

paid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

(2) is otherwise property of the estate of such partner.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2611; Pub. L. 98-353, title III, § 481, July 10, 1984, 98 Stat. 382; Pub. L. 99-554, title II, § 257(t), Oct. 27, 1986, 100 Stat. 3116.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 728 of the House amendment adopts a provision contained in the House bill that was deleted by the Senate amendment.

Liquidations: The House bill contained special tax provisions concerning the treatment of liquidations cases for State and local tax laws. These provisions deal with the taxable years of an individual debtor, return-filing requirements, and rules allocating State and local tax liabilities and refunds between a bankrupt partner and the partnership of which he is a member. The Senate amendment deleted these rules pending consideration of the Federal tax treatment of bankruptcy in the next Congress. The House amendment returns these provisions to the bill in order that they may be studied by the bankruptcy and tax bars who may wish to submit comments to Congress in connection with its consideration of these provisions in the next Congress.

SENATE REPORT NO. 95-989

Section 728 of title 11 applies only to state and local taxation. This provision contains four subsections which embody special tax provisions that apply in a case under chapter 7. Subsection (a) terminates the taxable year of an individual debtor on the date of the order for relief under chapter 7 of title 11. The date of termination of the individual's taxable year is the date on which the estate first becomes a separate taxable entity. If the case was originally filed under chapter 11 of title 11, then the estate would have been made a separate taxable entity on the date of the order for relief under that chapter. In the rare case of a multiple conversion, then the date of the order for relief under the first chapter under which the estate was a separate taxable entity is controlling.

Subsection (b) permits the trustee of the estate of an individual debtor or a corporation in a case under chapter 7 of title 11 to make a tax return only if the estate or corporation has net taxable income for the entire case. If the estate or corporation has net taxable income at the close of the case, then the trustee files an income tax return for each tax year during which the case was pending. The trustee of a partnership debtor must always file returns for each such taxable period.

Subsection (c) sets forth a marshalling rule pertaining to tax claims against a partner and a partnership

in a case under chapter 7 of title 11. To the extent that the income tax liability arose from the inclusion of undistributed earnings in the partner's taxable income, the court is required to disallow the tax claim against the partner's estate and to allow such claim against the partnership estate. No burden is placed on the taxing authority; the taxing authority should file a complete proof of claim in each case and the court will execute the marshalling. If the partnership's assets are insufficient to satisfy partnership creditors in full, then section 723(c) of title 11 will apply, notwithstanding this subsection, to allow any unsatisfied tax claims to be asserted by the partnership trustee against the estate of the partner. The marshalling rule under this subsection applies only for purposes of allowance and distribution. Thus the tax claim may be nondischargeable with respect to an individual partner.

Subsection (d) requires the court to apportion any tax refund or reduction of tax between the estate of a partner and the estate of his partnership. The standard of apportionment entitles the partnership estate to receive that part of the tax refund or reduction that is attributable to losses sustained by the partnership that were deducted by the partner but for which the partner never reimbursed the partnership. The partner's estate receives any part not allocated to the partnership estate. The section applies notwithstanding section 541 of title 11, which includes the partner's right to a tax refund or to reduction of tax as property of the partner's estate.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554 inserted reference to section 1208 of this title.

1984—Subsec. (c). Pub. L. 98-353, § 481(a), substituted "taxable income" for "taxable income,".

Subsec. (d)(2). Pub. L. 98-353, § 481(b), substituted "is otherwise property of the estate of such partner" for "is property of the estate of such partner otherwise".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 346, 348, 723 of this title.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 103 of this title.

§ 741. Definitions for this subchapter

In this subchapter—

(1) "Commission" means Securities and Exchange Commission;

(2) "customer" includes—

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity—

- (i) for safekeeping;
- (ii) with a view to sale;
- (iii) to cover a consummated sale;
- (iv) pursuant to a purchase;
- (v) as collateral under a security agreement; or
- (vi) for the purpose of effecting registration of transfer; and

(B) entity that has a claim against a person arising out of—

- (i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or
- (ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security;

(3) “customer name security” means security—

(A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;

(B) registered in such customer’s name on such date or in the process of being so registered under instructions from the debtor; and

(C) not in a form transferable by delivery on such date;

(4) “customer property” means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer—

(A) including—

(i) property that was unlawfully converted from and that is the lawful property of the estate;

(ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim of a customer based on a security of the same class and series of an issuer;

(iii) resources provided through the use or realization of a customer’s debit cash balance or a debit item includible in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934; and

(iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including—

(i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or

(ii) property to the extent that a customer does not have a claim against the debtor based on such property;

(5) “margin payment” means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an

obligation of a participant in a securities clearing agency;

(6) “net equity” means, with respect to all accounts of a customer that such customer has in the same capacity—

(A)(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

(ii) any claim of the debtor against such customer in such capacity that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;

(7) “securities contract” means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;

(8) “settlement payment” means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade; and

(9) “SIPC” means Securities Investor Protection Corporation.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2611; Pub. L. 97-222, §8, July 27, 1982, 96 Stat. 237; Pub. L. 98-353, title III, §482, July 10, 1984, 98 Stat. 382; Pub. L. 103-394, title V, §501(d)(25), Oct. 22, 1994, 108 Stat. 4146.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 741(6) of the House bill and Senate amendment is deleted by the House amendment since the defined term is used only in section 741(4)(A)(iii). A corresponding change is made in that section.

SENATE REPORT NO. 95-989

Section 741 sets forth definitions for subchapter III of chapter 7.

Paragraph (1) defines “Commission” to mean the Securities and Exchange Commission.

Paragraph (2) defines “customer” to include anybody that interacts with the debtor in a capacity that concerns securities transactions. The term embraces cash or margin customers of a broker or dealer in the broadest sense.

Paragraph (3) defines “customer name security” in a restrictive fashion to include only non-transferable securities that are registered, or in the process of being registered in a customer’s own name. The securities must not be endorsed by the customer and the stockbroker must not be able to legally transfer the securities by delivery, by a power of attorney, or otherwise.

Paragraph (4) defines “customer property” to include all property of the debtor that has been segregated for customers or property that should have been seg-

regated but was unlawfully converted. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Unlawfully converted property that has been transferred to a third party is excluded until it is recovered as property of the estate by virtue of the avoiding powers. The concept excludes customer name securities that have been delivered to or reclaimed by a customer and any property properly belonging to the stockholder, such as money deposited by a customer to pay for securities that the stockholder has distributed to such customer.

Paragraph (5) [enacted as (6)] defines “net equity” to establish the extent to which a customer will be entitled to share in the single and separate fund. Accounts of a customer are aggregated and offset only to the extent the accounts are held by the customer in the same capacity. Thus, a personal account is separate from an account held as trustee. In a community property state an account held for the community is distinct from an account held as separate property.

The net equity is computed by liquidating all securities positions in the accounts and crediting the account with any amount due to the customer. Regardless of the actual dates, if any, of liquidation, the customer is only entitled to the liquidation value at the time of the filing of the petition. To avoid double counting, the liquidation value of customer name securities belonging to a customer is excluded from net equity. Thus, clause (ii) includes claims against a customer resulting from the liquidation of a security under clause (i). The value of a security on which trading has been suspended at the time of the filing of the petition will be estimated. Once the net liquidation value is computed, any amount that the customer owes to the stockbroker is subtracted including any amount that would be owing after the hypothetical liquidation, such as brokerage fees. Debts owed by the customer to the debtor, other than in a securities related transaction, will not reduce the net equity of the customer. Finally, net equity is increased by any payment by the customer to the debtor actually paid within 60 days after notice. The principal reason a customer would make such a payment is to reclaim customer name securities under § 751.

Paragraph (6) defines “1934 Act” to mean the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

Paragraph (7) [enacted as (9)] defines “SIPC” to mean the Securities Investor Protection Corporation.

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in par. (4)(A)(iii), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

1994—Par. (4)(A)(iii). Pub. L. 103-394 struck out “(15 U.S.C. 78a et seq.)” after “Act of 1934”.

1984—Par. (2)(A). Pub. L. 98-353, § 482(1), substituted “with whom a person deals” for “with whom the debtor deals”, “that has a claim” for “that holds a claim”, “against such person” for “against the debtor”, “held by such person” for “held by the debtor”, and “such person’s business as a stockbroker,” for “business as a stockbroker”.

Par. (2)(B). Pub. L. 98-353, § 482(2)(A), (B), substituted “has a claim” for “holds a claim” and “against a person” for “against the debtor” in provisions preceding cl. (i).

Par. (2)(B)(ii). Pub. L. 98-353, § 482(2)(C), substituted “such person” for “the debtor”.

Par. (4)(A)(i). Pub. L. 98-353, § 482(3), substituted “from and that is the lawful” for “and that is”.

Par. (6)(A)(i). Pub. L. 98-353, § 482(4), inserted a comma after “petition” and “any” after “except”.

Par. (7). Pub. L. 98-353, § 482(5), amended par. (7) generally, inserting provisions relating to options for the

purchase or sale of certificates of deposit, or a group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies.

Par. (8). Pub. L. 98-353, § 482(6), inserted “a final settlement payment.”.

1982—Par. (4). Pub. L. 97-222, § 8(1), struck out “at any time” after “security, or property,” in provisions preceding subpar. (A), and inserted “of a customer” after “claim” in subpar. (A)(ii).

Par. (5). Pub. L. 97-222, § 8(3), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 97-222, § 8(2), (4), redesignated former par. (5) as (6), in provisions preceding subpar. (A), substituted “all accounts of a customer that such customer has” for “the aggregate of all of a customer’s accounts that such customer holds”, in subpar. (A)(2) inserted “in such capacity”, and in subpar. (B) inserted “in such capacity”. Former par. (6) redesignated (9).

Pars. (7), (8). Pub. L. 97-222, § 8(5), added pars. (7) and (8).

Par. (9). Pub. L. 97-222, § 8(2), (6), redesignated former par. (6) as (9) and substituted “Securities” for “Security”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 546, 548, 555, 752 of this title; title 12 sections 1787, 1821.

§ 742. Effect of section 362 of this title in this subchapter

Notwithstanding section 362 of this title, SIPC may file an application for a protective decree under the Securities Investor Protection Act of 1970. The filing of such application stays all proceedings in the case under this title unless and until such application is dismissed. If SIPC completes the liquidation of the debtor, then the court shall dismiss the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97-222, § 9, July 27, 1982, 96 Stat. 237; Pub. L. 103-394, title V, § 501(d)(26), Oct. 22, 1994, 108 Stat. 4146.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 742 of the House amendment deletes a sentence contained in the Senate amendment requiring the trustee in an interstate stock-brokerage liquidation to comply with the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker. The House amendment expands the requirement to require the SIPC trustee to perform such duties, if the debtor is a commodity broker, under section 7(b) of the Securities Investor Protection Act [15 U.S.C. 78ggg(b)]. The requirement is deleted from section 742 since the trustee of an intrastate stockbroker will be bound by the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker by reason of section 103 of title 11.

SENATE REPORT NO. 95-989

Section 742 indicates that the automatic stay does not prevent SIPC from filing an application for a pro-