

KEY POINTS FOR *AD VALOREM* TAXES IN CHAPTER 13

By Sherrel K. Knighton
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Frwy, Suite 1000
Dallas, TX 75207
(214) 880-0089 Telephone
(469) 221-5003 Facsimile
Sherrel.Knighton@lgbs.com
Camille.Stecker@lgbs.com

***Ad Valorem* taxes are:**

- Secured by a first priority lien that attaches to the property on January 1 of each year [TEX. TAX CODE §§ 32.01 AND 32.05]; also, property owner incurs personally liable on January 1 of each year [TEX. TAX CODE §32.07]. Year-of-filing taxes are a pre-petition debt.
- Entitled to post-petition interest [BANKR. CODE § 506(B)] and post-confirmation interest [BANKR. CODE § 1325(A)(5)(B)(II)] at the state statutory rate of 12% [BANKR. CODE § 511 and TEX. TAX CODE § 33.01(C)]

Schedules should:

- Include current-year taxes, even if not yet billed, on Schedule D with correct collateral value
- List the taxing entities that collect the taxes, i.e. the entities that receive the money. List the CAD only if it collects the taxes (e.g. Rockwall CAD and Parker CAD). Do not list the tax assessor or the taxing entity's law firm as the creditor. Tax offices have public websites that provide account information
- If taxes are not escrowed, budget for post-petition taxes in Schedule J

Plans should provide the proper:

- Treatment as a secured claim [section referenced are to NDTX plans]:
 - Delinquent taxes through trustee payments [Section E.(1)A or B (not in E.(2).)]
 - Current-year taxes paid directly, if paying outside of plan or escrowed [Section G]
 - Surrender the collateral [Section F]
 - [NOTE: surrender does not transfer title to the property]
- Interest rate – 12% [BANKR. CODE § 511 and TEX. TAX CODE § 33.01] (tax deferral interest rate is 5%)
- Collateral Value (if in plan) – full value of the property due to first priority lien

Ways to reduce future tax liability:

- Make sure the debtor has the appropriate exemptions – homestead, over-65, and/or disability
- Make sure the debtor pays post-petition taxes timely to prevent the accrual of penalties and interest
 - Homestead payment agreement – minimum 12 months [TEX. TAX CODE § 33.02]
 - Inclusion in Chapter 13 plan – only with consent of the taxing authorities [BANKR. CODE § 13.05(A)(1)(A)]