

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

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ABC Insights

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Definition of “Governmental Unit” in the Bankruptcy Code

What is a “governmental unit” under the Bankruptcy Code? It means “United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.”²

What are examples of governmental units? A foreign country is a governmental unit subject to a bankruptcy court’s jurisdiction despite the Foreign Sovereign Immunity Act.³ A state bar association bringing disciplinary proceedings has been found to be a “governmental unit.”⁴ A “governmental unit” also has been held to include federal credit unions,⁵ Native American tribes,⁶ utility commissions,⁷ transit authorities,⁸ liquor authorities⁹ and state universities.¹⁰ These examples are not exclusive.

The legislative history to § 101(27) indicates that this subsection defines “governmental unit” in the broadest sense.¹¹ Courts apply a functional approach to determine who is a “governmental unit” by examining whether the entity at issue is carrying out a governmental function.¹² The limited case law

suggests that courts should also look to the nature of the relationship between the government and the entity at issue.¹³

In contrast, which entities are *not* considered governmental units? A private party, acting as a “private attorney general” bringing a citizen action under the Clean Water Act, is not a governmental unit.¹⁴ Other examples of entities that are not “governmental units” include a nonprofit human service organization that provided housing for homeless even though it received funding from the government,¹⁵ a private landlord who received a subsidy under the section 8 program from the Federal Department of Housing and Urban Development,¹⁶ a private mortgage company approved under the Housing and Urban Development federal mortgage insurance program¹⁷ and a private nongovernmental association of members that accredits schools.¹⁸ At least one court has held that Native American tribes are not governmental units.¹⁹

What Is the Significance of Being a “Governmental Unit” under the Bankruptcy Code?

Section 106 of the Bankruptcy Code abrogates sovereign immunity for a governmental unit except to the extent other Code provisions may preserve it. The section contains a long list of other sections where § 106 applies.²⁰



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¹ The views expressed herein are solely those of the author and do not necessarily reflect the views or opinions of Husch Blackwell LLP. This article is solely for educational purposes and is not intended to constitute legal advice.

² 11 U.S.C. § 101(27) (2016).

³ *In re Tuli*, 172 F.3d 707, 711-12 (9th Cir. 1999).

⁴ *In re Wade*, 115 B.R. 222, 228 (B.A.P. 9th Cir. 1990), *aff’d*, 948 F.2d 1122 (9th Cir. 1991).

⁵ *Tl Fed. Credit Union v. DelBonis*, 72 F.3d 921, 924 (1st Cir. 1995).

⁶ *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055, 1060 (9th Cir. 2004).

⁷ *In re Begley*, 46 B.R. 707 (E.D. Pa. 1984).

⁸ *In re Marine Elec. Ry. Prods. Div. Inc.*, 17 B.R. 845 (Bankr. E.D.N.Y. 1982).

⁹ *In re Maley*, 9 B.R. 832 (Bankr. W.D.N.Y. 1981).

¹⁰ *In re Howren*, 10 B.R. 303 (Bankr. D. Kan. 1980).

¹¹ *In re Wade*, 115 B.R. 222, 226 (B.A.P. 9th Cir. 1990), *aff’d*, 948 F.2d 1122 (9th Cir. 1991).

¹² *Id.*

¹³ *Id.*

¹⁴ *In re Revere Copper & Brass Inc.*, 32 B.R. 725, 727 (S.D.N.Y. 1983).

¹⁵ *In re Marciano*, 288 B.R. 324 (Bankr. S.D.N.Y. 2003).

¹⁶ *In re Lutz*, 82 B.R. 699 (Bankr. M.D. Pa. 1988).

¹⁷ *In re Merriweather*, 185 B.R. 235 (Bankr. S.D. Tex. 1995).

¹⁸ *In re Draughton Training Inst. Inc.*, 119 B.R. 927 (Bankr. W.D. La. 1990).

¹⁹ *In re Whitaker*, 474 B.R. 687, 695 (B.A.P. 8th Cir. 2012).

²⁰ 11 U.S.C. §§ 106(a)(1), 105, 106, 107, 108, 303, 346, 362, 363, 364, 365, 366, 502, 503, 505, 506, 510, 522, 523, 524, 525, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 722, 724, 726, 744, 749, 764, 901, 922, 926, 928, 929, 944, 1107, 1141, 1142, 1143, 1146, 1201, 1203, 1205, 1206, 1227, 1231, 1301, 1303, 1305 and 1327.

However, some other Code provisions contain preferential treatment for governmental units. For example, § 362 provides that the automatic stay does not apply to the enforcement of a governmental unit's police or regulatory powers.²¹ In evaluating whether an action is part of police or regulatory powers, courts use two tests. First, courts use the "pecuniary purpose" test, which focuses on whether a governmental proceeding relates primarily to protecting of the government's pecuniary interest in a debtor's property rather than matters of public safety or public policy.²² In the alternative, courts use the "public policy" test, which distinguishes between proceedings that adjudicate private rights and those that effectuate public policy.²³

The police or regulatory power exception to the automatic stay has been held applicable to a National Labor Relations Board enforcement proceeding concerning the back pay of employees discriminatorily discharged, an assessment of penalties for child labor violations by the Secretary of Labor and the denial of an application for a license to race horses by a state racing board.²⁴ It has been held inapplicable to the termination by the Government National Mortgage Association of a guaranty agreement between the association and a mortgage banker, an eviction proceeding by a municipal housing authority for nonpayment of rent and a hearing by a state motor vehicle commission for termination of a motor vehicle franchise agreement.²⁵

Another important section for governmental units is § 525 of the Bankruptcy Code, which prohibits a governmental unit from discriminating against a person or refusing to grant a license, permit, charter, franchise or other similar grant to a person who has previously been a party to a bankruptcy proceeding or declared bankruptcy.²⁶ Finally, another relevant section includes § 523, which exempts debts from discharge that are for a fine, penalty or forfeiture payable for the benefit of a governmental unit and unrelated to any actual pecuniary loss.²⁷ **abi**

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²¹ *Id.* at § 362(b)(4).

²² *In re Sori*, 513 B.R. 728 (Bankr. N.D. Ill. 2014).

²³ *Id.*

²⁴ Lewis J. Heisman, "Annotation, What Are Proceedings by Governmental Units to Enforce Police or Regulatory Powers Which Are Excepted from Operation of Automatic Stay Provisions of Bankruptcy Code of 1978 (11 U.S.C.A. § 362(b)(4), (5))," 58 A.L.R. Fed. 282 (1982).

²⁵ *Id.*

²⁶ 11 U.S.C. § 525.

²⁷ *Id.* at § 523.