
Merrill A. Hanson
DO YOU THINK THE RAIN WILL RUIN THE RHUBARB?:

SOLUTIONS TO THE ISSUES RAINING DOWN ON FARMERS ATTEMPTING TO

EXERCISE 11 U.S.C. § 1222(a)(2)(A) TO DISCHARGE POST-PETITION TAXES

RESULTING FROM BANKRUPTCY

Merrill A. Hanson*

Abstract:

The Supreme Court should interpret section 1222 of the bankruptcy code broadly enough to discharge farmers’ post-petition income tax debts by considering the effects of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) as a statement of Congress’s intent with chapter 12. Congress has shown leniency towards farmers’ bankruptcy reorganizations which is inferred by the structure of the code. The utility of reorganization will be undermined if Congress’s intent is ignored because farmers will be forced to convert their chapter 12 reorganizations to chapter 13 reorganizations or chapter 7 liquidations. In other words, farmers’ chapter 12 options will be illusory.

This can be accomplished by sustaining the Eighth Circuit’s analysis of the disputed section, reversing the Ninth Circuit’s decision in United States v. Hall, which was based in part on the analogy that chapter 12 should be treated the same as chapter 13 because of their relationship to Internal Revenue Code Sections 1398 and 1399. This analogy fails to recognize that treating a chapter 12 bankruptcy the same as a chapter 13 bankruptcy does not give adequate consideration to the dissimilarities Congress purposefully integrated into each chapter, evidenced by the individual provisions within each separate chapter. Chapter 12’s must be afforded their own basis for determination of estate tax liability in light of Congress’s intent to give farmers and fishermen lenient treatment in bankruptcies that survived the scrutiny of the 2005 BAPCPA amendments. To hold otherwise would render the twelfth chapter redundant.

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Part I: A Short Story

The 2010 United States Census results reveal that our population has grown to 308,745,538 people. Of this population 497,248 are farmers (0.16%). About forty-six percent (46%) of the country is maintained as farmland. Ninety-seven percent (97%) of these farms are run by families, farmer partnerships, and co-ops. Most profits of the farming industry derive from marketing and processing of foods, not the initial farming. When consumers buy food, farmers receive only twenty cents of every dollar spent. The national median income for individual, full time, year-round farmers, ranchers, or other agricultural managers is merely $34,673. These individuals are well below the $50,046 of median income for households in the United States. In order to survive, farmers have become extremely efficient in their operations. One hiccup may upset the entire industry, the aggregated consequences of which are felt far beyond a broken down tractor or rickety ol’ barn. It is no surprise that many farmers end up seeking the advice of a bankruptcy attorney.

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4 Id.
5 Id.
6 Id.
8 Median Income in the Past 12 Months (in 2010 Inflation-Adjusted Dollars), U.S. Census Bureau, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_S1903&prodType =table (last visited Nov. 27, 2011). It is recognized that some farmers’ households may rely on income sources other than from the farm and may exceed the national median.
There are a number of reasons why a farmer must face bankruptcy. One common example is a result of the recent recession beginning in 2008. When it is not time to reap, little capital comes in from daily farm activities, and farmers rely heavily on their savings and, in the alternative, bank loans. When banks face economic uncertainties, such as those triggering a recession, banks deny loans to farmers. When expenses exceed income, the likelihood of securing a loan declines, and involuntary bankruptcy proceedings become more frequent.

Consider this farmer’s true story:

[One farmer], from northeastern Oklahoma, had suffered a high death loss in his cattle herd and had reduced his calf crop due to selenium problems. He was the first in his area to receive a guaranteed loan from what used to be a local bank and believes problems to have started after that. After filing the preliminary loan application, he apparently talked to the banker about needing additional money, as he wanted to take over some of his neighbor’s land. The banker agreed to loan him more. However, once the loan application was approved the banker refused to loan him more money. It took him thirteen months to get funds through the local bank. In the process he used up all of his cash reserves to pay for operating costs, to renew leases, and to plant crops. These were all expenses the bank had originally agreed to cover in the loan. Luckily his wife had a regular nonfarm job. Under the guaranteed loan Farmer one had made a principal loan, and was given a fixed payment for the next two years. These problems, plus the drought in 1995, led to his filing for bankruptcy.

This farmer is in a position of financial embarrassment and cannot muster enough financial opportunity from the farm to remain current on the debts, despite his spouse’s job. Creditors quickly become aggressive with harassing phone calls. With little choice left, farmers can file for chapter 12 bankruptcy.

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11 Id. at 8.
12 Id. at 7.
13 Id.
14 Id. at 11.
Chapter 12 is a special kind of bankruptcy designed to benefit family farmers and fishermen.\textsuperscript{15} It is simpler and less costly than the chapter 11 alternative.\textsuperscript{16} Under chapter 12, this farmer will be able to stop calls from creditors and prepare a plan to pay the majority of the debts, and most importantly, this can be accomplished without giving up possession of the farm.\textsuperscript{17} The farmer may, however, need to sell some assets from the farm in order to muster a fair payment to the creditors, who must be paid more than they would receive if the farmer had elected to liquidate under chapter 7.\textsuperscript{18} This raises some additional issues.

A farmer’s story of bankruptcy quickly becomes convoluted. After filing the bankruptcy petition, the decision is often made to sell assets in pursuit of a constructive reorganization; for example, a valuable strip of property on the far edge of a farmer’s lot may be sold to a neighbor. In doing so, farmers raise funds to pay creditors, but also incur capital gains taxes on the sale of the property outside the bankruptcy. This is because, generally, bankruptcy only discharges debts incurred before the filing. Thus, had the property been sold at a certain point before filing the chapter 12 petition, these debts could have been discharged.\textsuperscript{19} Instead, farmers in some jurisdictions are held personally liable for potentially tens of thousands of dollars of income taxes, payable with an already limited income.\textsuperscript{20}

\textsuperscript{17} 11 U.S.C. § 1222 (2011).
\textsuperscript{19} A minimum amount of time must elapse after a conveyance such as this is made or else the transaction may be deemed fraudulent. \textit{See generally} 11 U.S.C. § 523. Fraudulent conveyances risk rendering the bankruptcy proceeding dismissible. \textit{Id.}
\textsuperscript{20} For example, if proceeds from the sale of farmland (i.e. not including the farm house) are $500,000, and the cost of acquiring that land is $150,000, the long-term capital gains on the sale of the property are $350,000. In 2010, this gain was subject to a 15\% capital gains tax, or $52,500. \textit{Tax Guide 2010, The Internal Revenue Service} 1, 114 (2010), http://www.irs.gov/pub/irs-pdf/p17.pdf.
This portrays the situation some farmers must face when incurring post-petition taxes. In some jurisdictions, however, the farmer is permitted to treat the income taxes as unsecured debts, dischargeable through the same bankruptcy proceedings. This is possible because of a provision in the bankruptcy code known as section 1222(a)(2)(A). The relevant portions are:

(a) The plan shall— . . . (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless— (A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge . . . .

On first blush it appears Congress intended to discharge income taxes, but this section has a couple ambiguous attributes. Federal circuit courts have interpreted subsection (a) in divergent ways, resulting in some farmers being permitted to employ section 1222 to discharge their capital gains tax debts as an unsecured claim owed to a governmental unit. Other unlucky farmers encounter significant tax debt following execution of their chapter 12 reorganization. Now ripe for resolution, certiorari has been granted by the Supreme Court.

The split should be resolved by reversing the Ninth Circuit’s decision in United States v. Hall, which was based in part on the analogy that chapter 12 should be treated the same as chapter 13 because of their relationship to Internal Revenue Code Sections 1399 and 1398,
which actually only speak of sharing tax liability between debtors and estates of chapter 7 and chapter 11.\textsuperscript{26} This analogy fails to recognize that treating a chapter 12 bankruptcy like a chapter 13 bankruptcy does not harmonize with the structure of the bankruptcy code. Congress provided for farmers and fishermen in a separate chapter, apart from chapter 13, which suggests Congress intended to disentangle the legitimate needs of family farmers from the limited relief given to individuals in chapter 13 in order to grant some leniency.\textsuperscript{27} Chapter 12 is not a mere redundancy of chapter 13.

Chapter 12 must be afforded its own basis for determination of estate tax liability in light of Congress’s apparent intent to treat farmers and fishermen with leniency. If chapter 12 provisions are ignored, farmers’ chapter 12 options will be illusory. The purpose of chapter 12 would be undermined because farmers will be forced to convert their chapter 12 reorganizations to chapter 13 reorganizations, or complete chapter 7 liquidations. Furthermore, Congress’s lenient intent survived the scrutiny of the 2005 BAPCPA amendments. Farmers’ important function in society reinforces their favorable treatment in bankruptcy proceedings.

A number of solutions available to the Supreme Court would resolve this issue in the best light for farmers. Income taxes resulting from the sale of property in pursuit of reorganization could be regarded as administrative expenses, or the Supreme Court could find another place for

\textsuperscript{26}See infra Part IV.A.

\textsuperscript{27}Chapter 13 is inadequate to meet the specific needs of farmers who face more than just the credit card debts and mortgages of individual debtors. Farmers often have immense debts on farm equipment. One example of the difference between the two chapters is that chapter 12 has a higher debt limit than chapter 13. \textit{Family Farmer or Family Fisherman Bankruptcy}, US COURTS.GOV, http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter12.aspx (last visited Jan. 1, 2012). This shows Congress’s intent to provide separately for farmers, and aside from chapter 13. If Congress wanted farmers to be treated the same as individuals under chapter 13 reorganizations, Congress could have simply included farmers under chapter 13 as an exception, but with the higher debt limits given in chapter 12. Instead, Congress enacted an entire new chapter to the code.
post-petition income taxes under section 507. In the alternative, since courts have an established history of interpreting the term “claim” to include certain debts incurred post-petition (as long as they relate to conduct occurring pre-petition),\(^{28}\) the Court could include these taxes under the definition of “claim.”

This Comment, in Part II, discusses the context and framework of the relevant code sections, setting up the backdrop for the structural argument. Part III examines the specific arguments sounding from both sides of the circuit split. Part IV provides possible solutions and reasons why the Supreme Court should endorse the view that a broad interpretation of section 1222 is warranted. Lastly, Part V summarizes the recommendations to the Supreme Court and considers the broad context of bankruptcy within the United States.

**Part II: The Context and Framework of Chapter 12 Bankruptcies**

This section discusses the basic policy underpinnings of chapter 12, describes the overall layout of the code, and considers the effects of Congress’s enactment of BAPCPA in 2005. BAPCPA sets the stage for the problem arising in the circuit split.

**A. The Basic Policy Underpinnings of Bankruptcy**

The arguments supporting the discharge of post-petition taxes rely on the policy that debts should be forgiven, because when the sum of a person’s debts exceeds the sum of the fair valuation of the property, the insolvency will not be fairly cured otherwise.\(^{29}\) Today this is

\(^{28}\) See Grady v. A.H. Robins Co., 839 F.2d 198, 203 (4th Cir. 1988) (holding a *post-petition* tort liability resulting from the use of a Dalkon Shield was a claim for purposes of including the liability in the bankruptcy estate so that the debtor could pursue a fresh start with the bankruptcy plan).

accomplished through lawful bankruptcy proceedings. Bankruptcy has a storied history; bankruptcy concepts are referenced in both ancient Mosaic law\textsuperscript{30} and Islamic teachings.\textsuperscript{31} Unsurprisingly, bankruptcy was authorized by our founding fathers in Article I, Section 8, Clause 4 of the federal Constitution, which empowers Congress to enact “uniform laws on the subject of bankruptcies throughout the United States.”\textsuperscript{32} This authority underlies Title 11 of the United States Code, and subsequently chapter 12. The question now is not whether we should answer a person’s prayers for forgiveness of debts, but how the resulting bankruptcy proceedings should be performed.

**B. The Structure of the Code**

Congress has given debtors a number of different options to address their specific needs. The code is divided into six different chapters: 7, 9, 11, 12, 13, and 15.\textsuperscript{33} Each chapter contains different parameters tailored for each debtor’s situation, but the purpose behind all the chapters is to repay creditors in an orderly manner and to give an honest debtor a “fresh start.”\textsuperscript{34}

1. **The Outer Limits: Chapters 7 and 15**

Chapter 7 is for pure liquidation. This is where the debtor’s nonexempt property is sold and the proceeds are distributed to creditors.\textsuperscript{35} Once liquidation is completed, all debts are

\textsuperscript{30} Deuteronomy 15:1–3 (New King James).
\textsuperscript{31} Sura Al-Baqara 2:280.
\textsuperscript{32} U.S. CONST. art I, § 8, cl. 4.
discharged, which means the debtor is released from all present and future liability (except for certain debts which society does not render dischargeable, such as alimony payments, child support payments, and student loan debt).\textsuperscript{36} This is the last resort for debtors.

Chapter 15 was most recently added to the bankruptcy code in 2005.\textsuperscript{37} It is generally for bankruptcies of international significance.\textsuperscript{38} “The purpose of [chapter 15] is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency . . . .\textsuperscript{39} This Comment does not discuss the details of liquidation or international bankruptcy law, but it is worth noting both chapter 7 and chapter 15 are included on the list of differentiated alternatives Congress created for each distinct debtor’s use.

2. \textbf{Reorganization: Chapters 9, 11, 12, and 13}

Four additional chapters allow for reorganization of debts, giving debtors a chance to pay back creditors only if they can muster more money than if they were to file a chapter 7.\textsuperscript{40} The advantage of reorganization is that a debtor is not required to subject property to liquidation. Chapter 12 is among these reorganization chapters, and it will be discussed in detail in the following subsection.

\begin{footnotesize}
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\item[38] \textit{Id}.
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Chapter 9 is for municipalities. A municipality is defined by the bankruptcy code as a “political subdivision or public agency or instrumentality of a State.” It generally follows the rules laid out under chapter 11, explained below. Chapter 9 filings are very rare; less than 500 of them have been filed. Though they are infrequent, Congress has not forgotten to provide for them separately in the bankruptcy code.

Chapter 11 is for the reorganizations of corporations and partnerships. It is also available to individuals. In chapter 11, a plan is devised to pay back debts within five years. The amount of debts owed and their corresponding interest rates can be reduced. Creditors must vote to accept the plan or the bankruptcy petition faces dismissal or conversion to a chapter 7. The advantage of filing a chapter 11 is that businesses can keep their doors open and continue to earn more money than if they were shuttered and had to liquidate their assets (which may be few).

Chapter 13 is for individuals with regular income. Similar to chapter 11, a chapter 13 requires the debtor to draft a plan to pay back creditors within a three to five year time span.

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44 Municipality Bankruptcy, US COURTS.GOV, supra note 36.
45 Reorganization, US COURTS.GOV, supra note 35.
46 Id.
49 Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004) (determining the proper discount rate under §§ 1129(b)(2)(A)(i) and 1325(a)(5)(B) is the “prime plus” or “formula rate”). The rate is computed by adding a small percentage of 1–3% to the national prime rate given by lenders between banks. Id. at 506.
50 Reorganization, US COURTS.GOV, supra note 35.
52 Id.
Chapter 13 is distinct from chapter 11 because chapter 13 does not require a vote of acceptance from any creditors, but instead requires the debtor to meet certain minimum standards for eligibility.\textsuperscript{53} Chapter 13 is for debtors with less debt than a chapter 11 debtor.

Reorganization has the benefit of generally allowing a debtor to maintain business as usual, retain possession of their estate, and avoid the drastic measures of liquidation.\textsuperscript{54} Since debtors continue to enjoy a high level of control, a trustee is appointed to monitor and supervise the administration of the plan.\textsuperscript{55} The same is true for chapter 12 cases.\textsuperscript{56}

3. \textbf{A League of Their Own: Farmers and Fishermen}

Chapter 12 is for the reorganization of family farmers and family fishermen with regular income only.\textsuperscript{57} For simplicity purposes, this Comment speaks of this chapter in reference to its effects on farmers; however, the arguments raised here are equally applicable to fishermen. The bankruptcy code defines \textit{farmer} as a “person that received more than 80 percent of such person’s gross income . . . from a farming operation owned or operated by such person.”\textsuperscript{58} The code continues to define a \textit{farming operation} to “include farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.”\textsuperscript{59} To qualify, at least fifty percent of a family farmer’s debts must arise from the farming operation.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{53} Id.
\item \textsuperscript{54} Reorganization, USCourts.gov, supra note 35.
\item \textsuperscript{55} Id.
\item \textsuperscript{56} See generally, 11 U.S.C. § 1202 (2011).
\item \textsuperscript{57} 11 U.S.C. § 109(f) (2011).
\item \textsuperscript{58} 11 U.S.C. § 101 (2011).
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id.
\end{itemize}
This special chapter for farmers was adopted with the Family Farmer’s Bankruptcy Act of 1986. The Act’s legislative history “indicates that one of Congress’ [sic] principal concerns in adopting chapter 12 was the difficulty farmers encountered in seeking to reorganize under chapter 11.”61 Chapter 12 provides an approach with fewer obstacles than reorganization under chapter 11 or chapter 13.62 Chapter 12 is less expensive than chapter 11.63 It is also more advantageous than a chapter 13 because the debt limits under a chapter 13 are much lower.64

Section 1222 is the provision that mandates what must be included in the plan of a chapter 12 reorganization. As originally adopted, the section begins with “(a) The plan shall—

. . . (2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; . . . ”65 If full payment of claims under section 507 cannot be accomplished, the bankruptcy petition cannot be approved.

C. Effects of BAPCPA

BAPCPA was adopted in 2005 to curtail bankruptcy abuses. Upon signing the landmark Act into law, President George W. Bush stated, “[t]he act of Congress I sign today will protect those who legitimately need help, stop those who try to commit fraud, and bring greater stability

63 Id.
64 Id.
and fairness to our financial system.”66 Despite BAPCPA’s general thrust of making bankruptcy less accessible, the Act expanded the rights granted to farmers in chapter 12 bankruptcies.

The first major change to chapter 12 was the addition of “OR FISHERMAN” after “FAMILY FARMER” in the chapter heading.67 Prior to 2005, family fishermen were limited to chapter 7, 11, and 13 bankruptcies. Also, BAPCPA re-enacted the chapter and extended its provisions,68 which demonstrates general approval of the chapter’s function in the bankruptcy code.

Part of BAPCPA’s re-enactment included a change to section 1222. Now, in addition to the requirement of a plan to provide for the full payment of all claims entitled to priority under section 507, there is the following exception:

. . . unless— (A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor’s farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge . . . . 69

BAPCPA introduced an exception, but given the context of surrounding sections, circuits began to disagree about whether Congress gave farmers the right to discharge post-petition taxes.70

Now the Supreme Court must determine whether this section gives farmers a new right.

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70 E.g., Hall, 617 F.3d at 1161; Knudsen, 389 B.R. at 643.
The subsection is self-limited to claims listed under section 507, which refers to the priority of claims.\textsuperscript{71} Section 507 is over 1,700 words long and orders the priority of many types of claims, such as domestic support obligations, administrative expenses, unsecured claims of governmental units, and claims for death or personal injury resulting from intentional torts.\textsuperscript{72} One relevant subsection is 507(a)(8), which addresses the “allowed unsecured claims of governmental units.”\textsuperscript{73} A \textit{governmental unit} is defined by the code as any “department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state”\textsuperscript{74}; the Internal Revenue Service (“IRS”) considers itself an agent of the United States.\textsuperscript{75} Section 507 continues to limit the claims of governmental units prioritized under subparagraph (8) as,

\[\ldots\text{only to the extent that such claims are for— (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition }\ldots\text{ (ii) assessed within }240\text{ days before the date of the filing of the petition.}\]

As written, this section appears to end the debate. Post-petition capital gains taxes cannot be assessed 240 days before the date of the filing as they are assessed at the time of sale, post-petition. Section 1222 as applied with section 507(a)(8) does not grant the discharge of a farmer’s post-petition taxes, but other sections might. This is the primary argument between opposing circuits over the use of section 1222 to discharge post-petition income taxes.

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{75} \textit{The Agency, It’s Mission and Statutory Authority, Internal Revenue Service}, http://www.irs.gov/irs/article/0,,id=98141,00.html (last updated May 25, 2011) (“The IRS is organized to carry out the responsibilities of the secretary of the Treasury under section 7801 of the Internal Revenue Code. The secretary has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce these laws. The IRS was created based on this legislative grant.”).
Part III: Arguments from Both Sides of the Circuit Split

This section describes how opposing circuits have construed these code sections. Subsection A summarizes the arguments from circuits prohibiting the use of section 1222 to discharge farmers’ post-petition taxes as unsecured. These arguments challenge the existence of a chapter 12 estate, question who is able to incur a tax, and look to the application of the Internal Revenue Code (“IRC”) to chapter 13 cases for an answer. Subsection B addresses the arguments from the sole circuit permitting the interpretation of section 1222 to discharge the taxes. These arguments counter by reading the language of the statute broadly, defining the word “incur” broadly, and generally giving weight to the “fresh start” policy underpinning the bankruptcy code. To resolve the circuit split, assuring the fair and uniform application of federal bankruptcy law, the Supreme Court may rely on some or all of these arguments.

A. Arguments Against the Discharge of Post-Petition Income Taxes

The circuits that have refused to discharge post-petition income taxes pursuant to section 1222 are the Tenth Circuit with In re Dawes and In re Ficken and the Ninth Circuit with In re Hall. Most recently, In re Smith, a bankruptcy court decision from the Third Circuit, also declined to discharge post-petition income taxes under section 1222.

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79 See generally Hall, 617 F.3d at 1161.
In the *Dawes* case, the issue was whether taxes for land sold under the bankruptcy proceedings were listed within section 507,\(^1\) the section believed to limit which debts must be paid in order to receive a discharge under section 1222. This case arose when the Daweses sold several tracts of farm land, with the express permission of the bankruptcy court, but then tried to include the taxes in their reorganization, claiming the taxes as unsecured debts under section 1222.\(^2\) The arguments from this case are typical and illustrative.

The Daweses argued the taxes should be dischargeable because “[n]othing in the plain language of § 1222(a)(2)(A) restrict[ed] its applicability to pre-petition sales.”\(^3\) Also, they argued that the section’s application to post-petition sales was supported by the statute’s legislative history.\(^4\) Finally, the Daweses claimed that the IRS’s interpretation of section 1222(a)(2)(A) was flawed because it assumed post-petition taxes did not have administrative priority status under section 503(b),\(^5\) and that such an interpretation required discriminatory treatment of similarly situated farmers.\(^6\)

The IRS argued the taxes were not dischargeable because section 1222(a)(2)(A) was inapplicable to post-petition tax liabilities.\(^7\) This conclusion was based on provisions of the IRC, which does not generally treat the chapter 12 bankruptcy estate as a separate taxable

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\(^1\) *See Dawes,* 2011 U.S. App. LEXIS 12477, at *4.

\(^2\) *Id.* at *2–3.


\(^4\) *Initial Brief, Dawes, supra* note 77, at *5.

\(^5\) *Id.* at *6.

\(^6\) *Id.* at *5–6.

entity. Without an estate, the debts must eventually be paid by the debtors. The agency argued that only chapter 7 and chapter 11 are capable of claiming taxes as administrative expenses, but limited to those “incurred by the estate.” Finally, the IRS claimed that chapter 12 cases should be compared to chapter 13 cases as the “superior source of understanding the meaning and workings of chapter 12.” This is because chapter 13 requires debtors to pay for their post-petition taxes separately, with no taxable estate.

The court found the IRS’s arguments more persuasive and held that the issue was not ultimately a question of whether the taxes were incurred post-petition or pre-petition, but rather who could “incur” the taxes to begin with. The word “incur” is not defined by the bankruptcy code. In these situations, courts are inclined to seek out the plain meaning of words.

88 Id. at *27 (citing 26 U.S.C. § 1399 (2005)) (“Except in any case to which [26 U.S.C. §] 1398 applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.”).
89 Id.
90 Id. at *28 (citing 11 U.S.C. § 503(b)(1)(B)(1) (2005)).
91 Id. at *33 (citing Collier on Bankruptcy P.1200.01[5], at 1200–12 (15th ed. 2007) (citing Justice v. Valley Nat’l Bank, 849 F.2d 1078, 1085–86 (8th Cir. 1988)) (“Because chapter 12 was modeled on Chapter thirteen, and because so many of the provisions are identical, chapter thirteen cases construing [sic] provisions corresponding to chapter 12 provisions may be relied on as authority in chapter 12 cases.”). The basis for this argument, however, relies heavily on a case that is twenty years old, seventeen years of which are logged before the adoption of BACPA in 2005. More counter-arguments for the dismissal of the chapter 13-chapter 12 comparison are found in Part IV, subsection A.
92 M.S.J., Dawes, supra note 81, at *34–35.
According to Ballentine’s Law Dictionary, “incur” means “[t]o bring upon one’s self. To become subject to liability by act or by operation of law.”

The Dawes court examined a number of definitions of the word “incur” but settled on the meaning using the words “one’s self” above and found that “one’s self” was instrumental in determining whether or not there was an “incurrence.” According to the court, since a bankruptcy estate is not a listed taxable entity under the IRC, the person, not the estate, “incurs” the tax. The tax was post-petition, so it could not be considered as part of the reorganization, and the tax was not dischargeable as a general unsecured claim for administrative expense purposes. This holding is waiting further resolution as a petition for certiorari was filed for this case in August of 2011, or it may be consolidated with In re Hall.

In another Tenth Circuit case, In re Ficken, the court relied at first on the reasoning from In re Knudsen of the Eighth Circuit, and decided in favor of the debtors to include the post-petition taxes as part of the plan. The court stated that “doubts or ambiguities in bankruptcy statutes ‘must be liberally construed to give the debtor the full measure of the relief afforded by

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97 Dawes, 2011 U.S. App. LEXIS 12477, at *6 (“Black's Law Dictionary tells us that to ‘incur’ means to ‘suffer or bring on oneself,’ as in a ‘liability or expense.’”) (citing Black's Law Dictionary 782 (8th ed. 2004)).
98 Incur Definition, BALLENTINE’S LAW DICTIONARY, supra note 90.
100 Id. at *8.
101 Id. at *9.
103 Id.
104 See Ficken, 430 B.R. at 674 (“utilization of the method that provides the greater benefit to farmers better accomplishes Congress’ [sic] goals in enacting the new priority-stripping provision”); Knudsen, 389 B.R. at 675.
105 Ficken, 430 B.R. at 670.
However, the IRS appealed and the decision was reversed based on the recent decision reached in the *Dawes* case. The case arose after the Fickens had sold some calves, which according to the IRS, were not assets used in the debtors’ farming operation. The court ruled that such livestock, and any asset used in the farm operation, were considered a “capital asset” for the purposes of section 1222(a)(2)(A).

*In re Hall*, from the Ninth Circuit, has been granted *certiorari* and is awaiting review by the Supreme Court. It echoes the reasoning in *Dawes*, and focuses on the estate’s ability to incur a tax. This case involved an approved plan to sell the Halls’ family farm for $960,000. The Halls planned to use the proceeds from the sale to pay off their reorganized debt, but the IRS objected because of the failure to address the $29,000 owed in capital gains from the sale. The court concluded that section 1222(a)(2)(A) only permits chapter 12 debtors to treat taxes incurred from *pre-*petition asset sales as payable in less than full and dischargeable. However, *post-*petition taxes were not dischargeable and not applicable to the section. The court reasoned that the estate could not be deemed a taxable entity and therefore could not “incur” a tax. The court reached this conclusion much like the court in *Dawes* by following the links in the code. Section 1222 permits the conversion of debts owed to governmental units

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106 *Id.* at 675 (citing Wright v. Union Cent. Life Ins. Co., 311 U.S. 273, 279 (1940)).
107 *Id.* at 675.
108 *Id.* at 670.
109 Wesley F. Smith, *“Reorganizing” to Liquidate: Chapter 12 Anomaly*, 30–8 AM. BANKR. INST. J. 46, 46 (2011) [hereinafter “Reorganizing” to Liquidate].
111 *See Hall*, 617 F.3d at 1163.
112 *Id.* at 1162.
113 *Id.*
114 *Id.* at 1164.
115 *Id.* at 1163.
116 *Id.*
The argument from the debtors is that such taxes are an administrative expense under section 507(a)(2), attempting to quickly side-step the pre-petition tax provisions listed in 507(a)(8). Administrative expenses consist of those listed under section 503(b)(1)(B)(i), “administrative expenses . . . including . . . any tax . . . incurred by the estate.”

Since the bankruptcy code does not define “estate,” the Hall court, like the Dawes court, decided to turn to the IRC to determine what an estate is. Section 1399 states “no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code . . . [e]xcept in any case to which section 1398 applies.” Section 1398, which is entitled “Rules relating to individuals’ title 11 cases” states that it only applies to “any case under chapter 7 (liquidations) or chapter 11 (reorganizations) of title 11 of the United States Code in which the debtor is an individual.” This court concluded the Halls had to pay for the tax outside the plan because chapter 12 estates could not incur taxes if the estates did not exist to begin with.

The 2011 decision in Smith, a Pennsylvania bankruptcy court case from the Third Circuit, relied heavily on Dawes and Hall and held that post-petition taxes were outside chapter 12 reorganizations. The Smith court further suggested that conclusions could be drawn by comparing chapter 12 cases with cases arising under other chapters, specifically chapter 13.

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117 Hall, 617 F.3d at 1162.
118 Id. at 1163.
120 Id.
123 Hall, 617 F.3d at 1163.
124 “Reorganizing” to Liquidate, supra note 102, at 46.
125 Smith, 447 B.R. at 452 n.17.
The court reasoned that when there is a close similarity in language, decisions construing other chapters are instructive of issues in chapter 12 cases. These comparisons may be convenient, but could lead to error.

**B. Arguments for the Discharge of Post-Petition Income Taxes**

The Eighth Circuit permits the discharge of post-petition income taxes pursuant to section 1222. Its decision in *Knudsen v. IRS* resolved a conflict between two of its own states, Nebraska, whose slogan is “Possibilities…Endless,” and “Fields of Opportunities” Iowa.

The Nebraska case, *In re Schilke*, involved a debtor who attempted to sell farm assets, including both livestock and real property, as part of a proposed chapter 12 plan. Such sales naturally incurred a tax. The chapter 12 plan provided that these taxes would be unsecured debts, without priority, under section 1222(a)(2)(A). The court permitted this classification, concluding that these taxes were a type of administrative expense under section 503(b)(1)(B)—which are included in the listed priorities under section 507—and were therefore dischargeable as provided by section 1222(a)(2)(A). The court reached this conclusion by holding “incurred by the estate” simply meant “incurred post-petition.” This court’s interpretation of the word “incur” differs from those in the Tenth and Ninth Circuits.

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126 *Id.*
128 *Schilke*, 379 B.R. at 900.
129 *Id.*
130 *Id.* at 903.
131 *Id.* at 902.
132 *Id.*
133 See supra note 90.
Recall that “incur” is not defined in the bankruptcy code. Defining the word broadly enabled the Nebraska court to conclude the tax could be incurred as an “operation of law.”

The court did this in acknowledgment of In re Knudsen, which the Nebraska court declared as producing a “more appropriate result when considering the apparent intent of the statute—that is, to help farmers reorganize.”

In re Knudsen, another Eighth Circuit decision, originated from an Iowa court. The case involved debtors who proposed the sale of slaughter hogs pursuant to a proposed chapter 12 plan. This court allowed the debtors to invoke section 1222(a)(2)(A) to avoid income taxes, but a discrepancy rose as to whether the provision was applicable to the sale of the hogs because the court reasoned the provision was limited to the sale of farm assets used within the debtors’ farming operation as defined by section 1231(b)(3) of the IRC. The debtors did not own the animals for the minimum amount of time prescribed by the IRC, so the court did not permit the debtors to discharge the taxes on the hogs. The court reasoned that the IRC used the word “used” as a term of art, and thus, the Bankruptcy Code’s use of “used” should be given the same usual meaning as “used” as used in the IRC. As just demonstrated in the previous sentence, the word “used” can often be applied without any clear intent to employ it as a term of art.

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135 Schilke, 379 B.R. at 902; see also Incur Definition, BALLentine’S LAw DICTIONARY, supra note 90 (“[t]o bring upon one’s self. To become subject to liability by act or by operation of law.”) (emphasis added).
136 Schilke, 379 B.R. at 902.
137 Knudsen, 356 B.R. at 481.
138 Id. at 483.
139 Section 1231(b)(3) of chapter 26 of the IRC is part of the special rules for determining capital gains and losses and so defines the term “property used in the trade or business” in terms of livestock—other than cattle or horses—as “other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.” I.R.C. § 1231(b)(3)(2011) (emphasis added).
140 Knudsen, 356 B.R. at 486.
141 Id. (citing Colsen v. United States, 322 B.R. 118, 122 & n.5 (B.A.P. 8th Cir. 2005), aff’d, 446 F.3d 836 (8th Cir. 2006)).
Unsurprisingly, the court did not cite any decisions supporting why it thought the word should be qualified as a term of art for bankruptcy purposes.\textsuperscript{142}

On appeal, the district court reversed the holding which barred the debtors from claiming the hogs as part of the farming operation, and affirmed the decision to permit the debtors to claim the beneficial treatment of taxes given by section 1222(a)(2)(A).\textsuperscript{143} To reach these conclusions, the court determined that the court below mischaracterized the Bankruptcy Code by over-relying on the IRC and giving short shrift to bankruptcy policies.\textsuperscript{144} The court called the use of the statutes—as construed by the IRC—a “derogation of bankruptcy policy.”\textsuperscript{145} It explained this policy as “promot[ing] the effective reorganization of family farming operations.”\textsuperscript{146}

In light of \textit{Knudsen} and \textit{Schilke}, other cases have followed. \textit{In re Rickert} and \textit{In re Uhrenholdt} have built on the Eighth Circuit’s debtor-friendly precedent to determine the outer limits of the definition of “farm asset used within the debtor’s farming operation.”\textsuperscript{147} Both \textit{Rickert} and \textit{Uhrenholdt} applied the bankruptcy definitions broadly, saluting the “fresh start” policy of \textit{Knudsen} and \textit{Schilke}, and concluded that income taxes resulting in these situations ought to be discharged under section 1222(a)(2)(A).\textsuperscript{148}

\textsuperscript{142} \textit{Id.}

\textsuperscript{143} \textit{Knudsen}, 389 B.R. at 682.

\textsuperscript{144} \textit{Id.}

\textsuperscript{145} \textit{Id.}

\textsuperscript{146} \textit{Id.}

\textsuperscript{147} 11 U.S.C. § 1222(a)(2)(A) (2011). \textit{In re Rickert} involved the pre-petition sale of breeding livestock and equipment used in a farming operation. \textit{In re Rickert}, 2009 Bankr. LEXIS 17, at *1 (Bankr. D. Neb. Jan. 9, 2009). The taxes on the proceeds were charged post-petition, and the debtors were permitted to treat their post-petition taxes as unsecured under section 1222. \textit{Id.} at *8. \textit{In re Uhrenholdt} involved a claim by the IRS that a debtor owed post-petition income taxes on the sale of corn that the farmer claimed to have converted into feed for his new cattle operation (thus rendering the proceeds an asset of the cattle operation). \textit{In re Uhrenholdt}, 2009 Bankr. LEXIS 144, at *1 (Bankr. D. Neb. 2009).

\textsuperscript{148} \textit{Rickert}, 2009 Bankr. LEXIS 17, at *1; Uhrenholdt, 2009 Bankr. LEXIS 144, at *1.
Part IV: How the Supreme Court Could Discharge the Post-Petition Taxes

The Supreme Court should be persuaded to look beyond the narrow arguments made in some of the various lower courts and select the solution which gives weight to Congress’s original intent. The policy for leniency in farmers’ bankruptcy reorganizations will be undermined if farmers have no reason to file a chapter 12 and instead convert to other, less advantageous, types of filings. Subsection A identifies the problems with the fundamental reasoning of arguments opposing the discharge of chapter 12 income taxes. Subsection B isolates the error in applying IRC sections 1398 and 1399 to chapter 12. Finally, subsection C provides a possible solution to the convoluted interpretations of section 1222(a)(2)(A) and encourages the Supreme Court to interpret the section broadly enough to effectuate the compassionate intent of Congress in the family farmer context.

A. Debunking the Chapter 12–Chapter 13 Analogy

Courts failing to authorize the full use of section 1222(a)(2)(A) often cite the rationale that chapter 12 was modeled after chapter 13, and thus presume chapter 12 cases should be treated like chapter 13 cases, and even rely on chapter 13 cases as authority.149 The value of this comparison is exaggerated.

The comparable treatment of chapter 12 cases and chapter 13 cases clashes with the structure of the bankruptcy code. Congress individually provided for farmers in a separate chapter, apart from chapter 13, to give farmers special concessions not available to the general public (e.g., section 1222(a)(2)(A)); there is no section 1322(a)(2)(A).

149 See Smith, 447 B.R. at 452 n.17; see supra note 85 and accompanying text.
The common argument from *In re Dawes* for the chapter 12 and chapter 13 comparison is weak because it relies on reasoning from *Justice v. Valley National Bank*, a case decided over twenty years ago. While there may have been merit to comparing the two chapters when chapter 12 was first enacted in 1986, the comparisons have become increasingly more attenuated with the passage of time. In the twenty years following this decision, the Bankruptcy Code has been overhauled, including the adoption of BAPCPA in 2005, seventeen years after *Justice*. The utility of this precedent should be limited to the circumstances in which it was first analyzed.

One may argue that analogizing the chapters in this situation is not too attenuated, that Congress used chapter 13 as a model for chapter 12, and therefore the comparison lives on indefinitely. This limits Congress’s ability to amend provisions. In terms of code analysis, comparisons cease to be useful when the objects compared become too estranged from each other to extract any meaningful conclusions. Section 1222 has been radically amended since its enactment. Chapter 12 should be afforded its own basis for determination of estate tax liability because it contains its own set of provisions, apart from chapter 13.

**B. The Error of Applying I.R.C. Sections 1398 and 1399 to Chapter 12**

Courts have drawn a comparison between chapter 12 and preceding cases construing chapter 13 post-petition income taxes in view of sections 1399 and 1398 of the IRC. The IRC has been inordinately influential in courts’ interpretation of the Bankruptcy Code.

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150 See generally *In re Whall*, 391 B.R. 1 (Bankr. D. Mass. 2008); *see supra* note 85 and accompanying text.
152 M.S.J., *Dawes*, *supra* note 81, at *27.
IRC sections 1398 and 1399 concern themselves with the taxes of title 11 cases; the sections discuss sharing tax liability between the debtor and the estate of chapter 11 and chapter 7 cases. ¹⁵⁴ Section 1398 is self-confined to situations where the debtor is an individual, ¹⁵⁵ and section 1399 is limited to business organizations. ¹⁵⁶ Both sections curiously fail to mention chapter 12. Unlike chapter 13, this could be because the two sections were written years before chapter 12 was adopted. ¹⁵⁷ Section 1398 was amended the year chapter 12 was enacted, yet failed to mention chapter 12. ¹⁵⁸

It is argued by those opposing the discharge of these taxes that the language in section 1399 stops chapter 12 filings from creating a taxable estate. ¹⁵⁹ This is because the language appears all-encompassing when read devoid of context: “[e]xcept in any case to which section 1398 [IRC 1398] applies, no separate taxable entity shall result from the commencement of a case under title 11 of the United States Code.” ¹⁶⁰ The section appears to prohibit all other taxable entities from forming an estate except for those given by section 1398 for chapter 7 and chapter 11 filings. ¹⁶¹ This section is limited, however, to its descriptive title, “[n]o separate taxable entities for partnerships, corporations, etc.” ¹⁶² The words of the section are limited to certain business organizations.

¹⁵⁴ I.R.C. §§ 1398(a), 1399.
¹⁵⁵ I.R.C. § 1398(a).
¹⁵⁶ I.R.C. § 1399 (“No separate taxable entities for partnerships, corporations, etc.”).
¹⁵⁸ I.R.C. § 1398.
¹⁵⁹ See Dawes, 2011 U.S. App. LEXIS 12477, at *9; see also Hall, 617 F.3d at 1163.
¹⁶⁰ I.R.C. § 1399.
¹⁶¹ I.R.C. § 1398(a).
¹⁶² I.R.C. § 1399 (emphasis added).
The next step is to decipher whether a farmer fits into one of these categories. A farm is not a partnership, but a partnership may involve a farm. A farm is not a corporation, but a corporation may own a farm. The farmer from the story beginning this Comment, as an individual, does not fit into either of the two categories. The farmer is an entrepreneur who works under no one and extracts value out of the soil for a price in the free market. The farm, without the function of the farmer, is only unrealized potential. The relationship is organic, and such relationships exist without the need of classification as a partnership or corporation.

There is a possibility the “etc.” includes the farmer, perhaps as a sole proprietor, but this is an unreasonable conclusion in consideration of the pattern started by the first two items listed; multi-person organizations. The textual canon of interpretation “ejusdem generis” applies here.\footnote{This canon of construction provides that where there is a list of at least two specific descriptors followed by more general descriptors, the otherwise broad meaning of the later descriptors are restricted to the same category of the more specific words that preceded them. United States v. Mescall, 215 U.S. 26, 32 (1909).} The organizations listed require an agreement of some kind between the parties before the entity can be formed.\footnote{Unif. Partnership Act § 202 (“association of two or more persons to carry on as co-owners”).} Partnerships and corporations have this degree of formality; in fact, corporations require registration with the state.\footnote{See e.g. Cal. Corp. Code § 200 (MB 2012) (“persons, partnerships, associations or corporations, domestic or foreign, may form a corporation under this division by executing and filing articles of incorporation.”).} Sole proprietors, however, cannot have a “meeting of the minds” with themselves. The list of entities started by the title of section 1399 is limited, and it refers to a special class of business organizations. It does not refer to a child’s lemonade stand, a lone inventor’s book of secrets, or a farmer’s power to cultivate the earth.

Since neither of these sections mentions chapter 12, nor includes the chapter through a sweeping clause of inclusion, they should not be interpreted to limit a chapter 12 filing from having an estate or stop a chapter 12 from incurring taxes. The IRC has simply failed to address
the question of whether a chapter 12 has the ability to incur taxes, taxes which could be discharged through section 1222(a)(2)(A). The Bankruptcy Code, however, appears to have addressed these issues.

The words of section 1222(a)(2)(A) do not appear in any other section of the United States Code. This means a comparison of application of section 1322(a)(2) of chapter 13 is futile. There is an obvious aberration between the two sections, and they cannot be applied in the same way. Instead, it is inferable that Congress intended these words to grant farmers a special privilege, and one not given to any other debtor.

C. Solutions

The Supreme Court could cite a number of justifications to reach the conclusion that farmers are entitled to use section 1222(a)(2)(A) to discharge income taxes. Some of them have already been expressed in the previous sections of this Comment.¹⁶⁶ Three more possible interpretations of the bankruptcy code could provide a solution to this puzzle. In reaching one of these following solutions, the Supreme Court would be recognizing Congress’s underlying policy that this nation’s farmers need added protections.

First, since section 1222(a)(2) is limited in scope to the priority claims listed within section 507, it is behooving that the entire section be scoured for unnoticed provisions. For example, instead of focusing on the unsecured claims of governmental units measured by income in section 507(a)(8)(A), which is limited to taxes assessed 240 days prior to the filing of the petition, section 507(a)(8)(C) includes the “unsecured claims of governmental units to the extent

¹⁶⁶ These arguments are: reading the language of the statute broadly, defining “incur” broadly, and generally giving weight to the “fresh start” policy behind the bankruptcy code. *See supra* Part III.B.
that such claims are for— . . . a tax required to be collected or withheld and for which the debtor
is liable in whatever capacity.”167 This section includes income taxes. First, by their very nature, income taxes are taxes.168 Second, they are required to be collected or withheld.169 Finally, using the definition provided by courts opposed to the discharge of these taxes, the debtor is liable in “some capacity” because income taxes are initially due from the one that “incurs” them.170 Having met each element of section 507(a)(8)(C), income taxes fit neatly into one of the claims owed to a governmental unit addressed by section 1222(a)(2)(A).

True, section 507(a)(8)(A) separately provides for income taxes.171 This separate provision does not change the applicability of section 507(a)(8)(C). Subsection (A) purports to limit how far into the past the priority given for income taxes may reach. The limit is two-hundred forty days.172 It does not control taxes occurring after the filing, which leaves room for subsection (C) to control. Furthermore, even if subsection (A) were to prohibit the use of subsection (C), subsection (A) includes taxes “not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case.”173 This provision could be interpreted to include income taxes to be assessed after the commencement of the case. Once the income tax is included anywhere in section 507, it is incorporated into section 1222(a)(2)(A) and becomes unsecured without any priority.

168 See generally The Internal Revenue Code; see also 26 U.S.C. § 1 (2011).
170 Dawes, 2011 U.S. App. LEXIS 12477, at *6 (“Black's Law Dictionary tells us that to ‘incur’ means to ‘suffer or bring on oneself,’ as in a ‘liability or expense.’”) (citing BLACK'S LAW DICTIONARY 782 (8th ed. 2004)).
171 11 U.S.C. § 507(a)(8)(A) (LexisNexis of Matthew Bender 2012) (“a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition”).
172 Id.
173 Id.
Second, to solve the problem with administrative expenses and the words “incurred by the estate,” the Court should endorse the reasoning of In re Lambdin\textsuperscript{175} The court in Lambdin held, unchallenged since 1983, that post-petition capital gains taxes are classified as an administrative expense under section 503(b)(1)(B) of the bankruptcy code.\textsuperscript{176} The court reached this conclusion by citing the legislative history of section 503, which revealed “the Senate intended to include taxes on capital gains from the sale of property by the trustee as an administrative expense.”\textsuperscript{177} The court determined that this intent was reflected in the enactment of section 503(b)(1)(B),\textsuperscript{178} and interpreted “taxes incurred by the estate”\textsuperscript{179} to mean taxes incurred from the sale of property during the administration of the bankruptcy.\textsuperscript{180}

Those opposing the discharge of the income taxes argue that there is no separate bankruptcy estate for a chapter 12.\textsuperscript{181} Recall that courts which come to this conclusion rely on the fact that the bankruptcy code does not define “estate.”\textsuperscript{182} The word does not appear in a vacuum though; section 1207, “Property of the estate,” sets out to define exactly what is included in an estate as it relates to chapter 12.\textsuperscript{183} The estate consists of all property, including property acquired after the commencement of the case.\textsuperscript{184} Chapter 12 bankruptcies have such an estate,\textsuperscript{185}

\textsuperscript{174} See supra Part III.A. It is argued that there is no estate in a chapter 12 bankruptcy proceeding, at least not one that can incur a tax. See Dawes, 2011 U.S. App. LEXIS 12477, at *9; Hall, 617 F.3d at 1163.
\textsuperscript{175} This case has been cited as recently as 2003 by In re Messina. See In re Messina, 2003 Bankr. LEXIS 1964, 93 A.F.T.R.2d (RIA) 1376 (Bankr. N.D. Ill. 2003).
\textsuperscript{176} In re Lambdin, 33 B.R. 11, 12 (Bankr. M.D. Tenn. 1983).
\textsuperscript{177} Id. (citing S. REP. NO. 989, 95th Cong., 2d Sess. 66, reprinted in 1978 U.S. Code Cong. and Ad. News 5787, 5852).
\textsuperscript{180} Lambdin, 33 B.R. at 12.
\textsuperscript{181} Hall, 617 F.3d at 1163.
\textsuperscript{182} Id.
\textsuperscript{184} Id.
and it must be overseen by a trustee. The trustee takes an active role in hearings on the sale of property of the estate. Finally, section 1222(a)(1)—the provision immediately preceding the controversial subsection (a)(2)(A)—requires the debtor to submit “all future earnings or other future income to the supervision and control of the bankruptcy trustee.” Since the trustee is in charge of actions taken with the property of the estate, then taxes “from the sale of property by the trustee” are occurring during the administration of the bankruptcy, and therefore ought to be administrative expenses. Administrative expenses are given priority under section 507, then stripped of this priority by the exception granted in section 1222(a)(2)(A).

Finally, courts have constantly construed the word “claim” liberally, citing the broad definition given in section 101(5) of the code: “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” This definition includes some liabilities arising post-petition. This is because the word “contingent” means “[p]ossible, but not

185 The bankruptcy code has an estate with property in it comprised of section 541 items plus “all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first.” 11 U.S.C. § 1207 (emphasis added). Section 541 generally includes “all legal or equitable interests of the debtor in property as of the commencement of the case” with some exclusions for the debtor’s interests set aside for higher education, in liquid or gaseous hydrocarbons, etc. 11 U.S.C. § 541(a)–(b) (2011); see also, “Reorganizing” to Liquidate, supra note 102, at 46.
187 Id. (“The trustee shall . . . appear and be heard at any hearing that concerns . . . the sale of property of the estate.”).
190 11 U.S.C. § 1222(a)(2)(A) (“The plan shall . . . provide for the full payment . . . of all claims entitled to priority under section 507, unless . . . the claim is owed . . . to a governmental unit that arises as a result of a sale . . .”) (emphasis added).
192 See Grady, supra note 21 and accompanying text.
assured; doubtful or uncertain; conditioned upon the occurrence of some other future event which is itself uncertain . . . .”\textsuperscript{194} The definition could include a post-petition income tax incurred by a debtor, or a debtor’s estate, while in pursuit of administering a bankruptcy plan. At the time the petition is filed, it is \textit{possible} the debtor will incur taxes in order to achieve the proposed plan. The taxes are \textit{conditioned} upon the \textit{uncertain future event} that the trustee will need to sell certain assets of the estate.

Once the post-petition income taxes are classified as a claim, the Supreme Court can elect to apply the claim under one of the subsections of section 507, or can include it directly into the text of section 1222. Section 1222 requires full payment unless “\textit{the claim is a claim} owed to a governmental unit.”\textsuperscript{195} The emphasized section shows what appears to be a textual redundancy. This order of words appears nowhere else in the United States Code. By using the word “claim” twice, instead of simply saying “the claim is owed to a governmental unit,” the legislature apparently intended a different meaning for at least one of the “claims.” One of the “claims” likely relates back to the immediately preceding “claim,” which is limited to those entitled to priority under section 507.\textsuperscript{196} The other “claim” then refers to the definition of “claim” that is unrestrained by section 507. The definition is then the broad version given by section 101(5), which was just determined to potentially include income taxes.

\textsuperscript{194} \textit{Id.}
\textsuperscript{195} \textit{11 U.S.C. § 1222(a)(2)} (emphasis added).
\textsuperscript{196} \textit{Id.}
Part V: Conclusion

The abundant arguments made for and against the discharge of these claims are tightly intertwined. Some of the jurisdictions permitting section 1222 to discharge post-petition debts have relied solely on the broad meaning of the section, reading it as a whole to include the sale of assets after the petition has been filed in pursuit of fresh start. In contrast, jurisdictions not permitting section 1222 to discharge post-petition debts of governmental units have grasped onto each succeeding phrase and argue the discharge of claims is limited to section 507, which addresses the priority of claims, including pre-petition taxes, but makes no reference to post-petition taxes. This interpretation is too narrow. Jurisdictions supporting the discharge of taxes argue the taxes are instead “administrative expenses” under section 507, which provides for “allowed expenses” listed in section 503, including any tax *incurred* by the *estate*. This results in the further disagreement over what is “incurred by the estate.”

Jurisdictions against the discharge of taxes reference IRC 1398 and 1399 and argue an estate could not incur the taxes where there is no estate to begin with. Congress, however, has created an estate for chapter 12 in section 1207. It is further argued chapter 12 should be treated the same as chapter 13 because, by analogy, both are similar in structure and purpose (reorganization with a steady income). The utility of this argument is bolstered by existing decisions holding chapter 13 reorganizations do not establish an estate as a taxable entity. The

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198 *Id.*
200 *Hall*, 617 F.3d at 1163.
201 However, the tax code only references sharing tax liability between the debtor and the estate of chapter 11 and chapter 7 cases, but does not mention chapter 13.
202 *Hall*, 617 F.3d at 1163.
utility of this analogy, however, is exaggerated as it ignores the structure of the bankruptcy code and attempts to make chapter 12 a textual redundancy.

The solutions available to the Supreme Court would enable it to reach the conclusion that farmers are entitled to the use of section 1222(a)(2)(A) to discharge income taxes encountered by the legitimate pursuit of a bankruptcy plan. Congress intended to grant farmers extra leniency in pursuit of the repayment of their debts. In a time where money is hard to come by and the federal government carries the highest amount debt since just after World War II, it is understandable why its agencies are willing to extract as much tax revenue as possible for its constituents. Still, the United States has a history of forgiving debts that dates as far back as the Constitution itself. This nation has a history of supporting farmers. George Washington is credited as saying, “I know of no pursuit in which more real and important services can be rendered to any country than by improving its agriculture, its breed of useful animals, and other branches of a husbandman’s cares.” The quality of this nation’s food supply may weigh in the balance. These respectable breadwinners should be able to enjoy the freedoms afforded to them by their forefathers.

If tomorrow all the things were gone I’d worked for all my life, and I had to start my life again with just my children and my wife, I would thank my lucky stars to be standing here today, for the flag still stands for freedom, and they can’t take that away.

204 U.S. CONST. art. I, § 8, cl. 4.