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THE TAX DISCHARGE ANALYSIS

WHAT IS A TAX ANALYSIS?

When you retain Morgan King to deal with a delinquent tax problem our policy is,

whatever can be done, will be done.

Our objective is to find a way to eliminate as much delinquent tax, interest and penalties as possible, with the least amount of sacrifice or inconvenience to the client. A tax analysis is the process of exploring and identifying the best remedy for delinquent taxes. The possible remedies include:

1. Pay the taxes in a lump sum
2. Wait out the statute of limitations
3. Challenge the liability
4. Do an installment

plan 5. Do an offer-in-compromise 6. Seek non-collectible status 7. Discharge the taxes in bankruptcy 8. Seek protection from abusive collection Protect the non-liable spouse

The best remedy may be one of the above, or a combination of them.

WHY DO I NEED A TAX ANALYSIS?

In our experience, it is a mistake to assume at the very beginning that we should examine only one possible remedy. If we make a premature assumption, we may fail to identify a better remedy.

For example, if we focus only on discharging the taxes in a bankruptcy, we may not notice that the statutes of limitations for collection of the tax liabilities are about to expire, eliminating the tax debts automatically; so, it might be a mistake to put our client in bankruptcy if all that is needed is sitting tight for a couple of weeks.

Our most frequently used legal remedies are offer-in-compromise and bankruptcy. Either of these may present complex or subtle problems that must be carefully explored. Typically, the most challenging remedy is bankruptcy, which requires meticulous scrutiny of the client's tax history and the IRS's own, in-house records.

WHAT IS INVOLVED IN A TAX ANALYSIS?

The first steps are elimination of the least desirable or least

relevant remedies. What is left remaining will be the best remedy available.

For example, if the client is not married, we can eliminate remedy no. 9, "seek protection for non-liable spouse." If the client has limited financial resources, we can probably eliminate number 1, "payment in a lump sum/" If the taxes are fairly recent, waiting out the "statute of limitations" (item no. 2} would not be feasible. Thus, by a process of elimination we often find the best solution of the available methods.

The process of identifying the most effective solution involves several steps. These are:

1. A thorough interview with the client to obtain the best history of the tax problem, and also to explore the client's overall financial circumstances. This may involve looking at client's employment and income history, his or her budget, the value of existing property and assets, the client's retirement plans, and the client's health, marital history, and residence history.

Some special issues may be involved such as exploring the client's previous bankruptcy history or offer-in-compromise history.

2. A careful examination of the account history from the point of view of the taxing entity (i.e., the IRS or a state tax collection bureau). This typically involves obtaining various records from the taxing entity involved, often going back ten

or fifteen years. Some of these records are called "transcripts."

We typically request three kinds of transcripts, including Account Transcripts, IMP-Specific, and IMFOLI. Other documents may need to be obtained. These documents are usually provided to the King law firm upon request. Most taxpayers never see these transcripts, and even if they did, they would be unable to read them. This is because the transcripts are largely made up of codes, in the form of letters and numbers. Reading and understanding the codes requires expert familiarity with the IRS code system, and lots of experience.

It is easy to overlook a code or a part of a code, or miss the significance of a certain code in a certain context of other codes. Accordingly, studying the taxpayer's transcripts requires lots of time, careful attention, and no interruptions.

By reading the codes we can ascertain a great deal of information that is necessary to evaluate our "remedy of choice."

The codes tell us whether the tax returns were filed and if so when, when the taxes were originally assessed, subsequent assessment, possibly invalid assessments, whether liens were filed and if so, when, the dates the returns were due including extensions, the expiration date for the statute of limitations on collection, the expiration date for the statute of limitations for assessment, previous bankruptcy filings and previous offers-in-compromise, indications the taxpayer may have

been investigated for tax fraud, installment payment history, whether the taxpayer signed certain documents such as an agreed audit, whether there was a prior audit that has not been completed which may result in additional assessment of taxes, the marital status of the taxpayer when returns were filed, the residential addresses of the taxpayer, the dates penalties were imposed, and other similar information.

Any item of information in the categories described above may have a critical impact on which remedy may work and which may not, and especially in the case of bankruptcy, whether the taxes are or will be dischargeable in bankruptcy, and if so, which chapter of bankruptcy. The information also provides us with indications of the effect of any filed tax liens.

Typically, the process of obtaining the necessary documents takes from a few days to several months. In some cases, documents provided fairly quickly raise more questions, which may require requesting additional records.

In some cases, it is necessary to obtain all of the documents in the possession of the taxing entity pertaining to one or more tax liabilities, through a formal Freedom of Information request. This may add weeks or months to the process.

3. When the documents have been obtained and studied, legal issues may present themselves which may require legal research, consultation with professional colleagues, and further interview of the client.

4. Often, it is necessary to get on the phone directly with the taxing entity to obtain information or explanations of certain aspects of the tax history.

5. We look at the feasibility of bankruptcy, if only to eliminate it as a choice of remedies. This involves calendar calculations which often require the use of a special software application developed by Morgan King and an engineer / attorney colleague.

In addition to exploring the best way to deal with the tax liabilities, it is often necessary to scrutinize the effect of any tax liens that may have been filed. The existence of tax liens sometimes presents special problems, although in many cases dealing with the liabilities takes care of the lien problems. But this may require obtaining other information, such as current appraisals of the value of various assets, examination of the nature of a client's retirement plan, and other similar issues.

HOW LONG DOES IT TAKE?

A tax analysis typically takes at least six weeks, but frequently takes several months. The reason for the length of time is primarily the time it takes to obtain tax records, and the process of Mr. King studying those documents. This involves a methodical process. Rushing through a tax analysis, or doing a superficial job, invites mistakes.

Accordingly, Mr. King tries to limit his time on each case to

those times when he can devote his undivided attention to the issues. Often, however, his attention must be diverted to other cases due to sudden emergencies, and the like. Or, he may be involved in litigation in state or federal court, which typically requires his full attention. Thus, the client must be patient and let the law firm do what it has to do, and take the amount of time necessary to do it right.

It is possible in some cases to do some kind of emergency filing of a bankruptcy, and offer-in-compromise, or other remedy to protect client's assets and income. Information can often be obtained from the IRS or a state taxing entity by phone. However, in such cases the client will be asked to sign waivers releasing Mr. King from any liability if something is overlooked "in the rush."

HOW MUCH DOES IT COST?

All cases handled by the firm are billed hourly. Currently, our hourly fee is \$450/hr. We do not handle cases on a "fixed fee, bases. Clients often ask us to estimate how much the total fee may come to. We usually do not ask for the entire estimated fee "up front," but rather a "get started" retainer fee. We do try, however, to give an estimated total fee for the problem.

It is difficult to estimate the total cost in attorney's fees and expenses, because each client's problem has its own unique history and often raises special legal questions. And, many client's cases involve problems besides the back taxes, which may require additional time and attention.

Mr. King is usually able to estimate fairly accurately, at the beginning of the case, what the fee will come to, within a range of probability. However, one must always be prepared for the "surprise" issues that sometimes become evident after Mr. King has begun studying the client's tax history, which may require additional billable time.

WHY MORGAN KING'S LAW FIRM?

Morgan King is a nationally recognized expert in discharging taxes in bankruptcy, and has expertise in all other potential remedies, as well. His book, *Discharging Taxes in Bankruptcy*, is used by thousands of lawyers, trustees, judges and IRS and state tax collectors.

In addition, Mr. King has written many articles on the topic, and frequently speaks to groups of attorneys or other tax experts at their professional conventions and seminars. And, Mr. King himself puts on a special 3-day program every year for tax professionals, called the *King Bankruptcy Academy*.

You may find out more about Mr. King at his web sites:

MorganKing.com & Taxjustice.com