the discharge typically comes after the completion of payments.

C. Default

The default rate on confirmed Chapter 11 plans is high. In the event of default, the Service's options are not always clear. The IRM directs the Service to try to have provisions included in plans that specify the Service's remedies on default; the IRM also suggests language for a plan that allows the Service to take administrative collection action after giving notice to the debtor. IRM 5.9.8.14.2(3)(l)-(m); IRM 5.9.8.16.3 If the plan contains no such provision, the appropriate action may depend on local practice.

Revocation of a confirmed plan is rarely an alternative. A motion to revoke a confirmed plan must be made within 180 days of the entry of the confirmation order, and the order may only be revoked if it was procured by fraud. B.C. § 1144.

Rather than file a motion to revoke, the local practice in many jurisdictions is to file a motion to convert or dismiss the Chapter 11 case once the debtor has defaulted on a confirmed plan. Material default on a confirmed plan is a basis for conversion or dismissal. B.C. § 1112(b)(4)(N). *See* B.C. §§ 348 and 349 for the effects of conversion or dismissal. Filing a motion to convert, however, may be beneficial only if the bankruptcy estate retained property after confirmation. At least one court has held that because the property of the estate revests in the debtor on confirmation, there would be no property for a Chapter 7 trustee to administer. *See* B.C. § 1141(b). Further, there is no provision that reinstates the automatic stay upon conversion. *See* B.C. § 362(c). Dismissal is also a problematic option; if the dismissal is not for fraud (in procuring the confirmation) and within six months of confirmation, the discharge is not revoked. If filing a motion for conversion or dismissal is the practice in your area, you may try to have the bankruptcy court's order address these problems by specifying that the debtor's property is in the estate and that the not-so-automatic stay is reinstated.

Administrative collection of the plan debt as a tax debt is the simplest and easiest method for the Service to collect upon default. The tax debt is payable in the amount provided for in the confirmed plan. There is not extensive case law concerning a creditor's rights and remedies postconfirmation. It is the Service's position that the Service is entitled to collect the entire amount payable under the terms of the plan, and not just the defaulted amount. However, language specifying the Service's rights on default would eliminate any doubt.