



# Fine Print

A Quarterly Publication of The Ohio State Bar Association  
and Our Members

Issue 50 • Winter 2012

## My Customer Has Filed for Bankruptcy – Now What?

By Julie E. Rabin

**Q:** My customer claims that he has filed for bankruptcy. How can I verify this?

**A:** A bankruptcy proceeding is filed in bankruptcy court and is a matter of public record. Your customer should be able to provide you with a notice from the bankruptcy court where the case was filed that sets forth, among other things, the date of filing and the case number. Also, your attorney should be able to obtain filing information.

**Q:** My customer hasn't paid our last two invoices for materials shipped three months ago. I just got a notice indicating that the company has filed for bankruptcy. Can I still send collection notices?

**A:** No. Bankruptcy law includes an "automatic stay" that prohibits you from taking any further collection actions once your customer has filed for bankruptcy. This means you cannot send any further billing state-

ments or continue any lawsuits that you may have filed.

**Q:** I shipped goods to my customer before I knew he had filed for bankruptcy. Can I get my goods back?

**A:** Maybe. If you have delivered goods to the debtor within 45 days before the bankruptcy filing or the goods are in transit to the debtor at the time of the bankruptcy filing, contact your attorney immediately. Special "reclamation rights" may allow you to get your goods back, but there are tight time frames for the exercise of these rights.

**Q:** What's the difference between a secured creditor and an unsecured creditor?

**A:** A secured creditor has specific collateral for its claim, such as a house, car, equipment, inventory or receivables. The secured creditor does not lose the lien on its collateral just because a bankruptcy has been filed and normally retains the right to be paid from the proceeds of its collateral. An unsecured creditor has no such collateral.

**Q:** If I am an unsecured creditor, is there any way I can be paid

## IRS Changes Apply to Small Businesses

### Transportation

Beginning Jan. 1, 2012, the standard Internal Revenue Service (IRS) mileage rates used to calculate the deductible costs of operating an automobile, van, pickup or panel truck for business purposes will be 55.5 cents per mile for business miles driven. This rate is unchanged from the mid-year adjustment that became effective July 1, 2011. The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile.

Limits have changed on the value of certain employer-provided transportation benefits that can generally be excluded from the employee's wages. The limits are now \$125 per month for combined commuter highway vehicle transportation and transit passes, and \$240 per month for qualified parking.

### New Hire Retention Credit

The goal of the New Hire Retention Credit (NHRC) is to encourage businesses to hire and retain new employees. The employer may claim the credit for each retained worker whose employment meets certain qualifying guidelines. A retained worker is a qualified employee (as defined for payroll tax exemption purposes) who remains an employee for at least 52 consecutive weeks, and whose wages (as defined for income tax



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once my customer has filed bankruptcy?

**A:** It depends on the type of bankruptcy that is filed. In the majority of Chapter 7 bankruptcy liquidations, there are no funds to distribute to unsecured creditors. If there are assets, you will need to file a proof of claim by the deadline on the form sent to you by the court in order to share in any distribution. In a Chapter 11 reorganization, a plan may be proposed to allow unsecured creditors to receive a portion of their claims.

**Q:** What is a “preference”?

**A:** One of the principles of bankruptcy law is equality of distribution of funds to creditors. The trustee often has the right to recover payments made by the debtor to creditors within 90 days before the bankruptcy filing if the payments were made to cover back debts and were not made according to ordinary business terms. Such a payment is called a preference.

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withholding purposes) for the last 26 weeks equal at least 80 percent of the wages for the first 26 weeks. The amount of the credit is the lesser of \$1,000 or 6.2 percent of wages that the employer paid to the retained worker during the 52 consecutive week period.

If an employer chooses to claim the Work Opportunity Tax Credit (WOTC) for a qualified employee, the employer can still claim the NHRC for that qualified employee.

Employers can claim the NHRC for a retained worker for the first taxable year ending after March 18, 2010 (effective date of the HIRE Act), for which the retained worker satisfies the 52 consecutive week requirement. However, since retained workers must be qualified employees, the credit applies only for workers hired after Feb. 3, 2010, and before Jan. 1, 2011.

Calendar year taxpayers were not eligible to claim the NHRC (Form 5884-B) on their 2010 tax returns due to the 52-week retention period. As a result, calendar year taxpayers

are first eligible to claim the credit on their 2011 tax returns due April 17, 2012. For fiscal year filers, the earliest date to file a return claiming the credit would be fiscal years ending after Feb. 3, 2011.

## Expanded Tax Credit for Hiring Unemployed Veterans

The WOTC has been expanded to give employers new incentives to hire certain unemployed veterans. On Nov. 21, 2011, the VOW to Hire Heroes Act of 2011 was signed into law. This law gives an increased WOTC to businesses that hire eligible unemployed veterans and also makes part of the credit available to tax-exempt organizations. Businesses claim the credit as part of the general business credit and tax-exempt organizations claim it against their payroll tax liability. The credit is available for eligible unemployed veterans who begin work on or after Nov. 22, 2011, and before Jan. 1, 2013. For more information, visit [www.irs.gov/formspubs/article/0,,id=177948,00.html](http://www.irs.gov/formspubs/article/0,,id=177948,00.html).

*Information provided by the Internal Revenue Service.*

## You Should Know...

*By Patricia F. Weisberg*

### 2012 Minimum Wage Rates

On Nov. 7, 2006, Ohio voters voted to amend Ohio's Constitution so that each year Ohio's minimum wage will increase by the rate of inflation for the prior 12 months. The Ohio Department of Commerce has calculated the inflation rate and adjusted the Ohio minimum wage for 2012.

Effective Jan. 1, 2012, Ohio's minimum wage will increase \$0.30 from \$7.40 per hour to \$7.70 per hour for regular hourly employees. The minimum wage for tipped employees will increase \$0.15 from \$3.70 per hour to \$3.85 per hour.

For 2012, Ohio's minimum wage law does not apply to employees whose employer's gross revenues are under \$283,000 for 2011 or to 14- and 15-year-old employees. (Currently, Ohio's minimum wage applies to employers who gross over \$271,000 per year.) But, the federal minimum wage laws might apply to these employees. The federal minimum hourly wage is currently \$7.25.

The new poster is available through [www.com.ohio.gov](http://www.com.ohio.gov) (type “2012 minimum wage” into the search box).

### NLRB Postpones Effective Date of Posting Rule

The National Labor Relations Board's (NLRB) mandate that all employers must post a notice advising employees

of their rights under the National Labor Relations Act (NLRA) by Jan. 31, 2012 has been postponed again. The new deadline is April 30, 2012.

The NLRB agreed to the postponement at the request of the federal court in Washington, D.C., which is hearing a legal challenge regarding the rule. In its press release, the NLRB stated that postponing the effective date of the rule would facilitate the resolution of the legal challenges filed pertaining to the rule. Visit <https://www.nlr.gov/news/nlr-postpones-effective-date-rights-posting-rule-april-30> for more information.

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