

**Ten Things About the 2005 Bankruptcy Code Amendments
That Most Creditors Will NOT Like**

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- A. Provisions That Apply In Chapters 7, 11 and 13
1. Limitations on Contesting Property Taxes: Debtors may no longer seek to reduce a property tax on equipment or real estate, or challenge the debtor's liability for the tax, if the state period for contesting the tax or redetermining the amount has expired. 11 U.S.C. §505.
 2. Right to Recover Paid Property Taxes From A Secured Creditor: If the trustee or debtor in possession pay post-petition property taxes assessed against liened property, the trustee or debtor in possession may recover the amount of the paid property tax from the secured creditor as a reasonable, necessary cost or expense of preserving the property. 11 U.S.C. §506(c).
 3. Super-Priority Administrative Claim Status For Domestic Support Claims. In an individual debtor's case, pre-petition claims by the debtor's ex-wife for alimony and child support are paid before allowed administrative claims. The only claims that can be paid before such obligations are the administrative expenses of a trustee (not debtor in possession) for wages and salaries, the trustee's own compensation, and the allowed claims of the trustee's professionals (attorneys and accountants). 11 U.S.C. §507(a)(1).
 4. Enhanced Rights for Utility Creditors: Utilities can now require a debtor to provide cash, security or bonds to maintain utility service, and the court has little to no power to soften the blow. The offer of an administrative expense will no longer be enough to satisfy the requirement that a debtor offer "assurance of payment." 11 U.S.C. §366(c).
 5. Administrative Claims Granted to Suppliers of Goods Delivered within 20 Days prior to the Petition Date: This provision is the new "preferred vendor" administrative claim – the value of goods received by the debtor within 20 days prior to the bankruptcy petition have administrative claim priority, leapfrogging other pre-petition suppliers, service providers, and lessors. 11 U.S.C. §503(a)(9).
 6. Reclamation Claims for Goods Delivered Extend to 45 days. Creditors who supply goods to a debtor get more of an opportunity to come out whole, through their right to reclaim goods from the debtor.

Previously, such rights extended to giving written notice of a demand of reclamation 10 days after the date of delivery of the goods, and could extend for up to 20 days after receipt of the goods if the 10 day notice period expired after the petition date. Failure to give notice as required left the seller without recourse. Now, there is 45 day period after delivery for giving the notice of reclamation of goods; if the 45 day period expires after the petition date, the notice period can extend to up to 20 days after the petition date. Moreover, a seller's failure to provide the required notice for reclamation does not affect its right to an administrative claim if it delivered goods to the debtor within the 20 day period prior to the petition date. **BUT**, if the debtor has a secured creditor whose lien attaches to the goods, its rights are subject to the secured creditor's rights **AND** there is no longer a provision for an administrative claim if the seller is denied reclamation because of a secured creditor's prior rights. 11 U.S.C. §546(c)(1).

7. Post-Petition Taxes Are Automatically Allowed as Administrative Claims. Governments, unlike other administrative creditors, are not required to file a request for payment of post-petition taxes in order for such taxes to be allowed as administrative claims. 11 U.S.C. §503(1)(D).
8. New Limitation on Creditors Who May File or Join Involuntary Petitions Against a Debtor. In order to file or join an involuntary petition, a creditor now must have a claim that is not contingent and is not subject to a *bona fide* dispute as to liability **or amount**. Therefore, a debtor only has to raise a legitimate dispute as to the correct amount of a creditor's claim to knock that creditor out as a petitioning creditor. 11 U.S.C. §303(b)(1).
9. Creditor Liability if Payments Made Under a Plan are Not Properly Credited. If a Chapter 11 plan or Chapter 13 plan is confirmed, has not been revoked, and is not in default, a creditor's "willful failure" to credit payments as required under the confirmed plan, the creditor's actions in failing to credit the payments and/or attempting to collect the payments are a violation of the discharge injunction IF the creditor's actions caused a "material injury" to the debtor. 11 U.S.C. §524(i).
10. IRA Exemption of Up to \$1.0 Million. Regardless of whether a debtor uses state exemptions or federal exemptions, the debtor is now permitted to take an exemption for any property held in an IRA or Roth IRA, of up to \$1.0 million in amount; however, the bankruptcy court may increase the cap "if the interests of justice so require." 11 U.S.C. §§522(b)(3)(C), 522 (d)(12), & 522(n).