

## IRS Bankruptcy Discharge Cheat Sheet

### Individual Bankruptcy:

Chapter 7 = liquidation bankruptcy

Chapter 13 = reorganization bankruptcy

### Determine Income Tax Dischargeability:

1. 3-Year Rule – The taxes were due at least three years before the bankruptcy filing including valid extensions.
2. 2-Year Rule – The tax return was filed at least 2 years before the filing.
3. 240-Day Rule – The tax was assessed at least 240 days prior to the filing.
4. No tax fraud – Determined by the court.
5. No willful evasion – Subjective & determined by the court.

### Secure Debt:

- Secure/Non-Priority Debt can still be discharged, but the lien survives.
- Non-secured debt is possibly dischargeable if it is Non-Priority.

### Priority Debt:

- Determined by calculating the 3-Year, 2-Year, & 240-Day Rules and using the latest date.
- If the bankruptcy is filed after the 3-Rules date the debt is non-priority and possibly dischargeable.
- Priority debt is not dischargeable.

### Tolling Events:

Tolling Event	3-Yr Rule	2-Yr Rule	240-Day Rule	Additional Days
Prior Bankruptcy	Yes	No	Yes	90
Collection Due Process Hearing	Yes	No	Yes	90
Offer in Compromise	No	No	Yes	30

### Bankruptcy Traps:

- Late filed returns.
  - In Federal Circuits that observe the McCoy Ruling this could be a problem.
- SFR returns.
  - The Beard Test

### Definition of a Tax Return:

- *The Beard* test comes from the case *Beard v. Commissioner*, 82 T.C. 766, 1984 WL 15573 (6th Cir. 1984) under which a “return” must,
  - (1) purport to be a return;
  - (2) be executed under penalty of perjury;
  - (3) contain sufficient data to allow calculation of tax; and
  - (4) represent an honest and reasonable attempt to satisfy the requirements of the tax law.
- Some courts have ruled that an original return filed after an SFR Assessment do not pass part 4 of the Beard Test. Since they do not pass they are not considered returns and the tax for that year is not dischargeable.