LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

September 27, 2005

MEMORANDUM TO: **JUDGES, UNITED STATES BANKRUPTCY COURTS**
CLERKS, UNITED STATES BANKRUPTCY COURTS
BANKRUPTCY ADMINISTRATORS

SUBJECT: Tax Return Guidance **(INFORMATION)**

Section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 mandates that the Director of the Administrative Office establish procedures for safeguarding the confidentiality of tax information required to be provided under 11 U.S.C. § 521. On September 20, 2005, the Judicial Conference approved interim guidance drafted to implement this statutory directive. This guidance addresses the manner in which tax returns are filed with the courts and sets limits on access to the debtor's tax information. The effective date of this Interim Guidance is October 17, 2005, the general effective date of the Act.

The tax return guidance is attached. Should you have any questions, please contact Mary Louise Mitterhoff or Mary Fritsche of the Bankruptcy Court Administration Division at (202) 502-1540 or Amanda Anderson of the Bankruptcy Judges Division at (202) 502-1900.

Leonidas Ralph Mecham

Attachment

September 20, 2005

Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521

Section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) mandates that the Director of the Administrative Office of the United States Courts establish procedures for safeguarding the confidentiality of tax information required to be provided under 11 U.S.C. § 521.[1] In accordance with the Act, the Director provides the following guidance on procedures to protect a debtor's tax information.[2]

I. No tax information filed with the bankruptcy court or otherwise provided by the debtor will be available to the public via the Internet, PACER, or CM/ECF.

In order for tax information to be electronically entered into a court's CM/ECF system, the "tax information" event must be selected from the CM/ECF event list. The "tax information" event limits access to the filed tax information to those users assigned "court" log-ins (*i.e.*, judicial officers and court employees). All other users (including PACER users) will be limited to viewing a docket event on the docket report indicating that tax information has been filed. These other users will not be able to open and view the tax information.

II. Debtors providing tax information under 11 U.S.C. § 521 should redact personal information as set forth in the Judicial Conference's Policy on Privacy and Public Access to Electronic Case Files.

All tax information provided in accordance with section 521 of the Bankruptcy Code is subject to the Judicial Conference of the United States Policy on Privacy and Public Access to Electronic Case Files http://jnet.ao.dcn/it/ecf/privacy-policy.html ("JCUS policy") (JCUS-SEP/OCT 01, pp. 49-50). In accordance with the JCUS policy, the debtor should take the following steps to redact personal identifiers in any tax information filed with the court or provided to the trustee or creditor(s), in either electronic or paper form:

- **Social Security numbers.** If an individual's social security number is included, only the last four digits of that number should appear;

---

[1] For purposes of the Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521 ("Interim Guidance"), the term "tax information" includes tax returns, transcripts of returns, amendments to returns and any other document containing tax information provided by the debtor under section 521 of title 11, United States Code.

[2] Interim Bankruptcy Rule 4002 (b)(5) provides that the debtor's obligation to provide tax information to the trustee or a copy of the information submitted to the trustee provided to a requesting creditor pursuant to 11 U.S.C. § 521(e)(2) is subject to the Interim Guidance. In addition, section 315(c)(1) of the Act authorizes the Director to promulgate guidance to protect the "confidentiality of any tax information required to be provided under this section," which encompasses information provided under section 521(e) and (f) of the Bankruptcy Code. Thus, except where expressly limited to tax information filed with the court, this Interim Guidance applies to any other document containing tax information required to be filed with the court or otherwise provided by the debtor under section 521 of the Bankruptcy Code.

- **Names of minor children.** If a minor child(ren) is/are identified by name, only the child(ren)'s initials should appear;

- **Dates of birth.** If an individual's date of birth is included, only the year should appear; and

- **Financial account numbers.** If financial account numbers are provided, only the last four digits of these numbers should appear.

Court employees are not responsible for redacting any of the personal identifying information. The responsibility for redacting personal identifiers rests solely with the debtor.

The court should make this Interim Guidance, implementing the JCUS policy, available to the public and members of the local bar.

III. Procedure for requesting and obtaining access to tax information filed with the bankruptcy court under 11 U.S.C. § 521(f).

To gain access to a debtor's tax information under 11 U.S.C. § 521(f), the United States trustee (or a bankruptcy administrator, if any), trustee, or party in interest, including a creditor, must follow the procedures set forth below.

A written request that a debtor file copies of tax returns with the court pursuant to 11 U.S.C. § 521(f) shall be filed with the court and served on the debtor and debtor's counsel, if any.

In order to obtain access to debtor's tax information that is filed with the bankruptcy court, the movant must file a motion with the court, which should include:

- a description of the movant's status in the case, to allow the court to ascertain whether the movant may properly be given access to the requested tax information;

- a description of the specific tax information sought;

- a statement indicating that the information cannot be obtained by the movant from any other sources; and

- a statement showing a demonstrated need for the tax information.

An order granting a motion for access to tax information should include language advising the movant that the tax information obtained is confidential and should condition dissemination of the tax information as appropriate under the circumstances of the particular case. At the discretion of the court, the order may state that sanctions may be imposed for improper use, disclosure, or dissemination of the tax information.

IV. Access to tax information when a motion for access has been granted.

Local courts have authority to determine procedures, the details of which are within the discretion of the court, for transmitting the tax information to the movant when access has been granted.[3] Possible methods include mailing a hard copy, or developing procedures to view tax information at the clerk's office.

The transmission of the tax information to the movant, by whatever means the court deems appropriate, should be recorded as a docket event in CM/ECF so that the docket will reflect that the court has taken the action necessary to effect the provisions of its order granting access.

---

[3] Administrative Office staff will explore the feasibility of including modifications in a future release of CM/ECF, which will provide access to a particular user that has been granted access to tax information by the court. Until such modifications can be incorporated into CM/ECF, local courts will need to determine how to provide access.