

# FEDERAL DEBT COLLECTION PROCEDURES

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
ECONOMIC AND COMMERCIAL LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIRST CONGRESS

SECOND SESSION

---

JUNE 14, 1990

---

**Serial No. 96**

*F/W PL 101-647*



Printed for the use of the Committee on the Judiciary

---

U.S. GOVERNMENT PRINTING OFFICE

35-041 ⇒

WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office  
U.S. Government Printing Office, Washington, DC 20402

**EXHIBIT 5**

**COMMITTEE ON THE JUDICIARY**

**JACK BROOKS, Texas, *Chairman***

**ROBERT W. KASTENMEIER, Wisconsin**  
**DON EDWARDS, California**  
**JOHN CONYERS, JR., Michigan**  
**ROMANO L. MAZZOLI, Kentucky**  
**WILLIAM J. HUGHES, New Jersey**  
**MIKE SYNAR, Oklahoma**  
**PATRICIA SCHROEDER, Colorado**  
**DAN GLICKMAN, Kansas**  
**BARNEY FRANK, Massachusetts**  
**GEO. W. CROCKETT, JR., Michigan**  
**CHARLES E. SCHUMER, New York**  
**BRUCE A. MORRISON, Connecticut**  
**EDWARD F. FEIGHAN, Ohio**  
**LAWRENCE J. SMITH, Florida**  
**HOWARD L. BERMAN, California**  
**RICK BOUCHER, Virginia**  
**HARLEY O. STAGGERS, JR., West Virginia**  
**JOHN BRYANT, Texas**  
**MEL LEVINE, California**  
**GEORGE E. SANGMEISTER, Illinois**  
**CRAIG A. WASHINGTON, Texas**

**HAMILTON FISH, JR., New York**  
**CARLOS J. MOORHEAD, California**  
**HENRY J. HYDE, Illinois**  
**F. JAMES SENSENBRENNER, JR., Wisconsin**  
**BILL McCOLLUM, Florida**  
**GEORGE W. GEKAS, Pennsylvania**  
**MICHAEL DeWINE, Ohio**  
**WILLIAM E. DANNEMEYER, California**  
**HOWARD COBLE, North Carolina**  
**D. FRENCH SLAUGHTER, JR., Virginia**  
**LAMAR S. SMITH, Texas**  
**CHUCK DOUGLAS, New Hampshire**  
**CRAIG T. JAMES, Florida**  
**TOM CAMPBELL, California**

**WILLIAM M. JONES, *General Counsel***  
**ROBERT H. BRINK, *Deputy General Counsel***  
**ALAN F. COFFEY, JR., *Minority Chief Counsel***

**SUBCOMMITTEE ON ECONOMIC AND COMMERCIAL LAW**

**JACK BROOKS, Texas, *Chairman***

**ROMANO L. MAZZOLI, Kentucky**  
**DAN GLICKMAN, Kansas**  
**EDWARD F. FEIGHAN, Ohio**  
**LAWRENCE J. SMITH, Florida**  
**HARLEY O. STAGGERS, JR., West Virginia**  
**MIKE SYNAR, Oklahoma**  
**PATRICIA SCHROEDER, Colorado**  
**DON EDWARDS, California**

**HAMILTON FISH, JR., New York**  
**WILLIAM E. DANNEMEYER, California**  
**CHUCK DOUGLAS, New Hampshire**  
**CARLOS J. MOORHEAD, California**  
**HENRY J. HYDE, Illinois**  
**TOM CAMPBELL, California**

**JONATHAN R. YAROWSKY, *Chief Counsel***  
**GEORGE P. SLOVER, *Counsel***  
**PETER J. LEVINSON, *Minority Counsel***

# CONTENTS

## HEARING DATE

June 14, 1990.....	Page 1
--------------------	-----------

## OPENING STATEMENT

Brooks, Hon. Jack, a Representative in Congress from the State of Texas, and chairman, Subcommittee on Economic and Commercial Law .....	1
--	---

## WITNESSES

Asofsky, Paul H., Weil, Gotshal & Manges, Houston, TX, on behalf of the National Bankruptcy Conference.....	135
Gekas, Hon. George W., a Representative in Congress from the State of Pennsylvania.....	84
Hobbs, Robert J., deputy director, National Consumer Law Center, Inc., Boston, MA.....	92
Sommer, Henry J., Community Legal Services, Inc., Philadelphia, PA .....	115
Wortham, Bob, U.S. attorney, Eastern District of Texas, accompanied by Charles W. Larson, U.S. attorney, Northern District of Iowa; Joseph M. Whittle, U.S. attorney, Western District of Kentucky; and Louis G. DeFalaise, U.S. attorney, Eastern District of Kentucky .....	3

## LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Asofsky, Paul H., Weil, Gotshal & Manges, Houston, TX, on behalf of the National Bankruptcy Conference:	
Prepared statement .....	138
Submissions to minority questions for the record .....	165
Gekas, Hon. George W., a Representative in Congress from the State of Pennsylvania: Prepared statement.....	85
Hobbs, Robert J., deputy director, National Consumer Law Center, Inc., Boston, MA:	
Prepared statement .....	94
Submissions to minority questions for the record .....	162
Sommer, Henry J., Community Legal Services, Inc., Philadelphia, PA:	
Prepared statement .....	118
Submissions to minority questions for the record .....	164
Thurmond, Hon. Strom, a Senator in Congress from the State of South Carolina: Prepared statement.....	89
Wortham, Bob, U.S. attorney, Eastern District of Texas:	
Prepared statement .....	6
Submissions to minority questions for the record .....	40

## APPENDIX

Material submitted for the hearing record .....	169
---	-----

provision will reverse the recent decision by the Supreme Court in United States v. Energy Resources Co., Inc., 58 U.S.L.W. 4609 (May 29, 1990). The Supreme Court found in this case that judicial designations of tax payments were permissible in the absence of any statutory restrictions in this area under the Bankruptcy Code. By creating such a statutory restriction, this section of the bill will prevent debtors, whose success in reorganization is doubtful, from allocating payments first to reduce tax liabilities for which officers, directors or others might be held personally liable (e.g., 100 percent penalty on responsible officers for failure to pay over taxes withheld from employees), and then upon failure of the reorganization plan, leave the remaining tax liabilities uncollectible. While the taxes lost through this loophole cannot be precisely quantified, this provision will clarify the law and result in substantial recoveries of unpaid taxes. (Additional information on this section can be found in our RESPONSE TO MINORITY QUESTION 1.)

**Section 202. Amendment of 11 U.S.C. § 523(a)**

Under this section, debts arising from the violation of a statute, rule or regulation, civil or criminal, are not dischargeable in bankruptcy. Financial penalties imposed by other courts to punish and deter misconduct should not be invalidated by a bankruptcy court.

This section clarifies that criminal offenders may not use bankruptcy to escape their restitution obligations. The issue of whether criminal restitution is dischargeable was resolved, in part, in Kelly v. Robinson, 479 U.S. 36 (1986). However, the Supreme Court has recently held that criminal restitution is dischargeable under Chapter 13 of the Bankruptcy Code. Pennsylvania Department of Public Welfare v. Davenport, 58 U.S.L.W. 4610 (May 29, 1990).

Other debts that arise from offenses, such as civil and criminal penalties and fines, will also be non-dischargeable under this section. This section makes clear that the bankruptcy laws are not intended to be a mechanism for evading the legitimate police powers of the government.

This section also provides that criminal appearance bonds and judgments arising from them are non-dischargeable. These debts arise when a criminal defendant who has been released on bail becomes a fugitive. See, e.g., 18 U.S.C. § 3146.

**Section 203. Amendment to 11 U.S.C. § 523(a)(8)**

This section adds to the list of non-dischargeable debts, obligations to repay educational funds received in the form of benefits (such as VA benefits), scholarships (such as medical service corps scholarships) and stipends. These obligations are

often very sizeable and should receive the same treatment as a "student loan" with regard to restrictions on dischargeability in bankruptcy. See U.S. Department of Health and Human Services v. Smith, 807 F.2d 122 (8th Cir. 1986).

The limitation period is extended in the Senate on these claims from five to seven years in recognition of the lengthy processing and enforcement requirements. We recommend a further extension to 10 years. It has been brought to our attention that this section may have an unintended adverse effect on certain programs administered by the Department of Health and Human Services. We therefore recommend that subsection (8) be amended by adding the following after "educational benefit, scholarship or stipend": "(other than a loan made under subpart I of part C of title VII of the Public Health Service Act or an obligation for payment of damages arising under section 338E of such Act)".

Section 204(a). Amendment to 11 U.S.C. § 1129(a)(9)(C)

This section provides that "unassessed" tax claims must be paid within six years of the confirmation date. The Bankruptcy Code allows payment of certain taxes to be made over a six-year period measured from the date of assessment. Sometimes the taxes have not been assessed as of the confirmation date. The Bankruptcy Code is currently silent on this issue. One bankruptcy court has ruled that unassessed taxes cannot be collected or paid even where the Internal Revenue Service has filed an otherwise valid proof of claim. See In Re Flanigan's Enterprises, Inc., 75 Bankr. 446 (S.D. Fla. 1987). This amendment specifically overrules this holding. Without this amendment, substantial tax claims will be lost. The amendment will clarify the law on this point.

Section 204(b). Amendment to 11 U.S.C. § 1129

This section adds the requirement that tax claims shall be paid interest at the statutory rate applicable to unpaid taxes, not a "market" or some other non-statutory rate. The amendment is needed in order to clarify current law. Compare United States v. Neal Pharmacal Co., 789 F.2d 1283 (8th Cir. 1986), and In Re Camino Real Landscape Maintenance Contractors, Inc., 818 F.2d 1503 (9th Cir. 1987).

Section 205. Amendment to 18 U.S.C. § 3142(c)(1)(B)(xi)

This amendment requires the court to demand sufficient information regarding the ownership and value of property before the court accepts it as collateral for a bail bond. This is to ensure that the proceeds from the sale of property securing a bail bond will be adequate to pay the resulting obligation in the event of default and to be certain that the property pledged