

Bankruptcy Tax Discharge Presentation

Learn how to assist bankruptcy attorneys evaluate a taxpayer for a potential bankruptcy.



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- Started managing tax franchises in 2006 after.
- Developed Audit Detective in 2010.
- Qualified as an N.T.P.I. Fellow in 2015.
- Worked as a programmer for the largest Tax Resolution Company integrating automated transcript systems into workflow programs.
- Assisted in the downloading and research of over 30 million transcripts.
- To date our software has been used to download over 100 million transcripts (one-fifth of a billion).



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Handout Overview

- Bankruptcy Discharge Cheat Sheet
- Bankruptcy Discharge Flow Chart
- IRS Memo Reference to Original Return Before SFR Assessment

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Presentation Overview

This presentation will cover how to evaluate an individual taxpayer's IRS account for a potential bankruptcy filing. This course will focus on the IRS account review and the calculations for the potential bankruptcy discharge dates.

Presentation Note: Giving advice on bankruptcy is generally classified as legal advice. Tax professionals should have a relationship with a bankruptcy attorney who should talk to the client. This class is not providing legal training.

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Scope of Presentation

- How to determine if there is Federal Tax Debt.
- How to determine if the tax is secured.
- How to calculate the 3-Year, 2-Year, & 240-Day Rules.
- How to determine if there is a substitute for return.
 - If there is a substitute for return determine if an original return was filed prior to the SFR assessment.
- Assist with determining if the return qualifies as a return under the Beard Test.

Presentation Note: This webinar will not cover is tax debt dischargeable in a particular scenario. That is Legal Advice and must be given by an attorney. If you would like additional training on the subject we will discuss it at the end of this presentation.

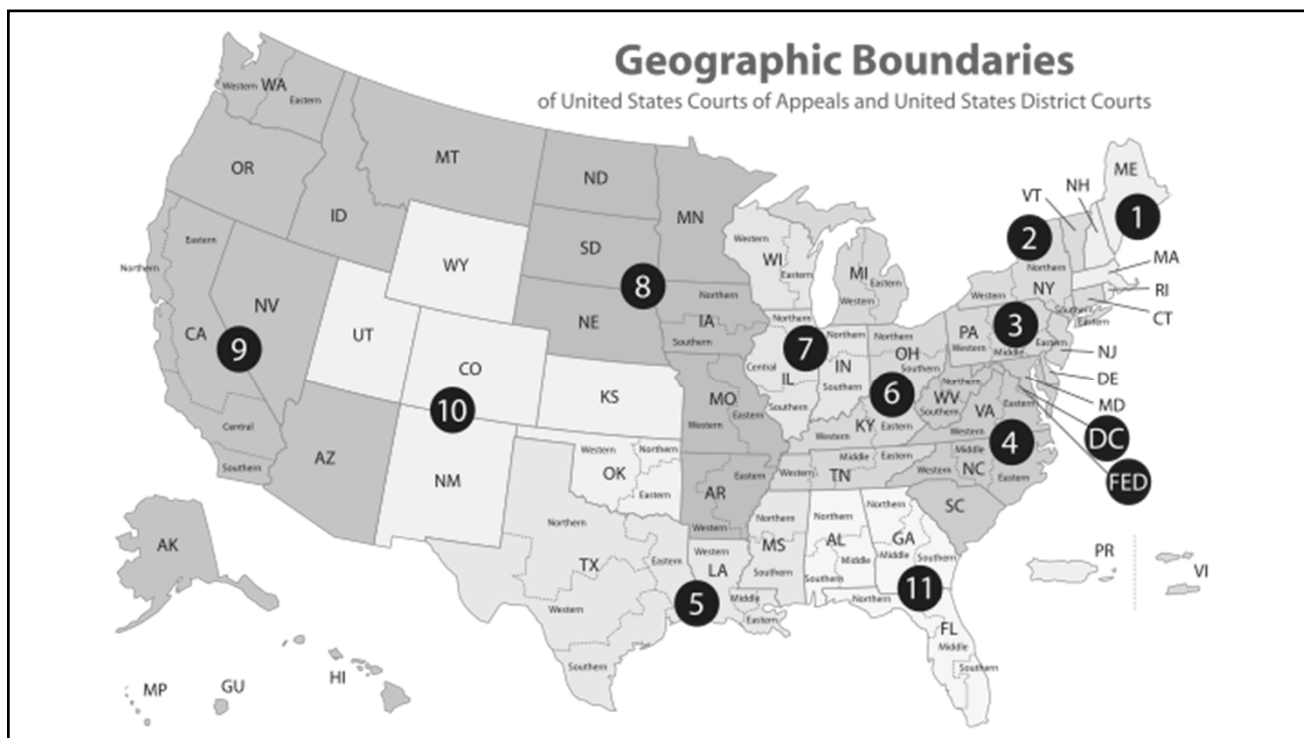
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Disclaimer

This class should not be considered legal advice or legal training. It's purpose is to educate the tax professional community on the basics of bankruptcy law so that they may assist their tax clients in referring them to bankruptcy attorneys for legal advice when the possibility exists and then working with those bankruptcy attorneys to assist them with evaluating the tax portion of the bankruptcy including calculating discharge dates.

Presentation Note: Many times the different Federal Circuits interpret the bankruptcy code differently. The map on the next page shows the Federal Circuit Court of Appeals map for reference. This presentation will not go into the different interpretations of each Federal Circuit. That is up to the bankruptcy attorney.

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The Catch 22

A Circular 230 preparer needs to evaluate all the available options for tax resolution clients or they may not meet the Circular 230 requirements. The problem is bankruptcy is a legal option and under Circular 230 § 10.32 Practice of law:

“Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.”

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Best Practice

As a tax professional you can review a tax clients records to evaluate if bankruptcy is a potential solution to their tax issue. You can then advise the client that bankruptcy is a potential solution and they should contact a bankruptcy attorney if they would like to pursue or evaluate that option further.

Presentation Note: Make sure you document this conversation in the client records so they do not sue you later because you did not present them with bankruptcy as an option.

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Presentation Outline

- Bankruptcy Basics:
 - Dischargeable taxes.
 - Secured and unsecured debt.
 - Priority and non-priority debt.
- Case Law:
 - Beard
 - McCoy
- How to review the tax payers IRS information to assist with the dischargeability decision.

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What is Dischargeable Tax Debt

- **Dischargeable:** Assessed federal income taxes and the associated interest and penalties can be discharged in bankruptcy if they qualify.
 - In order for taxes to be dischargeable they need to be classified as non-priority.
 - Secured (**N**otice of **F**ederal **T**ax **L**ien (**NFTL**) Filed) debt can be discharged but the lien survives. If property is sold after the bankruptcy the IRS can make a claim under the lien.
 - The associated interest and penalties of the tax debt are dischargeable.
- **Non-Dischargeable:** Taxes other than income taxes usually cannot be discharged.
 - Trust fund taxes.
 - Fraud penalties.

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Chapter 7 vs Chapter 13

- **Chapter 7 Bankruptcy is a liquidation bankruptcy.**
 - Liquidates assets and then pays off creditors based on priority and non-priority debt.
- **Chapter 13 Bankruptcy is a reorganization bankruptcy.**
 - The debt is organized into a payment plan and payments are made based on priority.
 - Non-Priority income tax debt is dischargeable at the end of the Chapter 13.
- Income Taxes can be discharged in both Chapter 7 & 13 Bankruptcies.
- If there is a lien on non-priority Debt:
 - For a Chapter 7, the debt would be discharged but the lien survives.
 - For a Chapter 13, the debt is still discharged but now you have a secured lien which has to be paid in the Chapter 13. For example, debtor owes \$50k on non-priority taxes with a lien filed. They have \$25k in assets. The plan must provide for payment of \$25k (the secured portion), but the remainder would be treated like a Chapter 7 – discharged but lien survives.

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Chapter 7 Example

- Tax payer files Chapter 7 and has the following Federal Income Tax Debt on the day of filing:
 - \$10,000 of Priority/Secured Tax Debt.
 - \$9,000 of Priority/Unsecured Debt.
 - \$8,000 of Non-Priority/Secured Debt.
 - \$7,000 of Non-Priority/Unsecured Debt.

Result: Only the \$7,000 of Non-Priority/Unsecured Debt & the \$8,000 of Non-Priority/Secured Debt is dischargeable. A total of \$15,000 is dischargeable.

Presentation Note: The lien still survives on the \$8,000 of secured debt.

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Chapter 13 Example

- Tax payer files Chapter 13 and has the following Federal Income Tax Debt on the day of filing:
 - \$10,000 of Priority/Secured Tax Debt.
 - \$9,000 of Priority/Unsecured Debt.
 - \$8,000 of Non-Priority/Secured Debt.
 - \$7,000 of Non-Priority/Unsecured Debt.
 - There are \$4,000 of assets.

Result: Only the \$7,000 of Non-Priority/Unsecured Debt & the \$4,000 of Non-Priority/Secured Debt is dischargeable at the end of the repayment plan minus the portion that was paid during the Chapter 13. The total dischargeable amount is \$11,000. \$4,000 of the \$8,000 non-priority secured debt must be included in the payment plan.

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Secured Debt

- IRS creates secured debt with a properly filed Notice of Federal Tax Lien (NFTL).
- Valid NFTL must identify taxpayer, tax year, assessment, and release date--
Treas. Reg. § 301.6323-1(d)(2)
- Rules for proper place to file NFTL vary by state.

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Priority vs Non-Priority Tax Debt

- There are five criteria or tests to determine if income taxes are dischargeable
 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 240 days prior to the filing.
 4. **No Tax Fraud or Willful Evasion**
 - Tax fraud was not committed & no willful evasion.

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Equitable Tolling

Equitable Tolling Definition: Equitable tolling is a legal principle evolved from the common law of equity. Equitable tolling states that the statute of limitations will not bar a claim if the plaintiff, despite reasonable care and diligent efforts, did not discover the injury until after the limitations period had expired.

The layman's definition of equitable tolling in regards to the IRS is the legal position that a deadline will toll while the IRS is barred from collecting a tax debt.

Presentation Note: Common sense would indicate that all of the "tolling events" that affect the Collection Statute Expiration Date would also apply to the bankruptcy rules as well. This is not the case. Only prior bankruptcies, Collection Due Process Hearings and Offer in Compromises toll some of the bankruptcy rules.

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Bankruptcy 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

Presentation Note: Be advised courts could make new rulings that could expand or contract equitable tolling. For example a court could rule equitable tolling could be applied to the 2-Year Rule.

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Offer in Compromise Tolling

- Offer In Compromise (OIC) tolling is different for bankruptcy than it is for CSED tolling.
 - In bankruptcy the OIC tolls from pending date to the rejected date plus 30 days, or
 - If the OIC is accepted then it tolls from the pending date through the duration of the OIC whether it is completed successfully (including the five year compliance time frame) or the default date plus 30 days.
 - To clarify the CSED OIC tolling is only from pending to accepted or rejected not the duration plus 30 days for a rejected OIC.
- The CDP and prior bankruptcy tolling are from the start of the event to the end plus 90 days.

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Accepted OIC Trap In Bankruptcy

- What happens if a tax payer has an accepted OIC and the debt has been written off but they are still in the five year compliance period.
- During that time they file a Chapter 7. For this example assume the written off balance would have been non-priority/unsecured debt.
- Once the tax payer emerges from bankruptcy they default during their compliance period and the debt is placed back on the account.

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Confirm Prior Bankruptcy With PACER

- Public Access to Court Electronic Records (PACER) is the public access portal where anyone can access Federal Public Court Documents.
- The tax pro or bankruptcy attorney can search for the tax payer to make sure the dates of the bankruptcy are correct and that it was a bankruptcy and not tax court.
- The transaction code for bankruptcy is the same for CDP and tax court.
 - TC 520 Bankruptcy or other legal action filed
 - The client is not the best source.
- You can also check the closing code on the MOD A transcript. It is still recommended that PACER is checked since the IRS has been known to make mistakes entering data in their system.

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3-Year Rule

- The taxes were due at least three years before the bankruptcy filing including valid extensions.
 - The due date for individuals is April 15 and extensions are October 15.
 - I have not seen any case law on the Saturday, Sunday, Legal Holiday Rule affecting the due date in regards to bankruptcy, but that does not mean there is not a case or the rules will change in the future.

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Individual Due Dates

3.30.123.6.1.6 (01-01-2018)

Domestic Form 1040 Series OTFP (AUSPC, FSPC, KCSPC, OSPC Only) (Programs 43110, 43130, 44110 and 47130) Processing Specifications

1. STATUTORY DUE DATES for Form 1040, Form 1040-A and Form 1040-EZ:

- April 15
- June 15 (Taxpayers living abroad-automatic extension)
- October 15 (If Extension Request is filed timely - April 15)

Presentation Note: Unsure how a natural disaster extension affects the due date interpretation for bankruptcy. This would benefit the tax payer if challenging a late filed return where there may have been an automatic extension for tax payers in Federally Declared Disaster area. This is for the attorneys to interpret. More information in the 2-Year Rule section.

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3-Year Rule Equitable Tolling

- Prior Bankruptcies
 - Tolls for the duration of the bankruptcy plus 90 days.
- Collection Due Process Hearing
 - Tolls for the duration of the hearing plus 90 days.

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2-Year Rule

- The tax return was filed at least 2 years before the filing.
- This is the most complicated of the five rules/criteria regarding non-priority debt.
 - This gets complicated because “What qualifies as a tax return” needs to be established. This will be discussed on an upcoming slide (The Beard Test).

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2-Year Rule Equitable Tolling

- Currently nothing tolls the 2-Year Rule.
- The courts could change their interpretation of the law at any time and start applying tolling.
- In the IRS Bankruptcy Presentation from the 2013 IRS Forum the presentation states:
 - “Prior bankruptcy filing extends 3-year rule plus 90 days, 240-day rule plus 180 days (under literal reading of statute), and 2-year rule with no additional time”
 - I have not found this tolling position in any other literature.
 - This is just an example of different interpretations of the same code.

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What Qualifies As A Tax Return

- A timely filed 1040.
- An agreed upon SFR IRC Section 6020(a) (In some districts)
 - This is basically an SFR where the taxpayer signs agreeing to the assessment.
- A late filed 1040 that is filed prior to an unagreed SFR IRC Section 6020(b) assessment.
- In some Federal Court Circuits late filed returns (even if one day late or with reasonable cause) do not qualify based on the McCoy Ruling. More on this in the next slide.

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McCoy Case

- On January 25th, 2012 the 5th Circuit Court of Appeals ruled on Linda McCoy vs Mississippi State Tax Commission that a late filed return did not meet the definition of a return under the 11 U.S.C. § 523(a)(1)(B)(i)
 - This case was about a state tax but it has since been applied to any income taxes including Federal Tax.
 - The IRS still recognizes late filed returns and the 2-Year Rule but the courts can decide on their own.
 - Even if the IRS does not pursue a McCoy ruling the court may as well as the states.
 - The Federal Districts that recognize McCoy interpret a return even one day late as not a return.

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240-Day Rule

- The tax was assessed at least 240 days prior to the filing.

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240-Day Rule Equitable Tolling

- Prior Bankruptcies
 - Tolls for the duration of the bankruptcy plus 90 days.
- Collection Due Process Hearing
 - Tolls for the duration of the hearing plus 90 days.
- Offer In Compromise (OIC)
 - Tolls for the time the OIC is pending and if accepted tolls for the duration of the OIC.
 - OIC tolls for an additional 30 days after the duration.

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Evaluate Tax Payer's Eligibility For Tax Dischargeability

- Determine which years have tax debt.
 - Check the Account Transcript, Separate Assessment, & Civil Penalty Transcripts.
 - Also need to check if there is an EIN for Payroll/Unemployment returns and request 940, 941, 943, 944, and/or 945 transcripts.
- Confirm the tax payer is compliant (compliant for bankruptcy not IRS Collections).
 - Determine if the returns past the Beard Test.
- Is the debt secure?
 - Check for Tax Liens.
- Is the debt priority?
 - For each year with tax debt calculate the 3-Year, 2-Year, & 240 Day Rules.
- Check for Tax Fraud and Willful Evasion.
- Check to see if the tax return was late filed.
 - If an SFR is present determine if an original return was filed before the SFR was assessed.
- Calculate the CSED Dates and verify with the IRS.
- Evaluate other tax resolution options.

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Bankruptcy Flow Chart Handout

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IRS Transcripts

- To begin the evaluation of a tax payer's eligibility for bankruptcy the IRS Account Transcripts should be acquired.
- Optionally the IRS Mod A transcript could be obtained.
 - The Mod A transcripts are not available electronically and can be difficult to obtain.
 - Try calling the Practitioner Hotline (PPL/PPS) and ask for them.
 - Try a FOIA Request.
 - The Mod A transcripts will have the IRS CSED's and all the closing codes that do not show in the Account Transcripts that are needed to determine tolling events.

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IRS Account Transcripts

The IRS Account Transcripts are the primary reference a bankruptcy attorney should use when manually calculating the Discharge Dates.

Remember the account transcript by themselves are usually not considered evidence in tax court (and possibly bankruptcy court). From Grauer v. Commissioner, T.C. Memo. 2016-52 (Mar. 22, 2016) - **As the court noted, the IRS's "only evidence that such an agreement exists is an account transcript that [it] concedes is inaccurate and an indecipherable and unconvincingly explained collection of numerical codes."**

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Grauer v. Commissioner, T.C. Memo. 2016-52 (Mar. 22, 2016)

The important takeaway from this case was the taxpayer just had to prove the IRS attempted to collect after the ten years. After that the burden of proof shifted to the IRS to prove they had valid statutory reason to extend or toll the CSED.

The taxpayer does not need to disprove the tolling event. The IRS needs to establish it and the taxpayer can challenge their evidence. The transcript was not considered evidence in this case as stated in the previous slide.

This also brings into play not “Did the tolling event happen?”, but instead “Can the IRS prove the tolling event happened?”

A recent TIGTA report determined that 10.6% of tolling events reviewed were not properly documented to justify tolling.

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Is There Income Tax Debt?

- IRS Income Tax Debt should appear on the IRS Account Transcripts.
- Make sure that you also obtain the Separate Assessment transcripts and the Civil Penalty transcripts.
 - These are often overlooked.
- Also check for existing IRS audits/exams as they could assess additional taxes.

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Is The Tax Payer Compliant?

- Tax filing compliance for bankruptcy is different than for IRS Collections.
 - IRS Collections usually defines tax compliance as having filed returns for the past 6 years.
 - For Chapter 7 there is no specified requirement, but I believe it is up to the local bankruptcy trustee.
 - Chapter 13 requires the past four years of returns be filed.
 - The Bankruptcy Code requires Chapter 13 debtors to file all required tax returns for the years ending within 4 years of the debtor's bankruptcy filing.
 - Unagreed SFR's are not consider tax returns in reference to bankruptcy law.
 - In order to be considered a tax return for bankruptcy the return must past the Beard Test.

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The Beard Test

- *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.

Presentation Note: As a non-attorney all the tax pro can do is advise the attorney if an original was filed pre-SFR assessment. It is up to the attorney to determine the course of action.

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Determine if an Original Return was Filed Pre-SFR Assessment

- This is very difficult to determine.
- Thanks to Morgan King for discovering and providing an IRS Memo that addresses this specific question (See Handout).
- The memo is dated September 28, 2011 and the subject is Determining Dischargeability of Late Filed Returns in Which a Substitute for Return was Prepared under IRC § 6020(b)
 - You should provide this memo to any bankruptcy attorneys you work with.
 - To summarize the memo if a TC 976, 977 or 610 is received the date of the transaction is the received date and it is pre-SFR Assessment.
 - If those transactions are not present a FOIA can be submitted requesting the MOD A transcript and any account notes which may indicate a return was filed. (The IRS may have received a return and not coded it correctly).

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What About an Agreed Upon SFR

- An SFR under IRC § 6020(a) is considered an “An Agreed Upon SFR”.
- One indication of an Agreed Upon SFR is a TC Code 599 with a cc 89. (cc = Closing Code).
 - The closing codes are not on the regular account transcript they are on the MOD A. Sometimes these can be acquired from PPL and other times they require a FOIA.

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Is The Debt Secured?

- To determine if tax debt is secure the account transcripts need to be checked if there is a lien.
- A Transaction Code (TC) 582 Lien placed on assets due to balance owed indicates a lien unless there is a 583 Lien released or 583 Lien removed on the same date or later than the initial lien.
- If no TC 582 exists or if it does exist but there is a TC 583 on the lien date or later then there is no lien.
- The TC 582 indicates the Notice of Federal Tax Lien (NTFL) has been filed.
- If there is an active lien then the debt is secured.
- Secured debt can be discharged in bankruptcy, but the lien survives and if the tax payer sells any property covered by the lien the IRS can make a claim.

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Is the Tax Debt Priority?

- The IRS Insolvency Unit will generally not tell a tax payer or their attorney when the debt becomes priority prior to bankruptcy filing.
- **WARNING!!!** If filing a Chapter 7 and the tax debt is determined to be Priority Debt there are usually no do-overs.
 - If it is determined that a mistake was made determining if the tax debt was priority the court generally does not allow a withdraw and then re-filing later to meet the requirements.
 - There may be exceptions to this and that is what the bankruptcy attorney can determine.
- One strategy that some attorneys have advised is to file a Chapter 13 to have the IRS Insolvency Unit determine the priority dates and then withdraw the Chapter 13 and file a Chapter 7 or convert it from one to another.

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3rd Party Programs That Assist With Determining Bankruptcy Discharge Dates

- The following screen shots are from a Tax Help Software Transcript Analysis Report. These calculations were completed seconds after the transcripts were downloaded from the IRS.
- The report accurately calculates the following:
 - Due date (including extension)
 - Original return filed date
 - SFR filed date
 - Tax payer compliance
 - Debt breakdown by year
 - Base bankruptcy discharge dates
 - CSER's
 - Lists all assessments including balance
 - Chronological IRS transactions
 - Lien status
 - Collections status
 - Active exam check

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Main THS Report Dashboard

ASED / RSED Dashboard

Was a return filed and what was the date of filing?

What is the due date adjust for possible extensions?

Year	Return Filed	Original Return Filed Date	Return Due Date	Est ASED*	3 Yrs After Due Date (RSED)*	3 Yrs After Original Return Filed (RSED)*	If 3 Yr RSED Not Expired, Estimated Amount Available*	Credit/Payment Amounts Made Within Past 2 Years (RSED)*
2018	RDNF							
2017	Original	4/15/2018	4/15/2018	4/15/2021	4/15/2021	4/15/2021	\$31,369.00	\$31,369.00
2016	Original	4/15/2017	4/15/2017	4/15/2020	4/15/2020	4/15/2020	\$11,100.00	\$11,100.00
2015	Original	4/15/2016	4/15/2016	4/15/2019	4/15/2019	4/15/2019	\$18,606.00	\$0.00
2014	Original	4/15/2015	4/15/2015	4/15/2018	4/15/2018	4/15/2018	expired	\$0.00
2013	Original	4/15/2014	4/15/2014	4/15/2017	4/15/2017	4/15/2017	expired	\$0.00
2012	Original	4/15/2013	4/15/2013	4/15/2016	4/15/2016	4/15/2016	expired	\$0.00
2011	Original	5/2/2012	10/15/2012	10/15/2015	10/15/2015	10/15/2015	expired	\$0.00
2010	Original	7/7/2011	10/15/2011	10/15/2014	10/15/2014	10/15/2014	expired	\$0.00
2009	Original	4/15/2010	4/15/2010	4/15/2013	4/15/2013	4/15/2013	expired	\$0.00
2008	Original	4/15/2009	4/15/2009	4/15/2012	4/15/2012	4/15/2012	expired	\$0.00
2007	Original	4/15/2008	4/15/2008	4/15/2011	4/15/2011	4/15/2011	expired	\$0.00
2006	Original	4/15/2007	4/15/2007	4/15/2010	4/15/2010	4/15/2010	expired	\$0.00
2005	Original	4/15/2006	4/15/2006	4/15/2009	4/15/2009	4/15/2009	expired	\$0.00
2004	Original	4/15/2005	4/15/2005	4/15/2008	4/15/2008	4/15/2008	expired	\$0.00
2003	Original	4/15/2004	4/15/2004	4/15/2007	4/15/2007	4/15/2007	expired	\$0.00
2002	Amended	4/15/2003	4/15/2003	4/15/2006	4/15/2006	4/15/2006	expired	\$0.00
2001	Original	4/15/2002	4/15/2002	4/15/2005	4/15/2005	4/15/2005	expired	\$0.00
2000	Original	4/15/2001	8/15/2001	8/15/2004	8/15/2004	8/15/2004	expired	\$0.00
1999	Original	4/15/2000	4/15/2000	4/15/2003	4/15/2003	4/15/2003	expired	\$0.00
1998	Original	4/15/1999	4/15/1999	4/15/2002	4/15/2002	4/15/2002	expired	\$0.00
1997	Original	4/15/1998	4/15/1998	4/15/2001	4/15/2001	4/15/2001	expired	\$0.00
1996	Original	4/15/1997	8/15/1997	8/15/2000	8/15/2000	8/15/2000	expired	\$0.00
1995	RDNF							
1994	RDNF							
1993	Original	4/15/1994	4/15/1994	4/15/1997	4/15/1997	4/15/1997	expired	\$0.00
1992	Original	4/15/1993	4/15/1993	4/15/1996	4/15/1996	4/15/1996	expired	\$0.00
1991	Original	4/15/1992	4/15/1992	4/15/1995	4/15/1995	4/15/1995	expired	\$0.00
1990	Original	4/15/1991	4/15/1991	4/15/1994	4/15/1994	4/15/1994	expired	\$0.00

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CSED Dashboard

List of each assessment.

Assessment dates.

Original assessed amount.

Remaining balance of each assessment.

Calculated CSED for each assessment.

YEAR	CODE	ASSESSMENT	DATE	ORIGINAL ASSESSED AMOUNT	REMAINING BALANCE	ESTIMATED TOTAL TOLLING DAYS	ESTIMATED CSED	LESSER OF MONTHS UNPAID CSED OR 72	IA AMOUNT
	360	Fees and other expenses for collection	5/9/2011	\$10.00	\$0.00	69	4/26/18		\$0.00
	276	Penalty for late payment of tax	7/25/2011	\$66.75	\$0.00		4/26/18		\$0.00
	276	Penalty for late payment of tax	8/12/2011	\$402.22	\$0.00		4/26/18		\$0.00
	196	Interest charged for late payment	8/12/2011	\$778.64	\$0.00		4/26/18		\$0.00
	196	Interest charged for late payment	8/13/2012	\$31.33	\$0.00		4/26/18		\$0.00
		2004 Total IA Payments							\$0.00
2005									
	150	Tax return filed	10/9/2006	\$4,608.00	\$0.00	254	6/21/17		\$0.00
	276	Penalty for late payment of tax	10/9/2006	\$93.15	\$0.00		6/21/17		\$0.00
	170	Penalty for not pre-paying tax	10/9/2006	\$126.00	\$0.00	254	6/21/17		\$0.00
		Penalty for filing tax return after the							
	166	due date	10/9/2006	\$698.62	\$0.00		6/21/17		\$0.00
	196	Interest charged for late payment	10/9/2006	\$142.22	\$0.00	254	6/21/17		\$0.00
	276	Penalty for late payment of tax	5/14/2012	\$672.96	\$0.00		6/21/17		\$0.00
	196	Interest charged for late payment	5/14/2012	\$1,246.74	\$0.00		6/21/17		\$0.00
		2005 Total IA Payments							\$0.00
2006									
	150	Tax return filed	1/5/2009	\$6,549.00	\$0.00	145	5/31/19		\$0.00
	276	Penalty for late payment of tax	1/5/2009	\$683.44	\$0.00		5/31/19		\$0.00
	170	Penalty for not pre-paying tax	1/5/2009	\$163.27	\$0.00	145	5/31/19		\$0.00
		Penalty for filing tax return after the							
	166	due date	1/5/2009	\$1,464.52	\$1,231.69	145	5/31/19	13	\$94.75
	196	Interest charged for late payment	1/5/2009	\$930.58	\$930.58		5/31/19	13	\$71.58
		2006 Total IA Payments							\$166.33
2007									
	150	Tax return filed	7/6/2009	\$5,196.00	\$5,196.00	145	11/29/19	19	\$273.47
	276	Penalty for late payment of tax	7/6/2009	\$389.70	\$389.70		11/29/19	19	\$20.51
	170	Penalty for not pre-paying tax	7/6/2009	\$236.00	\$236.00	145	11/29/19	19	\$12.42
		Penalty for filing tax return after the							
	166	due date	7/6/2009	\$1,169.10	\$1,169.10	145	11/29/19	19	\$61.53
	196	Interest charged for late payment	7/6/2009	\$380.59	\$380.59		11/29/19	19	\$20.03
		2007 Total IA Payments							\$387.96
2008									
	150	Tax return filed	12/6/2010	\$5,402.00	\$4,802.00	121	4/7/21	35	\$137.20
	276	Penalty for late payment of tax	12/6/2010	\$480.20	\$480.20		4/7/21	35	\$13.72
	170	Penalty for not pre-paying tax	12/6/2010	\$154.00	\$154.00	121	4/7/21	35	\$4.40
		Penalty for filing tax return after the							
	166	due date	12/6/2010	\$1,080.45	\$1,080.45	121	4/7/21	35	\$30.87

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Bankruptcy Dashboard

Base bankruptcy discharge dates
(3 date rules of bankruptcy).

Estimated base
bankruptcy discharge
date (without tolling).

YEAR	CODE	ASSESSMENT	DATE	ORIGINAL ASSESSED AMOUNT	REMAINING BALANCE	ESTIMATED CSED	ESTIMATED 3 YEAR LOOK BACK*	ESTIMATED 2 YEAR FILING RULE*	ESTIMATED 240 DAY ASSESSMENT*	ESTIMATED ELIGIBLE BANKRUPTCY DISCHARGE DATE*
2005										
	150	Tax return filed	10/9/2006	\$4,608.00	\$0.00	6/21/17	4/15/09	9/12/08	6/6/07	4/15/09
	276	Penalty for late payment of tax	10/9/2006	\$93.15	\$0.00	6/21/17				
	170	Penalty for not pre-paying tax	10/9/2006	\$126.00	\$0.00	6/21/17	4/15/09	9/12/08	6/6/07	4/15/09
		Penalty for filing tax return after the								
	166	due date	10/9/2006	\$698.62	\$0.00	6/21/17	4/15/09	9/12/08	6/6/07	4/15/09
	196	Interest charged for late payment	10/9/2006	\$142.22	\$0.00	6/21/17				
	276	Penalty for late payment of tax	5/14/2012	\$672.96	\$0.00	6/21/17				
	196	Interest charged for late payment	5/14/2012	\$1,246.74	\$0.00	6/21/17				
2006										
	150	Tax return filed	1/5/2009	\$6,549.00	\$0.00	5/31/19	10/15/10	12/4/10	9/2/09	12/4/10
	276	Penalty for late payment of tax	1/5/2009	\$683.44	\$0.00	5/31/19				
	170	Penalty for not pre-paying tax	1/5/2009	\$163.27	\$0.00	5/31/19	10/15/10	12/4/10	9/2/09	12/4/10
		Penalty for filing tax return after the								
	166	due date	1/5/2009	\$1,454.52	\$1,231.69	5/31/19	10/15/10	12/4/10	9/2/09	12/4/10
	196	Interest charged for late payment	1/5/2009	\$930.58	\$930.58	5/31/19				
2007										
	150	Tax return filed	7/6/2009	\$5,196.00	\$5,196.00	11/29/19	10/15/11	6/15/11	3/3/10	10/15/11
	276	Penalty for late payment of tax	7/6/2009	\$389.70	\$389.70	11/29/19				
	170	Penalty for not pre-paying tax	7/6/2009	\$236.00	\$236.00	11/29/19	10/15/11	6/15/11	3/3/10	10/15/11
		Penalty for filing tax return after the								
	166	due date	7/6/2009	\$1,169.10	\$1,169.10	11/29/19	10/15/11	6/15/11	3/3/10	10/15/11
	196	Interest charged for late payment	7/6/2009	\$380.59	\$380.59	11/29/19				
2008										
	150	Tax return filed	12/6/2010	\$5,402.00	\$4,802.00	4/7/21	10/15/12	11/5/12	8/3/11	11/5/12
	276	Penalty for late payment of tax	12/6/2010	\$480.20	\$480.20	4/7/21				
	170	Penalty for not pre-paying tax	12/6/2010	\$154.00	\$154.00	4/7/21	10/15/12	11/5/12	8/3/11	11/5/12
		Penalty for filing tax return after the								
	166	due date	12/6/2010	\$1,080.45	\$1,080.45	4/7/21	10/15/12	11/5/12	8/3/11	11/5/12
	196	Interest charged for late payment	12/6/2010	\$376.86	\$376.86	4/7/21				
2009										
	150	Tax return filed	1/3/2011	\$4,436.00	\$4,036.00	5/5/21	11/11/13	12/6/12	8/31/11	11/11/13
	276	Penalty for late payment of tax	1/3/2011	\$161.44	\$161.44	5/5/21				
	170	Penalty for not pre-paying tax	1/3/2011	\$97.00	\$97.00	5/5/21	11/11/13	12/6/12	8/31/11	11/11/13
		Penalty for filing tax return after the								
	166	due date	1/3/2011	\$181.62	\$181.62	5/5/21	11/11/13	12/6/12	8/31/11	11/11/13
	196	Interest charged for late payment	1/3/2011	\$106.89	\$106.89	5/5/21				
2010										
	150	Tax return filed	7/9/2012	\$28,949.00	\$28,840.00	8/29/22	10/15/14	6/5/14	3/6/13	10/15/14
	276	Penalty for late payment of tax	7/9/2012	\$2,163.00	\$2,163.00	8/29/22				

Note: The bankruptcy discharge dates in the THS reports are the base dates without tolling. There is not enough data on the account transcript to calculate tolling events for bankruptcy.

The THS Bankruptcy Calculator allows for the calculation of Bankruptcy Discharge dates with tolling.

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THS Bankruptcy CSED/Discharge Calculator

- The THS Bankruptcy Discharge Calculator is the only program on the market that allows the user to import transcripts or allow manual entry.
- The program also allows the user to change the bankruptcy and CSED logic as desired.
- The calculator will also bulk calculate bankruptcy dates or do one file at a time. This includes all account transcripts for individuals, Business, Payroll, Civil Penalties, & Separate Assessments.
- We will provide a demo at the end of the presentation.

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Presentation Note

- Remember as a non-attorney tax professional's role is to assist the bankruptcy attorney with interpreting the tax data. It is the bankruptcy attorney's responsibility to verify and review any data or calculations you provide in addition to interpreting the existing case law and how it affects the tax payer's bankruptcy filing.

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Calculate the 3-Year Rule

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Determine Due Date

- For individuals this is pretty simple (But remember nothing is really “Simple” with the IRS).
 - No Extension = April 15th
 - Tax payer out of the country (Taxpayers living abroad-automatic extension) = June 15th
 - Extension = October 15th
 - (In tax year 2006 extensions were changed from four months to six. Just an FYI if working really old cases).
 - Exceptions that you need to be aware:
 1. Taxpayer out of the country
 2. Military in combat zone

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IRS IRC Reference Due Dates

**U.S. Code › Title 26 › Subtitle F › Chapter 61 › Subchapter A › Part V › § 6072-
Time for filing income tax returns**

(a) General rule

In the case of returns under section 6012, 6013, or 6017 (relating to income tax under subtitle A), **returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year** and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

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Tax Payer Out of Country

- You may be allowed an automatic 2-month extension of time to file your return and pay any federal income tax that is due. You will be allowed the extension if you are a U.S. citizen or resident alien and on the regular due date of your return:
 - You are living outside of the United States and Puerto Rico and your main place of business or post of duty is outside the United States and Puerto Rico, or
 - You are in military or naval service on duty outside the United States and Puerto Rico
- If you use a calendar year, the regular due date of your return is April 15, and the automatic extended due date would be June 15. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is delayed until the next business day.
- Even if you are allowed an extension, you will have to pay interest on any tax not paid by the regular due date of your return.

How To Get The Extension

To use this automatic 2-month extension, you must attach a statement to your return explaining which of the two situations listed earlier qualified you for the extension. To get the additional four months the 4868 must be filed prior to June 15th.

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Extensions Related To Combat Zones Or Contingency Operations

- There are numerous extensions and exceptions extended to Military Members and non-Military Members who are supporting Combat Zones or Contingency Operations.
- Refer to IRS Publication 3 for details.

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Saturday, Sunday, Legal Holiday Rule (SSLH)

25.6.1.6.15 (10-01-2012)

When a Document Is Treated As Filed Under the IRC

3. Saturday, Sunday, or Legal Holiday (SSLH) Rule.

1. In general, when the last day for filing falls on a Saturday, Sunday or legal holiday and the taxpayer actually filed on the next succeeding day, the tax return or claim is **considered to be timely filed** on that next succeeding day. Section 7503 does not deem the filing to be made on the prescribed due date when it is actually received on the next succeeding day. For example, a Form 1040 received on Monday, April 16 (a legal holiday day) is considered filed on April 15 (is the received date). See Rev. Rul. 81-269, 1981-2 C.B. 243 (at Situation 2).

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IRC For SSLH

Title 26 › Subtitle F › Chapter 77 › § 7503- Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday

- When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term “legal holiday” means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term “legal holiday” also means a Statewide legal holiday in the State where such office is located.

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Tax Deadline vs Due Date

- The Due Date is the date when the return is due.
- The deadline is the date you have to file for the return to be considered timely filed.
 - Example in 2018 (Tax Year 2017) The deadline is April 17, instead of April 15, because of the Emancipation Day holiday in the District of Columbia—even if you do not live in the District of Columbia. When the due date (including extended due dates) falls on a Saturday, Sunday or legal holiday, a return filed on the next business day **is considered timely**.
- Timely filed extensions extend the Due Dates for purposes of bankruptcy calculations.

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Calculate the 2-Year Rule

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Determine Return Filed Date

- This is the date the accepted return was received by the IRS.
- There are 3 different scenarios to calculate the return filed date.
- If there is no **Substitute For Return (SFR)** on the account transcript:
 - Simply look at the account transcript.
 - Just above the transactions:

“RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)”
 - This is the return filed date
 - The transaction code 150 TAX RETURN FILED is **NOT** the return filed date. It is the processing date.
- An SFR is present. (detailed instructions on upcoming slides)

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Internal Revenue Service
United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 04-28-2017
Response Date: 04-28-2017
Tracking Number: 10032930532

FORM NUMBER: 1040
TAX PERIOD: Dec. 31, 2014

TAXPAYER IDENTIFICATION NUMBER: 999-00-9999
SPOUSE TAXPAYER IDENTIFICATION NUMBER: 888-00-8888

SANTA & JANE CLAUDE
123 FREEZING
NORTH POLE, FL 32333-4431-811

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	94,826.00	
ACCURED INTEREST:	2,100.00	AS OF: Mar. 02, 2015
ACCURED PENALTY:	5,925.00	AS OF: Mar. 02, 2015
ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	102,851.00	

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:	04
FILING STATUS:	Married Filing Joint
ADJUSTED GROSS INCOME:	102,155.00
TAXABLE INCOME:	73,955.00
TAX PER RETURN:	8,204.00
SE TAXABLE INCOME TAXPAYER:	0.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER): Apr. 15, 2015
PROCESSING DATE: Feb. 23, 2015

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20150505	02-23-2015	998,206.00
n/a	30221-433-76718-5			

Return Filed Date is April 15th.

Notice the Return Filed Date transaction date is the Processing Date not the Filed Date.

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Determining the Return Filed Date When An SFR Is Present

- Step 1 – Determine if an SFR is present.
 - There will be a transaction “150 Substitute tax return prepared by IRS”. This description can vary but the TC will be 150 and the description will contain the word “substitute” indicating the presence of an SFR.
- Step 2 – Check for indicating transactions.
 - For a TC 976 Duplicate return filed, 977 Amended return filed or 610 Payment with return (form) (year & quarter) the transaction date is the received date.

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If an Original Return is Filed After an SFR Assessment and More Tax Is Owed

- According to the handout memo:
 - The original assessment amount is **NOT** dischargeable.
 - The additional tax from the original return filing **IS** dischargeable.

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Calculate the 240-Day Rule

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Determine Assessment Dates

- This is the only bankruptcy rule date that can vary within a year.
 - If multiple assessments are made in the same tax year they share the same Due Date and Filed Date (thus the same 3-Year & 2-Year Rules). The 240-Day Rule will be the different for each assessment made on different dates. This is usually the result of an audit. The 290/300 Additional tax assessed Transaction Codes on the Account Transcripts.

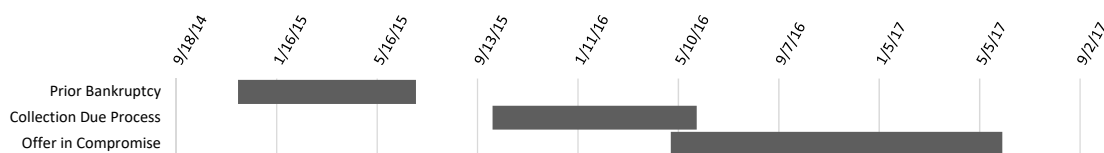
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Base Discharge Dates Before Tolling

- Once the Due Date, Filing Date and Assessment Dates have been determined the tax pro should calculate the base bankruptcy discharge dates (dates without tolling events applied).
 - 3-Year Rule - add 3 years to the Due date.
 - 2-Year Rule - add 2 years to the original return filed date.
 - 240-Day Rule - add 240 days to each assessment date.
- Once the base bankruptcy discharge dates are calculated the tolling events need to be calculated and applied to determine the priority status of the debt.

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Tolling Event Calculations



Tolling Event	Start Date	Duration	End Date	Duration In Days	Days Tolloed
Prior Bankruptcy	12/1/2014	212	7/1/2015	212	212
Collection Due Process	10/1/2015	244	6/1/2016	244	244
Offer in Compromise	5/1/2016	396	6/1/2017	396	365

In the following slides examples will be shown for these tolling events.

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3-Year Tolling Example

- Return Due Date for 2014 Tax Year = 10/15/2015
 - A timely extension was filed.
- Base 3-Year Rule = 10/15/2015 + 3 years = 10/15/2018
- The prior bankruptcy does not toll since the tolling event ends before the due date.
- The CDP tolls from 10/15/2018 (since the due date is after the CDP start date) to 6/1/2016 for a total of 230 days.
- The OIC does not toll the 3-Year Rule.
- The 3-Year Rule date in this example is the base 3-year rule date 10/15/18 + 230 days = 6/2/2019

Tolling Event	Start Date	Duration	End Date	Duration In Days	Days Tolloed
Prior Bankruptcy	12/1/2014	212	7/1/2015	212	212
Collection Due Process	10/1/2015	244	6/1/2016	244	244
Offer in Compromise	5/1/2016	396	6/1/2017	396	365

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2-Year Tolling Example

- Return Filed Date for 2014 Tax Year = 4/15/2015 (Actually filed on 2/1/2015)
 - A timely extension was filed.
- Base 2-Year Rule = 4/15/2015 + 2 years = 4/15/2017
- There are no tolling events that extend the 2-Year Rule (subject to change with no court cases)
- The 2-Year Rule date = 4/15/2017

Tolling Event	Start Date	Duration	End Date	Duration In Days	Days Tolloed
Prior Bankruptcy	12/1/2014	212	7/1/2015	212	212
Collection Due Process	10/1/2015	244	6/1/2016	244	244
Offer in Compromise	5/1/2016	396	6/1/2017	396	365

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240-Day Tolling Example

- For the 2014 Tax Year the tax payer received a refund with their return, but after being audited received an assessment on 6/15/2016 (only assessment).
- Base 240-Day Rule = assessment date 6/15/2016 + 240 days = 2/10/2017
- The prior bankruptcy does not toll since the event ends before the assessment date.
- The CDP does not toll since the event ends before the assessment date.
- The OIC tolls from 6/15/2016 (since the assessment date is after the OIC start date) to 6/1/2017 for a total of 351 days.
- The 240-Day Rule date in this example is the base 240-Day Rule date 2/10/2017 + 351 days = 1/27/2018.

Tolling Event	Start Date	Duration	End Date	Duration In Days	Days Tolloed
Prior Bankruptcy	12/1/2014	212	7/1/2015	212	212
Collection Due Process	10/1/2015	244	6/1/2016	244	244
Offer in Compromise	5/1/2016	396	6/1/2017	396	365

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Determine the Minimum Non-Priority Discharge Date

- The minimum non-priority discharge date is the greater of the three date rules; 3-Year, 2-Year, & 240-Day Rules.
- Example:
 - 3-Year Rule Date = 4/15/2018
 - 2-Year Rule Date = 4/15/2016
 - 240-Day Rule Date = 12/11/2015 (Initial assessment with return)
 - 240-Day Rule Date = 8/12/2018 (Additional assessment from exam on 12/15/17 with return)
- For the initial assessment the minimum non-priority date = 4/15/2018
- For the additional assessment the minimum non-priority date = 8/12/2018

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Check For Tax Fraud or Willful Evasion

- The only indicator on the transcript that indicates tax fraud is the Transaction Code for Fraud Penalties:
 - 320 Penalty for fraud
- There are no indicators of Willful Evasion on the account transcript.
- A FOIA request may be an option, but these are difficult to establish since the definition for both is subjective and lawyers are involved.

Presentation Note: The lack of any indicators does not mean that they do not exist. Tax fraud can exist when no fraud penalty has been assessed.

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Is The Return Late Filed?

- If the Return Filed Date is after the Return Due then the return is late filed.
- This comes into play in those Federal Districts that observe the McCoy Case.
- If the return is late filed and McCoy does not apply then the Beard Test needs to be applied.

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When Is The CSED

- **Collection Statute Expiration Date (CSED)**
 - The CSED defines how long the IRS has to collect tax for a specific assessment.
 - The CSED is calculated as 10 years after the assessment date.
 - Each assessment carries it's own CSED.
 - The CSED can be extended by tolling events.
 - The tolling events for the CSED are similar to the bankruptcy tolling events, but different.
 - We also provide a Statutes of Limitations Webinar as well.
 - The webinar is available in the ASTPS Archives.
- As a bankruptcy strategy the attorney should determine when the debt will expire.

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Are Their Other Resolution Options Available

- Are income taxes the primary reason for the bankruptcy?
- How close is the CSED.
- Does the tax payer qualify for an **Offer In Compromise (OIC) or Partial Pay Installment Agreement (PPIA)?**
 - The tax payer must provide detailed financial records when filing bankruptcy so they should be available to evaluate for an OIC.
- Does the tax payer qualify for Currently Not Collectible (**CNC**)?
 - The **Monthly Disposable Income (MDI)** is calculated during the OIC evaluation. If it is close to zero CNC may be an option.
- Does the tax payer qualify for an **Installment Agreement (IA)?**
- Does the tax payer qualify for innocent spouse?

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State & Local Income Taxes

- Don't forget these rules also apply to the state and local taxes.

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QUESTIONS?

Additional Free Information Can be found at:
TaxHelpSoftware.com
and
AuditDetective.com

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