



Session Date: Saturday, May 20, 2023

Session Time: 1:30pm – 2:30pm

Session Name: Play Your Cards Right: Tax Traps for the Unwary, Before, During and After Bankruptcy

Total Minutes: 60

Total Credit Hours: 1



**Play Your Cards Right:
Tax Traps for the Unwary, Before, During
and After Bankruptcy**



Speakers

- Honorable Robert N. Kwan, United States Bankruptcy Court, Central District of California (Los Angeles Division)
- Donny P. Le, Esq. Deputy Attorney General, State of California Department of Justice (CADOJ)
- Jolene Tanner, Assistant United States Attorney, Central District of California, U.S. Department of Justice (USDOJ)
- Steven L. Walker, Tax Attorney, walk-law.com

Agenda

- Getting Information and Who To Talk To
- Resolving The Case Early
- Unfiled Returns
- Post Discharge Enforcement of Liens

BRIEF OVERVIEW

Types of Tax Liabilities

Federal or State Taxing Authority	Type of Tax
Internal Revenue Service (IRS)	<ul style="list-style-type: none">• Federal Income Taxes• Federal Employment (or Payroll) Taxes, including 26 U.S.C. § 6672 Trust Fund Recovery Penalty
California Franchise Tax Board (FTB)	<ul style="list-style-type: none">• State Income Taxes
California Employment Development Department (EDD)	<ul style="list-style-type: none">• State Employment Taxes, including Responsible Person Liability for Payroll Taxes under Cal. Unemp. Ins. Code § 1735
California Department of Tax and Fee Administration (CDTFA)	<ul style="list-style-type: none">• Sales Taxes, including Responsible Person Liability under Cal. Rev. & Tax. Code § 6829

Basic Options

1. Installment Agreement (Payment Plan)
2. Offer in Compromise (OIC)
3. Currently Not Collectible (CRC) Status (IRS Only - Temporary Status)
4. Audit Reconsideration (IRS Publication 3598)
5. Innocent Spouse Relief
6. Bankruptcy

*Options Nos. 1 to 4 are outside of bankruptcy

Reducing the Balance Due Outside of Bankruptcy

- **Audit Reconsideration**
 - Second bite at the apple
 - IRS Publication 3598
 - Work with accountant and submit paperwork
- **Offer in Compromise (OIC)**
 - Generally requires full compliance (i.e., filing of missing returns).
 - Works Well = Doubt as to collectability (“I owe the money, but lack the means to pay”).
 - Doesn’t Work = Doubt as to liability (“I don’t owe it”).
- **Currently Not Collectible**
 - Internal Revenue Manual 5.16.1

Why File Bankruptcy re: Taxes?

- Discharge tax debts or contest the nondischargeability of tax debts
- Reduce the tax debts inside of bankruptcy through an adversary proceeding or contested matter (objection to claim, 11 U.S.C. § 505 motion or adversary proceeding to determine tax liability)
- Establish a payment plan in a Chapter 13 or Chapter 11 (including Subchapter V)
- Determine the secured status of tax liens (i.e., FRBP 3012 motion to value a secured claim or FRBP 7001 adversary proceeding)

Discharging Taxes Quick Reference Guide

Type	Description
8 th Priority Taxes Under 11 U.S.C. § 507(a)(8)	<ul style="list-style-type: none">• Prepetition priority income taxes or gross receipt taxes (including sales taxes)• Property taxes• Trust fund / withholding taxes• Employment taxes• Excise taxes• Customs duties• Penalty related to a tax claim and in compensation for actual pecuniary loss• Responsible person liability for taxes (personal liability for entity employment or sales tax liabilities) <p><i>Must pass 3-year rule, 240-day rule, and not be tax liability that is assessable but not yet assessed.</i></p>
Unfiled Returns	Not dischargeable. 11 U.S.C. § 523(a)(1)(B)(i)
Late-Filed Returns	Two-year rule. 11 U.S.C. § 523(a)(1)(B)(ii)
Fraudulent Returns	Not dischargeable. 11 U.S.C. § 523(a)(1)(C)
Trust Fund Recovery Penalty or Responsible Person Liability	Not dischargeable. 11 U.S.C. §§ 523(a)(1), 507(a)(8)(C)
Recorded Notice of Federal Tax Lien or State Tax Lien	Lien rides through bankruptcy and taxing agency can take collection action against liened property post discharge (but not collectible <i>in personam</i>). See <i>In re Isom</i> , 901 F.2d 744 (9th Cir. 1990)

GETTING INFORMATION AND WHO TO TALK TO

Who to Contact at IRS and CA Tax Agencies?

- **IRS Bankruptcy Specialist** - This person works for IRS Field Insolvency. Prepares and files all proof of claims, works on bankruptcy cases, reviews plans and schedules, makes collection determinations, and negotiates with debtors, refers cases to USDOJ or IRS Area Counsel
- **IRS Revenue Officer** – Larger dollar cases often have a Revenue Officer assigned to the case. The person's contact information can be found on recent IRS correspondence or by calling IRS with a valid Form 2848
- **USDOJ Bankruptcy Attorneys** – Assistant United States Attorneys in NDCA, EDCA, SDCA (Civil Division), and CDCA (Tax Division); Trial Attorney, USDOJ Tax Division in Washington, D.C.
- **FTB** – Form FTB 933C (Bankruptcy Service and Contact Information)

How to Get Transcripts, Account Balance, Assessment, and Other Information

Internal Revenue Service

- File power of attorney (IRS Form 2848)
- Request transcripts online, ask Bankruptcy Specialist, or call IRS Practitioner Priority Service. 866-860-4259

FTB and other State Taxing Authorities

- FTB
 - MyFTB - Online access to tax account information and online services.
 - FTB Bankruptcy Counsel – See attached for contact information, Form 933C (Bankruptcy Service and Contact Information).
- CDTFA
 - Collections Support Bureau, (916) 309-5650 or email LegalSOB@cdtfa.ca.gov
 - <https://www.cdtfa.ca.gov/legal/bankruptcy-faq.htm>
- EDD
 - The Bankruptcy Group, (916) 464-2888

Telephone Numbers

IRS Contact Information:

- IRS Practitioner Priority Service. 866-860-4259
- Centralized Insolvency: 800-973-0424
- Attorneys need Form 2848 Power of Attorney
- IRS Taxpayer Advocate – File IRS Form 911

FTB – See attached FTB Form 933C (Bankruptcy Service and Contact Information)

CDTFA – Collections Support Bureau, (916) 309-5650 or email at LegalSOB@cdtfa.ca.gov

EDD – The Bankruptcy Group, (916) 464-2888

Power of Attorney (POA) Forms

IRS

- **IRS Form 2848**, Power of Attorney and Declaration of Representative
- **Alternatively, IRS Form 8821**, Tax Information Authorization (limited authority)
- Submit forms online at IRS website (or fax to IRS)

FTB (Income Tax)

- **FTB Form 3520**, Power of Attorney

CDTFA (Sales Tax)

- **Form CDTFA-392**, Power of Attorney

EDD (Employment or Payroll Taxes)

- **Form De48**, Power of Attorney (POA) Declaration

Proof of Claim Provides Contact information

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/01/2017
MM/DD/YYYY

I
/s/ _____
(Signature)

If you have a question, ask IRS Field Insolvency, who drafted the claim. Most questions can be answered. No need to file an objection if you can get your question answered. The contact information for the Bankruptcy Specialist is below

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title Bankruptcy Specialist

Company Internal Revenue Service
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City _____ State _____ ZIP Code _____

Contact Phone _____ Email: _____

IRS Publications

- **IRS Publication 908** - This publication explains the basic federal income tax aspects of bankruptcy.
- **IRS Publication 5082**, What You Should Know About Chapter 13 Bankruptcy and Taxes.
- **IRS Publication 594**, The IRS Collection Process
- **Internal Revenue Manual, Part 5.9** - discusses Bankruptcy and Other Insolvencies.

Figuring Out Date of Assessment

Federal (IRS)

- “Assessment” - Recording of Tax Liability
 - Taxes shown on return. 26 U.S.C. § 6201(a)
 - Substitute for return (SFR) – 26 U.S.C. § 6020(b).
 - Deficiency proceedings: Audit Examination, IRS Appeals Office (settlement), Tax Court Litigation. 26 U.S.C. § 6201(e).
- IRS Account Transcript shows assessment dates

Figuring Out Date of Assessment

California (FTB and other state taxing agencies)

- Liabilities for proposed assessments (determinations) are deemed “assessed” when the determination is final. *In re King*, 961 F.2d 1423 (9th Cir. 1992).
- Sales and use tax determinations become final 30 days after a notice of determination is issued, absent the filing of a petition for redetermination. Cal. Rev. & Tax. Code § 6561.
- Contact FTB Bankruptcy Counsel, Bankruptcy Case Compliance Representative, Compliance Specialist, or the Authorized Representative that executed the proof of claim.

Federal Tax Lien

- **Federal tax lien** arises at time of assessment of the tax after any person neglects or refuses to pay after notice and demand. 26 U.S.C. § 6321.
- IRS records lien by filing a **Notice of Federal Tax Lien**. 26 U.S.C. § 6323. In California, per Cal. Code of Civ. P. § 2101:
 - **Real Property** – county where property subject to lien is situated
 - **Personal Tangible or intangible property** –
 - For individuals - County Recorder where taxpayer resides at time of filing
 - For entities - CA Secretary of State
- **Period of Lien:** Arises at time of assessment and continues until liability is satisfied or become unenforceable by reason of lapse of time. 26 U.S.C. § 6322.
- **Length of Period:** 10 years after assessment of tax. 26 U.S.C. § 6502(a). USDOJ can bring suit to reduce IRS tax assessment to judgment and extend collection period.

Federal Tax Collection Statute of Limitations

- 10 years from date of assessment. 26 U.S.C. § 6501.
- Limitation period can be **tolled** for various reasons (bankruptcy, filing request for Collection Due Process (CDP) Hearing (administrative process), pending installment agreement, and pending offer in compromise).
- Ask the IRS for the Collection Statute Expiration Date (CSED) dates for each tax year or period.
- Prepare a worksheet for the file.

State Tax Liens and Collection Statute of Limitations

FTB (and other state taxing agencies)

- A state tax lien arises at time of assessment after any person neglects or refuses to pay after notice and demand. Cal. Rev. & Tax. Code § 19221(a).
- A “perfected and enforceable” lien attaches by operation of statute. Cal. Gov’t Code § 7170(a).
- Until recorded, the state tax lien is invalid as to certain persons identified by statute (i.e., subsequent holders of a security interest, mechanic’s lienors or judgment lien creditors). Cal. Gov’t Code § 7170(b).
- FTB can collect unpaid tax liabilities for up to 20 years after the date the latest tax liability becomes due and payable for that tax year. Cal. Rev. & Tax. Code § 19255.
- State tax lien is valid for 10 years. Cal. Gov’t Code § 7172(a). But may be extended at 10 year intervals. Cal. Gov’t Code §§ 7172(b) and (c).

RESOLVING A CASE EARLY

Options to Resolve Tax Disputes in Bankruptcy

- Reach out to IRS Insolvency or state taxing authority to try to resolve the issue before litigation.
 - Examples:
 - Claim shows return was unfiled but debtor believes return was filed.
 - Certain tax period listed as priority should actually be general unsecured claim.
 - Tax lien filed in wrong location (county vs. secretary of state).
- File claim objection – this can be useful if the dispute is purely a legal issue or there are few disputed facts (contested matter under FRBP 9014 and discovery is permitted)
- File adversary proceeding - if there is a factual dispute, an objection or motion under 11 U.S.C. § 505 may not be as procedurally effective as an adversary proceeding because of the very nature of tax information.

Practice tip: Present the taxing authority with a detailed package supporting your requested adjustment of the tax liability for tax agency or counsel to justify settlement.

Practice tip: For FTB matters, you will receive a response to a written inquiry sent to FTB's counsel contacts listed in Form 933C (Bankruptcy Service and Contact Information).

Practice tip: Following these tips will give you a much better idea as to whether IRS Insolvency or the state taxing authority can resolve the issue before litigation after speaking with them.

Informal Resolution of Tax Disputes in Bankruptcy – State

- **Good Results**

- Good faith effort to pay tax claims.
- Comply with future filing requirements.
- Valid legal disputes.

- **Bad Results**

- “I don’t want to pay anything.”
- Frivolous litigation or litigation that undermines Ninth Circuit authority, the definition of a “return,” state tax lien rights, etc.

Bring Adversary Proceeding to Reduce Tax Balance Due

- The court may determine the amount or legality of any tax, fine or penalty, whether or not the tax authority has not assessed the taxes or the taxes were paid. 11 U.S.C. §505(a)(1).
- **It's almost like a second or third bite of the apple!**
- But, the court may not determine “the amount of a tax, fine or penalty if such amount or legality was **contested before and adjudicated by a judicial or administrative tribunal** of competent jurisdiction before the commencement of the case under this title” or “any right of the estate to a refund” unless the debtor first complies with the administrative requirements of requesting a refund. 11 U.S.C. § 505(a)(2)(A) & (B).
- So, if a court has decided the issue, you can't relitigate it.
- Bankruptcy court jurisdiction to determine tax under 11 U.S.C. § 505 is discretionary and may raise abstention issue if resolving tax issue is not necessary to administration of the bankruptcy estate. See *Lopez v. FTB (In re Lopez)*, Adv. No. 2:12-ap-01342-RK, 2012 WL 2579316 (Bankr. C.D. Cal. July 3, 2012).

Mailing Addresses for Federal and State Government Units – Fed. R. Bankr. P. 5003(e)

- Official government addresses to serve on taxing authorities in bankruptcy matters for IRS and California state tax matters (see links below):
 - www.canb.uscourts.gov/content/roster-public-agencies-bankruptcy-noticing
 - www.cacb.uscourts.gov/the-central-guide/addresses-federal-and-state-government-agencies
 - www.cacb.uscourts.gov/sites/cacb/files/documents/the-central-guide/TCGSupp5003%28e%29_Addresses-Federal-State-Agencies.pdf
 - <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesFeb2023.pdf> (Local Rule 2002-1)
 - <https://www.casb.uscourts.gov/register-federal-state-government-units>

Practice tip: More service is better than less service. Must comply with FRBP 7004(4) and (5)(federal) and (6) (state) and/or 9014 anyway.

Case #1: Bad Audit

- Get IRS Account Transcript
- Get IRS Administrative File – make Freedom of Information Act (FOIA) request
- Work with CPA to prepare adequate books and records
- Make an Offer in Compromise or ask for a Settlement

Case #2: Responsible Person

- Debtor may consider filing an adversary proceeding under 11 U.S.C. § § 523(a)(1) or 505 and litigate whether (1) the person had authority as a responsible person; and (2) whether s/he acted willfully.
- Employment or sales taxes considered to be trust fund taxes cannot be discharged in bankruptcy.
- Such as a dispute is not really about discharging the liability, but whether the debtor is liable in the first place.
- Tax authority may request bankruptcy court abstain and dismiss on grounds that no effect on estate administration and debtor can bring refund suit in CA Superior Court (requiring full payment) or federal district court (divisible payment)
- **Types of Cases**
 - IRS: Trust fund recovery penalty cases for payroll taxes.
 - EDD: Section 1735 investigations for payroll taxes
 - CDTFA: Responsible person investigations for sales taxes.
- **Practice Tip.** Consider using Subchapter V of Chapter 11 to litigate responsible person liability. Adversary proceeding.

Strategies Outside of Bankruptcy to Avoid Personal Liability as Responsible Person for Unpaid Payroll Taxes

- Don't borrow money from the government and think you will pay it back later (i.e., paying other creditors and not paying payroll taxes as they become due, or IRS or EDD "financing").
- Make designated payments to trust fund portion of the taxes. See Internal Revenue Manual 5.1.2.8 (06-20-2013); Rev. Proc. 2002-26 (Apr. 15, 2002), Section 3.
- Enter into an installment agreement and make balloon payments, if the business can pay. If not, make voluntary payments.
- File a request for penalty abatement using IRS Form 843, Claim for Refund and Request for Abatement.
- If the company lacks the means to full or partial pay, consider a collection alternative such as an offer in compromise based upon doubt as to liability and/or collectability; both avenues may be appropriate.

UNFILED RETURNS

What to do with Unfiled Tax Returns?

- **IRS:** Generally, has six-year lookback period. See IRM 4.12.1.3 (10-05-2010) (Enforcement Period, Policy Statement 5-133). Note: this is non-binding IRS administrative procedure and the Bankruptcy Code may dictate a different result in litigation
- **FTB:** No time limit and forfeiture of possible refund claim.
- **CDTFA:** *Except in the case of fraud or intent to evade tax*, notice of the deficiency determination must be issued within 8 years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined. Cal. Rev. & Tax. Code § 6487.
- Obtain the IRS account transcripts and contact FTB to determine how big the problem is.
- Do not file returns without having an accountant calculate, with reasonable certainty, the tax, penalties and interest owed.
- But get into compliance ASAP.
- And, have a plan of action after the IRS/FTB begin sending notices. Payment plan? Offer in compromise? Bankruptcy?

Practice Tip: Unfiled returns, no matter how old, can cause many problems in a bankruptcy (i.e., issues with plan confirmation, good faith, etc.).

Reporting IRS Audit Changes to the Franchise Tax Board

- FTB requires taxpayers to report tax audit changes or corrections made by IRS that increase the amount of tax owed to the FTB within 6 months of the final IRS determination. Cal. Rev. & Tax Code § 18622.
- If a debtor fails to report the changes, the state taxes are not dischargeable. See *Berkovich v. California Franchise Tax Board (In re Berkovich)*, 15 F.4th 997 (9th Cir. 2021) (debtor failed to file a report with FTB following IRS's assessment, and thus, debtor's state tax debts were excepted from discharge under § 523(a)(1)(B)).

POST DISCHARGE ENFORCEMENT OF LIENS

Tax Liens Survive Bankruptcy

Not all taxes are forgiven!

Discharge does not apply to prepetition lien property *in rem*

- *In re Snyder*, 343 F.3d 1171, 1176-77 (9th Cir. 2003)
- *In re Isom*, 901 F.2d 744 (9th Cir. 1990)
- *Bowman v. FTB*, Case No. 4:21-cv-07129-YGR (N.D. Cal. Sept. 27, 2022)

So, if there is prepetition property subject to a perfected tax lien that survives the bankruptcy, and the prepetition taxes are not paid, even though the taxpayer technically has a discharge of the underlying liability, the IRS and State can enforce the lien against prepetition lien property.

Practice Tip: Especially in Chapter 13 cases, it is the debtor's responsibility to obtain lien information and to provide for liens in a Chapter 13 plan.

Post Discharge Enforcement

- Example # 1
 - Debtor filed a Chapter 7 which discharged income taxes for tax years 2013, 2014, 2015 and 2016.
 - IRS sent a Letter 4068 (“soft” postdischarge letter seeking payment) to Debtor stating that the IRS plans to collect the discharged taxes from certain property that Debtor owned when the bankruptcy case was filed.
- Example # 2
 - Debtor completed a Chapter 13 plan, received a discharge, but the plan did not “did not state that any liens are avoided, terminated, or reduced by its operation.”
 - Post discharge, FTB renewed its tax lien.
- Retirement accounts and equity in home may remain at risk of postdischarge collection.

IRS Post Discharge Enforcement

- If you have a case where the IRS is taking enforcement action after bankruptcy, read Internal Revenue Manual (IRM) 5.9, Bankruptcy and Other Insolvencies.
- The Manual explains how to handle the case.

The screenshot shows the IRS Internal Revenue Manual (IRM) page for 5.9.17 Closing a Bankruptcy Case. The page includes a navigation bar with links for Home, IRM, and Parts. The main content area is titled 'Part 5. Collecting Process' and 'Chapter 9. Bankruptcy and Other Insolvencies'. The specific section is 'Section 17. Closing a Bankruptcy Case'. The page lists various subsections under 5.9.17, including 'Closing a Bankruptcy Case', 'Program Scope and Objectives', 'Background', 'Authority', 'Responsibilities', 'Program Management and Review', 'Program Controls', 'Related Resources', 'Overview', 'Lift of Stay and Reversing the Bankruptcy Freeze', 'Time Frames for Required Actions', 'Exempt, Abandoned, or Excluded Property (EAEP)', 'Pre-discharge Review for Exempt, Abandoned, or Excluded Property (EAEP) in Chapter 7 No Asset Cases', 'Collection from Exempt, Abandoned, or Excluded Property (EAEP)', 'Addressing Lien Issues', 'Insolvency Levy Procedures for Excluded Retirement Plans', 'Thrift Savings Plan (TSP)', 'Dismissal', 'Closure without Discharge', 'Dismissal Issues Specific to Chapter 7', 'Dismissal Issues Specific to Chapter 12', 'Dismissal Issues Specific to Chapter 13', 'Closing Dismissed Cases', and 'Orders Vacating'.

The 'Change' table for IRM 5.9.17.1 is as follows:

IRM	Change
5.9.17.1	Added content to comply with the IRM internal controls requirement. The addition of this new subsection renumbered the following subsections.
5.9.17.2(1)	Content previously found in the Overview section, Introduction paragraph can now be found in the new 5.9.17.1, <i>Program Scope and Objectives</i> , section.
5.9.17.2(6)	Updated list of case classifications that prevent systemic case closure to include 11 USC1232 and ACA MFT=43.
5.9.17.3(4)	Updated the address to which NMF account transaction requests will be sent. Cincinnati Submission Processing Center (CSPC) will no longer process most NMF documents. NMF account transaction requests will now be sent to the Kansas City Submission Processing Campus (KCSPC).
5.9.17.5.1(4)	Added instruction to secure and document managerial approval of collection potential and/or collection action in Chapter 7N EAEP review.
5.9.17.5.3(8)	Updated to clarify that a second notice is only required when there are additional taxes, <i>an accuracy related filing penalty or a payment delinquency penalty</i> , that were assessed on the period after the original CDP notice was issued.
5.9.17.5.4(4)	Added note to remind the caseworker to review for the disaster freeze that may suspend collection activity, such as issuing levies.
5.9.17.5.4(7)	Content has been revised to clarify that if a lien release occurs prior to the completion of collection activity, under certain circumstances the release

Post Discharge Enforcement: The Lesson

- **Practice Tip:** A bankruptcy case alone may not completely resolve a debtor's tax situation.
- An effective strategy may require a debtor to address a tax liability and/or tax lien **both** INSIDE and OUTSIDE of bankruptcy.
 - A Chapter 7 may be combined with a post-discharge Offer in Compromise.
 - A Chapter 13 may be combined with a post-discharge Installment Agreement/Payment Plan.
- Even simple strategies, such as a change in a debtor's Withholding Allowance, are effective.
- Ensure your debtor does not end up back in bankruptcy for the same reason.

Questions?

We hope you enjoyed the program.

Thank you!

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: DONNA MARIE BOWMAN,
Debtor.

CASE NO.: 4:21-cv-07129-YGR

Bankruptcy Case No. 13-55508 SLJ

DONNA MARIE BOWMAN,
Appellant,

Adversary Proceeding No. 20-05050 SLJ

vs.

**OPINION AFFIRMING BANKRUPTCY COURT
JUDGMENT**

CALIFORNIA FRANCHISE TAX BOARD,
Appellee.

This action arises out of a bankruptcy order granting appellee California Franchise Tax Board’s (“FTB”) motion for judgment on the pleadings on a complaint brought by appellant Donna Marie Bowman seeking, in part, (i) declaratory and injunctive relief to void the FTB’s lien based upon the completion of her Chapter 13 plan and (ii) damages for an alleged violation of a discharge injunction.

In short, the legal question is straightforward. Does FTB’s lien pass through Chapter 13 bankruptcy proceedings unaffected even if FTB filed an unsecured proof of claim with a reservation of its lien? The answer is yes, whether or not it appears unfair to the appellant. Based on Ninth Circuit law, the bankruptcy court properly granted the motion for judgment on the pleadings. Judgment was entered in favor of the FTB and Bowman timely commenced this appeal.

The Court’s analysis follows having carefully considered the parties’ briefing¹ and relevant

¹ Throughout the appeal process, Bowman failed to comply with basic procedural rules. For instance, she initially filed an excessive opening brief without leave claiming that this case was complex enough to justify the tactic. That brief was stricken and, while the Court disagrees with the characterization of this case as complex, she was ordered to resubmit a new opening brief that complied with the increased word count permitted by the Court. After the FTB filed a responsive brief, Bowman, again, without seeking leave, then filed a new opening brief raising new arguments in excess of the word limit permitted on reply. The Court did not accept the tactic and Bowman was directed to file a compliant reply brief. Given this posture, the controlling opening brief is at Docket Number 13, the responsive brief is at Docket Number 17, and the reply brief is at Docket Number 22.

United States District Court
Northern District of California

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1 portions of the record. The Court **AFFIRMS** the bankruptcy court’s order granting the FTB’s
2 motion for judgment on the pleadings.²

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 The following background is not disputed:³

5 Bowman petitioned for Chapter 13 bankruptcy on October 17, 2013. Her Schedule E
6 listed the FTB as having an unsecured claim that totaled \$13,000. (AP, Dkt. No. 6-1.) On
7 December 30, 2013, the FTB filed a proof of claim asserting a general unsecured claim for
8 \$12,422.35 for California state income tax liability for the 2008 tax year. (AP, Dkt. No. 6-2.)
9 While the lien was marked as unsecured on the proof of claim form, the proof of claim contained
10 an attachment that provided “to the extent it is secured, is secured by all property and rights to
11 property whether real or personal, tangible or intangible, including all after-acquired property and
12 rights to property, belonging to debtor(s) and located in this state.” (*Id.* at 3.) The attachment
13 further provided that “because the debtor’s plan does not provide for the FTB’s secured claim,
14 FTB has an unsecured claim in this case. *FTB has done so without waiving its lien rights.*
15 Accordingly, to the extent that FTB’s secured claim . . . is not paid . . . , FTB will continue to assert
16 its lien rights during and after this case.” (*Id.* (emphasis supplied).)

17 Bowman then proceeded to file an amended Chapter 13 plan. (BK, Dkt. No. 17.) The
18 amended plan was confirmed on February 13, 2015. (BK, Dkt. No. 34.) Despite the FTB’s
19 reservation of rights and proof of claim, the amended plan did not state that any liens are avoided,
20 terminated, or reduced by its operation. No payment was made to the FTB or other general
21 unsecured claims. (BK, Dkt. No. 17.) Having completed the plan, Bowman received a discharge.
22 (BK, Dkt. No. 44.) The discharge order provided that “[a] creditor with a lien may enforce a claim
23

24 ² Pursuant to Federal Rules of Bankruptcy Procedure Rule 8019(b)(3), the Court
25 determines that “the facts and legal arguments are adequately presented in the briefs and record,
and the decisional process would not be significantly aided by oral argument.”

26 ³ Record citations herein are to docket numbers in the bankruptcy court’s docket for the
27 Chapter 13 proceedings, *In re: Donna Marie Bowman*, No. 15-55508 [“BK”], or the adversary
28 proceedings, *In re: Donna Marie Bowman*, No. 20-5050 [“AP”]. Most facts are drawn from the
allegations contained in the First Amended Complaint filed in the adversary proceedings. Some
additional facts are drawn from the docket of the Chapter 13 proceedings because the Court can
take judicial notice of public records to the extent they are not disputed.

1 against the debtor's property subject to that lien unless the lien was avoided or eliminated." (*Id.* at
2 1.)

3 Following the discharge, the FTB renewed its lien. (AP, Dkt. No. 6 at ¶¶ 23-24.) Bowman
4 then paid the FTB to secure a release of the lien. (*Id.*) After making her payment, Bowman
5 commenced an adversary proceeding against the FTB seeking declaratory and injunctive relief that
6 the FTB's lien was void upon completion of her Chapter 13 amended plan. (*See generally id.*)
7 She also sought damages for violation of the discharge injunction and its preclusive effect. In
8 addition to her individual relief, Bowman sought to enjoin the FTB's conduct for all similarly
9 situated debtors on a class-wide basis.

10 In response, the FTB moved for judgment on the pleadings. (AP, Dkt. No. 19.) After
11 hearing oral argument, the bankruptcy court granted the motion on August 13, 2021. (AP, Dkt.
12 Nos. 32, 40.) Over Bowman's objection that the FTB waived its lien by filing an allowed
13 unsecured claim, the bankruptcy court held that the applicable rules and statutes did not require the
14 FTB to file a *secured* claim, 11 U.S.C. § 506 did not operate to terminate the FTB's lien, the
15 amended plan did not address or impact the FTB's lien, and under binding Ninth Circuit law in the
16 Chapter 13 context, the FTB's lien passed through bankruptcy unaffected. (AP, Dkt. No. 40.)
17 The motion was granted with leave to amend. After Bowman did not timely amend, judgment
18 was entered in favor of the FTB. (AP, Dkt. No. 41.) This appeal followed.

19 II. LEGAL STANDARD

20 The parties do not dispute the appropriate standard applicable to motions for judgment on
21 the pleadings and make no argument that the bankruptcy court erred by applying an erroneous
22 standard. Pursuant to 28 U.S.C. § 158(a), district courts have jurisdiction to hear both
23 interlocutory and final appeals from bankruptcy court orders and judgments. *See*
24 28 U.S.C. § 158(a). When reviewing a bankruptcy court's decision, the district court functions as
25 an appellate court would, and applies the same standards of review as a federal court of appeals.
26 *Beal Bank v. Crystal Props., LTD. (In re Crystal Props., Ltd.)*, 268 F.3d 743, 755 (9th Cir. 2001).
27 The bankruptcy court's conclusions of law are reviewed de novo and its factual findings for clear
28 error. *See Brace v. Speier (In re Brace)*, 979 F.3d 1228, 1232 (9th Cir. 2020). Since the

1 bankruptcy court effectively dismissed Bowman's complaint for failure to state a claim under its
2 interpretation of the bankruptcy code, the dismissal and interpretation are reviewed de novo. *See*
3 *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)*, 960 F.3d 1188, 1192 (9th Cir. 2020);
4 *Vibe Micro, Inc. v. SIG Capital, LLC (In re 8Speed8, Inc.)*, 921 F.3d 1193, 1195 (9th Cir. 2019).

5 III. DISCUSSION

6 The issues on appeal are narrow notwithstanding Bowman's prolific hyperbole.⁴ It is not
7 disputed that the FTB had a valid tax lien prior to the commencement of the Chapter 13
8 bankruptcy. (AP, Dkt. No. 6 ¶ 11.) Instead, the central question is whether the FTB's lien was
9 waived or avoided by virtue of its participation in the Chapter 13 proceedings by its filing of an
10 unsecured claim and the discharge obtained through those Chapter 13 proceedings.⁵ While it is
11 not clear why the FTB proceeded to file an unsecured claim with a reservation of its rights in lieu
12 of a secured claim, the Court ultimately agrees with the bankruptcy court and cannot find that the
13 FTB waived its lien. To do so would contradict binding precedent in this circuit in the Chapter 13
14 context.

15 Given the issues raised in this appeal, a short framing of Chapter 13 proceedings is
16 instructive. The Court agrees with Bowman that the Ninth Circuit's decision in *Spokane Law*
17 *Enforcement Fed. Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1198 (9th Cir. 2016)
18 provides a helpful breakdown of the claims process:

19 In order to collect a debt from a debtor filing a Chapter 13 bankruptcy petition, an
20 unsecured creditor must file a valid proof of claim, which has gone through the

21
22 ⁴ Bowman's approach to briefing reflects her frustration with the state of the law. Numerous arguments misrepresent the state of the law and myriad red herrings are asserted. For
23 instance, Bowman's opening brief addresses the actual bankruptcy court's order in passing near
24 the end of the brief. Accordingly, the Court focuses on the most salient issues that were presented
to the bankruptcy court in this Opinion.

25 ⁵ Bowman also asserted in her opening brief that permitting the FTB to assert the lien
26 despite its waiver provides the FTB with the benefits of a secured claim that was never filed in
27 violation of due process. However, as the FTB noted, the due process argument was not properly
28 submitted to the bankruptcy court and courts will not hear an issue raised for the first time on
appeal. *See Kaass Law v. Wells Fargo Bank, N.A.*, 799 F.3d 1290, 1293 (9th Cir. 2015). Bowman
fails to adequately address this issue in reply, effectively conceding the point. Thus, the due
process argument is not addressed.

1 allowance process set forth in 11 U.S.C. § 502. A secured creditor, who wishes to
 2 receive distributions under a Chapter 13 plan, must also file a valid proof of claim.
 3 However, a secured creditor, who does not wish to participate in a Chapter 13 plan
 4 or who fails to file a timely proof of claim, does not forfeit its lien.

5 *Id.* at 1193-94 (internal citations and quotation marks omitted). As the foregoing illustrates, the
 6 Bankruptcy Code distinguishes between secured and unsecured claims. For instance, when the
 7 collateral securing the claim is worth less than the debt, debtors are able to split an otherwise
 8 secured claim into a secured and an unsecured claim.⁶

9 Within the Bankruptcy Code, “secured claim” is a term of art that bears a different
 10 meaning than it does for a creditor, such as the FTB, to have a security interest or lien outside of
 11 bankruptcy proceedings. *See Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 330-31 (1993)
 12 (recognizing that a claim, whether secured or unsecured, is defined by section 101(5), whereas
 13 whether a creditor holds a secured claim is “determined by application of [section] 506(a”).
 14 Thus, “[o]utside of bankruptcy, if a creditor has a valid security interest, regardless of the
 15 collateral’s value, it may be thought of as a secured creditor. However, in bankruptcy, a creditor is
 16 only a secured creditor if its claim is so classified. If the claim is not so classified, the once-
 17 secured creditor will have an unsecured claim and will thus be an unsecured creditor for purposes
 18 of the bankruptcy case.” *In re Okosisi*, 451 B.R. 90, 93 (Bankr. D. Nev. 2011).

19 Bowman’s appeal hinges on the argument that the FTB was required to file a secured proof
 20 of claim and that the FTB prevented her from filing a secured claim on behalf of the FTB by way
 21 of its participation with its unsecured claim in the bankruptcy proceedings. This misses the mark.
 22 Importantly, section 501 “does not require a creditor with a lien to file a secured proof of claim or
 23 any proof of claim at all” as Bowman acknowledges. (*See* Dkt. No. 22 at 7.) Indeed, as the
 24 bankruptcy court properly acknowledged, the statute says that a “creditor . . . *may* file a proof of
 25 claim.” 11 U.S.C. § 501 (emphasis supplied). By its plain terms, the statute authorizes, but does
 26 not require, the filing of a proof of claim. If a proof of claim is timely filed, it is presumptively

27 ⁶ *See* 11 U.S.C. § 506(a)(1) (“An allowed claim of a creditor secured by a lien on property
 28 in which the estate has an interest . . . is a secured claim to the extent of the value of such
 creditor’s interest in the estate’s interest . . . and is an unsecured claim to the extent that the value
 of such creditor’s interest . . . is less than the amount of such allowed claim.”).

1 “deemed allowed.” 11 U.S.C. § 502(a). To be allowed, the Bankruptcy Rules further provide that
2 “[a] secured creditor, unsecured creditor or equity security holder must file a proof of claim or
3 interest,” however, “[a] lien that secures a claim against the debtor is not void due only to the
4 failure of any entity to file a proof of claim.” Fed. R. Bankr. P. 3002(a). Thus, the lien interest is
5 not terminated solely by a creditor’s failure to file a secured claim.

6 Indeed, as the Court noted above, failure to timely file a proof of claim does not result in a
7 forfeiture of the lien. *In re Barker*, 839 F.3d at 1194. Furthermore, relevant here, it is established
8 in the Ninth Circuit that “[a]bsent some action by the representative of the bankruptcy estate, liens
9 ordinarily pass through bankruptcy unaffected, regardless [of] whether the creditor holding that
10 lien ignores the bankruptcy case, or files an unsecured claim when it meant to file a secured claim,
11 or files an untimely claim after the bar date has passed.” *County of Ventura Tax Collector v.*
12 *Brawders (In re Brawders)*, 325 B.R. 405, 411 (B.A.P. 9th Cir. 2005) (citing *Bisch v. United*
13 *States (In re Bisch)*, 159 B.R. 546, 550 (B.A.P. 9th Cir. 1993) (holding that a federal tax lien on
14 real property remained valid even though the Internal Revenue Service had filed an unsecured
15 proof of claim instead of a secured claim in a Chapter 13 case)) (emphasis supplied).⁷ As the
16 bankruptcy court explained, Bowman admitted that there was a valid lien at the time her Chapter
17 13 bankruptcy was filed and that Bowman, as the representative of the bankruptcy estate, failed to
18 take action against the lien, including invoking section 506(a) to address the FTB’s claim of a lien.
19 Thus, the lien passed through bankruptcy unaffected and the FTB’s characterization of the proof
20 of claim as unsecured, with a reservation of its rights to assert its lien rights after the case, does not
21 change the result.⁸

22 Nonetheless, Bowman challenges this conclusion arguing “every court that has ever
23

24 ⁷ By way of background, the Ninth Circuit adopted the Bankruptcy Appellate Panel’s
25 “thorough and well-reasoned opinion” as its own. *Brawders v. County of Ventura (In re*
26 *Brawders)*, 503 F.3d 856, 859 (9th Cir. 2007). While the analysis of *In re Bisch* was not adopted
and is not binding as a practical matter, it is persuasive for the proposition that the Ninth Circuit
did adopt from the BAP in *In re Brawders*.

27 ⁸ Bowman contends that any argument that a lien passes through bankruptcy unaffected is
28 derivative entirely of Chapter 7. This ignores the fact that *In re Brawders* and *In re Bisch* are
Chapter 13 cases, based upon the specific sections applicable in Chapter 13, and that the Chapter
13 plan failed to otherwise provide for the lien in anyway.

1 addressed this issue, going back almost 100 years, has found that when a creditor like the FTB
2 files an unsecured claim such creditor has *waived* its lien.” (Dkt No. 22 at 10 (emphasis in
3 original).) The argument fails for several reasons.

4 **First**, Bowman relies extensively on the Seventh Circuit pronouncement that “the
5 consequence of filing a secured claim as an unsecured debt is the waiver of the security.” *In re*
6 *O’Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir. 1926). There, the creditor had full knowledge that
7 the security at issue was worthless, filed an unsecured claim, and then sought to amend it to a
8 secured claim years later after it became valuable. *Id.* However, as the bankruptcy court noted,
9 *O’Gara* was decided under section 57 of the Bankruptcy Act, a section that is no longer effective.
10 Thus, it ignores the current rules and statutory provisions identified above, as well as the law in
11 this circuit.

12 **Second**, Bowman suggests that the Second Circuit confirmed this rule in *Rumsey Mfg.*
13 *Corp. v. United States*, 206 F.2d 565 (2d Cir. 1953), demonstrating a consensus amongst circuits.
14 This is inaccurate and borders on a Rule 11 violation for misrepresenting the law. The issue
15 before the court was “whether the United States by originally filing its claim as unsecured had
16 estopped itself from claiming the . . . judgment as a security for the bankrupt’s unpaid notes.” *Id.*
17 at 567. Thus, the case principally focused on estoppel as opposed to waiver,⁹ and found no
18 evidence of reliance to justify estoppel. Furthermore, the Second Circuit noted that *O’Gara* was
19 an “exceptional” case and did not find a waiver in *Rumsey* where “the United States did not
20 actually intend the filing of its claim as unsecured to operate as a waiver or surrender of its
21 collateral security [as] made apparent” by its reservation of rights in its proof of claim. *Id.* at 568.
22 This is not far removed from the circumstances here.

23 **Third**, Bowman’s extensive reliance on *In re Taylor*, 280 B.R. 711 (Bankr. D. Ala. 1990)
24 does not persuade. There, the bankruptcy court, relying upon *O’Gara*, found that the mortgage
25

26 ⁹ It does not appear that Bowman relied on an estoppel theory below. However, there is
27 no dispute that Bowman characterized the FTB’s claim as unsecured in her schedule prior to any
28 action by the FTB. Accordingly, the FTB appeared in the bankruptcy consistent with Bowman’s
own conduct, and subject to a clear reservation of its lien in light of that conduct.

1 company had waived its right to assert a secured claim because the claim was filed as an
 2 unsecured claim by counsel, the confirmed plan expressly accounted for the claim, and payments
 3 had been paid for several years under the plan without objection. Thus, the court found the effort
 4 to amend the proof of claim was untimely. *Id.* at 715-17. By contrast, while the claim here was
 5 filed as an unsecured claim, Bowman knew there was a valid lien, there was an express and
 6 unambiguous reservation of rights,¹⁰ the plan did not provide for the FTB's lien, no payments
 7 were made on the FTB's claim, and there was otherwise no conduct that was inconsistent with the
 8 FTB's lien rights. *Taylor* does not bind this Court, is plainly distinguishable, and does not account
 9 for section 506(a).¹¹

10 ***Fourth***, Bowman argues that the FTB should not be treated as a nonparticipating creditor
 11 within the Chapter 13 proceedings because it voluntarily participated in those proceedings by
 12 filing an unsecured claim. However, filing an unsecured claim, even where a creditor meant to
 13 file a secured claim, does not result in a waiver of the lien in Chapter 13 proceedings. *In re Bisch*,

14
 15 ¹⁰ Curiously, Bowman's opening brief indicated that she wished to challenge the terms of
 16 the reservation as fraudulent in her reply brief. However, it is well established that courts do not
 17 consider argument raised for the first time in reply.

18 ¹¹ Bowman's citation to *In re Krahn*, 124 B.R. 78 (Bankr. D. Minn. 1990) is also not
 19 binding and is not persuasive as applied to the facts here. In *Krahn*, the Internal Revenue Service
 20 ("IRS") initially filed a *secured* claim in connection with Chapter 13 proceedings. *Id.* at 79. After
 21 participating with its *secured* claim, the IRS then proceeded to amend its claim to assert only
 22 unsecured claims. *Id.* The bankruptcy court found that by treating its claim as entirely unsecured,
 23 which was inconsistent with its prior treatment of its rights, the IRS waived its secured status. *Id.*
 24 at 80. Even if the claim was not waived, the bankruptcy court found that it was voidable under
 25 section 506(d) of the Bankruptcy Code because the IRS conceded that the lien had no collateral
 26 value since the value of the liens exceeded the value of the property at issue. *Id.* at 82. Here, the
 27 FTB filed an unsecured claim with a reservation of rights. It never filed a secured claim in the
 28 bankruptcy proceedings and was not required to do so. There is no indication in the record that
 the FTB engaged in conduct that was otherwise inconsistent with its rights, which Bowman was
 aware of at the commencement of her bankruptcy proceedings, and throughout the duration of
 those proceedings.

The Court also notes that *Krahn* undermines Bowman's argument that the FTB needed to
 invoke section 506(a). "Under 11 U.S.C. § 506(a), debtors or creditors may obtain a
 determination of the allowed amount of a particular secured claim." *Id.* at 81. As noted by the
 bankruptcy court below, section 506 is not self-executing, and Bowman never sought a
 determination even though she admitted that the lien was valid at the time the bankruptcy
 commenced. Bowman cites to no persuasive authority that she was prevented from seeking the
 appropriate determination due to the FTB's participation with respect to filing an unsecured proof
 of claim.

1 159 B.R. at 550. For all of the reasons discussed in connection with the cases that Bowman relies
 2 upon, the FTB never engaged in any conduct that was inconsistent with its lien rights. In fact, the
 3 record shows that the FTB filed its unsecured claim consistent with Bowman’s schedules, reserved
 4 its rights, and did not intend its participation in the Chapter 13 proceedings to waive its lien rights
 5 in any way. Indeed, her opening brief concedes that “a ‘creditor with a lien’ who files a claim will
 6 not automatically possess a secured claim, i.e., ‘creditor with a lien’ is not exclusive to a ‘creditor
 7 with a secured claim.” (Dkt. No. 13 at 6-7.) Nevertheless, Bowman, who was represented by
 8 counsel, now seeks to distance herself from the record and her own conduct (or lack of conduct),
 9 without justification or legal support.

10 Finally, Bowman’s suggestions that the confirmed plan stripped the FTB of its lien, or that
 11 the confirmed plan precludes the FTB from asserting its lien, lack legal foundation. Bowman is
 12 correct that “[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not
 13 the claim of such creditor is provided for by the plan, and whether or not such creditor has
 14 objected to, has accepted, or has rejected the plan.” 11 U.S.C. § 1327(a). However, as authority
 15 invoked by Bowman acknowledges, “[a]lthough a secured creditor is bound by the plan, this does
 16 not mean that a debtor can void or otherwise extinguish a creditor’s lien without addressing the
 17 lien in the plan.” *Shook v. CBIC (In re Shook)*, 278 B.R. 815, 824 (B.A.P. 9th Cir. 2002).
 18 Furthermore, “a plan that is silent about the fate of a secured claim provides no notice of what will
 19 happen to the secured claim and therefore cannot effectively avoid a lien or determine its value.”
 20 *Id.* Again, this is consistent with the rule adopted in this circuit, that “[a]bsent some action by the
 21 representative of the bankruptcy estate, liens ordinarily pass through bankruptcy unaffected,
 22 regardless [of] whether the creditor . . . files an unsecured claim when it meant to file a secured
 23 claim[.]” *In re Brawders*, 325 B.R. at 411. Below, the plan implicitly provided for the FTB’s
 24 claim (i.e., personal liability for the tax debt secured by the lien),¹² however, the plan made no

26 ¹² Section 1327(c) provides “[e]xcept as otherwise provided in the plan or in the order
 27 confirming the plan, the property vesting in the debtor under subsection (b) of this section is free
 28 Thus, the code distinguishes between claims and interests. “Under this reasoning, a plan that
 provides for a claim but does not provide for an interest in property securing that claim does not
 affect the interest of the creditor in the property.” *In re Brawders*, 325 B.R. at 416 (adopting *Work*

1 reference to the FTB’s lien and the status of the FTB’s secured claim was never adjudicated.
2 Bowman fails to seriously dispute this. Thus, the lien was not provided for and passed through the
3 bankruptcy unaffected.

4 **IV. CONCLUSION**


5 Based upon the foregoing, the Court finds that the bankruptcy court did not err and
6 **AFFIRMS** the bankruptcy court’s order granting the motion for judgment on the pleadings.

7 The Clerk of the Court shall issue a judgment consistent with this Opinion.

8 **IT IS SO ORDERED.**

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10 Dated: September 27, 2022


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California

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v. County of Douglas (In re Work), 58 B.R. 868, 869-71 (Bankr. D. Or. 1986)).



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Honorable Robert N. Kwan

Judge Robert Kwan has served on the United States Bankruptcy Court for the Central District of California since 2007. Although Judge Kwan officially retired from the bench in 2021, he continues to serve as a bankruptcy judge recalled to service to preside over his existing bankruptcy cases through at least February 2024. Prior to taking the bench, Judge Kwan was a trial attorney for the U.S. Department of Justice in its Civil Rights and Tax Divisions in Washington, D.C., and an Assistant United States Attorney in the U.S. Attorney's Office in Los Angeles, where he was deputy chief of the U.S. Attorney's Office's Tax Division and litigated criminal, civil and bankruptcy tax cases, and he also worked in private practice in immigration law and general practice. Judge Kwan was one of the founders of the James T. King Southern California Bankruptcy Inn of Court and served on its board for many years, and he regularly participates on bar association panels, particularly on bankruptcy tax issues.

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Jolene Tanner is an Assistant United States Attorney at the U.S. Attorney's Office, Tax Division in Los Angeles California, where she primarily handles bankruptcy tax litigation in the Central District of California. AUSA Tanner also serves as the Office's Criminal Bankruptcy Fraud Referral Coordinator. Ms. Tanner is frequently sought after as a bankruptcy tax expert to present at bar events and trainings across the country. Ms. Tanner is a Certified Specialist in Bankruptcy Law by the California Board of Legal Specialization, State Bar of California. Ms. Tanner was selected by the National Conference of Bankruptcy Judges as a "Next Generation" attorney in 2020 and was recognized by the American Bankruptcy Institute in the 40 under 40 class for 2021.

Prior to joining the U.S. Attorney's Office, Ms. Tanner was a judicial law clerk for the Honorable Mark D. Houle, and the Honorable Deborah J. Saltzman. Ms. Tanner was Judge Houle's law clerk when he sat *pro tem* on the Ninth Circuit Bankruptcy Appellate Panel. Ms. Tanner externed for the Honorable Sheri Bluebond. Her law review article *Stern v. Marshall: The Earthquake That Hit the Bankruptcy Courts and the Aftershocks That Followed*, 45 Loy. L.A. L. Rev. 587 (2012), is cited in multiple publications including amicus curiae to the Ninth Circuit and Supreme Court.

Donny P. Le

Since I began my legal career in 2009, my practice has been focused on bankruptcy law. I was a judicial law clerk for four years at the Bankruptcy Court for the Eastern District of California, clerking for the Honorable Thomas C. Holman. I worked on all matters brought under Chapters 7, 11, and 13 of the Bankruptcy Code, including adversary proceedings.

After clerking, I worked at the California Franchise Tax Board (FTB) in the Litigation Bureau for 6 years. There, I focused on the intersection of tax and bankruptcy law. I routinely advised on complex matters involving tax liens, priority treatment of state income taxes, dischargeability, and bankruptcy court jurisdiction over state tax litigation. Thereafter, I joined the California Department of Justice, Office of the Attorney General, where I continue to represent FTB, as well as other state taxing agencies such as the California Department of Tax and Fee Administration and the Employment Development Department, in tax, bankruptcy, and business litigation.

I am admitted in all Bankruptcy Courts and District Courts in California and the Ninth Circuit Court of Appeals. In addition, I have practiced in the Bankruptcy Courts for the Southern District of New York and the Eastern District of Virginia. Prior to my legal career, I was a certified public accountant at one of the "Big 4" public accounting firms.

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