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Bipartisan Legislation Pending to Make Permanent the Increased Maximum Debt Limit for Small Business Debtors in Bankruptcy Reorganization

Client Alert

4.4.2022

As we reported in previous client alerts concerning the impact of CARES Act legislation on small business reorganizations under subchapter V of chapter 11 of the Bankruptcy Code^[1], the maximum debt threshold for eligible small business debtors was increased by Congress under the March 27, 2020 CARES Act^[2] from \$2,725,625, originally established under the Small Business Reorganization Act of 2019^[3], to \$7,500,000 with a one-year sunset provision. Then, in response to the continuing economic distress of the pandemic, Congress extended the \$7,500,000 debt threshold for an additional one year under March 27, 2021 COVID-19 Bankruptcy Relief Extension Act of 2021.^[4]

The CARES Act was not extended. As a consequence, the maximum debt threshold of \$7,500,000 for small business debtors electing to reorganize under subchapter V of Chapter 11 expired on March 27, 2022. For cases filed after the March 27th sunset date, the maximum debt threshold reverted to the original \$2,725,625. Because the debt threshold for small business debtors is subject to upward dollar adjustment every three years under section 104 of the Bankruptcy Code to account for inflation, effective April 1, 2022, the maximum debt threshold increased to \$3,024,725.

However, on March 14, 2022, Senators Durbin (D-IL), Whitehouse (D-RI) and Cronyn (R-TX) and Grassley (R-IA) introduced a bipartisan bill entitled "Bankruptcy Threshold Adjustment and Technical Corrections Act."^[5] The bill seeks, among other things, to make permanent the higher maximum debt threshold of \$7,500,000 in small business reorganizations subject to the periodic dollar upward adjustments except that the first dollar adjustment would not go into effect until April 1, 2025. The bill is currently being considered by the Committee on the Judiciary

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and its enactment into law, whether in its current form or in a form substantially similar, would appear likely due to its bipartisan support.

We will monitor and report on the progress of the bill as it makes its way through Congress and, hopefully, to the desk of the President. In the meantime, this should give pause for those small business debtors with aggregate debts totaling at least \$3,024,725 but not more than \$7,500,000 to filing a subchapter V case before the bill becomes law, assuming the small business debtor can withstand the delay.

For further information, feel free to contact Tom Radom (the author) or Max Newman.

Thomas Radom

248.258.1413

radom@butzel.com

Max Newman

248.258.2907

newman@butzel.com

[1] See, “CARES Act Provides Greater Relief for Financially Distressed Small Businesses under Small Business Reorganization Act,” dated March 30, 2020; “New Bankruptcy Relief Provisions for Small Business Debtors and Creditors Impacted by Covid-19 Pandemic under the Consolidated Appropriations Act of 2021,” dated February 24, 2021; “Bipartisan Legislation Introduced to Extend Bankruptcy Relief Provision in CARES Act and Consolidated Appropriations Act” dated March 2, 2021; “Covid-19 Bankruptcy Relief Extension Act Signed into Law,” dated March 30, 2021.

[2] Public Law 116-136, Div. A, Title I § 1113

[3] Public Law 116-54

[4] Public Law 117-5

[5] S. 3823