

Income Tax Returns in T. G. Morgan, Inc. Bankruptcy Case – Fraud or Just Inconsistent

Professor Peter Erlinder has discovered that the income tax returns filed by Trustee John Stuebner are almost completely inconsistent with other facts in this case, In re: T. G. Morgan, Inc. No. 92-40578 (Bkrcty. D. Minn.) (Kressel, J.). This analysis involves the intersection of bankruptcy law with income tax principles.

Analysis is guided by two key steps:

Basis Under the Subchapter S Income Tax Rules

- I. Subchapter S companies, of which T. G. Morgan, Inc. was a Subchapter S company, depend upon and pass through to the shareholders all gains or losses, for income tax purposes, but any such losses have to reflect what is called “basis”.

Basis means how much the shareholder(s) have paid in full into the company or into the assets owned by the Subchapter S, and any assets in which there is no basis cannot count or pass through as losses to the shareholders.

Subchapter S bankruptcy estate payments to the Trustee under the Code, §§ 330(a), 327(a), 328(c) and 503(b)(2)

- II. A Chapter 7 bankruptcy Trustee for an involuntary bankruptcy Subchapter S company, can only get paid out of assets that belong to the Subchapter S and that have basis. If the company does not own the assets, they cannot be part of the estate and there is no basis for such assets. Assets with basis are the only assets that the Trustee can sell off to raise the cash to get himself and his professional employees properly paid, under these Code Sections.

The question is: Can the Trustee pay himself \$2.8 million that can only come out of assets that have “basis”, but then turn around and send out K-1’s to the shareholders saying they have no “basis”?

The Conundrum - \$2.8 million in Payments to Himself but No Basis for Any of the \$2.8 million to the Shareholders?

Because Judge Kressel has approved the \$2.8 million and also has approved the inconsistent or fraudulent income tax returns, where the income tax returns show no basis but the payments show \$2.8 million in basis that according to Stoebner rightfully belonged to the shareholders, this matter is now up on appeal. But because Judge Kressel appeared so confident when he dismissed Erlinder’s attempts to expose this fraud, we want to know what the Court of Public Opinion decides.

Should Judge Kressel have ruled that the Chapter 7 Trustee, John Stoebner can pay himself \$2.8 million out of assets that Stoebner under oath has stated can only be property of the estate with at least \$2.8 million of “basis”... but that Stoebner also can declare under oath that the shareholders have absolutely no basis and thus cannot deduct any losses or loss carry forwards or as basis their share of the \$2.8 million Stoebner paid himself?

Before You Sign Anyone Up Over the Internet to Become Minnesota Bankruptcy Lawyers – Stoebner’s Approach May be Fools Gold

Our Team cannot find anything that would allow what Stoebner has done, except for the Honorable Robert Kressel. And we worry that he looked so confident when he almost threw Erlinder out of the courtroom for daring to raise such questions, which are based on In re: Larsen, 59 F. 3d 783 (8th Cir. 1995), Estate of Trompeter, T. C. Memo 1998-35, and In re: Carroll, 310 B. R. 621 (Bankr. D. Minn. 2004) (Kressel, J.).

Erlinder and some other resources are trying to expose this inconsistency as either negligence or outright fraud by the Trustee, and as an error of law by Judge Kressel that sends entirely the wrong message. Erlinder and our Team don’t believe Stoebner should have it both ways.