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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

SEPTEMBER 17-23, 2021

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WHAT CHAPTER 11 BANKRUPTCY COULD MEAN FOR YOUR BUSINESS

Recently, the owner of Polaris Fashion Place, Washington Prime Group, filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. Washington Prime Group is the owner of over 100 mall properties, including 8 other properties in Ohio. While a bankruptcy filing might seem ominous, due to the nature of Chapter 11 bankruptcies, business will likely continue as usual at Polaris.



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As a debtor in possession (or DIP), a corporation that files a Chapter 11 bankruptcy continues to hold property in which the creditors have a legal claim under a lien or a security interest. The DIP may still do business using the encumbered assets but must seek approval for any actions that are outside of the scope of its normal business activity. They must also keep accurate financial records, ensure its property and file tax returns. DIP status allows a debtor to continue to run its business while having the power and obligation to do so in the best interest of its creditors.

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Can you obtain financing while filing Chapter 11 Bankruptcy?

A DIP may obtain financing in the form of debtor in possession financing. According to section 364 of the Bankruptcy Code, DIP financing permits the debtor to obtain post-petition or post-bankruptcy filing credit. This gives incentives to both new and existing lenders to make loans, by providing them with special protections. To encourage DIP lenders to extend unsecured

financing to a debtor, the Bankruptcy Code gives DIP lenders an administrative expense priority. This means that a DIP lender's claim, for repayment of the unsecured DIP financing, will have priority over all other pre-petition unsecured claims. It is important to note these claims must be paid in full in order for the debtor to emerge from bankruptcy, unless otherwise agreed to by the lender.

Secured financing to a debtor is given super-priority over any and all other administrative expenses of the bankruptcy estate, along with a security interest in any unencumbered assets or a junior lien on already encumbered assets. A debtor must obtain the approval of the Bankruptcy Court to secure credit under Section 364(c), and the debtor must prove to the court that it could not obtain financing on an unsecured basis.

What happens if you cannot secure financing during bankruptcy?

If a debtor is unable to obtain either unsecured or secured financing, bankruptcy courts can authorize a debtor to borrow funds on a secured

basis through a "priming" DIP loan. This has priority over pre-petition secured creditors as well as a super-priority claim above all other claims. With a priming DIP loan, a lender generally will need a first-priority priming lien on the debtor's cash, receivables, inventory, any unencumbered assets and a second lien on any other encumbered property of the debtor's estate. ■

What does Chapter 11 Bankruptcy mean?

A case filed under Chapter 11 of the Bankruptcy Code is often referred to as a "reorganization bankruptcy" and usually involves a corporation or partnership. Typically, the debtor remains "in possession." This means it has the powers and duties of a trustee, may continue to operate its business and may, with court approval, borrow new money. A Chapter 11 case begins when the bankruptcy petition has been filed, either voluntarily by the debtor or via an involuntary petition which is filed by creditors.

EDUCATION & EVENTS

■ Thursday, Sept. 23 • 12 – 1:30 p.m.
Live Webinar: The Britney Spears Case and Conservatorship
1.5 CLE Hours

■ Tuesday, Sept. 28 • 7 – 9 p.m.
Live Webinar: Defending Britta Stein: Conversation w/ Author Ronald Balson

All classes listed are offered by the Columbus Bar Association through Zoom. To register, call 614-221-4112 or enroll online at www.cbalaw.org.

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TAX CHANGES UNDER THE OHIO FISCAL YEAR 2022-23 BUDGET BILL

Ohio Governor Mike DeWine recently signed the fiscal year 2022-23 budget bill, which contains several tax provisions and changes that will affect businesses and their owners. The bill's general effective date is the 91st day after being filed with the Ohio Secretary of State. Some of the bill's highlights are as follows:



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taxpayer-investor during the taxable year attributable to a VCOC's investment in Ohio businesses, and 50 percent of capital gain received from a VCOC's investment in all other businesses. The deduction will be available for taxable years beginning in 2026.

• A sales and use tax exemption for employment services and employment placement services, set to go into effect the month following the legislation's general effective date.

• A requirement that taxpayers use their preceding year's taxable gross receipts,

rather than the current year's gross receipts, to calculate the commercial activity tax, or CAT, owed on their first \$1 million in gross receipts.

• In computing the CAT, taxpayers can exclude from gross receipts any excess surplus of the State Insurance Fund received by the taxpayer from the Ohio Bureau of Workers' Compensation. The exclusion is set to go into effect in the taxable year 2022, continuing and making permanent the temporary exclusion currently in place for tax years 2020 and 2021.

• An income tax deduction for certain qualifying taxpayers for capital gain

attributable to the sale of an ownership interest in a business, capped at the lesser of the capital gain from the sale or an amount calculated using the business's payroll during a certain period. The deduction is set to go into effect for taxable years beginning in 2026.

• For tax years beginning on or after January 1, 2021, there is no longer a requirement that taxpayers report each business or professional activity from which their business income was derived when claiming the business income deduction. ■

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