NOTE

All that Glitters Isn't Gold: Deciphering *In re Knudsen*'s Tax Allocation Methods Under 11 U.S.C. § 1222(a)(2)(A) for Chapter 12 Debtors

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TABLE OF CONTENTS

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INTRODUCTION

Buck Johnson owns and operates a family farm in rural Nebraska where he has grown corn for the past thirty years.[1] He has experienced typical business fluctuations over his lifetime, but a recent drought has brought his farm to the brink of collapse.[2] Thus, Buck files bankruptcy under Chapter 12 of the Bankruptcy Code as amended in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").[3] The bankruptcy court confirms Buck's bankruptcy plan in April, requiring him to sell his corn stock and a portion of his land.[4] From land sold in the required asset sale, Buck realizes a significant taxable gain in June.[5] Buck treats the tax generated from this land sale as an unsecured and nonpriority claim under bankruptcy statute 11 U.S.C. § 1222(a)(2)(A) ("§ 1222(a)(2)(A)").[6] However, how should Buck apply this nonpriority claim relative to his other tax obligations?[7]

The Eighth Circuit Court of Appeals faced a similar scenario in *In re Knudsen*.[8] In *Knudsen*, the court noted that there were two possible methods of allocating such a tax: the proportional method and the marginal method.[9] The court found that the marginal tax allocation method is appropriate when a taxpayer allocates the tax between priority and nonpriority tax claims.[10]

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[1] This hypothetical presents a variation on the facts in *Knudsen v. IRS (In re Knudsen)* (*Knudsen*), 581 F.3d 696 (8th Cir. 2009), and the parties are fictitious. *See infra* Part II (discussing *Knudsen*'s facts, holding, and rationale).

[2] *See Knudsen*, 581 F.3d at 700; Roger A. McEowen, *Agricultural Law Developments Shaping the Sector and Legal Practice*, 14 DRAKE J. AGRIC. L. 1, 16 (2009).

[3] *See* United States v. Nazar (*In re* Dawes), 415 B.R. 815, 819-20 (D. Kan. 2009) (discussing brief history of 11 U.S.C. § 1222(a)(2)(A) (2006)); *In re* Knudsen (*Knudsen I*), 356 B.R. 480, 483 (Bankr. N.D. Iowa 2006) (same).

[4] *See Knudsen*, 581 F.3d at 702; *cf. Knudsen I*, 356 B.R. at 483 (discussing reasons court is unable to confirm debtors' bankruptcy plan).

[5] *See Knudsen*, 581 F.3d at 700-01.

[6] *See* 11 U.S.C. § 1222(a)(2)(A) (2006). Unsecured and nonpriority claims are those claims not secured by collateral and not entitled to priority payment. Chapter 12 bankruptcy plans must provide full payment for priority claims under 11 U.S.C. § 507. *See* 11 U.S.C. § 1222(a)(2). Further, bankruptcy plans generally must provide secured creditors with either the full amount of the allowed claim or the collateral. *See* 11 U.S.C. § 1225(a)(5) (2006). Such claims are dischargeable under 11 U.S.C. § 1228(a).

[7] *See Knudsen*, 581 F.3d at 715.

[8] *See id.* at 700-02.

[9] *See id.* at 715-16 (citing *Knudsen I*, 356 B.R. at 486-87).

[10] *See id.* at 718-19 (citing *In re* Knudsen, 389 B.R. 643, 668-69 (N.D. Iowa 2008)) (concluding marginal method is proper).

Prior to the 2005 BAPCPA amendments, the Bankruptcy Code required bankruptcy plans to provide for tax payments in full.[11] Bankruptcy courts could only confirm plans that provided for full tax payments, forcing debtors to construct such a plan.[12] For example, the Bankruptcy Code required full payment of all tax claims, even though general, nonpriority, non-tax creditors may receive less than full repayment.[13] As many farmers faced enormous tax debts, the BAPCPA amendments aided farmers by reducing the full tax payment requirement under certain circumstances.[14]

After July 1, 2005, the effective date of BAPCPA, § 1222(a)(2)(A) created an exception to the provision of full tax payments under a bankruptcy plan.[15] If the debtor receives a Chapter 12 discharge, this discharge may strip the existing priority from the claims of governmental units under § 1222(a)(2)(A).[16] This development is a significant gain for debtors because their bankruptcy plans need not provide for full payment of these tax obligations.[17] Thus, the debtor may treat qualifying claims by governmental units as nonpriority claims equal to the claims of other nonpriority creditors under

[11] *See* United States v. Nazar (*In re* Dawes), 415 B.R. 815, 820 (D. Kan. 2009) (describing § 1222(a)(2)(A) as new priority stripping provision); *Knudsen I*, 356 B.R. 480, 483-84 (Bankr. N.D. Iowa 2006); Mike Lowry, Note, *A New Paint Job on a '85 Yugo: BAPCPA Improves Chapter 12 but Will It Really Make a Difference?*, 12 DRAKE J. AGRIC. L. 231, 232-34, 246-47 (2007); *see also* 11 U.S.C. § 1222(a)(2) (2000) (providing no priority stripping for claims by governmental units). *See generally* McEowen, *supra* note 2, at 18 n.53 (describing Chapter 12 amendments in BAPCPA).

[12] *See* 11 U.S.C. § 1222(a)(2); IRS v. Cousins (*In re* Cousins), 209 F.3d 38, 40 (1st Cir. 2000); Mosbrucker v. United States (*In re* Mosbrucker), 1999 U.S. App. LEXIS 24628, at *1-2 (8th Cir. Oct. 5, 1999); John D. Howard, *The Taxation of Liquidating Trusts, Escrows and Settled Funds in Chapter 11 Cases*, 64 AM. BANKR. L.J. 403, 423-24 (1990) (describing Chapter 12 bankruptcy plans); *see also* 11 U.S.C. § 507 (2006).

[13] *See* Gregory L. Germain, *Taxing Income in the Year of Bankruptcy Under BAPCPA*, AM. BANKR. INST. J., Dec.–Jan. 2006, at 14, 57 & n.37 (citing 11 U.S.C. §§ 1222(a)(2), 1322(a)(2) (2006)).

[14] *See* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[15] *See Dawes*, 415 B.R. at 820 (describing § 1222(a)(2)(A)'s priority-stripping exception); *see also* Carl M. Jenks, *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Summary of Tax Provisions*, 79 AM. BANKR. L.J. 893, 913 n.49 (2005) (describing limitation of § 1222(a)(2)(A) to farming assets though Chapter 12 is also applicable to fishermen); Neil E. Harl et al., *Major Developments in Chapter 12 Bankruptcy*, DAY RETTIG PEIFFER, PC (Nov. 7, 2009), http://www.drpjlaw.com/article_major_developments_chapter_12_bankrupcty_iowa.html.

[16] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d 696, 706 (8th Cir. 2009); *Dawes*, 415 B.R. at 820.

[17] *See Dawes*, 415 B.R. at 820 (describing congressional concerns of debtor losing farm if unable to pay IRS in full).

§ 1222(a)(2)(A).[18] Bankruptcy debtors generally pay less to nonpriority creditors than to priority creditors.[19] Therefore, debtors benefit under the BAPCPA amendment to § 1222(a)(2)(A) by paying the Internal Revenue Service ("IRS") less than the full tax amount owed.[20]

Bankruptcy law grants beneficial (nonpriority) treatment to the tax generated under § 1222(a)(2)(A) sold pursuant to a confirmed bankruptcy plan.[21] Frequently, this grant helps farmers remain on their land because they need not pay the full amount of their potentially overwhelming tax liabilities.[22] By treating some previously priority claims as nonpriority claims, § 1222(a)(2)(A) enables farmers to pay less tax.[23]

Many nuances of § 1222(a)(2)(A) are still evolving in the courts.[24] One outstanding issue is the proper tax allocation method for tax receiving nonpriority treatment relative to the debtor's priority tax.[25] Currently, no nationwide binding precedent has determined the

[18] *See id.* (describing § 1222(a)(2)(A) as remedial statute to help family farmers reorganize).

[19] *See* Roger S. Cox, *Bankruptcy and Creditors' Rights*, 56 SMU L. REV. 1145, 1170 n.84 (2003) (noting unsecured creditor claim payout reduced to zero in Chapter 13 bankruptcy); Stephen J. Lubben, *Business Liquidation*, 81 AM. BANKR. L.J. 65, 80-81 (2007) (discussing unsecured creditors' payout under Chapters 7 and 11); William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, 68 AM. BANKR. L.J. 397, 401 (1994) (noting unsecured creditors receive nothing in typical Chapter 7 bankruptcy).

[20] *See Dawes*, 415 B.R. at 820; *see also* Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 653-54 (Bankr. D. Colo. 2009). *See generally* 11 U.S.C. § 1222(a)(2)(A) (reducing priority on certain taxes).

[21] *See Dawes*, 415 B.R. at 824 (affirming bankruptcy court); Hall v. United States (*In re* Hall), 393 B.R. 857, 863-64 (D. Ariz. 2008) (reversing bankruptcy court); *In re* Knudsen (*Knudsen II*), 389 B.R. 643, 677 (N.D. Iowa 2008) (affirming bankruptcy court); *In re* Gartner, No. BK06-40422-TLS, 2008 Bankr. LEXIS 3525, at *3-4 (Bankr. D. Neb. Dec. 29, 2008) (following *In re* Schilke, 379 B.R. 899 (Bankr. D. Neb. 2007)); *In re* Schilke, 379 B.R. 899, 903 (Bankr. D. Neb. 2007).

[22] *See Dawes*, 415 B.R. at 820; *Knudsen II*, 389 B.R. at 668; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[23] *See* 11 U.S.C. § 1222(a)(2)(A); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668). *See generally* Whitford, *supra* note 19, at 401 (noting that Chapter 7 creditors generally receive nothing in liquidations).

[24] *See* McEowen, *supra* note 2, at 15, 18 n.54; *see also* Jenks, *supra* note 15, at 901; Kenneth C. Weil, *Taxes and BAPCPA – Calm Before the Storm*, AM. BANKR. INST. J., Mar. 2007, at 38, 38.

[25] *See Knudsen*, 581 F.3d 696, 718-19 (8th Cir. 2009) (citing *Knudsen II*, 389 B.R. at 668-69) (noting claims that qualify under § 1222(a)(2)(A) are nonpriority claims with remainder retaining priority status).

proper tax allocation method of these claims, and the limited case law on point contains considerable disagreement.[26]

This Note argues that the proportional method is the correct tax allocation method under § 1222(a)(2)(A) and, therefore, the ruling in *Knudsen* was incorrect.[27] Through its analysis, the *Knudsen* court improperly afforded beneficial (nonpriority) treatment to an excessive amount of tax.[28] Part I describes the alternative tax allocation methods and discusses relevant judicial determinations of the proper tax allocation method.[29] Part II describes the Eighth Circuit's analysis in *Knudsen*.[30] Part III argues that the *Knudsen* court incorrectly held that the marginal tax allocation method is proper under § 1222(a)(2)(A).[31] First, *Knudsen* failed to analyze the relevant legislative history of § 1222(a)(2)(A) that contemplated reducing the IRS's veto power.[32] Second, although § 1222(a)(2)(A) is primarily a tax statute, the *Knudsen* court failed to consult the Internal Revenue Code and tax policy.[33] Finally, the *Knudsen* court erred because the proportional method properly balances the competing interests of creditors and debtors during tax allocation.[34]

I. BACKGROUND

Few courts have had the opportunity to examine § 1222(a)(2)(A), and even fewer courts have opined on the proper tax allocation method under this statute.[35] Notably, § 1222(a)(2)(A) applies only

[26] *See Knudsen II*, 389 B.R. at 669 (determining marginal method is correct); *In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009) (determining proportional method is proper); *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006), *overruled by Knudsen II*, 389 B.R. at 669 (determining proportional method is proper).

[27] *See infra* Part III (arguing that *Knudsen* improperly analyzed legislative history, § 1222(a)(2)(A) is primarily tax statute, and that proportional method treats parties equally).

[28] *See Knudsen*, 581 F.3d at 718 (describing marginal method as more beneficial to debtor than proportional method); *Knudsen II*, 389 B.R. at 665.

[29] *See infra* Part I (discussing tax allocation methods and relevant case law).

[30] *See infra* Part II (discussing *Knudsen* decision).

[31] *See generally infra* Part III (arguing that *Knudsen* improperly analyzed legislative history, § 1222(a)(2)(A) is primarily tax statute, and fairness between bankruptcy parties is essential in finding proportional method correct).

[32] *See infra* Part III.A (discussing § 1222(a)(2)(A)'s legislative history).

[33] *See infra* Part III.B (discussing § 1222(a)(2)(A)'s applicability to tax statutes).

[34] *See infra* Part III.C (discussing proportional method as treating debtors and creditors fairly).

[35] *See Knudsen*, 581 F.3d 696, 718 (8th Cir. 2009); *Knudsen II*, 389 B.R. 643, 669 (N.D. Iowa 2008); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 663 (Bankr. D. Colo.

under specific circumstances.[36] However, all Chapter 12 debtors must contemplate the tax allocation of qualifying transactions under § 1222(a)(2)(A) relative to their other tax debts.[37] Part I describes the two alternative tax allocation methods and situates the *Knudsen* decision within the relevant case law.[38]

A. Tax Allocation Methods

There are two possible tax allocation methods under § 1222(a)(2)(A): the proportional method and the marginal method.[39] The proportional method requires the taxpayer to prepare a tax return recognizing the taxpayer's total income and deductions.[40] The IRS then determines the taxpayer's percentage of total income that is attributable to either qualifying or non-qualifying sources pursuant to § 1222(a)(2)(A).[41] Finally, the IRS divides the taxpayer's overall outstanding tax based on these resulting percentages to determine the total tax owed.[42]

Conversely, the marginal method requires the taxpayer to prepare a tax return recognizing all income.[43] The taxpayer then calculates a second pro forma tax return that removes all income from qualifying sources pursuant to § 1222(a)(2)(A).[44] Finally, the taxpayer applies their highest marginal tax rate to these qualifying sources of income to determine the total tax owed.[45]

For example, assume in the previously discussed hypothetical that Buck Johnson's total tax liability is $100,000 in the current year.[46]

2009); *In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009); *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006).

[36] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d at 699; Katherine M. Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 AM. BANKR. L.J. 729, 737-38 (2005).

[37] *See Knudsen*, 581 F.3d at 702 (quoting *Knudsen II*, 389 B.R. at 669); *Ficken*, 430 B.R. at 660-61 (quoting *Knudsen II*, 389 B.R. at 667); *Rickert*, 2009 Bankr. LEXIS 17, at *5.

[38] *See infra* Part I.A-B (discussing § 1222(a)(2)(A)'s relevant legislative history and applicability to tax statutes).

[39] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen*, 581 F.3d at 715-16 (citing *Knudsen I*, 356 B.R. at 486-87); *Knudsen II*, 389 B.R. at 665.

[40] *See Knudsen*, 581 F.3d at 715 (citing *Knudsen I*, 356 B.R. at 486-87); *Knudsen II*, 389 B.R. at 665.

[41] *See supra* sources cited in note 40.

[42] *See supra* sources cited in note 40.

[43] *See supra* sources cited in note 40.

[44] *See supra* sources cited in note 40.

[45] *See supra* sources cited in note 40.

[46] *See Knudsen*, 581 F.3d 696, 701 (8th Cir. 2009); *Knudsen I*, 356 B.R. 480, 486

Prior to BAPCPA, Buck's bankruptcy plan necessarily accounted for his entire tax liability as a priority claim and paid this liability in full.[47] However, after BAPCPA, some portion of Buck's tax liability qualifies as a nonpriority claim under § 1222(a)(2)(A).[48] Under the marginal method, more tax is subject to § 1222(a)(2)(A) because Buck's highest marginal tax rate applies to the qualifying transactions.[49] However, under the proportional method, Buck's average tax rate applies to the qualifying transactions, reducing the portion of Buck's tax liability qualifying under § 1222(a)(2)(A).[50] Next, assume Buck's tax liability subject to nonpriority status under § 1222(a)(2)(A) is $70,000 using the favorable marginal method, but is $40,000 using the proportional method.[51] Finally, assume that Buck pays priority claims in full, while nonpriority claimants receive just ten percent of their claim amount.[52] In this hypothetical, Buck's total tax liability after applying § 1222(a)(2)(A) is $37,000 under the marginal method, but is $64,000 using the proportional method.[53] Thus, the marginal method of tax allocation under § 1222(a)(2)(A) reduces Buck's tax liability by permitting the discharge of an increased amount of tax.[54]

(Bankr. N.D. Iowa 2006) (noting that priority claimants receive eighty-two percent of total claim while nonpriority claimants receive eighteen percent); *see also supra* Part I (introducing hypothetical).

[47] *See* 11 U.S.C. § 1222(a)(2) (2000); IRS v. Cousins (*In re* Cousins), 209 F.3d 38, 40 (1st Cir. 2000); Mosbrucker v. United States (*In re* Mosbrucker), 1999 U.S. App. LEXIS 24628, at *1-2 (8th Cir. Oct. 5, 1999); *see also* 11 U.S.C. § 507 (2006).

[48] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d at 699-700; Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009).

[49] *See Knudsen*, 581 F.3d at 718 (quoting *Knudsen II*, 389 B.R. 643, 668-69 (N.D. Iowa 2008)); *Knudsen II*, 389 B.R. 643, 668-69 (N.D. Iowa 2008); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668).

[50] *See Knudsen*, 581 F.3d at 715-16 (quoting *Knudsen I*, 356 B.R. at 486-87); *Knudsen II*, 389 B.R. at 668-69; *Ficken*, 430 B.R. at 660.

[51] *See Knudsen*, 581 F.3d at 701; *Knudsen I*, 356 B.R. at 486.

[52] *See Knudsen I*, 356 B.R. at 486.

[53] *See Knudsen*, 581 F.3d at 701; *Knudsen I*, 356 B.R. at 486; *see also* 11 U.S.C. § 1222(a)(2)(A). Under the marginal method, Buck's total tax liability is: $100,000 - $70,000 + ($70,000 x 10%) = $37,000. Conversely, under the proportional method, Buck's total tax liability is: $100,000 - $40,000 + ($40,000 x 10%) = $64,000.

[54] *See Knudsen*, 581 F.3d at 718-19 (citing *Knudsen II*, 389 B.R. at 668-69); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668); *In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009); *see also* 11 U.S.C. § 1228(a) (2006) (discharging debt in Chapter 12 bankruptcies upon completion of all payments required by confirmed plan); Bessette v. Avco Fin. Servs., 230 F.3d 439, 443-44 (1st Cir. 2000) (noting discharge in bankruptcy generally relieves debtor from debt and permanently enjoins creditor actions to collect discharged debts).

As illustrated in Buck's hypothetical, the marginal method grants beneficial (nonpriority) treatment to a greater amount of tax than does the proportional method.[55] Debtors prefer the benefits of the marginal method, while the IRS prefers the greater overall tax generated under the proportional method.[56] This disparate result creates tension between debtors and the IRS over which tax allocation method is proper under § 1222(a)(2)(A).[57]

B. The State of the Law

Very few courts have had the opportunity to decide the appropriate tax allocation method under § 1222(a)(2)(A).[58] The Northern District of Iowa Bankruptcy Court was the first court to decide the proper tax allocation method in *In re Knudsen* ("*Knudsen I*").[59] In *Knudsen I*, hog farmers Anders and Cynthia Knudsen filed for Chapter 12 bankruptcy protection claiming a partial tax liability discharge under § 1222(a)(2)(A).[60] The court in *Knudsen I* held that the proportional tax allocation method is the appropriate method under § 1222(a)(2)(A).[61]

On appeal, the Northern District of Iowa reversed the bankruptcy court in *In re Knudsen* ("*Knudsen II*"), holding that the marginal method is proper.[62] The court's analysis relied on Senator Charles Grassley's statement in support of the Safety 2000 legislation.[63] Although never enacted, the Safety 2000 legislation language was

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[55] *See Knudsen*, 581 F.3d at 715-16 (citing *Knudsen I*, 356 B.R. at 486-87); *Knudsen II*, 389 B.R. at 665; *Ficken*, 430 B.R. at 661.

[56] *See Knudsen*, 581 F.3d at 715-16 (citing *Knudsen I*, 356 B.R. at 486-87); *Knudsen II*, 389 B.R. at 665. *See generally* Jenks, *supra* note 15, at 893 (describing tension between general creditors, debtor, and tax collector).

[57] *See, e.g.*, *Knudsen*, 581 F.3d at 699 (adopting marginal method); *Knudsen II*, 389 B.R. at 668-69 (same); *Rickert*, 2009 Bankr. LEXIS 17, at *7 (adopting proportional method); *Knudsen I*, 356 B.R. at 487 (same). *See generally* Jenks, *supra* note 15, at 893 (describing strain between bankruptcy parties).

[58] *See Knudsen*, 581 F.3d at 718; *Knudsen II*, 389 B.R. at 669; *Ficken*, 430 B.R. at 663; *Rickert*, 2009 Bankr. LEXIS 17, at *7; *Knudsen I*, 356 B.R. at 487.

[59] *See Knudsen I*, 356 B.R. at 480, 487, *overruled by Knudsen II*, 389 B.R. at 665.

[60] *See Knudsen I*, 356 B.R. at 482; *see also infra* Part II (discussing *Knudsen*).

[61] *See Knudsen I*, 356 B.R. at 487.

[62] *See Knudsen II*, 389 B.R. at 668. Three forums may hear appeals from the bankruptcy court: the district court, bankruptcy appellate panel, and the relevant circuit court of appeals in limited circumstances. *See* 28 U.S.C. § 158 (2006); Douglas E. Deutsch & Thomas M. Horan, *Seven Bankruptcy Appeals Questions Answered*, AM. BANKR. INST. J., Nov. 2009, at 48, 52-53.

[63] *See Knudsen II*, 389 B.R. at 668; *see also* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

identical to that in § 1222(a)(2)(A) as enacted under BAPCPA.[64] In his statement, Senator Grassley explained that the legislation's purpose was to reduce the IRS's veto power over a farmer's reorganization plan.[65] Senator Grassley further explained that Safety 2000 dampens the IRS's veto power by reducing the priority of taxes during bankruptcy proceedings.[66]

The court's analysis in *Knudsen II* found that the marginal method fulfills Senator Grassley's purpose underlying Safety 2000 and, thus, the purpose underlying § 1222(a)(2)(A).[67] The court found that the marginal method, as opposed to the proportional method, reduces the IRS's veto power by maximizing the percentage of taxes attributed beneficial (nonpriority) treatment.[68] Therefore, *Knudsen II* held that the marginal method is the correct tax allocation method under § 1222(a)(2)(A).[69]

Further, the *Knudsen II* court also held that statutory ambiguities should both favor the debtor and comply with the overall purpose of Chapter 12.[70] The court noted that judicial interpretations of Chapter 12 have relied on these principles where the underlying statute is ambiguous.[71] The court reasoned that because § 1222(a)(2)(A) is silent regarding the proper allocation method, the court must interpret

[64] *See Knudsen II*, 389 B.R. at 661 n.5 (analyzing relative weight of Senator Grassley's statement in support of Safety 2000 amendment and entitling statement to considerable weight); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 653 (Bankr. D. Colo. 2009) (quoting *In re* Schilke, 379 B.R. 899, 902 (Bankr. D. Neb. 2007)).

[65] *See* 11 U.S.C. § 1222(a)(2) (2006) (requiring bankruptcy plan to provide for full payments of all priority claims under 11 U.S.C. § 507); *Ficken*, 430 B.R. at 653 (quoting *In re* Schilke, 379 B.R. 899, 902 (Bankr. D. Neb. 2007)); *Knudsen II*, 389 B.R. at 668 (noting reducing IRS's veto power makes reorganization plan more feasible and confirmable); *id.* at 668-69 (noting veto power remains in place to extent that farmer's reorganization plan does not provide for priority portion of claim or farmer fails to receive discharge).

[66] *See Ficken*, 430 B.R. at 653 (quoting *In re* Schilke, 379 B.R. 899, 902 (Bankr. D. Neb. 2007)).

[67] *See Knudsen II*, 389 B.R. at 668; *see also* 11 U.S.C. § 1222(a)(2)(A); *Ficken*, 430 B.R. at 661.

[68] *See Knudsen II*, 389 B.R. at 668.

[69] *See id.* at 668-69.

[70] *See id.* at 668 (citing New Neighborhoods, Inc. v. W. Va. Workers' Comp. Fund, 886 F.2d 714, 719 (4th Cir. 1989)); *In re* Green, 360 B.R. 34, 42 (Bankr. N.D.N.Y. 2007); Ill. Marine Towing, Inc. v. Barnick (*In re* Barnick), 353 B.R. 233, 246 (Bankr. C.D. Ill. 2006); Bell v. Brown (*In re* Payne), 27 B.R. 809, 817 (Bankr. D. Kan. 1983).

[71] *See Knudsen II*, 389 B.R. at 667-68 (quoting Martin v. Cox (*In re* Martin), 140 F.3d 806, 807-08 (8th Cir. 1998)); *see also* Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 737 (1985).

this ambiguity in favor of the debtor.[72] The court noted that the marginal method affords the IRS's claims the most beneficial (nonpriority) treatment.[73] Because the marginal method reduces the priority of the IRS's claim, the marginal method similarly reduces the IRS's veto power over the debtor's bankruptcy plan.[74] Therefore, the court held that the marginal tax allocation method is proper.[75]

In explicit disagreement with *Knudsen II*, the District of Nebraska Bankruptcy Court in *In re Rickert* held that the proportional method is appropriate.[76] In *Rickert*, Mark and Joan Rickert realized a significant taxable gain from their pre-petition sale of breeding livestock and equipment.[77] However, the Rickerts' tax liability from this sale became due post-petition following the Rickerts' subsequent bankruptcy filing.[78] The parties stipulated that the Rickerts' tax liability subject to § 1222(a)(2)(A) was $669.00 greater under the marginal method as compared with the proportional method.[79]

The *Rickert* court found that § 1222(a)(2)(A) allows a Chapter 12 debtor to treat certain governmental claims, such as tax liability, as nonpriority claims.[80] However, the court noted that § 1222(a)(2)(A) does not require courts to maximize that beneficial treatment.[81] The *Rickert* court explained that the proportional method allocates tax without regard to which income source generated the last dollar of income.[82] As such, the proportional method affords neither the most nor the least beneficial (nonpriority) treatment to the IRS's claim under § 1222(a)(2)(A).[83] Thus, the court asserted that the proportional method is the fairest allocation method because it treats each dollar of income equally under the Tax Code.[84] Therefore, the

[72] *See Knudsen II*, 389 B.R. at 668.

[73] *See id.*

[74] *See id.*; *see also* Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009) (quoting *Knudsen II*, 389 B.R. at 668).

[75] *See Knudsen II*, 389 B.R. at 668 (holding marginal method is correct in light of ambiguities in § 1222(a)(2)(A) and requirement that ambiguities favor debtor).

[76] *See In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *6-7 (Bankr. D. Neb. Jan. 9, 2009).

[77] *See id.* at *2.

[78] *See id.*

[79] *See id.* at *2-3.

[80] *See id.* at *6.

[81] *See id.*

[82] *See id.* at *7.

[83] *See id.*

[84] *See id.* (noting proportional method treats every taxable dollar of income as equal to extent that Internal Revenue Code does so).

court held that the proportional method is the proper tax allocation method under § 1222(a)(2)(A).[85]

However, in *In re Ficken*, the District of Colorado Bankruptcy Court agreed with *Knudsen II* that the marginal method is proper.[86] In *Ficken*, Kent and Roberta Ficken owned a cattle farm in eastern Colorado and filed for Chapter 12 bankruptcy protection in 2005.[87] Pursuant to their confirmed plan, the Fickens sold their breeding livestock and calf inventory.[88] The parties claimed that the Fickens' tax liability subject to § 1222(a)(2)(A) was $22,088.34 greater under the marginal method as compared with the proportional method.[89]

In holding that the marginal method is appropriate, the *Ficken* court found that the marginal method gives nonpriority treatment to the largest amount of tax.[90] The court noted that this result accomplishes Congress's goal under § 1222(a)(2)(A) of reducing priority claims by allowing discharge of the largest amount of tax.[91] The court further illustrated that the IRS does not consistently apply the proportional method to all tax.[92] For example, the court demonstrated that the IRS does not use the equivalent of the proportional method to determine estate taxes for special use valuation.[93] The court further noted that the marginal method might be easier for taxpayers to calculate because it does not require IRS intervention.[94] Therefore, the *Ficken* court followed *Knudsen II* and adopted the marginal tax allocation method for claims arising under § 1222(a)(2)(A).[95] Overall, the lower courts disagree regarding the proper tax allocation method under § 1222(a)(2)(A), and the Eighth Circuit is the highest court that has determined the proper tax allocation method.[96]

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[85] *See id.*

[86] *See* Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 663 (Bankr. D. Colo. 2009).

[87] *See id.* at 651.

[88] *See id.*

[89] *See id.* at 659-60.

[90] *See id.* at 661-62.

[91] *See id.* at 661-62; *see also* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[92] *See Ficken*, 430 B.R. at 662.

[93] *See id.*

[94] *See id.* at 662-63.

[95] *See id.* at 660-61, 663; *see also Knudsen II*, 389 B.R. 643, 669 (N.D. Iowa 2008).

[96] *See Knudsen*, 581 F.3d 696, 718 (8th Cir. 2008) (holding marginal method is proper). *Compare Knudsen II*, 389 B.R. at 667-68 (finding marginal method appropriate), *and Ficken*, 430 B.R. at 663 (same), *with In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *6 (Bankr. D. Neb. Jan. 9, 2009) (finding proportional method appropriate), *and Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006) (same). *See generally* Susan B. Haire et al., *Appellate Court Supervision in the Federal*

II. *IN RE KNUDSEN*: HOLDING THE MARGINAL METHOD IS PROPER

The Knudsens were career farmers in northern Iowa where they raised hogs on a 160-acre farm.[97] The Knudsens and their lender became concerned after two bouts with swine disease in 1999 severely crimped the farm's growth and profitability.[98] These bouts with swine disease led the Knudsens to reorganize their operations through bankruptcy in an attempt to save their farm.[99] After liquidating their entire operation in December 2003, the Knudsens entered into two contracts with Squealers Pork, Inc.[100] Under the contracts, Squealers Pork supplied baby pigs to the Knudsens, and the Knudsens raised the pigs to market weight.[101] The Knudsens presumably did not fare well under these contracts, though the details are scarce.[102] Following these misfortunes, the Knudsens filed a petition under Chapter 12 of the Bankruptcy Code on July 1, 2005.[103] The Knudsens sought confirmation of their bankruptcy plan wherein they used the marginal method to allocate tax under § 1222(a)(2)(A).[104] The IRS, however, objected to the Knudsens' use of the marginal tax allocation method under § 1222(a)(2)(A).[105]

In *Knudsen I*, the bankruptcy court determined that the proportional tax allocation method was correct under § 1222(a)(2)(A).[106] However, in *Knudsen II*, the district court reversed the bankruptcy court, finding that the marginal method was proper.[107] The IRS appealed the district court's ruling to the Eighth Circuit, arguing that the proportional method was the appropriate tax allocation method.[108]

On appeal, the Eighth Circuit agreed with *Knudsen II* and affirmed the district court's holding that the marginal method was proper under

Judiciary: A Hierarchical Perspective, 37 LAW & SOC'Y REV. 143 (2003) (discussing reasons circuit courts affirm or reverse district courts).

[97] *See Knudsen*, 581 F.3d at 700.

[98] *See id.*

[99] *See id.* at 700-01; *Knudsen I*, 356 B.R. at 482-83.

[100] *See Knudsen*, 581 F.3d at 700.

[101] *See id.*

[102] *See id.* at 700-01; *Knudsen I*, 356 B.R. at 481-83 (providing additional facts though still not detailing problems directly contributing to bankruptcy filing).

[103] *See Knudsen*, 581 F.3d at 700-01; *Knudsen I*, 356 B.R. at 482.

[104] *See Knudsen*, 581 F.3d at 701; *see also Knudsen I*, 356 B.R. at 484.

[105] *See supra* sources cited in note 104.

[106] *See Knudsen I*, 356 B.R. at 487; *see also Knudsen*, 581 F.3d at 701.

[107] *See Knudsen II*, 389 B.R. 643, 669 (N.D. Iowa 2008); *see also Knudsen I*, 356 B.R. at 487.

[108] *See Knudsen*, 581 F.3d at 699.

§ 1222(a)(2)(A).[109] In rendering its decision, the *Knudsen* court noted § 1222(a)(2)(A)'s silence regarding the proper tax allocation method.[110] Further, the court noted that statutory ambiguities are generally resolved in favor of the debtor.[111] The court then consulted § 1222(a)(2)(A)'s legislative history and chose to rely on statements from 1986 that described the general purpose of Chapter 12.[112] The court stated that Chapter 12's original intent was to provide farmers with an alternative to other debt reorganization procedures.[113] The *Knudsen* court also agreed with *Ficken*, noting that the IRS does not always use the proportional method when allocating the tax under § 1222(a)(2)(A).[114] Therefore, the *Knudsen* court held that the marginal method is the proper tax allocation method under § 1222(a)(2)(A).[115] To date, the Eighth Circuit's opinion in *Knudsen* represents the highest court ruling regarding the proper tax allocation method under this statute.[116]

III. ANALYSIS

In *Knudsen*, the Eighth Circuit incorrectly held that the marginal tax method is the proper tax allocation method under § 1222(a)(2)(A).[117] First, the *Knudsen* court evaluated general Chapter 12 legislative history, but failed to analyze legislative history specifically applicable to § 1222(a)(2)(A).[118] Second, § 1222(a)(2)(A) is primarily a tax statute, but the *Knudsen* court improperly confined its analysis to the

[109] *See id.* Interestingly, the Eighth Circuit reversed *Knudsen I* as to the tax allocation method, instead of affirming the district court. *See Knudsen*, 581 F.3d at 699-700; *see also Knudsen I*, 356 B.R. at 487. This Note will treat the *Knudsen* opinion as affirming the district court's usage of the marginal method for clarity.

[110] *See Knudsen*, 581 F.3d at 715-16.

[111] *See* New Neighborhoods, Inc. v. W. Va. Workers' Comp. Fund, 886 F.2d 714, 719 (4th Cir. 1989); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 654 (Bankr. D. Colo. 2009) (quoting *New Neighborhoods*, 886 F.2d at 719).

[112] *See Knudsen*, 581 F.3d at 716-17; H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

[113] *See Knudsen*, 581 F.3d at 716-17.

[114] *See id.* at 717-18 (quoting *Ficken*, 430 B.R. at 662).

[115] *See id.* at 718.

[116] *See id.* at 715-16. *See generally* McEowen, *supra* note 2, at 15, 18 n.54 (noting many BAPCPA amendments remain unresolved and discussing various holdings surrounding § 1222(a)(2)(A)); Weil, *supra* note 24, at 38 (discussing *Knudsen I*'s importance).

[117] *See generally infra* Part III (arguing that (i) *Knudsen* improperly analyzed legislative history; (ii) § 1222(a)(2)(A) is primarily tax statute; and (iii) that the proportional method treats parties equally).

[118] *See infra* Part III.A (discussing § 1222(a)(2)(A)'s legislative history).

Bankruptcy Code.[119] Third, the *Knudsen* court erred in adopting the marginal method because the proportional method properly balances the competing interests of the creditor and debtor.[120]

A. Knudsen *Failed to Analyze Relevant Legislative History*

The *Knudsen* court failed to analyze the relevant legislative history directly addressing § 1222(a)(2)(A) and instead chose to analyze general Chapter 12 legislative history.[121] The first canon of statutory construction is to look to the statute itself.[122] Section 1222(a)(2)(A) is silent regarding the proper tax allocation method under the statute.[123] Because the statute is silent regarding the tax allocation method, the statute is ambiguous.[124] Once a statute is determined to be ambiguous, courts may seek guidance from statutory structure, relevant legislative history, and congressional purposes.[125]

The *Knudsen* court properly consulted legislative history for guidance in interpreting § 1222(a)(2)(A)'s ambiguity regarding the correct tax allocation method.[126] However, instead of consulting legislative history explicitly addressing § 1222(a)(2)(A), the court chose to consult legislative history from 1986, describing Chapter 12's

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[119] *See infra* Part III.B (discussing § 1222(a)(2)(A) as primarily tax statute).

[120] *See infra* Part III.C (discussing proportional method as treating debtors and creditors equally).

[121] *See Knudsen*, 581 F.3d at 716-17; *cf. Knudsen II*, 389 B.R. 643, 667-68 (N.D. Iowa 2008) (discussing Senator Grassley's statement on Safety 2000); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009) (same).

[122] *See* Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ., 550 U.S. 81, 105 (2007) (Stevens, J., concurring); Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 548 U.S. 291, 296 (2006) (quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000)); Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) (quoting Rubin v. United States, 449 U.S. 424, 430 (1981)); United States v. Ron Pair Enters., 489 U.S. 235, 241 (1989) (citing Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985)).

[123] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d at 716; *Knudsen II*, 389 B.R. at 667; *Ficken*, 430 B.R. at 661; *In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *5 (Bankr. D. Neb. Jan. 9, 2009).

[124] *See* Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 737 (1985); *Knudsen*, 581 F.3d at 716 (citing Clark v. U.S. Dep't of Agric., 537 F.3d 934, 942 (8th Cir. 2008)); *Knudsen II*, 389 B.R. at 667; *see also* 11 U.S.C. § 1222(a)(2)(A); *Rickert*, 2009 Bankr. LEXIS 17, at *5.

[125] *See* Ardestani v. INS, 502 U.S. 129, 142 (1991); *Fla. Power & Light Co.*, 470 U.S. at 737; Robinson v. United States, 586 F.3d 683, 686-87 (9th Cir. 2009) (quoting United States v. Daas, 198 F.3d 1167, 1174 (9th Cir. 1999)).

[126] *See Knudsen*, 581 F.3d at 716-17 (consulting legislative history after noting § 1222(a)(2)(A) is silent as to tax allocation method); *Knudsen II*, 389 B.R. at 667-68 (same); *Ficken*, 430 B.R. at 661 (same).

original intent.[127] This general Chapter 12 legislative history indicated Congress's intent to give farmers a chance to reorganize their farms.[128] Chapter 12 accomplishes this goal by providing farmers with a positive alternative to Chapter 11 and Chapter 13 procedures, which are slow, complex, and expensive.[129] However, Chapter 12's legislative history also shows that Congress intended Chapter 12 to prevent bankruptcy abuse and to ensure that lenders receive fair payment.[130] Ensuring fair payment supports the proportional method as the proper tax allocation method because it does not prejudice one party in favor of the other.[131] *Knudsen*, however, disregarded Chapter 12's explicit legislative intent to ensure fair payment to creditors.[132] However,

[127] *See Knudsen*, 581 F.3d at 716-17; *Ficken*, 430 B.R. at 661; *cf.* Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 568-71 (2005) (refusing to consult ambiguous legislative history); Whitfield v. United States, 543 U.S. 209, 216-17 (2005) (refusing to override congressional intent from vague and ambiguous legislative history).

[128] *See Knudsen*, 581 F.3d at 716-17 (quoting H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249); *see also* Rowley v. Yarnall, 22 F.3d 190, 192 (8th Cir. 1994) (noting Chapter 12 expressly created to address mid-1980s farm crisis); Campbell v. Bonney (*In re* Campbell), 313 B.R. 871, 872 (B.A.P. 10th Cir. 2004) (noting Congress enacted Chapter 12 in 1986 to deal with farm crisis of mid-1980s and continuously extended Chapter for sixteen years).

[129] *See* 11 U.S.C. §§ 1101-1330 (2006); *Knudsen*, 581 F.3d at 717; *Rowley*, 22 F.3d at 193; *cf. In re* Sohrakoff, 85 B.R. 848, 849 (Bankr. E.D. Cal. 1988) (quoting *In re* Tart, 73 B.R. 78, 81 (Bankr. E.D.N.C. 1987)) (noting Congress created Chapter 12 to help family farmers continue farming).

[130] *See Knudsen*, 581 F.3d at 716-17 (quoting H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249); *Rowley*, 22 F.3d at 193; Farmers Home Admin. v. Rape (*In re* Rape), 104 B.R. 741, 742 n.3 (W.D.N.C. 1989) (quoting *In re* Pianowski, 92 B.R. 225, 232 (Bankr. W.D. Mich. 1988)).

[131] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part) (noting Bankruptcy Code's effort to strike appropriate balance between competing interests in bankruptcy where the Code is silent); IRS v. Energy Res. Co. (*In re* Energy Res. Co.), 871 F.2d 223, 230 (1st Cir. 1989) (citing Burlingham v. Crouse, 228 U.S. 459 (1913)) (noting purpose of Bankruptcy Code is to ensure fair payment to creditors and provide bankruptcy firm with "fresh start"); *In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *6-7 (Bankr. D. Neb. Jan. 9, 2009) (noting § 1222(a)(2)(A) does not mandate that courts should maximize the taxes to which beneficial treatment applies); H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249 (describing purpose of Chapter 12 is to give family farmers chance to reorganize debts while preventing abuse and ensuring fair repayment to farm lenders); *see also* 11 U.S.C. § 1222(a)(2)(A) (2006) (making no mention of proper tax allocation method).

[132] *See* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249 (noting Chapter 12's purpose is to help family farmers facing bankruptcy and ensure fair repayment to creditors); *see also Knudsen*, 581 F.3d at 716-17, 717 n.4 (analyzing legislative history); *id.* at 722-23 (Colloton, J., concurring in part and dissenting in part) (citing Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.,

§ 1222(a)(2)(A)'s priority stripping nature was not implemented until well after the original manifestation of Chapter 12.[133] Therefore, proper legislative history analysis should also consider both the fair repayment of creditors and Senator Grassley's statement regarding subsequent amendments to the Bankruptcy Code.[134]

The legislative history most applicable to § 1222(a)(2)(A) is Senator Grassley's statement regarding Safety 2000 — un-enacted legislation identical to § 1222(a)(2)(A).[135] The *Knudsen* court improperly failed to consult Senator Grassley's statement regarding the purpose of Safety 2000.[136] Legislative history regarding an identical, though un-enacted, statute is more relevant to an evaluation of statutory ambiguity than legislative history generally discussing Chapter 12.[137] Congress made

128 S. Ct. 2326 (2008)) (noting Supreme Court rejected declaration that Bankruptcy Code is "remedial statute" that should be construed "liberally" in favor of debtors); *Energy Res. Co.*, 871 F.2d at 230 (citing Burlingham v. Crouse, 228 U.S. 459 (1913)) (describing Bankruptcy Code as ensuring fair payment to creditors and providing bankrupt firm with "fresh start").

[133] *See* Jenks, *supra* note 15, at 913 n.49. *Compare Campbell*, 313 B.R. at 872 (noting Congress enacted Chapter 12 in 1986), *with* United States v. Nazar (*In re* Dawes), 415 B.R. 815, 820 (D. Kan. 2009) (noting BAPCPA added § 1222(a)(2)(A) in 2005). *See generally* 11 U.S.C. § 1222(a)(2) (2000) (making no mention of priority stripping).

[134] *Cf.* Alexander v. Sandoval, 532 U.S. 275, 297 (2001) (noting Court performed extensive analysis of relevant legislative history); Am. Hosp. Ass'n v. NLRB, 499 U.S. 606, 613-14 (1991) (consulting multiple sources of legislative history and evaluating its relevance and quality). *See generally* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426 (discussing purpose of Safety 2000 bill).

[135] *See* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also Knudsen II*, 389 B.R. 643, 668 (N.D. Iowa 2008) (consulting Senator Grassley's statement); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009).

[136] *See Knudsen*, 581 F.3d at 716-17 (making no mention of Senator Grassley's statement); *Knudsen II*, 389 B.R. at 661 n.5 (noting Senator Grassley's statement was regarding identical predecessor bill to congressionally passed bill contained in 2005 BAPCPA); *Ficken*, 430 B.R. at 661 (consulting Senator Grassley's statement).

[137] *See* Bowen v. Mich. Acad. of Family Physicians, 476 U.S. 667, 672-73 (1986) (quoting Block v. Cmty. Nutrition Inst., 467 U.S. 340, 349, 351 (1984)) (finding that reliable specific language or specific legislative history may overcome presumption of judicial review); Am. Soc'y of Cataract & Refractive Surgery v. Thompson, 279 F.3d 447, 452 (7th Cir. 2002) (quoting *Bowen*, 476 U.S. at 673) (noting that specific language or specific legislative history that is reliable indicator of congressional intent may overcome other presumptions in interpreting statutes); *Knudsen II*, 389 B.R. at 661 n.5 (analyzing reliability of Senator Grassley's statement and concluding that comments should be given considerable weight); Murphy v. United States, 340 F. Supp. 2d 160, 171-72 (D. Conn. 2004) (noting that authoritative legislative history may confirm statutory interpretation). *But see In re* Hall, 376 B.R. 741, 747 (Bankr. D. Ariz. 2007) (finding little assistance in determining legislative intent in sparse

no explicit indication in § 1222(a)(2)(A)'s legislative history regarding their preferred tax allocation method.[138] Senator Grassley's statement, however, shows that Congress's intent behind the Safety 2000 legislation and § 1222(a)(2)(A) was to reduce the IRS's priority in certain circumstances.[139] Further, Congress indicated that bankruptcy laws should provide for fair payment to creditors.[140] The proportional method accomplishes both of these goals by reducing the IRS's priority claim under § 1222(a)(2)(A)'s explicit terms and by providing fair payment to creditors by refusing to provide the maximum possible relief to the debtor.[141] Taken together, the most relevant legislative history to § 1222(a)(2)(A) shows that the proportional method is the proper tax allocation method.[142]

Some critics may argue that *Knudsen* was correct in solely analyzing the legislative history from the original implementation of Chapter 12.[143] These proponents argue that this legislative history supports *Knudsen*'s holding because it focused on Congress's intent to aid farmers during the farm crisis.[144] For example, *Knudsen II* interpreted

legislative history on BAPCPA).

[138] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also Knudsen*, 581 F.3d at 715-16.

[139] *See Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also* 11 U.S.C. § 1222(a)(2)(A) (reducing IRS's priority but silent as to tax allocation method).

[140] *See* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also Knudsen*, 581 F.3d at 716 (quoting Rowley v. Yarnall, 22 F.3d 190, 193 (8th Cir. 1994)).

[141] *See* 11 U.S.C. § 1222(a)(2)(A); Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2338-39 (2008); *Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part); *see also* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[142] *See In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *6-7 (Bankr. D. Neb. Jan. 9, 2009); *Knudsen I*, 356 B.R. at 487. *But see Knudsen II*, 389 B.R. at 668-69.

[143] *See Knudsen*, 581 F.3d at 716; *see also* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; *cf.* Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 343 n.37 (1993) (Stevens, J., dissenting) (quoting W. Va. Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 112 (1991) (Stevens, J., dissenting)) (stating that courts may seek guidance in statutory interpretation from historical context and legislative history). *See generally Knudsen II*, 389 B.R. at 660 (quoting 145 CONG. REC. S750-02, S767 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426) (declaring support for Safety 2000 bill).

[144] *See Knudsen*, 581 F.3d at 716; Rowley v. Yarnall, 22 F.3d 190, 193 (8th Cir. 1994); H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986

Senator Grassley's statement to mean that Congress intended to reduce certain claim priorities as fully as possible.[145] The marginal method aids farmers by treating the most tax possible as a nonpriority claim, thus accomplishing Congress's intended goal.[146] Because the general Chapter 12 legislative history supports the marginal method, the *Knudsen* court correctly declined to analyze the Safety 2000 legislative history.[147]

However, this argument fails because *Knudsen* improperly interpreted the relevant legislative history and, thus, erroneously held that the marginal method was correct.[148] Senator Grassley indicated that Safety 2000 removes the IRS's veto power over the debtor's bankruptcy plan by reducing the priority of taxes.[149] *Knudsen II* adopted the marginal method by interpreting Senator Grassley's statement to indicate that Congress intended to reduce the IRS's priority fully under the law.[150] However, using the marginal method is not necessary to accomplish Senator Grassley's stated purpose of reducing the IRS's veto power over the debtor's bankruptcy plan.[151] Congress accomplished this goal by explicitly reducing the priority of taxes covered by the statute, which transformed the IRS's claims into nonpriority claims.[152] Therefore, these proponents and *Knudsen II*'s

U.S.C.C.A.N. 5246, 5249.

[145] *See Knudsen II*, 389 B.R. at 668 (quoting 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426); Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[146] *See Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69); *Knudsen II*, 389 B.R. at 669; *Ficken*, 430 B.R. at 661.

[147] *See Knudsen II*, 389 B.R. at 668-69; *Ficken*, 430 B.R. at 661; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[148] *See Knudsen II*, 389 B.R. at 668-69; *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006). *But see Ficken*, 430 B.R. at 661.

[149] *See Knudsen II*, 389 B.R. at 668; *Ficken*, 430 B.R. at 661; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also Knudsen II*, 389 B.R. at 661 n.5 (noting that Grassley's comments not entitled to as much weight as other types of legislative history, although ultimately concluding that Grassley's statement should be afforded considerable weight given that there is no legislative history more reliable nor any other legislative history).

[150] *See Knudsen II*, 389 B.R. at 668-69; *Ficken*, 430 B.R. at 661; *cf.* 11 U.S.C. § 1222(a)(2)(A) (2006) (reducing priority of governmental unit claims).

[151] *See* 11 U.S.C. § 1222(a)(2)(A) (explicitly reducing priority of claims from governmental units); Weil, *supra* note 24, at 38; *cf.* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426 (stating purpose of § 1222(a)(2)(A)).

[152] *See* 11 U.S.C. § 1222(a)(2)(A); McEowen, *supra* note 2, at 18 nn.53-54; Weil, *supra* note 24, at 38.

suggested leap to the marginal tax allocation method is an unnecessary and inappropriate solution to reducing the IRS's priority.[153]

Further, § 1222(a)(2)(A) is silent regarding the proper tax allocation method and, thus, courts may decide the proper tax allocation method under diverse grounds.[154] The *Rickert* court noted that § 1222(a)(2)(A) neither impliedly nor explicitly provides that courts should maximize the beneficial treatment of taxes.[155] Therefore, given § 1222(a)(2)(A)'s silence and the availability of relevant legislative history directly interpreting this statute, *Knudsen*'s approval of the marginal method is improper.[156]

Knudsen improperly consulted only the general Chapter 12 legislative history and inappropriately failed to consult legislative history specifically addressing § 1222(a)(2)(A).[157] A proper interpretation of § 1222(a)(2)(A) also requires consulting Senator Grassley's statement regarding Safety 2000 due to its direct relevance to the statute.[158] Section 1222(a)(2)(A) accomplishes Senator Grassley's goal of reducing the IRS's priority in bankruptcy proceedings by explicitly treating certain claims as nonpriority claims.[159] Therefore, *Knudsen*'s judicial leap to reduce the IRS's priority

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[153] *See* 11 U.S.C. § 1222(a)(2)(A); *cf. In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *6-7 (Bankr. D. Neb. Jan. 9, 2009) (noting that proportional method is most fair); *Knudsen I*, 356 B.R. at 487 (noting proportional method divides actual tax without regard to which sales produced last dollar of income).

[154] *See, e.g.*, *Knudsen*, 581 F.3d 696, 716-17 (8th Cir. 2009) (citing H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.S.C.A.N. 5246, 5249) (discussing original Chapter 12 legislative history); *Knudsen II*, 389 B.R. at 660-61 (quoting 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426) (discussing Senator Grassley's statement on Safety 2000 legislation); *Ficken*, 430 B.R. at 662-63 (noting that marginal may be easier to implement); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7 (noting that proportional method is most fair); *Knudsen I*, 356 B.R. at 487 (noting that proportional method divides tax without regard to source of income).

[155] *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *see* 11 U.S.C. § 1222(a)(2)(A); *Knudsen I*, 356 B.R. at 487. *But see Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69).

[156] *See Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487. *But see Knudsen*, 581 F.3d at 699.

[157] *See Knudsen II*, 389 B.R. at 668 (consulting Senator Grassley's statement on Safety 2000); *see also* 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426. *See generally Knudsen*, 581 F.3d at 716-17 (consulting legislative history from Chapter 12's original enactment).

[158] *See Knudsen II*, 389 B.R. at 661 n.5, 667-68; *Ficken*, 430 B.R at 661. *See generally Knudsen*, 581 F.3d 696 (refusing to analyze Senator Grassley's statement).

[159] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen II*, 389 B.R. at 653-54; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

further through the marginal method is unnecessary.[160] Thus, relevant legislative history supports the proportional method as the proper tax allocation method under § 1222(a)(2)(A).[161]

B. Courts Should Consult the Internal Revenue Code for Guidance Because 11 U.S.C. § 1222(a)(2)(A) Is Primarily a Tax Statute

While located in the Bankruptcy Code, § 1222(a)(2)(A) is, in fact, primarily a tax statute.[162] Under § 1222(a)(2)(A), only qualifying claims of governmental units under 11 U.S.C. § 507 ("§ 507") of the Bankruptcy Code may be priority claims.[163] Section 507(a)(8) lists the only governmental units eligible to receive priority treatment for their pre-petition claims — which are limited solely to taxes or customs duties.[164] Thus, only governmental units laying a tax or custom duty claim may assert a priority claim.[165] The IRS is the most significant of these qualifying governmental units.[166] Further, claims of governmental units incurred post-petition constitute administrative expenses under § 507(a)(2).[167] This tax incurred post-petition is then subject to the priority-reducing provision of § 1222(a)(2)(A).[168]

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[160] *See Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487. *See generally* Jean Braucher, *A Guide to Interpretation of the 2005 Bankruptcy Law*, 16 AM. BANKR. INST. L. REV. 349 (2008) (discussing different approaches to statutory interpretation under Bankruptcy Code).

[161] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen II*, 389 B.R. at 666 (noting amicus curiae argued that § 1222(a)(2)(A) intended to reduce claim of any governmental unit); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[162] *Cf. Knudsen*, 581 F.3d at 722 (Colloton, J., concurring in part and dissenting in part) (quoting *Knudsen II*, 389 B.R. at 667) (noting that proportional method is appealing from tax perspective and as matter of tax policy); *Knudsen II*, 389 B.R. at 667 (same). *But see* 11 U.S.C. § 1222(a)(2)(A) (locating statute in Bankruptcy Code).

[163] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen*, 581 F.3d at 706 (analyzing § 1222(a)(2)(A) and § 507); *Ficken*, 430 B.R. at 655 (same); *see also* 11 U.S.C. § 507(a)(2), (8) (2006).

[164] *See* 11 U.S.C. § 507(a)(8); *Knudsen II*, 389 B.R. at 675-76 (analyzing statute); *Ficken*, 430 B.R. at 655-56 (same). *See generally* 11 U.S.C. § 507 (describing priority claims).

[165] *See* 11 U.S.C. § 507(a)(8); *cf. Ficken*, 430 B.R. at 654 (discussing 11 U.S.C. § 507); Germain, *supra* note 13, at 14 (discussing eighth priority, which includes governmental units).

[166] *Cf.* 11 U.S.C. § 507(a)(8) (describing priority of governmental units); *Ficken*, 430 B.R. at 654-55 (discussing taxes arising under § 507); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426 (reducing IRS's priority status explicitly).

[167] *See* 11 U.S.C. § 507(a)(2) (referencing allowable administrative expenses under 11 U.S.C. § 503(b)); 11 U.S.C. § 503 (2006); *Knudsen II*, 389 B.R. at 677; *Ficken*, 430

Both § 507(a)(8) for pre-petition taxes, and § 507(a)(2) for post-petition taxes, lead to the conclusion that § 1222(a)(2)(A) is primarily a tax statute.[169] Section 507(a)(8) lists only tax and customs authorities as governmental units.[170] Similarly, § 503 may aid courts in determining the tax allocation method given *Knudsen*'s reliance on § 503 in determining post-petition taxes as administrative expenses.[171] Sections 507(a)(2) and 503(b)(1)(B) explicitly name taxes as administrative expenses, not claims from governmental units, illustrating § 1222(a)(2)(A)'s special status as a tax statute.[172] For both pre-petition and post-petition claims, only tax or customs entities qualify as government units that are subject to § 1222(a)(2)(A).[173] Therefore, § 1222(a)(2)(A) emerges as primarily a tax statute.[174]

Section 1222(a)(2)(A)'s legislative history also supports the statute's classification as a tax provision.[175] In his statement regarding the Safety 2000 legislation, Senator Grassley explicitly indicated that the legislation's purpose is to reduce the IRS's priority in bankruptcy

B.R. at 654-55. *See generally* 11 U.S.C. § 503(b) (describing any tax incurred by estate as administrative expense).

[168] *See Knudsen*, 581 F.3d at 702; United States v. Nazar (*In re* Dawes), 415 B.R. 815, 820-21 (D. Kan. 2009); Hall v. United States (*In re* Hall), 393 B.R. 857, 860 (D. Ariz. 2008).

[169] *Cf.* 11 U.S.C. § 507(a)(8) (describing governmental units as only tax and customs entities); *id.* § 507(a)(2) (giving priority to administrative expenses); *id.* § 503(b)(1)(B)(i) (referring specifically to taxes).

[170] *See id.* § 507(a)(8); *In re* Dawes, 382 B.R. 509, 513-14 (Bankr. D. Kan. 2008). *See generally* Shu-Yi Oei, *Rethinking the Jurisdiction of Bankruptcy Courts over Post-Confirmation Federal Tax Liabilities: Towards a New Jurisprudence of § 11 U.S.C. 505*, 19 AKRON TAX J. 49, 55-56 (2004) (discussing priority of administrative expenses).

[171] *See* 11 U.S.C. § 1222(a)(2)(A); *see Knudsen*, 581 F.3d at 702, 708-09; *see also Ficken*, 430 B.R. at 655-57. *See generally* 11 U.S.C. §§ 507(a)(2), 503(b)(1)(B) (describing administrative expenses).

[172] *See* 11 U.S.C. §§ 503(b)(1)(B), 507(a)(2); *Dawes*, 382 B.R. at 513-15; *In re* Schilke, 379 B.R. 899, 902 (Bankr. D. Neb. 2007).

[173] *See* 11 U.S.C. § 1222(a)(2)(A); *id.* § 507(a)(2); *id.* § 507(a)(8); *id.* § 503(b)(1)(B)(i).

[174] *See Knudsen*, 581 F.3d at 721-22 (Colloton, J., concurring in part and dissenting in part); *cf. In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009) (noting that proportional method reduces complications of marginal tax rates in Internal Revenue Code); *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006) (noting that proportional method divides tax without regard to source of income). *But see Knudsen*, 581 F.3d at 713-14 (noting that § 1222(a)(2)(A) is found in Bankruptcy Code and applies to any tax claim).

[175] *See Knudsen II*, 389 B.R. 643, 660 (N.D. Iowa 2008); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also* Greene v. Savage (*In re* Greene), 583 F.3d 614, 622 (9th Cir. 2009) (citing Merkel v. Comm'r, 192 F.3d 844, 848 (9th Cir. 1999)).

proceedings.[176] Notably, Senator Grassley made no mention of any other governmental unit separate from the explicitly named IRS.[177] Therefore, because the statute's sponsoring Senator only contemplated reducing the IRS's claims, legislative history further justifies treating § 1222(a)(2)(A) as primarily a tax provision.[178]

Thus, courts should consult the Internal Revenue Code and tax policy in determining the proper tax allocation method for claims arising under § 1222(a)(2)(A).[179] Notably, the Internal Revenue Code treats each dollar earned equally regardless of its source.[180] Because § 1222(a)(2)(A) is primarily a tax statute, qualifying transactions falling within its authority must also be treated equally.[181] Therefore, because the proportional method treats both creditors and debtors equally, the proportional method is the proper tax allocation method under § 1222(a)(2)(A).[182]

Some courts interpret § 1222(a)(2)(A) under the Bankruptcy Code and bankruptcy policy.[183] First, these proponents argue that § 1222(a)(2)(A) is not a tax statute because other governmental units, beyond the IRS, may lay a priority claim.[184] Second, *Knudsen* relied on

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[176] *See Knudsen II*, 389 B.R. at 659-60; *Ficken*, 430 B.R. at 653 (quoting *In re* Hall, 393 B.R. 857, 863 (D. Ariz. 2008)); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[177] *See Knudsen II*, 389 B.R. at 668; *Ficken*, 430 B.R. at 653 (quoting *In re* Hall, 393 B.R. 857, 863 (D. Ariz. 2008)); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[178] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Knudsen II*, 389 B.R. at 668; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[179] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *cf. Knudsen I*, 356 B.R. at 487 (finding proportional method allocates tax without regard to source).

[180] *See* 26 U.S.C. § 61(a) (2006); *Rickert*, 2009 Bankr. LEXIS 17, at *7; *cf.* U.S. CONST. amend. XVI (permitting Congress to collect tax from whatever source derived); Sw. Portland Cement Co. v. United States, 1968 U.S. Dist. LEXIS 12482, at *13 (C.D. Cal. Nov. 15, 1968) (noting that proportional method treats each cost equally in contributing to total revenue).

[181] *See Knudsen II*, 389 B.R. at 668; *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487.

[182] *See Knudsen*, 581 F.3d at 721-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7; *Knudsen I*, 356 B.R. at 487, *overruled by Knudsen II*, 389 B.R. at 669.

[183] *See Knudsen*, 581 F.3d at 713, 716-17; *Knudsen II*, 389 B.R. at 662-63; Ficken v. IRS (*In re* Ficken), 430 B.R. at 660-61 (Bankr. D. Colo. 2009) (quoting *Knudsen II*, 389 B.R. at 667).

[184] *See Knudsen II*, 389 B.R. at 662; *Ficken*, 430 B.R. at 653 (citing *Knudsen II*, 389 B.R. at 659). *But see Knudsen*, 581 F.3d at 713.

statutory structure to determine that § 1222(a)(2)(A), which is located in the Bankruptcy Code, is a bankruptcy provision.[185] Thus, the *Knudsen* court asserted that § 1222(a)(2)(A) should be interpreted under the Bankruptcy Code according to bankruptcy policy.[186] Additionally, the *Knudsen* court found that bankruptcy policy supports giving family famers a fighting chance to keep their land.[187] Proponents note that the marginal method best accomplishes this goal, as it maximizes the debtor's benefit.[188] Because § 1222(a)(2)(A) is a bankruptcy statute interpreted under the Bankruptcy Code and bankruptcy policy, these proponents find that the marginal method is proper.[189]

However, this interpretation of § 1222(a)(2)(A) under bankruptcy policy fails because of the statute's limited applicability.[190] First, although these proponents claim that § 1222(a)(2)(A) applies more broadly, they also offer no alternative governmental units that may lay a priority claim.[191] Additionally, § 1222(a)(2)(A) only allows the debtor to strip the priority status of claims from those governmental units mentioned in § 507.[192] Although governmental units may include those other than taxing authorities, § 507 explicitly restricts § 1222(a)(2)(A)'s applicability to tax claims and customs duties.[193] Therefore, because of this limiting restriction, interpreting

[185] *See Knudsen*, 581 F.3d at 713-14 (citing United States v. Reorganized CF&I Fabricators of Utah, Inc., 518 U.S. 213, 224 (1996)); *see also Knudsen II*, 389 B.R. at 667; *Ficken*, 430 B.R. at 660-61 (quoting *Knudsen II*, 389 B.R. at 667).

[186] *See supra* sources cited in note 185.

[187] *See Knudsen*, 581 F.3d at 716 (quoting H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249); Rowley v. Yarnall, 22 F.2d 190, 193 (8th Cir. 1994); *Knudsen II*, 389 B.R. at 663 (quoting Justice v. Valley Nat'l Bank, 849 F.2d 1078, 1090 (8th Cir. 1988)); *Ficken*, 430 B.R. at 662; *see also* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

[188] *See Knudsen II*, 389 B.R. at 668; *Ficken*, 430 B.R. at 661 (citing *Knudsen II*, 389 B.R. at 668); *see also Knudsen*, 581 F.3d at 702 (quoting *Knudsen II*, 389 B.R. at 669).

[189] *See Knudsen*, 581 F.3d at 718; *Knudsen II*, 389 B.R. at 668-69; *Ficken*, 430 B.R. at 661 (citing *Knudsen II*, 389 B.R. at 668).

[190] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *see also In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009); *cf.* Jenks, *supra* note 15, at 901 n.49 (noting that § 1222(a)(2)(A) does not apply to family fishermen).

[191] *See Knudsen II*, 389 B.R. at 667; *cf. Ficken*, 430 B.R. 648 (offering no other governmental units). *But see Knudsen*, 581 F.3d at 713-14.

[192] *See* 11 U.S.C. § 1222(a)(2)(A); *id.* § 507(a)(2), (8); *Knudsen*, 581 F.3d at 703; *Ficken*, 430 B.R. at 655.

[193] *See* 11 U.S.C. § 507(a)(2), (8); *Ficken*, 430 B.R. at 655; *cf. Knudsen*, 581 F.3d at 703 (analyzing § 1222(a)(2)(A)).

§ 1222(a)(2)(A) under the Internal Revenue Code and tax policy is proper.[194]

Second, these proponents correctly note that § 1222(a)(2)(A) is physically located in the Bankruptcy Code.[195] However, the statute solely applies to tax and customs duties, excluding all other bankruptcy claims.[196] Accordingly, while § 1222(a)(2)(A) is located in the Bankruptcy Code, the statute functions as a tax provision based on its limited field of applicability.[197] Therefore, judicial reliance on the statutory structure of § 1222(a)(2)(A) is improper.[198]

Further, courts assume that Congress, when drafting legislation, has knowledge of enacted statutes.[199] As such, courts should interpret statutes so that they do not conflict with existing law.[200] Therefore, § 1222(a)(2)(A) must be interpreted with respect to all relevant enacted statutes, including the Internal Revenue Code.[201] However,

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[194] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *cf. Rickert*, 2009 Bankr. LEXIS 17, at *7 (noting that proportional method reduces complications with Internal Revenue Code). *But see Knudsen*, 581 F.3d at 713-14.

[195] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen II*, 389 B.R. at 662-63; *cf. Ficken*, 430 B.R. at 661-62 (interpreting tax allocation method based on bankruptcy policy).

[196] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *see also* 11 U.S.C. § 507. *But see Knudsen*, 581 F.3d at 716-17.

[197] *See* 11 U.S.C. § 1222(a)(2)(A); *Knudsen*, 581 F.3d at 722 (Colloton, J., concurring in part and dissenting in part); *cf. Rickert*, 2009 Bankr. LEXIS 17, at *7 (noting proportional method treats every taxable dollar as equal to extent Internal Revenue Code does so).

[198] *Cf.* Bass v. Stolper, 111 F.3d 1322, 1326 (7th Cir. 1997) (noting statutory structure as evidence of congressional intent is unnecessary given clear textual meaning); Gibbs v. United States, No. 2:97-cv-556, 2006 U.S. Dist. LEXIS 91557, at *14 (S.D. Ohio Dec. 19, 2006) (noting that statutory structure may be informative at times but refusing to look to statutory structure for guidance). *But see* Milwaukee v. Yeutter, 877 F.2d 540, 544 (7th Cir. 1989) (finding statutory structure reliable).

[199] *See* Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990) (citing Cannon v. Univ. of Chi., 441 U.S. 677, 696-97 (1979)) (noting that courts assume Congress is aware of existing law when it passes legislation); Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 184-85 (1988) (citing Dir. of OWCP v. Perini N. River Assoc., 459 U.S. 297, 319-20 (1983)) (noting that courts generally presume that Congress is knowledgeable about existing law pertinent to legislation it enacts); Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 554 (9th Cir. 1991) (citing *Goodyear Atomic Corp*, 486 U.S. at 184-85).

[200] *See* Atl. Sounding Co. v. Townsend, 129 S. Ct. 2561, 2573 (2009) (quoting *Miles*, 498 U.S. at 32); South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 351 (1998) (quoting *Miles*, 498 U.S. at 32); Cannon v. Univ. of Chi., 441 U.S. 677, 696-98 (1979) (presuming that Congress is familiar with judicial rulings).

[201] *See Atl. Sounding*, 129 S. Ct. at 2573 (quoting *Miles*, 498 U.S. at 32); *Yankton Sioux Tribe*, 522 U.S. at 351; *Cannon*, 441 U.S. at 696-98 (presuming that legislators are familiar with judicial rulings).

both *Knudsen* and *Knudsen II* improperly confined their analysis to the Bankruptcy Code and bankruptcy policy.[202] As § 1222(a)(2)(A) is primarily a tax statute, courts should look to the Internal Revenue Code for guidance in determining the proper tax allocation method.[203] The Internal Revenue Code generally treats each dollar earned equally regardless of its source.[204] Thus, because § 1222(a)(2)(A) is primarily a tax statute, qualifying transactions falling within its authority must also be treated equally to maintain consistent law.[205] The proportional method prevents this conflict of law and ensures the equal treatment of creditors and debtors under § 1222(a)(2)(A).[206]

C. The Proportional Method Treats Debtors and Creditors Equally

The *Knudsen* court erred in adopting the marginal method because this method, unlike the proportional method, unduly prejudices one party in favor of the other.[207] Further, the proportional method is consistent with the relevant legislative history.[208] Thus, because the proportional method properly accounts for the tension between the debtor and creditor, it is the proper tax allocation method under § 1222(a)(2)(A).[209]

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[202] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7. *But see Knudsen*, 581 F.3d at 716-17 (majority opinion) (declining to consult Internal Revenue Code); *Knudsen II*, 389 B.R. 643, 662-63 (N.D. Iowa 2008).

[203] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7. *But see Knudsen*, 581 F.3d at 716-17.

[204] *See Rickert*, 2009 Bankr. LEXIS 17, at *7 (noting proportional method treats each taxable dollar as same to extent Internal Revenue Code does so); *Knudsen I,* 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006) (noting proportional method divides actual tax without regard to which sales produced last dollar of income); *cf.* U.S. CONST. amend. XVI (permitting Congress to tax from income whatever source derived); 26 U.S.C. § 61(a) (2006) (collecting income); Sw. Portland Cement Co. v. United States, No. 63-95-WP, 1968 U.S. Dist. LEXIS 12482, at *13 (C.D. Cal. Nov. 15, 1968) (noting that proportional method treats each cost equally in contributing to total revenue).

[205] *See Atl. Sounding*, 129 S. Ct. at 2573 (quoting *Miles*, 498 U.S. at 32); *Yankton Sioux Tribe*, 522 U.S. at 351; *Cannon*, 441 U.S. at 698-99.

[206] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7; *see also Knudsen I*, 356 B.R. at 487.

[207] *See supra* sources cited in note 206. *But see Knudsen*, 581 F.3d at 716; *id.* at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69).

[208] *See* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *cf. Rickert*, 2009 Bankr. LEXIS 17, at *7 (noting proportional method provides most fair tax allocation).

[209] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2338-39 (2008); *see also* Jenks, *supra* note 15, at 893.

The marginal method prejudices the IRS in favor of the debtor and does not properly account for the parties' competing interests.[210] The debtor advocates for the use of the marginal method, through which the highest possible tax rate applies to the qualifying transaction under § 1222(a)(2)(A).[211] This application would result in the most favorable tax treatment for the debtor because it allows the debtor to discharge the largest amount of tax.[212] However, another possible marginal method may instead subject the qualifying transaction under § 1222(a)(2)(A) to the lowest marginal tax rate.[213] In this hypothetical tax allocation method, the income generating the tax subject to § 1222(a)(2)(A) is treated as the debtor's first dollars earned.[214] As the first dollars earned, the qualifying transactions subject to § 1222(a)(2)(A) are subject to the debtor's lowest marginal tax rate, resulting in discharge of the lowest amount of tax.[215] This hypothetical marginal method benefits the IRS, but unduly harms the debtor because a decreased amount of tax is dischargeable.[216] Notably, the IRS has neither advocated for nor proposed this latter marginal method,

[210] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487.

[211] *See Knudsen*, 581 F.3d at 718; Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 660 (Bankr. D. Colo. 2009) (quoting *Rickert*, 2009 Bankr. LEXIS 17, at *7); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7.

[212] *See Knudsen*, 581 F.3d at 718 (quoting *Knudsen II*, 389 B.R. at 668-69); *Knudsen II*, 389 B.R. 643, 668-69 (N.D. Iowa 2008); *Ficken*, 430 B.R. at 661 (citing *Knudsen II*, 389 B.R. at 668). *But cf. Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part) (noting that marginal method is improper).

[213] *Cf. Knudsen*, 581 F.3d 696, at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69) (describing how last dollars in is subject to highest marginal tax rate); *Ficken*, 430 B.R. at 660 (quoting *Rickert*, 2009 Bankr. LEXIS 17, at *7) (same); *Rickert*, 2009 Bankr. LEXIS 17, at *7 (same).

[214] *Cf. Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69) (noting that marginal method treats income qualifying under § 1222(a)(2)(A) as last dollars in); *Knudsen II*, 389 B.R. at 668 (same); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668) (same).

[215] *Cf. Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69) (noting that marginal method maximizes dischargeable taxes); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668) (noting that marginal method maximizes amount of taxes subject to § 1222(a)(2)(A) treatment); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7 (noting that § 1222(a)(2)(A) does not mandate courts to maximize dischargeable taxes).

[216] *Cf. Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69) (illustrating that marginal method maximizes taxes subject to § 1222(a)(2)(A)); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668) (noting that marginal method maximizes amount of taxes subject to nonpriority treatment); *Rickert*, 2009 Bankr. LEXIS 17, at *6 (noting that § 1222(a)(2)(A) does not mandate courts to maximize taxes afforded nonpriority treatment).

but has instead advocated for balanced treatment in light of § 1222(a)(2)(A)'s silence.[217]

The proportional method, however, eliminates the marginal method's inherent prejudice towards one party to the detriment of the other.[218] The proportional method neither maximizes nor minimizes the tax subject to § 1222(a)(2)(A).[219] The income that generated the dischargeable tax is neither the first nor the last dollars earned.[220] Instead, the debtor's average tax rate applies to the tax subject to discharge under § 1222(a)(2)(A).[221] The bankruptcy court neither discharges the most nor least amount of tax.[222] Therefore, no party unduly benefits to the detriment of the other party under the proportional method and, thus, the proportional method avoids prejudicial treatment.[223]

Knudsen's approval of the marginal method, however, failed to acknowledge the tension between the IRS, as an unsecured creditor, and the debtor.[224] The Supreme Court recently rejected any notion that courts should construe the Bankruptcy Code liberally in favor of

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[217] *See Rickert*, 2009 Bankr. LEXIS 17, at *7. *See generally Knudsen*, 581 F.3d 696 (making no mention of prejudicial marginal method in favor of IRS); *Ficken*, 430 B.R. 648 (same).

[218] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part); *Ficken*, 430 B.R. at 661 (quoting *Knudsen II*, 389 B.R. at 668); *Rickert*, 2009 Bankr. LEXIS 17, at *7.

[219] *See Rickert*, 2009 Bankr. LEXIS 17, at *7; *see also Ficken*, 430 B.R. at 660 (quoting *Rickert*, 2009 Bankr. LEXIS 17, at *7); *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006).

[220] *See Knudsen*, 581 F.3d at 715-16 (quoting *Knudsen I*, 356 B.R. at 486-87); *Ficken*, 430 B.R. at 660 (quoting *Rickert*, 2009 Bankr. LEXIS 17, at *7); *Rickert*, 2009 Bankr. LEXIS 17, at *5-7; *Knudsen I*, 356 B.R. at 487.

[221] *See Knudsen*, 581 F.3d at 715-16 (quoting *Knudsen I*, 356 B.R. at 486-87); *Ficken*, 430 B.R. at 660 (quoting *Rickert*, 2009 Bankr. LEXIS 17, at *7); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487.

[222] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part) (noting marginal method is one-sided approach); *Knudsen II*, 389 B.R. 643, 667 (N.D. Iowa 2008) (citing *Knudsen I*, 356 B.R. at 487); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7.

[223] *See Rickert*, 2009 Bankr. LEXIS 17, at *7 (noting that proportional method is most fair); *Knudsen I*, 356 B.R. at 487; *see also* Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2338-39 (2008) (noting that Chapter 11 strikes balance between debtor's interest in reorganizing and creditors' interest in maximizing value of bankruptcy estate).

[224] *See* First USA v. Lamanna (*In re* Lamanna), 153 F.3d 1, 4 (1st Cir. 1998); *In re* Official Comm. of Unsecured Creditors of White Farm Equip. Co., 943 F.2d 752, 756 (7th Cir. 1991). *See generally* Jenks, *supra* note 15, at 893 (describing bankruptcy parties' tension).

the debtor.[225] The Court noted that Chapter 11 strikes a balance between a debtor's interest in reorganizing and the creditor's interest in maximizing the estate's value.[226] Similarly, the proportional method also does not favor either party, but instead balances creditor and debtor interests by using the debtor's average tax rate.[227] Therefore, the Court's interpretation of Chapter 11 as requiring balanced treatment between debtors and creditors further supports the conclusion that the proportional method is proper.[228]

The proportional method's equitable treatment of both the debtor and creditor is also consistent with relevant legislative history.[229] Chapter 12's legislative history from 1986, on which the *Knudsen* majority relies, notes that Chapter 12 ensures a fair payment to creditors.[230] Since Chapter 12's enactment, its stated goal was to balance creditors' and debtors' competing interests.[231] The proportional method accomplishes this goal by providing the fairest tax allocation under § 1222(a)(2)(A).[232]

Additionally, Senator Grassley's statement on Safety 2000 is consistent with using the fairest tax allocation method.[233] In his

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[225] *See Piccadilly Cafeterias*, 128 S. Ct. at 2338-39; *Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *In re* Neclerio, 393 B.R. 784, 791 (Bankr. S.D. Fla. 2008).

[226] *See Piccadilly Cafeterias*, 128 S. Ct. at 2338-39; *Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *see also* Jenks, *supra* note 15, at 893.

[227] *See Piccadilly Cafeterias*, 128 S. Ct. at 2338-39; *Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7.

[228] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); Energy Res. Co. v. IRS (*In re* Energy Res. Co.), 871 F.2d 223, 230 (1st Cir. 1989); Joshua M. Silverstein, *Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debate over Non-Debtor Releases in Chapter 11 Reorganizations*, 23 EMORY BANKR. DEV. J. 13, 15-16 (2006).

[229] *See Knudsen*, 581 F.3d at 716-17; *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006); H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[230] *See Knudsen*, 581 F.3d at 716-17; Rowley v. Yarnall, 22 F.3d 190, 193 (8th Cir. 1994); H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

[231] *See* IRS v. Cousins (*In re* Cousins), 209 F.3d 38, 42 (1st Cir. 2000); *Rowley*, 22 F.3d at 193; H.R. REP. NO. 99-958, at 48 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249.

[232] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *7. *But see* Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661 (Bankr. D. Colo. 2009).

[233] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley),

statement, Senator Grassley supported statutory reductions of the IRS's tax priority.[234] Section 1222(a)(2)(A) accomplishes this goal by explicitly reducing the IRS's claim priority.[235] However, Senator Grassley did not indicate that the debtor's benefit should be maximized under § 1222(a)(2)(A), which is precisely the result under the marginal method.[236] Therefore, § 1222(a)(2)(A)'s legislative history supports the proportional method, as it achieves the fairest allocation of tax burdens and balances debtors' and creditors' competing interests.[237]

The proportional method treats both creditors and debtors equally and, thus, ameliorates unfairness.[238] Further, the Chapter 12 and § 1222(a)(2)(A) legislative history both support the proportional method.[239] Therefore, the *Knudsen* court erred in adopting the unfairly prejudicial marginal method of tax allocation under § 1222(a)(2)(A).[240]

1999 WL 20426; *see also Ficken*, 430 B.R. at 661 (noting that court should adopt most fair method under law).

[234] *See Knudsen II*, 389 B.R. 643, 668 (N.D. Iowa 2008); Hall v. United States (*In re* Hall), 393 B.R. 857, 863 (D. Ariz. 2008) (quoting *In re* Schilke, 379 B.R. 899, 902 (Bankr. D. Neb. 2007)); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[235] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen*, 581 F.3d at 718; Porter, *supra* note 36, at 738.

[236] *See Knudsen*, 581 F.3d at 718; *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426.

[237] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; *see also* H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249. *See generally* Jenks, *supra* note 15, at 893 (describing tension in bankruptcy between creditors and debtors).

[238] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006).

[239] *See Knudsen*, 581 F.3d at 722-23 (Colloton, J., concurring in part and dissenting in part); 145 CONG. REC. S750-02, S764 (Jan. 20, 1999) (statement of Sen. Grassley), 1999 WL 20426; H.R. REP. NO. 99-958, at 48 (1986) (Conf. Rep.), *reprinted in* 1986 U.S.C.C.A.N. 5246, 5249; *cf. Rickert*, 2009 Bankr. LEXIS 17, at *6-7 (finding proportional method does not prejudice one party in favor of other). *But see* Ficken v. IRS (*In re* Ficken), 430 B.R. 648, 661-62 (Bankr. D. Colo. 2009).

[240] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part); *Rickert*, 2009 Bankr. LEXIS 17, at *6-7; *Knudsen I*, 356 B.R. at 487. *But see Knudsen*, 581 F.3d at 718.

CONCLUSION

Buck Johnson realized a significant gain by treating the tax liability from the sale of his land and corn stock as a nonpriority claim.[241] Section 1222(a)(2)(A) reduced the IRS's veto power over his bankruptcy plan, which made his plan more feasible and, therefore, more confirmable.[242] However, under § 1222(a)(2)(A), the proportional tax allocation method is more appropriate when compared to the marginal method.[243] The use of the proportional method will have the effect of reducing Buck's tax liability subject to § 1222(a)(2)(A) and increasing the IRS's priority claim.[244] Therefore, Buck's total tax liability will also increase.[245]

The *Knudsen* court incorrectly held that the marginal tax allocation method is proper under § 1222(a)(2)(A) by misconstruing the statute's relevant legislative history.[246] Moreover, because § 1222(a)(2)(A) is primarily a tax statute, the *Knudsen* court also improperly confined its analysis to the Bankruptcy Code.[247] Further, the proportional method reflects both the Internal Revenue Code's and the Bankruptcy Code's preference for debtor and creditor equality.[248] Therefore, the Supreme Court should adopt the proportional tax allocation method for claims arising under § 1222(a)(2)(A).[249] Buck still recognizes a significant gain by treating certain IRS claims as nonpriority claims.[250] However, the adoption of the proportional method will moderate that benefit by reducing the amount of IRS

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[241] *See* United States v. Nazar (*In re* Dawes), 415 B.R. 815, 820 (D. Kan. 2009).

[242] *See* 11 U.S.C. § 1222(a)(2)(A) (2006); *Knudsen II*, 389 B.R. 643, 668 (N.D. Iowa 2008) (noting that marginal method makes bankruptcy plans more feasible and more confirmable).

[243] *See Knudsen*, 581 F.3d at 723 (Colloton, J., concurring in part and dissenting in part).

[244] *See id.* at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69).

[245] *See id.*

[246] *See id.* at 722-23 (Colloton, J., concurring in part and dissenting in part); *supra* Part III.C (arguing that *Knudsen* incorrectly rejected *Knudsen I*'s proportional method holding); *supra* Part III.A (discussing § 1222(a)(2)(A)'s legislative history); *see also In re* Rickert, No. BK06-40253-TLS, 2009 Bankr. LEXIS 17, at *7 (Bankr. D. Neb. Jan. 9, 2009); *Knudsen I*, 356 B.R. 480, 487 (Bankr. N.D. Iowa 2006), *overruled by Knudsen II*, 389 B.R. at 669.

[247] *See supra* Part III.B (discussing § 1222(a)(2)(A) as primarily tax statute).

[248] *See supra* Part III.C (discussing proportional method's equal treatment of debtors and creditors).

[249] *See Rickert*, 2009 Bankr. LEXIS 17, at *7; *Knudsen I*, 356 B.R. at 487; *supra* Part III (arguing proportional method is correct).

[250] *See* 11 U.S.C. § 1222(a)(2)(A) (2006).

claims subject to § 1222(a)(2)(A), and reducing the amount of tax discharged.[251]

[251] *See id.*; *Knudsen*, 581 F.3d at 718-19 (quoting *Knudsen II*, 389 B.R. at 668-69).