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The IRS Can Offset Post-petition Tax Overpayments
Against Pre-petition Tax Liabilities

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The IRS Can Offset Post-petition Tax Overpayments Against Pre-petition Tax Liabilities

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Introduction

In bankruptcy cases, creditors have the powerful right of "setoff," i.e., the right to "net" or cancel payments.[1] The right to set off usually arises in cases of mutual debt obligations where a debtor owes a debt to a creditor who in turn owes a unilateral debt back to the same debtor.[2] The rationale for the right to setoff it obvious, as it allows the parties to apply their mutual debt obligations against each other, "thereby avoiding the absurdity of making A pay B when B owes A."[3] In other words, the court will reduce the two competing judgments into a single judgment to arrive at a balance due or net figure.[4] Additionally, the right to setoff preserves creditor value by insulating the creditor from being forced to pay its debtor while it waits to recover a pro rata share of the debtor's debt via the debtor's plan.

The Bankruptcy Code does not create an explicit right of setoff; rather, section 553 of the Bankruptcy Code preserves, with certain exceptions, whatever right of setoff that exists outside

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[1] David A. Murdoch, Jamie A. Bishop, Michael J. Crossey, & Michael J. Poss, *Bankruptcy: Getting to Know Your Two Best Friends: The Rights of Setoff and Recoupment,* K&LNG ALERT (December 2005) http://www.klgates.com/files/Publication/56da8ca6-ba6a-4973-8fa4-3b2d8aaf05a5/Presentation/PublicationAttachment/77554d2e-5845-481f-9f1c-4f3a7f161e4d/ba1205.pdf

[2] *Id.*

[3] *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 19 (1995) (citing *Studley v. Boylston Nat'l Bank*, 229 U.S. 523,528 (1913)).

[4] *See In re* Hancock, 137 B.R. 835, 845 (Bankr. N.D. Okla. 1992).

of bankruptcy. Generally, once a debtor files for bankruptcy, the creditor may only seek to setoff the debt after being granted relief from the automatic stay; any attempt to setoff without first obtaining relief from the automatic stay will be void. Once the bankruptcy court grants relief from the automatic stay, the creditor may assert its right to setoff, so long as section 553 of the Bankruptcy Code is satisfied.[5]

Regarding the use of setoff for tax purposes, section 6402(a) of the Internal Revenue Code provides that the Internal Revenue Service ("IRS"), "may credit the amount of [any] overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall…refund any balance to such person."[6] Regardless of whether the refund has been ordered by a court or the IRS, section 6402(a) of the Internal Revenue Code allows the IRS to offset the refund by other tax liabilities owed by the taxpayer.[7] Moreover, it is important to note that the IRS may offset the refund by tax liabilities incurred by the taxpayer in any year. In other words, the IRS may offset (1) *pre-petition tax overpayments* against pre-petition tax liabilities, as well as (2) *post-petition tax overpayments* against pre-petition tax liabilities.[8]

This Article will focus primarily on the current split among courts regarding the government's application of a debtor's post-petition tax overpayments against a debtor's pre-petition tax liability. Part I of this Article will outline the basic procedure and substance framework of section 553 of the Bankruptcy Code and its relationship with section 6402 of the Internal Revenue Code, the so-called "federal-intercept statute." Part II will discuss the split

[5] *See generally In re* Hancock, 137 B.R. 835, 845 (Bankr. N.D. Okla. 1992) (explaining that (1) section 553 does not define a setoff, but that the right is established by state courts, and (2) the right to setoff will be applied only when the three additional requirements of the Bankruptcy Code are satisfied).
[6] 26 U.S.C. § 6402.
[7] *Id*.
[8] *Id*.

among the courts regarding whether the IRS may offset pre-petition tax overpayments against pre-petition tax liabilities. Part III will discuss whether the IRS may offset post-petition tax overpayments against pre-petition tax liabilities. Part IV will discuss implications of the most recent decision in *In re Pugh*.[9] Part V will conclude on the overall issues raised in this article.

I. A CREDITOR'S RIGHT TO SETOFF UNDER SECTION 553 OF THE BANKRUPTCY CODE.

There are few tools available to creditors as powerful as section 553's right to setoff. Accordingly, section 553 includes a variety of procedural and substantive requirements for which creditors must strictly comply. In order for a creditor to exercise a valid right of setoff under section 553, the creditor must prove: (1) a pre-petition debt owed to the creditor from the debtor; (2) a creditor's pre-petition claim against the debtor; and (3) that the debt and the claim are mutual obligations, i.e., between the same parties in the same capacity.[10]

Section 553 does not itself create a right of setoff. Consistent with the *Butner* principle,[11] section 553 only recognizes and preserves "whatever setoff rights a party may have possessed outside of bankruptcy before the petition was filed" and then only to the extent that the procedural requirements of section 553 are satisfied.[12] Procedurally, the IRS must establish that (1) it has the right to setoff under bankruptcy law; and (2) this right should be served preserved in bankruptcy under § 553.[13] If the automatic stay has been applied, the IRS generally cannot use its right of setoff without first obtaining relief from the stay. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), however, has altered the automatic stay provisions to allow the IRS to offset pre-petition tax liabilities against pre-petition

[9] *See In re* Pugh, 510 B.R. 862 (Bankr. E.D. Wis. 2014).
[10] 11 U.S.C. § 553.
[11] *Butner v. United States*, 440 U.S. 48, 49, 99 S. Ct. 914, 915, 59 L. Ed. 2d 136 (U.S. 1979).
[12] Collier on Bankruptcy ¶ 553.01 [2] (16th ed. 2014); *see also Miller v. United States,* 422 B.R. 168, 170–71 (W.D.Wis.2010); *see also In re* Pugh, 510 B.R. 862, 868 (Bankr. E.D. Wis. 2014).
[13] *In re* HAL Inc., 196 B.R. 159 (B.A.P. 9th Cir. 1996).

tax overpayments without first obtaining relief from the automatic stay.[14]

Yet, this exception does not apply where the liability arose pre-petition and most (or all) of the overpayment arose post-petition, as the offsetting debts may not be considered "mutual" as section 533 of the Bankruptcy Code defines the term. The minority of courts, however, have circumvented section 553 and have allowed the IRS to offset pre-petition tax overpayments against post-petition tax liabilities. The majority of courts remain consistent in their literal reading of section 553 of the Bankruptcy Code and their enforcement of strict section 553-compliance.

II. THE IRS' ABILITY TO OFFSET PRE-PETITION TAX LIABILITY AGAINST PRE-PETITION TAX OVERPAYMENT.

Courts are split as to whether the IRS may offset pre-petition tax liabilities against pre-petition tax overpayments. The cases below are split according to pre- and post-BAPCPA methodology.

A. **Pre-BAPCPA authority indicates that there was a split among the courts regarding the role of the automatic stay and the IRS' ability to offset pre-petition tax liability against pre-petition tax overpayments.**

Before the adoption of the BAPCPA, the courts were split as to whether the IRS was permitted to offset pre-petition tax liabilities against pre-petition tax overpayments without first obtaining relief from the Bankruptcy Code's automatic stay provision, i.e., section 362(b). The minority of courts generally allowed the IRS to offset the pre-petition liabilities against the pre-petition overpayments, while the majority of courts did not.

[14] 11 U.S.C. § 362(b)(26). *See also In re* Pugh, 510 B.R. 862 (Bankr. E.D. Wis. 2014).

1. *Minority Rule: The IRS may offset pre-petition tax liability against pre-petition tax overpayment without first obtaining relief from the stay.*

A minority of courts have adopted the holding in *In re Luongo*,[15] whereby the Fifth Circuit held that the IRS was permitted to offset the debtor's pre-petition tax liability against the pre-petition tax overpayment.[16] In that case, the debtor filed for bankruptcy under chapter 7 of the Bankruptcy Code.[17] At the time of the filing, the debtor owed the IRS $3,800 in unpaid taxes from the 1993 tax year.[18] On August 15, 1998, the debtor filed her 1997 income tax return, which showed a $1,395.94 overpayment.[19] Accordingly, the bankruptcy court entered an order discharging the debtors 1993 tax liability.[20] The IRS then executed its right to setoff and applied debtor's 1997 tax overpayment against her 1993 tax liability.[21] The Debtor then appealed.[22]

The IRS easily satisfied the second and third prong of section 553 of the Bankruptcy Code because the debtor owed the IRS $3,8000 before she filed her petition, and the debts satisfied the mutuality requirement.[23] At issue was section 553's first prong, which required that the debt owed by the IRS' to the debtor arise prior the commencement of the bankruptcy case.[24] Unfortunately, the court found that the IRS' debt to the debtor "arose" when it accrued, not when the debtor filed the return.[25] Therefore, the date the debtor actually filed her return was not

[15] *In re* Luongo, 259 F.3d 323, 336 (5th Cir. 2001).
[16] *Id. see also In re* Pigott, 330 B.R. 797, 800 (Bankr.S.D.Ala.2005); *In re* Baucom, 339 B.R. 504, 506–07 (Bankr.W.D.Mo.2006); *Gordon v. United States* (*In re* Sissine), 432 B.R. 870, 883 (Bankr.N.D.Ga.2010); *Lyle v. Santa Clara County Dep't of Child Support Services* (*In re Lyle*), 324 B.R. 128, 131 (Bankr.N.D.Cal.2005); *Beaucage v. IRS,* 342 B.R. 408, 411 (C.D.Mass.2006); *Jones v. IRS* (*In re* Jones), 359 B.R. 837, 841 (Bankr.M.D.Ga.2006).
[17] *Id*. at 332.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] *Id*. at 333.
[22] *Id*.
[23] *Id*. at 334.
[24] *Id*.
[25] *Id*. *see also In re* Eggemeyer, 75 B.R. 20, 22 (Bankr.S.D.Ill.1987) (holding that the date the return is actually filed is not relevant in determining when the debt arose).

relevant in determining the date the debt "arose."[26] In other words, " '[a] tax claim is incurred on the date it accrues rather than the date it is assessed or becomes payable.' "[27] Thus, because the debtor's bankruptcy petition was filed on May 19, 1998, the overpayment "arose" prior to the commencement of the case and therefore satisfied the first prong of section 553 of the Bankruptcy Code.[28]

2. *Majority Rule: The IRS must move for relief from the automatic stay in order to validly setoff pre-petition tax liabilities against pre-petition tax overpayments.*

Before the BAPCPA was adopted, the majority of courts held that the IRS must first seek relief from the automatic stay under section 362 of the Bankruptcy Code before offsetting the debtor's tax refund.[29] For example, in *In re Stienes*,[30] the Debtors filed for bankruptcy under chapter 13 of the Bankruptcy Code on March 27, 2002.[31] On March 7, 2002, the IRS filed a secured proof of claim for unpaid income taxes for the years of 1995, 1996, and 1997, which was secured in part by a right of set-off of the debtor's 2001 income tax refund.[32] The IRS then placed an administrative freeze on the 2001 tax refund.[33] The Debtors moved to release the 2001 tax refunds, claiming that it was subject to the protection of the automatic stay.[34] The IRS, however, cross-moved for relief from the automatic stay to setoff the debtor's pre-petition tax liabilities against the 2001 tax refund.[35]

In granting the IRS' motion to lift the automatic stay, the *Stienes* court held that "[t]he right to setoff is not absolute, but is limited by the provisions of the automatic stay under 11

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[26] *In re* Luongo, 259 F.3d at 334.
[27] *Id*. (citing *Matter of Midland Indus. Service Corp.,* 35 F.3d 164, 167 (5th Cir.1994).
[28] *Id*.
[29] *In re* Stienes, 285 B.R. 360, 362 (Bankr. D.N.J. 2002). *See also In re Pleasant,* 320 B.R. 889 (Bankr.N.D.Ill.2004) (granting relief from the automatic stay so the government's setoff of a tax refund was proper).
[30] *In re* Stienes, 285 B.R. 360 at 361.
[31] *See id*.
[32] *See id*.
[33] *See id*.
[34] *See id*.
[35] *See id*.

U.S.C. § 362."[36] The court further reasoned that in order to exercise a valid right of setoff, the IRS must first move for relief.[37] Because the IRS properly moved for relief, the IRS' claim was secured to the amount subject to the setoff.[38]

B. **Post-BAPCPA authority indicates that there still exists a split among the courts regarding the IRS' ability to offset pre-petition tax liabilities against pre-petition tax overpayments.**

The BAPCPA significantly changed the procedural, and arguably substantive, rights by which the IRS may offset a debtor's pre-petition tax liabilities against pre-petition tax overpayments. In particular, BAPCPA's creation of section 362(b)(26) of the Bankruptcy Code enumerates the IRS' ability to offset pre-petition liabilities against pre-petition tax overpayments without first obtaining relief from the automatic stay. However, even in light of section 362(b)(26)'s effective elimination of the IRS' duty to lift the stay, a number of the courts have found the IRS' application of the debtor's tax overpayment against the debtor's pre-petition tax liabilities, without first obtaining relief from the automatic stay, to be a direct violation of the automatic stay provisions outlined within section 362(a) of the Bankruptcy Code.

1. *BAPCPA's creation of section 362(b)(26) allows the IRS to offset a debtor's pre-petition tax liability against pre-petition tax overpayment without first lifting the automatic stay.*

The BAPCPA eliminated the requirement that the IRS must ask the court for a lift of stay to apply pre-petition tax refunds to pre-petition tax liabilities. Pursuant to section 362(b)(26), the filing of a petition under the Bankruptcy Code does not operate as a stay, as it creates an exception for governmental units seeking to offset an income tax refund while the automatic stay

[36] *See id. See also In re* Patterson, 967 F.2d 505, 509 (11th Cir.1992).
[37] *See In re* Stienes, 285 B.R. 360 at 361.
[38] *See id.*

is in place.[39] In effect, section 362(b)(26) creates an exception to section 362(a)(7)'s blanket restriction against setoffs without prior court approval.[40] Accordingly, under section 362(b)(26), the IRS does not have to seek court approval before offsetting pre-petition tax refunds against pre-petition tax liabilities.[41]

2. *Notwithstanding section 362(b)(26) of the Bankruptcy Code, some courts have held that offsetting pre-petition tax liabilities against pre-petition tax overpayments without first obtaining a lift from the stay violates the automatic stay.*

Many courts have held that the government's application of overpaid funds against pre-petition debt without first obtaining relief from the automatic stay is a direct violation of section 362(a) of the Bankruptcy Code. In *In re Sexton*,[42] for example, the debtor filed for chapter 7 bankruptcy on February 13, 2013.[43] On March 6, 2013, the Secretary of Treasury informed the debtor that it was withholding her 2012 tax refund in order to apply it to a pre-petition tax liability pursuant to 26 U.S.C. § 6402(d).[44] The debtor filed a motion to challenge the government's application of her tax refund to her pre-petition debt.[45]

The *Sexton* court found that the government's offset of the debtor's pre-petition debt against the debtor's pre-petition tax liability was a violation of the automatic stay.[46] The court's reasoning ultimately lay in the chronology of events that arose before and after the commencement of the bankruptcy case. The court reasoned that because the debtor filed her

[39] 11 U.S.C. § 362(b) (stating that "under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief").
[40] *In re* Maines, at *2 (Bankr. D.N.J. Oct. 8, 2010)
[41] *See id. See also In re* Gould, 603 F.3d 1100 (9th Cir.2010) ("for cases filed after October 17, 2005, 11 U.S.C. § 362(b)(26) permits the IRS to set off a pre-petition income tax overpayment against a pre-petition income tax liability without seeking relief from the automatic stay"); *see also In re* Ewing, 400 B.R. 913, 916 (Bankr.N.D.Ga.2008) (section 362(b)(26)"carve[s] out a special exception for an income tax refund setoff by a governmental unit").
[42] *In re* Sexton, 508 B.R. 646, 650 (Bankr. W.D. Va. 2014).
[43] *Id*.
[44] *Id*.
[45] *Id*.
[46] *Id*. at 662.

chapter 7 petition on February 13, 2013 and because the debtor's right to recover her tax overpayment for the 2012 tax year arose at midnight on December 31, 2012, all of the debtor's eligible property, including her interest in the tax overpayment, was to be considered property of the estate.[47] Thus, the tax overpayment vested in her bankruptcy estate and was instantly protected by the automatic stay.[48] Accordingly, the court found the government's application of the debtor's tax overpayment against the debtor's pre-petition tax liabilities, without first obtaining relief from the automatic stay, to be a direct violation of the automatic stay provisions outlined within § 362(a).[49]

III. IRS' ABILITY TO OFFSET PRE-PETITION TAX LIABILITY AGAINST POST-PETITION TAX OVERPAYMENT IN THE POST-BAPCPA SETTING.

Similar to the issue concerning the IRS' ability to offset pre-petition tax liability against pre-petition tax overpayment, there exists a split among the courts regarding the IRS' ability to offset pre-petition tax liabilities against *post-petition* tax overpayments. The majority of the courts have held that offsetting a debtor's pre-petition tax liabilities against post-petition tax overpayments without first obtaining relief from the automatic stay is a violation of section 362(b)(26) of the Bankruptcy Code. On the contrary, the minority of courts, evidenced by a recent decision in *In re Pugh*,[50] have permitted the IRS to setoff pre-petition tax liabilities against post-petition tax overpayments.

[47] *Id*.
[48] *Id*.
[49] *Id*.
[50] *In re* Pugh, 510 B.R. at 868.

A. **Majority Rule: The IRS must seek relief from the automatic stay before offsetting the debtor's pre-petition tax liabilities against the post-petition tax overpayments.**

The majority of courts hold that the IRS is allowed to offset without first lifting the automatic stay.[51] Therefore, section 362(b)(26)'s exception to section 367(a)(7) does not apply when the IRS attempts to offset a pre-petition tax liability against a post-petition tax overpayment. Instead, section 362(a)(7) is fully applicable only during the IRS' attempts to offset pre-petition tax liability against post-petition tax overpayment.[52] Accordingly, the IRS must first seek relief from the automatic stay under section 362(d) of the Bankruptcy Code before it asserts its setoff right.[53]

B. **Minority Rule: The IRS may offset pre-petition tax liability against post-petition tax overpayment, without first obtaining relief from the automatic stay.**

In *In re Pugh*,[54] the Bankruptcy Court for the Eastern District of Wisconsin modified the automatic stay to allow the IRS to offset the debtor's post-petition claim for tax overpayment against the debtor's pre-petition tax liability due to the IRS.[55] In *Pugh,* the chapter 13 debtor confirmed her plan, which provided that she would be able to keep any federal or state tax refunds received during the term of the plan.[56] Sometime after the debtor had filed, the IRS audited her pre-petition tax returns and discovered a tax liability for 2011.[57] The debtor then filed a proof of claim on behalf of the IRS for the tax liability for 2011, and then IRS

[51] *See In re* Mirabilis Ventures, Inc., No. 6:08-BK-04327-KSJ, 2011 WL 1167880, at *11 (Bankr. M.D. Fla. Mar. 28, 2011) (reasoning that, although the IRS had a right to offset the tax refund, it first had to petition for relief from the automatic stay). *See also In re Vargas,* 342 B.R. 762 (Bankr.N.D.Ohio 2006); *In re* Lybrand*,* 338 B.R. 402 (Bankr.W.D.Ark.2006); *In re Pleasant,* 320 B.R. 889 (Bankr.N.D.Ill.2004); *Newberry v. USDA* (*In re Newberry*), 12–40455, 2013 WL 618746 (Bankr.S.D.Ill. Feb. 19, 2013); *IRS v. Martinez,* No. 07–CV–0687, 2008 WL 408402, at * 1 n. 2 (M.D.Penn. Feb. 12, 2008).
[52] *In re Vargas,* 342 B.R. 762.
[53] *See id*.
[54] *In re* Pugh, 510 B.R. at 868.
[55] *Id*.
[56] *Id*. at 862.
[57] *Id*.

subsequently filed an amended proof of claim.[58] In early 2014, the debtor filed her 2013 federal income tax return, claiming a refund based on an overpayment.[59]

Ultimately, the court granted the IRS' order modifying the automatic stay, thereby allowing the IRS to offset the debtor's post-petition tax overpayment for 2013 against the debtor's pre-petition 2011 tax liability.[60] The court accepted the IRS' circumvention of section 553's mutuality requirement by holding that the IRS was not obliged to the debtor pursuant to section 6402 of the Internal Revenue Code because, notwithstanding the issue raised in *Sexton* of whether the post-petition tax overpayment is considered "property of the estate," the debtor is not entitled to a refund because there is no net amount after offset. Accordingly, "because the IRS properly offset the overpayment, and the refund was merely contingent upon the application of the IRS offset procedures, the debtor had no interest in the property remaining in her estate to exempt."[61]

Although the minority of courts permit the IRS to offset pre-petition tax liability against post-petition tax overpayment without first obtaining relief from the automatic stay, it should be noted that this method is becoming the common trend.

IV. IMPLICATIONS FOR THE FUTURE DEBTOR

The split over whether a debtor who overpaid his post-petition taxes for a given year will be entitled to a tax refund, if the debtor has a pre-petition tax liability, will likely be of significant importance for an individual debtor seeking to retain the refund. First, future debtors must be aware that the IRS has a greater right to setoff, as they are permitted to setoff pre-petition tax liabilities against pre-petition overpayments, as well as pre-petition liabilities against post-

[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *In re* Luongo, 259 F.3d 335.

petition tax overpayments. General creditors, however, cannot do both, as their right to setoff is limited generally to competing pre-petition claims and competing post-petition claims.[62] Such deference to the IRS is so strong that a minority of courts will even allow the IRS to offset pre-petition tax liabilities with post-petition tax overpayments *and* pre-petition tax liabilities against post-petition tax overpayments, without first obtaining relief from the automatic stay.

Second, while debtors with pre-petition tax liabilities residing in the minority of jurisdictions will be subject to offset by the IRS if they would otherwise be entitled to a post-petition refund, debtors residing within majority of jurisdictions should be somewhat relieved that the IRS will most likely not be able to offset their unpaid tax debt against any tax overpayment. The *Pugh* decision, however, should not overly concern future debtors because the ultimate outcome, while arguably inconvenient, was largely harmless to the debtor and probably was in her best interest. In particular, the debtor in *Pugh* was upset that she would not be able to keep her return to spend how she liked while simultaneously paying the IRS its claim over the life of the plan. However, using the overpayment to pay the tax liability, which was a non-dischargeable, priority claim, ultimately makes more sense given the fact that the IRS' claim was not going to be satisfied until fully paid. Accordingly, if the debt is non-dischargeable (as it was in *Pugh*), the debt will therefore never be satisfied until paid, so the debtor may as well use the overpayment to directly pay down the liability.

Third, given the high failure rate of individual chapter 11 and chapter 13 plans, debtors must be aware that they will be in a worse position outside of bankruptcy.[63] For example, if the

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[62] 11 U.S.C. § 553.

[63] *See, e.g.,* Susan Ladika, *Chapter 13 Bankruptcy: How it Works*, Fox Business (May 09, 2013, 10:04 AM), http://www.foxbusiness.com/personal-finance/2013/04/19/chapter-13-bankruptcy-how-it-works/ (stating that U.S. Bankruptcy Court data shows 240,000 Chapter 13 cases were closed in 2011, with just 22% completed). *See also,* Anne Lawton, Commentary, *Chapter 11 Triage: Diagnosing a Debtor's Prospect for Success*, 54 Ariz. L. Rev. 985, 1005 (2012) (indicating that more than 70% of Chapter 11 cases are not successful and 13% of confirmed-plan cases

debtor in *Pugh* ultimately failed to complete her plan, she would at least owe less in back taxes, given the IRS' automatic offset of the pre-petition tax liability against the post-petition tax over-payment. What the debtor in *Pugh* did not realize was that if she did not use her post-petition overpayment to offset the pre-petition liability, and her bankruptcy plan failed, she would still owe the taxes after the failed bankruptcy plan. Thus, by using a post-petition tax overpayment to offset (whether voluntarily or involuntarily) a pre-petition tax liability, a chapter 11 or chapter 13 debtor can improve her ultimate financial position by immediately decreasing or eliminating his tax liability, which would not otherwise be discharged if his case is dismissed or converted to chapter 7.

V. CONCLUSION

Overall, the issues surrounding the IRS' power to offset (1) pre-petition tax liabilities against pre-petition tax overpayments or (2) pre-petition tax liabilities against post-petition tax overpayments are complex. The decisions handed down across the country have split the issues into a variety of camps, with many different rationales supporting the IRS' ability (or inability) to offset without first obtaining relief from the automatic stay. The majority focused their holdings on the traditional reading of section 362 of the Code, thereby reinforcing the notion that all creditors, including the IRS, must first seek relief from the automatic stay before offsetting any pre-petition tax liabilities with pre- or post-petition tax overpayments. On the contrary, the minority courts have embraced the methodology codified in the BAPCPA, whereby relief is not required.

fail; in 36 of the 269 studied cases with confirmed plans, the court either dismissed or converted the case, or the debtor re- filed for bankruptcy post-confirmation).