



2015

IRSNationwide

TaxFORUM

Bankruptcy Developments & Updates

Unpaid Federal Tax Liabilities – The Better Alternative and The IRS Collection System

Wm. Robert (“Bob”) Pope, Jr.

Lawyer

White & Reesor, PLC
Nashville, Tennessee

Frances (“Fran”) D. Sheehy

Lawyer

Law Office of Frances D. Sheehy
Coconut Creek, Florida



2015

IRSNationwide

TaxFORUM

Bob Pope and Fran Sheehy

Bob Pope and Fran Sheehy are members of the American Bar Association's Tax Section Committee on Bankruptcies and Workouts. Each are former trial attorneys with the Office of Chief Counsel, Internal Revenue Service. Each are Fellows of the American College of Tax Counsel.

www.whitereasor.com

www.fransheehy.com

PURPOSE

Review and compare the United States Bankruptcy Code (Title 11) with options offered by the Internal Revenue Service for Payment

- Assume: Attendees generally not lawyers
- Compare:
 - Judicial Review of IRS “remedies”
 - Bankruptcy Court review of IRS liabilities



2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

Tax FORUM

I. OVERVIEW: ENLIGHTENMENT, NOT CONVERSION

A. The Professional Gap

B. The Tax Professional and the Tax Bankruptcy

II. THE BANKRUPTCY CODE VERSUS THE IRS

A. The Internal Revenue Code and

B. The Internal Revenue Manual



2015

IRSNationwide

Tax FORUM

Individual Federal Income Tax Liabilities: Dischargeable in bankruptcy?

YES

- Timing Restrictions: “Priority” Liabilities
- Statutorily “Non-dischargeable” Liabilities



- Timing Restrictions: Discharge “STALE” Taxes
 - “3 Year” Rule: From due date of return (as extended)
 § 507(a)(8)(A)(i)
Example: 2011 – Extension to October, 2012 – 3 years – October, 2015
 - “2 Year” Rule: For late filed returns only
 § 523(a)(1)(B)(ii)
 Date of Filing: No assessment before late return filed
 - “240 Day” Rule: Assessments, § 507(a)(8)(A)(ii)

DISCHARGE PROHIBITED BY STATUTE:

NON-DISCHARGEABLE (EVEN IF NOT PRIORITY) CLAIM

Bad Acts:

- Fraud on return or evasion to pay, § 523(a)(1)(C)
- Trust fund taxes, § 507(a)(8)(C)
- Unassessed – but assessable taxes -- § 507(a)(8)(A)(iii)
- No Return Filed
Litigation: When late filed returns will not be considered a “return” as a matter of law



When Does The Debtor Get A Discharge?

1. Chapter 7 – When the court enters the discharge order, § 727.
2. Chapter 13 – After the last plan payment is made, unless there is a hardship, § 1328.
3. Chapter 11 – After the last plan payment is made.



2015

IRSNationwide

TaxFORUM

Are These Liabilities About To Expire By Statute Anyway?



No – 10 year statute

- 2011 – Filed April 15, 2012
- 10 Year Statute – April 15, 2022
- 3 Year Rule – Bankruptcy, April 15, 2015
- Bankruptcy – 7 Years Shorter!



2015

IRSNationwide

TaxFORUM

Objections to Dischargeability of Tax Claims

- Passive
- Active

Non-Dischargeable Taxes

- What Happens? -- Nothing
- IRS collects after case closed

Secured Tax Liability

- Notice of Federal Tax Lien – Remains even if tax dischargeable



- Statute Extends 3 Year Rule and 240 Day Rule 507(a)(8) hanging paragraph

CRITICAL: All CDP Requests EXTEND the time rules.

[From the time the Request is submitted until withdrawn or a Notice of Determination has been issued.]

- Delay in the CDP Process: Lengthy periods of time for statute extension.



2015

IRSNationwide

TaxFORUM

The IRS Options:

- A. The Collection Statute of Limitations –
10 Years
- B. Installment Agreements



2015

IRSNationwide

TaxFORUM

C. Partial Payment Installment Agreement

D. Offers-in-Compromise

E. Uncollectible Status



BASIC TOOLS FOR TAX PRACTITIONERS

www.IRS.gov

Tax Payment Alternatives

- Collection Procedures for Taxpayers Filing and/or Paying Late
- Electronic Payment Options



2015

IRSNationwide

TaxFORUM



BASIC TOOLS FOR TAX PRACTITIONERS

www.IRS.gov

Tax Payment Alternatives

- EFTPS
- Payment Plans, Installment Agreements
- Online Payment Agreement Application



2015

IRSNationwide

Tax FORUM



BASIC TOOLS FOR TAX PRACTITIONERS

www.IRS.gov

Tax Payment Alternatives

- Online Payment Agreement (Video)
- Offer in Compromise
- Offer in Compromise Pre-Qualifier Tool
- Completing Form 656, Offer in Compromise (Video)
- Owe Taxes? Understanding IRS Collection Efforts (Video)

2015

IRSNationwide

TaxFORUM



BASIC TOOLS FOR TAX PRACTITIONERS

www.irs.gov

Representing Your Client Before The IRS

After Returns Have Been Filed

- Understanding Notices
- IRS Notices and Bills, Penalties and Interest Charges (Topic 653)
- Understanding the Collection Process (Publication 594)
- Taxpayer Advocate Service



2015

IRSNationwide

Tax FORUM



BASIC TOOLS FOR TAX PRACTITIONERS

www.IRS.gov

IRS Collection Tools and Your Clients' Rights

- Tools
 - Understanding a Federal Tax Lien
 - Levies
 - Notice of Potential Third Party Contact

...



IRSNationwide

TaxFORUM



Basic Tools For Tax Practitioners -- www.irs.gov

IRS Collection Tools and Your Clients' Rights

- Rights

...

- Collection Due Process Hearing (Form 12153)
- Collection Appeal Right
- Collection Appeal Request (Form 9423)
- Fast Track Mediation
- Offer In-Compromise

...

<http://www.irs.gov/Individuals/Post-Appeals-Mediation>



2015

IRSNationwide

Tax FORUM



Collection Due Process Hearing

1. Purpose
2. Practice
3. Judicial Review: Exclusive Jurisdiction in United States Tax Court
4. Standard for Review of Collection Alternatives: “Abuse of Discretion”
5. Trust Fund Recovery Penalty
6. Review of Bankruptcy Discharge

TAXES IN BANKRUPTCY

CH 7	--	--	Non-Priority Dischargeable Goes away BUT liens on property
CH 13	Secured must be satisfied— Sell property Give \$ to IRS Pay [Even if Discharged]	Priority Must be paid over life of plan Not Discharged	Unsecured Dischargeable Creditors must receive more than CH 7 --
CH 11	Secured Same as CH 13	Priority Paid with interest – 5 years	Unsecured Same as CH 13



2015

IRSNationwide

Tax FORUM

CHAPTER 7

ADVANTAGES

- a. Certainty
- b. Short timeframe
- c. Post-bankruptcy income and assets
- d. Discharge
- e. COD income not taxable

DISADVANTAGES

- a. Pass means test – Not a real problem
- b. Tax lien remains on pre-bankruptcy property
- c. IRS Collection – SOL extended
- d. Non-dischargeable taxes remain (CH 20 – 7 and 13)
- e. Trustee can take pre-bankruptcy assets
- f. IRS can take exempt property
- g. Tax attributed reduced



IRSNationwide

TaxFORUM

CHAPTER 11

ADVANTAGES

- a. Certainty
- b. Pay % unsecured
- c. Keep property
- d. No debt limits
- e. Debtor is trustee
- f. Flexibility of Plan
- g. If Plan paid liens released
- h. Automatic stay stops levy

DISADVANTAGES

- a. Expensive
- b. Substantial Reporting
- c. Post-bankruptcy income funds plan – 5 years +
- d. If Plan defaults – tax stays
- e. Lien stays until end of Plan
- f. SOL extended
- g. More tax returns
- h. Defend discharge exemptions / Plan



IRSNationwide

Tax FORUM

CHAPTER 13



ADVANTAGES

- a. Certainty
- b. Keep property
- c. Keep tax attributes
- d. Pay portion of unsecured
- e. Lien released at end
- f. Automatic stay stops levy
- g. Lien value capped

DISADVANTAGES

- a. Plan payments 3 – 5 years
- b. Lien stays until end
- c. Post-bankruptcy income goes to Plan
- d. If default – all tax stays
- e. Debt limits
- f. SOL suspended
- g. Defend objections to Plan, discharge and exemptions