

a bit confusing. When an individual or corporation files for bankruptcy, an estate is created. The estate consists of property that is liquidated for the purpose of paying creditors. So in the case of farmers filing a bankruptcy petition under Chapter 12, the farm assets are the property of the estate.

According to section 541(a)(6) of the Bankruptcy Code, the proceeds of the sales of those assets are also property of the estate. So the situation farmers faced was that the IRS held a large priority claim against the bankruptcy estate.

Let me take a minute to talk about claims against the estate to understand how we got to where we are today. In this situation, we are dealing with a claim that is based on taxes owed. The Bankruptcy Code says that taxes incurred by the estate are administrative expenses. An administrative expense essentially receives top priority when determining who gets paid what. Thus, the effect this had was that the IRS with its priority claim could object to any reorganization plan that did not provide for full payment of its tax claim. The IRS essentially held veto authority over a family farmer's plan confirmation. In some instances then, a farmer who sought to sell a portion of his farm to reorganize, pay creditors, and become profitable again was prohibited completely from doing so.

After learning of this problem, I started working on a way to fix it. Simply put, I wanted to make sure that family farmers in a Chapter 12 case could, in fact, sell portions of their farm to effectively reorganize without the capital gains taxes jeopardizing the reorganization. The very purpose of Chapter 12 and bankruptcy in general is to allow for a fresh start. Unfortunately, this was not happening because of the IRS priority.

In 1999, I introduced the Safeguarding America's Farms Entering the Year 2000 Act. This bill, among other things, sought to fix the capital gains tax issue. When I introduced the bill, I said it would "help farmers to reorganize by keeping tax collectors at bay." I also explained:

Under current law, farmers often face a crushing tax liability if they need to sell livestock or land in order to reorganize their business affairs . . . High taxes have caused farmers to lose their farms. Under the Bankruptcy Code, the IRS must be paid in full for any tax liabilities generated during a bankruptcy reorganization. If the farmer can't pay the IRS in full, then he can't keep his farm. This is not sound policy. Why should the IRS be allowed to veto a farmer's reorganization plan?

But let me go back to a portion of what I quoted, these words, "then he can't keep his farm." Simply put, if you are a farmer in a farming operation, and you can continue to farm, and reorganization is keeping you from farming, well, obviously you do not have a business of farming and you cannot farm. Family farms are very important to the economic viability of rural America.

The language I proposed ultimately was enacted in the 2005 bankruptcy reform law. Since the Bankruptcy Code, the courts, and the IRS treated the tax liability as an administrative expense, the new provision created a very narrow exception to that administrative expense. Basically, only in Chapter 12 cases, if a farmer sold farmland that resulted in a capital gains liability, then the IRS's claim would not receive priority status. That is the benefit of the legislation I got passed to reorganization of a family farm. But it is what is in dispute in these particular cases I am referring to. Instead the government would have an unsecured claim, which means they may get paid something but not necessarily the entire amount. Also, the IRS would no longer be able to veto a plan's confirmation, thus the farmer debtor would be allowed to reorganize.

From a bankruptcy point of view, this approach makes complete sense. As I have discussed already, filing a petition creates a bankruptcy estate. The bankruptcy estate then sells the lands post petition, and that results in capital gains that are owed to the IRS. Those taxes incurred by the estate post petition are administrative expenses which receive priority status.

My language, enacted into law in 2005, stripped the priority claims owed to the government in this very specific instance and made them generally unsecured claims. However, since the passage of this legislation, the IRS has made an about-face. The government now argues, despite the way it treated this situation for all of these years, that the tax liability created is the responsibility of the individual and not the bankruptcy estate. Yet the entire reason we created this new provision was because of the way the IRS treated the tax liability.

The IRS's new position has been argued in Federal courts and has received mixed results, so now there is a dispute whether my provision accomplishes what it was designed to do. In 2009 the Eighth Circuit case *Knudsen v. IRS* held the provision applies to post-petition sales of farm assets, which is what we are discussing here. Specifically, the Eighth Circuit rejected the IRS's position that the Internal Revenue Code does not recognize a separate taxable entity being created when a debtor files a Chapter 12 petition.

Put another way, the IRS is claiming the individual debtor is responsible for tax liability that arises out of a bankruptcy estate action. The Eighth Circuit disagreed and said there is now an exception preventing the IRS from having a priority claim for capital gains.

But in the Ninth Circuit, the court there held that there was no exception for post-petition capital gains. In *Hall v. the United States*, now before the Supreme Court, the Ninth Circuit said the Halls were responsible for the capital gains tax from selling part of their farm during bankruptcy. This holding means that my provision did not create

a narrow exception even though that is what I intended.

Unfortunately, the IRS, under the Obama administration, is taking a position today that is antifarmer and the exact opposite of what it said 6 years ago. This about-face on the part of the IRS came only after we made the change in the law, and it became clear that in very narrow circumstances the IRS would lose its priority position. I respect the IRS's interest in pursuing tax dollars, but it exhibited a heck of a lot of chutzpah in taking this position. Our policy reasons for this new exception were very simple. The farmers didn't have enough money to pay everyone. We decided it would be better to let them sell some assets, which would generate cash and help them to reorganize, keep farming, and pay their creditors.

In making this decision, we realized someone would have to make a sacrifice. We decided to give farmers a break from government taxes in a very narrow set of circumstances. Now, though, the government is trying to figure out a way to jump back ahead of other creditors and get more money. These creditors the IRS is trying to break in front of are small businesses, suppliers, and small local banks that extend credit and supplies to farmers. This is not what we expected would happen when we passed the 2005 bankruptcy law.

This is an important issue and an important case that the Supreme Court will decide in the coming months. The Supreme Court will decide whether this provision accomplishes my goal, which I have stated. I look forward to seeing how the case is resolved. Rest assured, I will work to ensure that this policy of protecting family farmers is followed as that was our clear intent in having this law enacted. Chapter 12 has proven successful as a leverage tool for farmers and their lenders. It helps the farmer and banker to sit down and work out alternatives for debt repayment. Should the Court rule that the Internal Revenue Code is inconsistent with the Bankruptcy Code and rule against my intent as the author, I will obviously have to work to remedy that inconsistency because what we did in 2005 is the right thing. I hope the Supreme Court realizes the history and intent behind the legislation and follows the congressional intent.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOOZMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FEEDING THE HUNGRY

Mr. BOOZMAN. Mr. President, as Arkansans and all Americans do last

minute errands in preparation for Christmas, one stop on the list almost always includes the grocery store.

Like many other families our Christmas traditions include baking cookies. On Christmas Eve we get together with extended family for lunch. Many holiday memories are centered around the time spent sitting at the table with family and friends.

The unfortunate reality for more and more people, is that those memories are becoming more distant as more Americans than ever are having difficulty putting food on the table. In fact, recent studies show one in six Americans are food deprived.

Despite Arkansas's reputation as a leader in agriculture production, Arkansans are struggling to provide nutritious, healthy meals for their families.

What is most concerning is that nearly 25 percent of Arkansas kids go to bed hungry. That gives Arkansas the unfortunate distinction of having the worst rate of childhood hunger in the country.

While I believe Congress should be working identifying a range of legislative improvements or reforms that can be made in Federal policy to help fight hunger, Washington can't help solve this problem alone.

This requires community involvement. Fortunately, we are blessed to have help at the local level from a wide variety of organizations in Arkansas, and nationwide, that make it their mission to fight hunger.

As a co-chair of the Senate Hunger Caucus, Senators DURBIN, LUGAR, CASEY, MORAN, BROWN of Ohio, and myself put politics aside to raise awareness and recognize the great work underway in our states addressing food insecurity.

We call this effort the Hour for Hunger. Our initiative encourages all Members of Congress to dedicate one hour during this holiday season to highlight the commitments of national, state and local organizations to fight hunger.

Last Friday, I had the opportunity to visit the Samaritan Community Center in Rogers, Arkansas. For more than 20 years, this organization has lent a helping hand to the hungry through soup kitchens, food pantries, "Snackpacks for Kids" and a variety of other initiatives.

This help is needed now more than ever. The economy is forcing more people to rely on the services of Samaritan Community Center. In just three years, there has been more than a 50 percent increase in clients.

This is the story with similar organizations throughout Arkansas. In a segment that aired last month, CNN focused on the extent of the hunger problem in Arkansas's second largest city, Fort Smith. Ken Kupchick, marketing director for the River Valley Regional Food Bank in Fort Smith, told CNN some heart-wrenching stories encountered while helping those in need.

Ken spoke of a mother who used to volunteer at a food pantry and is now in need of the organization's services due to mounting medical bills for her children. He recounted a story of an elderly lady who went from financial security to sorting through the dumpster garbage at the local grocery store after her husband passed away and her monthly income disappeared.

Unfortunately, similar stories can be heard throughout our State. Community-based efforts like those in Fort Smith are making a difference to address hunger and malnourishment.

We are seeing it across the state of Arkansas. Last week, the NBC affiliate KARK in Little Rock spent the week urging viewers to donate to the Arkansas Food Bank. The Greater Good Week of Giving donation drive will undoubtedly provide many blessings to many families this holiday season.

It's painfully clear that our current economic environment is intensifying our hunger issues in Arkansas and across the country. The fact is, we don't have to look far to see how hunger hurts.

I believe hunger is a solvable problem but it requires us all working together. Please consider what you can do to help neighbors in need, not just during this holiday season, but all year long.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

THE ECONOMY

Mr. SESSIONS. Mr. President, we are, as a nation, facing difficult financial times, and I for one believe it is true that the middle class in America is suffering economically to a degree that is unusual. It needs to be thought about, it needs to be addressed.

I have a number of ideas about what we should do, and they don't include raising taxes and spreading the money around. I don't believe that is the right direction for the country to go. That is essentially the view of President Obama. As he says he is for the middle class, he taxes people at even higher levels and would do those kinds of government programs that he believes will work.

At a most fundamental level, I am convinced the greatest thing we can do to strengthen America—strengthen us financially, strengthen job creation for the middle class—would be to do the things that allow growth in the private sector. There are a lot of things we can do that will not cost this Treasury a dime.

Indeed, one of the greatest threats to the American economy is the debt that hangs over us like a cloud. It is inhibiting growth and investment and prosperity. We have to get this Nation on a sustainable path, not the unsustainable path we are on. I have been disappointed, frankly, at the leadership of the President. He has not understood this. He believes that the way to do it is through governmental borrowing,

taxing, and spending. That is not the way to get out of this fix.

One of the most dramatic things that are coming up before us today is the Keystone Pipeline. This is precisely the kind of project this Congress could take action on to ensure that it occurs because it will create lots of jobs, create wealth, make us more secure as a nation, and help bring down the cost of energy. Low-cost energy is the best possible way to create even more jobs in America. We compete in a global marketplace, and the extent to which our industries can have cheaper energy, they can hire more people, make more widgets, and pay more taxes to the U.S. Government and to States, cities, and counties.

The construction of the Keystone Pipeline would run from Alberta, Canada, to Texas refineries along the gulf coast. It adds a number of miles of pipeline, although it will also use existing pipelines that are in place now. We have thousands of miles of pipelines around the United States. Building a pipeline is not unusual. We build them over and over again. Many pipelines run through our State, and they provide the low-cost energy that helps us to be competitive and create jobs.

This construction project alone would add 20,000 American workers, high-paid American workers, jobs not funded by additional debt that we borrow to try to artificially create jobs. They are real construction jobs. Experts tell us it would likely lead to the creation of more than 100,000 jobs overall. This is a significant number.

In addition, as I said, it would make us more energy secure and make us more able to contain the growth in the price of fuel because it would provide a large, competitive source of fuel for America. When fully operational, the pipeline will transport 700,000 barrels a day. That is almost half of the amount of oil the United States currently imports from the entire Middle East. Mr. President, 700,000 barrels a day is almost exactly the amount of oil we import from Venezuela, and that is not a friendly country to us. Hugo Chavez and his team there are a dangerous threat to the hemisphere. Much of their wealth comes from the oil they sell to the United States. I am not saying that we cannot buy on the world market and that we should not buy from Venezuela, but why in the world would we deny ourselves the right to purchase 700,000 barrels a day from our friend, our fine trading partner, Canada, our neighbor?

There is a strategic political interest of significance here too. How will the Canadians feel if we reject this pipeline when great effort, time, and years of investment and study have gone into it?

This plan to build a pipeline is supported by a bipartisan coalition, Democrats and Republicans, including many Democratic Governors, such as Montana Governor Brian Schweitzer, along with a number of Democratic Senators