

**OFFICE OF THE CHAPTER 13 TRUSTEE
CRAIG SHOPNECK, TRUSTEE**

For Cases Filed Under Chapter 13 in the United States Bankruptcy Court
For the Northern District of Ohio – Eastern Division (Cleveland)

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To: Chapter 13 Attorneys
From: Craig Shopneck, Chapter 13 Trustee
Date: Updated January 20, 2006
Re: Income Tax Refunds

The Chapter 13 Trustee's office regularly requires debtors to provide a copy of the debtor's most recent federal tax return. Tax returns provide information important to the analysis, testing and verification of information provided for in the debtor's bankruptcy documents filed with the court.

One item the Trustee's office pays particular attention to on the federal tax return is the tax refund. Because a tax refund is an asset of the debtor's estate, it is an important factor in the determination of debtor equity. In many cases, tax refunds require a higher dividend be paid to unsecured creditors than would be required if there was no tax refund.

A tax refund may also indicate that the debtor has excess tax withheld by the employer from his/her pay. By having excess tax withheld, the debtor's disposable income may appear to be lower than is actually the case. A tax refund due to excess tax withholding is essentially the debtor's disposable income being returned to the debtor. Unless debtor's counsel makes an adjustment in Schedule I to account for the excess tax withheld, the amount of disposable income available to be paid to creditors will be understated. The recommended method for adjusting for the excess tax withholding is to add back the excess amount withheld each month at the "Other Monthly Income" line in Schedule I.

The example below shows an adjustment in Schedule I to add back \$100 to monthly income due to excess tax withholdings of \$1,200.

Other monthly income		
(Specify) _____ Adjustment for excess tax withholding	\$	100
_____	_____	_____

Debtor's counsel should also be aware that the tax expense figure shown on line 30 of the Statement of Current Monthly Income (Form B22C) must also take into consideration a tax refund. Failure to consider the tax refund when determining the amount to use on line 30 may overstate the debtor's actual taxes incurred.

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The need to increase the unsecured dividend due to a tax refund or to increase the monthly plan payment due to excess tax withholdings may require the filing of a modified plan. Debtor's counsel may be able to prevent the need to file a modified plan by being certain to factor the tax refund into the calculation of the unsecured dividend or by adjusting the Schedule I income to reflect excess tax withholdings when preparing the original Chapter 13 plan.

Please feel free to contact me if you have any questions.