



**COURSE 1003-A
DISCHARGING TAXES IN
CONSUMER BANKRUPTCY CASES**

HOUR # 4

**SPECIFIC TRANSCRIPTS
&
LIENS & LEVIES**

TO SEE the presenter's "**talking head**" with the outline, click on the dropdown link:

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YOUR ISSUES – If you would like us to address an interesting problem or issue relevant to the topic of this hour, go to BankruptcyAcademy.com and select the **"PREFERRED TOPICS"** tab and select **DISCHARGING TAXES IN BANKRUPTCY** – at the top of the page click on **"SUBMIT YOUR REQUESTED ISSUES."**

SPECIFIC TRANSCRIPTS

IMF MCC SPECIFIC -

THE TRANSCRIPTS AND CODES FOR THIS DISCUSSION ARE AT THE
“MATERIALS” PAGE FOR DISCHARGING TAXES

A MORE DETAILED IRS TRANSCRIPT

One transcript for each taxable year

Individual master file – Martinsburg Computer Center

Be familiar with **971** “Action Codes”

Be familiar with **520** plus “Closing Codes” (“COLCLOS”)

Be familiar with **240** penalty codes + 3-digit reference code

Watch for 240

- + 615, 616 “False Information”
- + 618 “Attempt to evade or defeat”
- + 628 “Promoting Abusive Tax Shelter
- + 630 “Aiding and Abetting Understatement of Tax Liability
- + 631 Preparer-aiding / abetting understatement of liability
- + 646 Willful or reckless conduct
- + 650 Intentional disregard
- + 665 through 673 “Frivolous return”
- + 686 “Fraudulent failure to file”

EXHIBIT 2b

SFR & Tax Per Return (no taxpayer return)

420 Audit commenced

971 + Action code (“CD”) 010 = or 977 = Amended return filed

300 Additional assessment \$1,339

421 Audit concluded

EXHIBIT 11a

No SFR indicated

460 Extension to file

420 Audit commenced

520 + COLCLOS 72 = Proposed assessment appealed

421 Audit concluded

521 Tax court litigation finished

300 Additional tax assessed

520 + COLCLOS 86 = Bankruptcy 06/04/1991

PROC 1 = CHAPTER 7

521 + COLCLOS 86 = Bankruptcy ends 09/30/1991

530 Currently not collectible

EXHIBIT 18

460 Extension to file on 04/15/1992

Taxpayer filed return on 05/13/1992

420 Audit commenced 10/10/1992

300 Additional tax assessed 05/13/1992

240 + 680 Penalty imposed 05/09/1994 negligence

582 Lien

971 + action code 063 = Installment agreement”

971 + action code 082 = New installment agreement fee”

COMPARE TRANSCRIPTS

Account transcript (“MFTRA-X”)

Does not show “420” audit – see Specific transcript

EXHIBIT 11a-2

914 – Criminal investigation

910, 914, 916, 918,

Deleted from the Transaction Code reference table

320 = fraud penalty

OTHER TRANSACTION CODES TO LOOK FOR

608 = Statute of limitations expired

480 = offer in compromise accepted for consideration

780 = OIC accepted

781 – OIC defaulted

596 = referred to criminal investigation

977 = amended return filed

11/30/09

TAX LIENS & LEVIES

LIEN AND LEVY DISTINGUISHED

A STATUTORY LIEN

ARISES UPON ASSESSMENT AND DEMAND FOR PAYMENT

A federal tax lien attaches to all property or rights to property of the taxpayer and its reach is not limited by state law exemptions or federal exemptions

PUTS IRS INTO SHOES OF THE TAXPAYER

ATTACHES TO ALL REAL AND PERSONAL PROPERTY

Secret Liens v. Recorded Liens

ONLY RECORDED LIEN TREATED AS SECURED IN BANKRUPTCY

Lien On Non-Estate Property Not Treated As Secured

e.g. ERISA retirement plan

For personal liability - assets of debtor's closely held corporation

TO ATTACH TO REAL PROPERTY IN BANKRUPTCY

County where property is located

TO ATTACH TO PERSONAL PROPERTY IN BANKRUPTCY

County where taxpayer resides

LIFE SPAN OF IRS TAX LIEN

10 years from date of assessment

Same as statute of limitations for collection

TOLLING EVENTS EXTEND LIFE SPAN

Bankruptcy

Offer in compromise

Tax litigation and appeals of assessments

3. Recorded lien effect on discharge.

The existence of a lien recorded in client's county of residence may negate the effect of a discharge.

11 U.S.C. Section 524 bars creditors, including the IRS, from seeking to collect discharged debts from the debtors personally. However, tax liens that are still valid may be enforceable against property owned by the debtor before bankruptcy, even though the tax debt has been discharged.

4. Excluded Property:

Reminder: Property excluded from the bankruptcy estate may be pursued after discharge even if no Notice of Federal Tax Lien has been filed, e.g., an ERISA-qualified plan.

5. Not avoidable on exempt property

Unlike judgment liens which can ordinarily be voided as to the debtor's exempt property, tax liens pierce the exemptions, even for discharged taxes.

6. After acquired property

a. Discharged tax –

1. A lien survives the bankruptcy but only as to property owned by the Debtor at the time of the bankruptcy filing.
2. If a tax is dischargeable you can do lien stripping in a Chapter 13. The restrictions on lien stripping for vehicles and other personal property pursuant to BAPCPA Section 1325(a)(9) apply only to purchase money security interests and tax liens are not purchase money security interests. You cannot lien strip in a Chapter 7

b. Nondischarged tax –

The lien survives bankruptcy as to all of the Debtors' present and future property, including after-acquired property. As BAPCPA makes more taxes non-dischargeable, it becomes even more important to avoid having a Debtor acquire property after the bankruptcy is over if there remain tax liabilities that have to be resolved with the Internal Revenue Service.

c. Bankruptcy Not Filed -

If bankruptcy is not filed, the lien covers all property acquired throughout the lifetime of the lien.

Competing liens:

There will always be a question as to whether the IRS lien is prior in time to any other lien that is filed. You must check your county recorder records to determine the status of the IRS lien in the chain of title regarding any property.

Strip-down still permitted.

An undersecured tax lien for a dischargeable tax may be stripped down in chapter 13.

The limitation on lien stripping under BAPCPA applies only to "Purchase money security interests" and a tax lien is not a PMSI. 11 U.S.C. § 1325(a)(9)

Self-releasing:

The Internal Revenue Service lien form states on its face that upon the expiration of

the collection period, the notice of federal tax lien shall “operate as a certificate of release.” This means the Internal Revenue Service will not actually file a second piece of paper stating the lien has been released. The problem this creates is the original lien filing will continue to appear of record in not only the county filings but also on the debtor’s credit report. If the lien liability has legally been satisfied or the lien has self-released, it will be necessary to send copies of the original lien and the discharge to the credit reporting agencies in order to ask them to remove the original lien filing as a matter of record or to otherwise note the lien has been released.

c. Pierces exemptions.

No property is exempt from the I.R.S. tax lien, whether it be a recorded or the “secret” lien (§ 522(c)(2)(B). Although some property may be excluded from the estate, e.g., an ERISA-qualified plan, and thus treated as unsecured for Chapter 13 purposes, all other property is subject to a recorded IRS lien and acts as security for it. As to property excluded from the estate, the value of that property does not have to be included in the valuation of property for determination of the secured amount that must be paid to the IRS as part of a Chapter 13 plan.

d. Treated in schedules.

A secured tax claim should be separately classified from unsecured priority claims and unsecured general claims. There may be limited circumstances where you would be better off having the IRS in a secured position than having them as an unsecured creditor or having a tax liability that is otherwise nondischargeable and not priority.

For example, the debtor’s total unsecured debt may exceed the 109(e) debt limit for chapter 13 eligibility, unless some of it can be shifted over to the secured column. Note, however, that a tax lien on property that is not property of the estate (e.g., an **ERISA retirement plan**) is not treated as secured in bankruptcy, unless it is also secured on property of the estate.

Under-secured tax liens should be bifurcated, the secured portion listed in Schedule “D” and the unsecured portion in Schedule “F.”

e. Due process hearing.

Under the Taxpayer Bill(s) of Rights, taxpayers now have the right to request a Collection Due Process Hearing if they disagree with either proposed collection by levy or lien recordation action of the Internal Revenue Service. As to a threat of levy, the taxpayer is given the opportunity to request the hearing prior to the IRS actually making a levy. However, as to the CDP hearing in regard to a lien, the lien will have first been recorded. It will be a very unusual case where the IRS will, as part of the collection due process procedure, agree to release a lien.

f. **Under-secured tax liens** for discharged taxes are typically bifurcated into their respective secured and unsecured portions for purposes of the schedules and treatment in a chapter 13 plan.

g. **Lien places IRS in “the shoes of the taxpayer”**; if the taxpayer can’t touch it, neither can the IRS. Hence, the IRS can’t levy on a retirement plan payment until the plan goes into “pay status” upon the retirement of the taxpayer.

CHECKLIST - ATTACKING TAX LIENS

This checklist provides suggested legal theories that may help invalidate or reduce a tax lien.

YES NO

- Filed in wrong office - ¶ 6.7(f)(1)
- Incorrect or defective name on lien - ¶ 6.7(f)(2)
- Filed in wrong county - ¶ 6.7(f)(3)
- Other defect in filing process - ¶ 6.7(f)(4)
- Not refiled when required - ¶ 6.7(f)(5)
- Filed in violation of stay - ¶ 6.7(f)(7), 6.8(f)(8)
- Lien unrecorded - may not attach to exempt assets - ¶ 6.7(g)
- Statute of limitations is expired - ¶ 6.8(f)(1)
- Lien reduced to civil judgment - possibly not collectible under applicable state collection procedures - ¶ 6.8(f)(2), (3)
- Lien against wrong assets or wrong taxpayer - ¶ 6.8(f)(5)
- Underlying tax discharged - lien may not attach to debtor's after-acquired property - ¶ 6.8(f)(6)
- Lien based on invalid tax assessment - ¶ 6.8(f)(7)
- Unenforceable against nonlevyable property - ¶ 6.8(f)(9)
- Invalid against assets under IRC § 6323(b) - ¶ 6.8(f)(14)
- Property has no equity and tax is discharged - ¶ 6.3(e)
- Property has no equity, may be stripped to zero value in Chapter 13 - ¶ 6.5(b)(3), 6.9(h)
- Statute will expire before pension plan goes into pay status, and underlying tax is dischargeable; lien is unenforceable against pension plan - ¶ 6.1(d)(5), 6.1(h)
- Lien on non-estate property may not be allowed secured claim in bankruptcy - ¶ 6.5(b)(4)

THIS SESSION IS FINISHED

THE TEST

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