

2010

TaxFORUM

IRS Nationwide



Tax Aspects of Personal Bankruptcy

Types of Bankruptcy

- Chapter 7 – liquidation with Ch 7 trustee
 - Individual or Entity
- Chapter 13 – Payment Plan 3-5 yrs, with Ch 13 trustee
 - Individual only
- Chapter 11 – Payment Plan,
 - debtor-in-possession is trustee
 - Individual or Entity

Limitations on Filing Bankruptcy

- Ch 7 – Means test
 - Tax is not consumer debt – may not apply
 - Income less than state median
- Ch 13 – Debt limits
 - Unsecured <\$336,900
 - Secured <\$1,010,650
- Ch 11 -



Discharge Happens

- Ch 7 – Court enters discharge order
 - Could be as soon as 3 months
- Ch 13 – After last plan payment
 - Unless there is hardship
- Ch 11 – After last plan payment
 - Unless unsecureds paid something and request it

Dischargeable Tax

- 3 years from due date + extensions
- 2 years after filing late return
- 240 days after assessment of tax
- No fraud on return or evasion to pay
- No un-assessed tax
- No trust fund tax

Taxes in Bankruptcy

- Ch 7 – Non-discharged taxes must be paid after bky
- Ch 13/Ch 11 – Secured tax
 - Must be paid w/interest or surrender property
- Ch 13/Ch 11 – Priority tax
 - Must be paid w/interest during plan /5 yrs max
- Ch 13/Ch 11 – Unsecured tax
 - Must be paid in plan from disposable income

Tax Liens After Bankruptcy

- Taxes Discharged
 - No pre-bky assets – lien should be released
 - Pre-bky assets – lien remains on those assets
 - Post-bky assets – lien does not attach
- Taxes Not Discharged
 - Lien remains and continues to have effect until 10 yr SOL expires – plus extension due to bky

Collection Stat. of Limitations

- 10 years generally
- Extensions:
 - TP out of US for > 6 months
 - TP in bankruptcy + 6 month
 - Anytime levy is precluded
 - During OIC pendency
 - While offer of IA is pending
 - During timely CDP
 - While innocent spouse request pending

IRS Alternatives

- Currently Uncollectible determination
- Installment Agreement
 - Partial Pay
 - Full Pay
- Offer in Compromise
 - Doubt as to Liability
 - Doubt as to Collectibility
 - Effective Tax Administration Offer

CDP Caselaw

- *Ken Ryan, Inc. v. Comm'r*, T.C. Summ. Op. 2010-18
 - Abate FTD penalties, reasonable cause, advise of CPA
- *Barnes v. Comm'r*, T.C. Memo 2010-30
 - OK to dispute liability in CDP when TP didn't "receive" 90 day ltr
- *Gonzalez v. Comm'r*, T.C. Memo 2010-8
 - TP claimed hardship in CDP, IRS could levy anyway SOL expiring
- *Fairlamb v. Comm'r*, T.C. Memo 2010-22
 - TP filed 3 OIC's during CDP, based on Appeals #'s, Court remanded
 - To appeals because inadequate reasons to reject OIC
- *Precourt v. Comm'r*, T.C. Memo 2010-24
 - TP got 6673 penalty \$25,000 – 8 tax court cases, 3 D. Ct. cases

Bankruptcy Caselaw

Links v. US, 2009 Bankr. LEXIS 2921 (Bankr. N.D. OH 2009)

The TP filed late returns before any 6020(b) assessment

Held: not a return for bky because wasn't 6020(a) safe harbor

State of Maryland v. Ciotti, 421 B.R. 202 (D. Md. 2009)

The MD report issued after IRS audit is not return for bky.

Wilson v. US, 2009 U.S. App. LEXIS 12676 (10th Cir. 2009)

Frivolous filing penalty not discharged, event within 3 yrs of bky

Long v. US, 419 B.R. 884 (Bankr. M.D. Fla. 2009)

TP too busy with drugs, alcohol and gambling no tax discharge

Mitchell v. US, 2009 Bankr. LEXIS 2901 (Bankr. M.D. GA 2009)

TP who didn't file returns/pay got tax discharged, bad judgement isn't willful

Practice Points

- Always get IRS transcripts
- Let TP know all his options
- Watch out for events that can change the time periods for dischargeability

