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Chapter 13 of the Bankruptcy Act, and Its Application to Wage-Earners

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rules, together with a request for designation of place of hearing if no such request was filed by the taxpayer or if the respondent is not in agreement with the place which the taxpayer designated.

Upon the filing of the answer, issue is joined before the board and the case is ready for hearing, except in cases involving fraud or transferee liability or where an increased deficiency or other affirmative matter is pleaded by the respondent. In such cases, the petitioner has forty-five days within which to file a reply to the answer, and issue is not joined until such reply is filed. If there is any dispute between the petitioner and respondent as to where the hearing should be held, this matter is passed upon by the board, with or without hearing, and the parties are notified where the hearing will be held. After issue is joined, the case will in due course be set for hearing at the place designated at a time determined by the board, which gives adequate notice thereof.

After all pleadings have been filed, the case is assigned to a technical advisor or assistant technical advisor in the staff, as well as to the attorney who prepared the answer, if the case was not considered by the staff prior to the issuance of the deficiency notice or where such consideration was given and the taxpayer requests a further conference to discuss settlement possibilities. The staff then follows the same procedure with respect to the holding of conferences in docketed cases as in pre-ninety-day cases with the exception that if a basis of settlement is arrived at, the settlement must be approved, not only by the head of the staff division but also by division counsel, and the settlement takes the form of a stipulation which is filed with the board. When such a stipulation is filed, the board as a matter of course enters an order or decision based on the stipulation, following which the deficiency agreed upon is assessed and collected in due course or the overpayment, if any, is scheduled for allowance.

(To be concluded in April Issue.)

Chapter 13 of the Bankruptcy Act, and Its Application to Wage-Earners

By HON. FRANK McLAUGHLIN*

For some time I have been impressed with the necessity to revise the handling of wage-earner bankruptcies. Wage earners may be divided into about three classes. First, those who are unmarried and who earn more than \$75 a month; second, those who have families and earn more than \$100 a month; third, those of the first and second classes who earn less than \$75 if single, and less than \$100 if married.

As a part of the Chandler Act, effective August 22, 1938, Chapter XIII was added as new legislation. You will recall that Section 12 and

*Referee in Bankruptcy.

Section 74 were preceding Acts. The first one could not be applied to wage earners, as it contemplated a cash settlement with creditors who accepted a composition. Section 74 likewise was inadequate to meet elastic conditions of employment and income. Chapter XIII has such application to wage-earners and permits wage-earners to file an application for composition with their creditors whether or not they have filed a bankruptcy and/or have been adjudicated. The mechanical procedure under this chapter is very simple. Let us illustrate.

Suppose A is a bankrupt earning \$125 a month and has a family. In the absence of unusual conditions with careful management he can live on \$100 a month. He owes in all say \$500. He files his petition under Chapter XIII offering to pay, through the bankruptcy court, \$25 a month to satisfy his creditors in full. This will take him approximately two years. He makes this offer in writing with his petition. A meeting is called, creditors are asked to vote on its acceptance, and, if accepted, the transaction is complete with the wage-earner having the necessity to comply with his offer. A lesser sum may be offered to creditors under this chapter, and whatever sum is offered and accepted by the vote of a majority of his creditors becomes binding on all his creditors. During the process of settlement a wage-earner has the full protection of the court against the suits or the efforts to collect the debts scheduled.

The advantages of this chapter to wage-earners who earn only enough to support themselves and/or their families is not apparent, as such persons must necessarily be adjudicated bankrupts and be discharged from any obligation to pay the creditors. The advantage to those who earn sufficient money to ultimately pay their creditors in whole or in part is that they thereafter enjoy the confidence of the mercantile people and have the self-satisfaction of having paid their debts out of their own earnings without the stigma of the bankruptcy proceeding. The advantage to the merchant and/or the other creditors is that they collect money that otherwise would never be paid if the wage earner had not adopted the provisions of Chapter XIII.

The application of Chapter XIII in Colorado is very limited so far, but with the advent of governmental projects employing large numbers of wage-earners, it might become highly important to trades people. In other sections of the country Chapter XIII is popular and has worked with success. At Birmingham, Alabama, since the Chandler Act, there have been filed at Birmingham, under Chapter XIII, 3411 wage-earner cases. Of these, 1,007 cases have been closed up to August, 1940, and creditors from these 1,007 cases have been paid \$211,073.03, something over \$200 in each case. This 1,007 represents approximately 30% of the total cases filed. During the same period of time, 1,222 cases have been dismissed for failure to comply with the provisions of the composition offer. This is about 35% of the total cases filed; but before these

cases were dismissed these wage-earners had paid in \$133,280, or more than \$100 a case, so that we may say that 2,229 out of 3,411 have been successfully handled to the profit of the creditors. About 250 cases have failed to be confirmed because the wage-earner was not able to secure the vote of the required number of creditors to accept his plan. This was only 7% of the total cases filed.

Compositions under Chapter XIII necessarily will be favored by unsecured creditors, who have everything to gain and nothing to lose.

The expense of operating the plan in Birmingham has averaged \$8 a case and it is expected that this will be ultimately reduced to \$5 a case where the volume of filings increase. A few other bankruptcy districts have been handling some cases under this chapter, particularly in Chicago.

The lawyers who practice in bankruptcy courts are the ones who control the filings of bankruptcies for wage-earners, and I am sure that they could secure the cooperation of both the bankrupts and the general creditors of bankrupts, because the benefits are so obviously in favor of both.

Most wage-earner bankruptcies are initiated because wage-earners are sued and their wages are attached, and most employers of labor do not care to have the trouble of defending their employees against such suits; hence, the alternative is either bankruptcy or dismissal.

Suing a wage-earner is a short-sighted policy, as the suit usually results in bankruptcy and a loss to the creditor, but the practice is very common.

I shall be very glad indeed to aid in any way I can to bring about an adjustment for wage-earners and creditors not now present in ordinary bankruptcy proceedings.

The First Judicial District Bar Association held a meeting at the Lakewood Country Club on February 11, 1941, at which approximately 45 members were in attendance.

James W. Kelley of Denver was the principal speaker of the evening, and the meeting was presided over by Judge Homer Preston of Arvada and George Lerg acted as toastmaster. Entertainment was furnished by Bryan Whitehead and David Oyler.

Another meeting of the Association is planned to be held in April at Brighton.

The Boulder County Bar Association held its annual banquet in Louisville on February 17, with Edward Affolter and David Griffith acting as hosts. After feasting on spaghetti and ravioli, the members heard a delightful after-dinner talk by Mortimer Stone of Fort Collins.

—HARLAN HOWLETT, *Correspondent*.