

But I Thought You Can't Eliminate Taxes in Bankruptcy...

There is much misinformation about whether bankruptcy can eliminate taxes. I hear the confusion all the time from my clients. You may have, too. Rest assured, bankruptcy does resolve IRS controversies.

If your practice includes representation of clients with IRS controversies, you should be able to recognize when bankruptcy may be the best solution. It is a feather in your cap to be able to advise clients on a powerful source of resolution that others may not understand.

Bankruptcy attorneys regularly work with new clients who have tax problems, but they cannot handle the tax problems as they are not versed in IRS representation. Try to form a relationship with a good bankruptcy attorney in your area who would accept your bankruptcy referrals after you and your client have done the background homework to determine if it is an acceptable option. A good bankruptcy attorney would probably recog-

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nize your knowledge and reciprocate with tax controversy referrals back to you.¹

First, I will answer the question of when bankruptcy can help. Second, I will address the different types of bankruptcy that you should be familiar with, namely Chapter 7 and Chapter 13, and how they work. And lastly, I will identify the situations when bankruptcy can be the best option for your client.

WHEN BANKRUPTCY CAN HELP

A tax bankruptcy is all about "when" the taxes can be impacted by a bankruptcy filing. The tax returns that caused the liability have to be a little bit older to be eliminated in bankruptcy. Timing is everything. So, know these three rules first:

1. The bankruptcy must be filed more than three years after the tax return with the liability was due to be filed. Extensions are included in calculating the return due date.

Practice Example: A 2003 income tax return due to be filed on October 15, 2004 (by

extension) would be eligible for a bankruptcy discharge on October 15, 2007, three years after it was due to be filed.

2. For late filers, the bankruptcy must be filed more than two years after the tax return was actually filed.

Practice Example: A 2003 tax return due to be filed on October 15, 2004 was filed late, on June 30, 2006. This return now will not be eligible for a bankruptcy discharge until June 30, 2008, two years after it was actually filed.

Practice Pointer: The bankruptcy must be filed three years after the return was due to be filed *and* two years after the return was actually filed. The bankruptcy filing date would be after the latest date of those two dates. In the above examples, the bankruptcy must be filed after June 30, 2008, the later of October 15, 2007 (due date) and June 30, 2008 (filing date).

3. If your client owes taxes from an IRS audit, the bankruptcy must be filed more than 240 days after the audit is final on the IRS books. This is in addition to the timing of the return due dates and filing dates.

Practice Example: Continuing the example, the 2003 tax return was due to be filed on October 15, 2004, but it was actually filed late on June 30, 2006. In 2007, the return was audited. The additional tax due from the audit was assessed on February 1, 2008.

Before the audit, the bankruptcy filing date was June 30, 2008. Now, with the audit, the filing date is moved back to September 28, 2008 (240 days after the audit results were assessed).

I like to make a chart with columns to do my calculations and then compare the dates to find the latest date. This makes the calculations easier. Here is how my chart looks for this example:

		Bankruptcy date
Return due date; and add three years	October 15, 2004	October 15, 2007
Return filing date; and add two years	June 30, 2006	June 30, 2008
Audit assessment date; and add 240 days	February 1, 2008	September 28, 2008

The bankruptcy filing date in this example would be September 28, 2008, the latest date calculated. Without the audit, if this was a balance due return, the bankruptcy filing date would be after June 30, 2008.

Obtain a power of attorney for your client and contact the IRS for account transcripts, which will contain the return due dates, filing dates, and assessment dates.

Piece of cake so far, right? Hold on, you will need to add the following two limitations into the mix as well:

1. Your client must have filed an income tax return to maximize the results. The keywords here are *filed* and *income tax return*.

Substitute returns filed by the IRS are not counted as returns in most bankruptcy courts.² Taxes from false or fraudulent returns also cannot be discharged in bankruptcy.

Bankruptcy can only eliminate or reduce income tax liabilities and the non-trust fund portion of employment taxes. Taxes for which a third party bears personal responsibility, such as the trust fund portion of

employment taxes or sales taxes, cannot be discharged in a Chapter 7 bankruptcy and would require monthly repayment in a Chapter 13 bankruptcy.³

2. Be careful in submitting an offer in compromise within 240 days of any assessment. An offer in compromise submitted within 240 days of assessment (whether from an audit or a balance due return) extends the 240-day

period during the time the offer is pending plus thirty additional days.

Practice Example: Continuing the example further, the audit of the 2003 tax return became an assessment on the IRS books on February 1, 2008. This audit assessment would be ready for bankruptcy on September 28, 2008. However, if an offer in compromise is submitted to resolve the audit on April 1, 2008 (within 240 days from the audit assessment), the path to bankruptcy is delayed by the time the offer is investigated plus thirty days. If the offer is ultimately rejected twelve months later, the 240-day time period is extended by thirteen months (twelve months + thirty days).

Practice Pointer: The 240-day rule also pertains to an assessment stemming from a balance due on a return, not just audit situations. If a client has a group of unfiled returns, files them all at once, and then subsequently submits an offer in compromise within 240 days of the assessment of those returns, the time to bankruptcy will be extended by the pendency of the compromise. The bankruptcy

could be a back-up “Plan B” to the compromise, but getting there will take longer if the offer is ultimately rejected.

An offer submission within 240 days following an assessment does not affect the calculations regarding the return due date and the return filing date. It only tolls the 240-day period.

3. Finally, the last rule to know for most bankruptcies: the filing of a collection appeal and request for a hearing (i.e., collection due process appeal) will also stop the clock in bankruptcy calculations. A timely filed collection due process appeal tolls all bankruptcy timing calculations across the board, including the rules that the bankruptcy must be filed three years after the return due date, two years after the return filing date, and 240 days after assessment. Time is tolled during the time a collection appeal is pending plus ninety additional days.

Practice Pointer: If you are considering filing a collection due process appeal in response to a notice of intent to levy, consider filing it late, but not by more than one year after the date it was issued if bankruptcy is a possibility. Late filing by up to one year on a collection due process appeal still stops IRS collection action by its internal administrative rules, but should not extend the bankruptcy code timing rules.

Your client may not always walk into your office with a tax situation that is ready for bankruptcy. If you meet with your client and determine that bankruptcy is the best option, it may turn out that your client must wait a little longer to get there. In those situations, you will need to determine how to represent your client in holding off the IRS long enough to get to a bankruptcy. This takes careful planning and consultation with your client.

Sometimes the client will come in without any IRS contact and your advice may just be to lay low for a little bit longer, especially if your client is risk averse. Or, maybe the IRS should be contacted and an uncollectible determination secured or an installment agreement entered into. A cost-benefit analysis should be performed, considering the bankruptcy and other possible remedies, such as an offer in compromise.

DIFFERENT TYPES OF BANKRUPTCY

Each bankruptcy is named for the chapter of the bankruptcy code it falls under. There are three different types of bankruptcy that you may be familiar with: Chapter 7, Chapter 13, and Chapter 11. A Chapter 11 bankruptcy is primarily a business reorganization. In a Chapter 11 filing, the business proposes a plan to reorganize the way it pays its creditors to permit it to stay in business. Chapter 11 filings account for less than five percent of all bankruptcies filed. A discussion of it is beyond the scope of this article, which focuses only on individual taxpayers.

Chapter 7

Chapter 7 is the most common form of bankruptcy. Most Chapter 7 bankruptcies take approximately four to six months to be completed. In addition to taxes, typical debts eliminated in a Chapter 7 bankruptcy include credit cards and medical bills. Some debts cannot be eliminated in a Chapter 7 bankruptcy such as child support and student loans.

Taxes can be eliminated in a Chapter 7 bankruptcy if they are income tax liabilities or non-trust fund employment taxes and meet all the timing rules previously reviewed. The trust fund portion of employment taxes and any tax for which there is a personal responsibility to a third party (e.g., sales taxes) cannot be eliminated in a Chapter 7 filing.

There is no minimum or maximum amount of debt that must be owed to file

under Chapter 7. Chapter 7 bankruptcy is most appropriate for a client who cannot afford to make monthly payments on his or her tax liability after deducting reasonable living expenses. It is generally for the client with minimal or no cash flow. In that regard, qualifying for a Chapter 7 bankruptcy is somewhat analogous to having a currently-not-collectible status, in IRS parlance. Results in a Chapter 7 bankruptcy are best if the client has no assets that could be seized, although that is not a qualification for filing. A client with consistent cash flow would most likely file a Chapter 13 repayment plan.

A Chapter 7 filing is broken down into two different types of cases: no-asset and asset. Most Chapter 7 bankruptcy cases involve no-asset cases. If your client has a no-asset case, then no personal property will be lost through the bankruptcy process.

A client has a no-asset case when the value of his or her assets would result in no meaningful distribution to creditors, including the IRS. Asset value is arrived at after deducting bankruptcy exemptions your clients can claim in their property. Bankruptcy law allows most Chapter 7 filers to emerge from bankruptcy with all their personal belongings. Typical bankruptcy exemptions would permit someone emerging from a Chapter 7 bankruptcy to keep all their household goods; retirement plans; cash on hand and in a bank account up to \$800, up to \$1,000 of equity in a car, and up to \$5,000 of equity in a personal residence.

Practice Pointer: In bankruptcy, equity is what is left over after deducting loans against property, less liquidation fees. If your client has a car worth \$5,000 and has a loan against it for \$4,000, there would be equity but it would be protected by the \$1,000 exemption provided by bankruptcy law and the car would not be lost. If the car is worth \$5,000 and the loan is \$5,000, there would be no equity and the car would not be lost. If there is no equity, there is nothing to lose to creditors.

Asset cases are those Chapter 7 filings in which there is equity in an asset after application of bankruptcy law exemptions. If there is equity in an asset, then your client will be given a choice by a bankruptcy trustee of either (1) negotiating a value to the equity and pay in that amount to the court and keep the asset or (2) losing the asset and let the bankruptcy court liquidate the asset. The bankruptcy court will disperse the equity to creditors according to their priority under the bankruptcy code. IRS often has first priority.

Whether the Chapter 7 filing involves a no-asset or asset case, the taxes would be eliminated if they are income tax liabilities or non-trust fund employment taxes and meet the timing rules we have already reviewed.⁴

In asset cases, the taxes would still be eliminated if they qualify, but your client would either have to pay the agreed value of an asset or lose that asset. The value of the asset that could be lost should be compared to the value of the tax debt that would be eliminated in the Chapter 7 filing. Eliminating a \$100,000 tax liability but paying \$2,500 for the value of equity in a vehicle is still a pretty good deal.

Practice Example: Your client owes the IRS income taxes for multiple years, 1999–2007. The amount owed is \$100,000, of which \$85,000 is from 1999–2004 and \$15,000 is from 2005–2007. You secure IRS account transcripts and determine the 1999–2004 income taxes are “old enough” to be eliminated under the timing rules, but the 2005–2007 taxes are not. A budget reveals your client has minimal cash flow to consistently make monthly payments to repay the taxes. The value of your client’s property is small, and your analysis reveals that there is no equity for IRS purposes, which usually translates into no equity for bankruptcy purposes.

In this example, your client can file under Chapter 7 now and eliminate eighty-five percent

of the liability (1999–2004) or wait a few years to file and eliminate the 2005–2007 as well.

In analyzing whether you should wait to file, consider the cost and risk of waiting. What is the risk of collection action if you wait longer and include more in the bankruptcy? Is your client uncollectible, meaning the IRS will not take any collection action while you wait? Is your client willing to take on the risk of an IRS levy to eliminate \$15,000 additional in taxes? Is an offer in compromise a better approach if the collections risk is too great in waiting?

In this example, if your client had assets with equity that could be liquidated, a Chapter 13 filing would protect those assets so they would not be lost.

Chapter 13

A Chapter 13 bankruptcy is a repayment plan for individuals who have sufficient cash flow to permit some recovery to the IRS of their tax liabilities. No assets are lost in a Chapter 13. Your client will buy back equity in any assets with his or her monthly payments. Chapter 13 payment plans last between thirty-six and sixty months.

Chapter 13 bankruptcy also provides a mechanism for individuals to prevent foreclosures and repossessions. Arrearages on cars and houses can be repaid in a Chapter 13 so that the property is not lost to a creditor.⁵

An important aspect of a Chapter 13 bankruptcy is that the amount repaid to the IRS can range from one percent to 100% of what is owed. The lowering of the amount actually repaid to creditors is commonly referred to as a “cramdown.”

In addition to taxes, debts such as credit cards and medical bills can be repaid at substantially lower rates than what is actually owed. Interest also stops running on most IRS claims, a feature that is impossible to obtain directly from the IRS. Penalties also stop accruing after a Chapter 13 is filed.

The amount repaid to the IRS in a Chapter 13 bankruptcy depends on how much your client can afford to repay and the classification of the taxes under bankruptcy law.

Taxes are repaid and classified in a Chapter 13 filing in the following three ways:

1. The value of any tax lien the IRS has filed must be repaid at 100% plus continually accruing interest while the bankruptcy is pending. This rule operates regardless of which type of tax is involved or how old it is. This feature is referred to as a “secured claim.”

A claim is secured if the IRS has filed a tax lien before your client files for bankruptcy. In that event, the value of your client’s property subject to the lien must be repaid.⁶ Your client must have sufficient cash flow to pay back at least the value of the tax lien to the IRS during the course of the Chapter 13 repayment.

Practice Example: Your client files under Chapter 13. The IRS filed a tax lien before the bankruptcy was commenced. Your client has \$1,500 in household goods, a car with no equity, a house with no equity, and \$400 cash in the bank. The client’s payments on the tax lien must at least total \$1,900 (\$1,500 + \$400), the value of the client’s property subject to the lien. If the house had \$2,500 in equity, after deducting the cost of liquidation, then the amount that would have to be repaid would be \$4,400 (\$1,500 + \$400 + \$2,500). This is the minimum that would need to be paid from the value of property to satisfy the IRS tax lien.⁷

There is also an unsecured part to most tax liens. The unsecured part is the amount of the taxes, interest, and penalties owed on the lien that are in excess of the value of your client’s property.

Practice Example: Continuing the example above, if the value of the property is \$4,400, but if the taxes, interest, and penalties owed on the lien when the bankruptcy is filed totaled \$85,000, then the IRS secured claim is \$4,400 and the unsecured claim is \$80,600 (\$85,000 – \$4,400). Your client will pay back the \$4,400

secured part of the tax lien in the Chapter 13 bankruptcy with continually accruing interest. The rest of the tax lien, the unsecured part, is then repaid either as an unsecured priority claim or is subject to cramdown as an unsecured general claim.

2. Unsecured priority claims are the income taxes (and the accrued interest on those taxes) that are not yet old enough under the timing rules.⁸ These “newer” claims must be fully repaid in a Chapter 13 filing. They are unsecured but bankruptcy law treats them as a priority for repayment. Trust fund employment taxes and sales taxes are also fully paid as priority claims. The penalties on unsecured priority claims have a lower classification as unsecured general claims.

No interest runs on most priority claims while they are being paid in a Chapter 13.⁹

3. General unsecured claims are repaid at the cramdown rate that can be afforded by your client with whatever cash flow is left after paying the secured part of a tax lien and the unsecured priority claims.

No additional interest or penalties will accrue on most general unsecured claims during the bankruptcy.¹⁰ And the penalties that already accrued before the bankruptcy was filed are subject to cramdown.

Practice Example: Continuing the previous example, your client has \$4,400 of personal property. The IRS has filed a tax lien for an amount owed of \$85,000, of which \$4,400 is secured and \$80,600 is unsecured. The tax lien is for the period from 1999–2004. All these returns were due to be filed more than three years ago but were actually filed more than two years ago and were assessed more than 240 days ago. Nothing has been filed with the IRS that extended any of those dates, so they are “old enough” under the timing rules.

Your client also owes \$15,000 on an income tax liability from 2005–2007. The \$15,000 owed consists of \$8,000 in tax, \$3,000 in interest, and \$4,000 in penal-

ties. The IRS did not file a tax lien on the 2005–2007 liabilities.

You complete a budget for your client and find that the client can afford to make monthly payments of \$350. A Chapter 7 filing would not work because your client has cash flow. On an installment agreement negotiated directly with the IRS for a \$100,000 tax liability, your client's \$350 per month will not even pay interest accruals, and your client will find the liability may actually grow despite the monthly payments.

In a Chapter 13 bankruptcy, your client would pay \$350 per month for sixty months for a total of \$21,000, and be done.

The \$21,000 your client would pay during the repayment period would be disbursed in the Chapter 13 filing to the IRS as follows:

- \$4,400 on the value of the secured claim on the 1999–2004 taxes (plus interest on the \$4,400).
- \$8,000 to pay in full the unsecured priority taxes due from 2005–2007.
- \$3,000 to pay in full the unsecured priority interest due from 2005–2007.

Here is the fun part: The unsecured general claims totaled \$84,600 (\$100,000 – \$4,400 – \$8,000 – \$3,000) and will be recovered by the IRS for \$5,600, an effective cramdown rate of just over six percent. The remaining ninety-four percent of the unsecured general claim (\$84,600 – \$5,600 = \$79,000) will be eliminated in the Chapter 13 bankruptcy. That is a \$79,000 cramdown.

The impact of a Chapter 13 bankruptcy in this example would be even further amplified if your client had unpaid credit cards, medical bills, or business debt. These debts would also be part of the cramdown and paid as unsecured general claims.

If your client had \$40,000 of credit card debt and \$5,000 of unpaid medical bills, the creditors would share with the IRS in the six percent that was left over. The interest also stops accru-

ing on the credit cards. A Chapter 13 bankruptcy stops the clock, shifts and prioritizes money among creditors, and determines who gets what share of the pie.

BANKRUPTCY SITUATIONS TO LOOK FOR

Here is a laundry list of some of the most common situations to look for where bankruptcy could make a difference for your client:

Alternative to installment agreements.

If you are considering an installment agreement for your client, consider the overall cost to the client of the agreement and compare it to making payments to the IRS through a Chapter 13 bankruptcy. Many installment agreements will never pay off an IRS liability and all include continually running interest and penalties.

A Chapter 13 bankruptcy can stop interest and penalty accruals. What your client pays is what your client owes as of a certain date (the bankruptcy filing date). A Chapter 13 bankruptcy can also shorten the repayment schedule of an IRS installment agreement by virtue of the bankruptcy cramdown provisions. The rate of repayment to the IRS in an installment agreement is 100%. It can be significantly less under Chapter 13, as low as five percent or even less.

Additionally, a Chapter 13 bankruptcy can be used to force the IRS into a repayment plan it would otherwise refuse to give. If your client wants to pay \$350 monthly, but the IRS wants \$1,000, a Chapter 13 filing could resolve the dispute by taking a more favorable bankruptcy view of cash flow (along with the other benefits on interest and penalty accruals and cramdowns).

Alternative to penalty abatement. Penalty abatement requests with the IRS are very problematic, with the “IRS reviewing the IRS” to determine if there is cause to abate an already assessed penalty. A penalty abatement request is made with the intent to then repay a lower amount (without the penalties) to the IRS. But keep in mind that a Chapter 13 bankruptcy

can reduce and cram down older unsecured penalty claims to a low rate of recovery. And Chapter 7 bankruptcies can eliminate penalties in full, along with tax and interest.

Release IRS seizures or levy actions.

Bankruptcy stops the IRS from taking further action. The instant a Chapter 7 or Chapter 13 bankruptcy is filed, the IRS is barred from initiating any collection against your client. This is called a bankruptcy “stay” and continues while the bankruptcy is pending. If the IRS has issued a wage levy, bank levy, or seizure of real or personal property, it must release them once the bankruptcy is filed. There should be no negotiation to obtain the release once bankruptcy is filed. It is absolute.

Intervention when the IRS is perceived as being unreasonable to your client. If you have a revenue officer with whom you cannot reach an agreement, or if Automated Collection Service is running your client around, bankruptcy can bring impartiality to the process. IRS procedure defers to bankruptcy law, and claims that you are unable to negotiate with the IRS can be eliminated under Chapter 7 or repaid in a Chapter 13 filing. You will also change the parties, as revenue officers and ACS employees usually do not handle bankruptcies on behalf of the IRS. Instead you will get the IRS Insolvency Unit and IRS District Counsel.

Leverage in an offer in compromise. The Internal Revenue Manual at Section 5.8.5.5, permits the IRS to consider the impact of a potential bankruptcy on the settlement of an offer in compromise. In other words, if a bankruptcy is a real option and could eliminate everything owed to the IRS, but your client wants to avoid it if possible, tell the IRS your client is considering bankruptcy and show IRS what it would get if a bankruptcy was filed. If you are considering filing under Chapter 7, the IRM instructs the offer investigator to consider reducing the value of future income to reflect that a bankruptcy could eliminate the liability. The intangible value of avoiding the bankruptcy would be considered by the IRS as a cost of the compromise.

To simultaneously resolve both a tax problem and a credit card problem. Clients with tax problems often have other financial problems, whether it is credit card debt, medical bills, or unpaid bills from a business. A Chapter 7 bankruptcy can eliminate all these debts. Your client may be making payments on the credit balance and have no cash left over for the IRS. But the IRS wants the money your client is sending to credit cards. There is not enough to satisfy everyone. A Chapter 13 payment reorganizes this quagmire and forces both the IRS and other creditors to split up the pot according to bankruptcy law and what your client can afford to pay.

Alternative to an offer in compromise. When you consider that the IRS accepted only twenty-six percent of compromises submitted in fiscal year 2007 and that recent offer processing revisions require nonrefundable down payments to be made as part of an offer submission, bankruptcy becomes a viable alternative.

Also consider how long a bankruptcy takes and how long an offer in compromise can take. A Chapter 7 bankruptcy takes four to six months, and a Chapter 13 takes thirty-six to sixty months. The outcome of a Chapter 7 or a Chapter 13 filing should be predetermined by quantifiable analysis before the bankruptcy is filed.

Depending on where the offer is worked and the volume of IRS caseload, an offer in compromise can take six to twelve months to be investigated. If the investigation results in a rejection of the offer, an appeal can take another six to twelve months. If a settlement is ultimately reached, your client will be permitted up to twenty-four months to pay the value to complete the compromise, and then your client must stay current on all taxes and filings for sixty months thereafter.

Stopping the accrual of interest and penalties. A Chapter 7 bankruptcy eliminates interest and penalties along with the underlying tax liability. A Chapter 13 bankruptcy can stop the accrual of interest and penalties

while repayment is made. This, alone, can result in significant savings.

Quick and efficient end to tax problem without negotiation. Bankruptcy law governs reduction or elimination of taxes, not IRS personalities or procedures. A Chapter 7 bankruptcy can end a tax problem within four to six months without any repayment. A Chapter 13 bankruptcy takes a little longer because payments are made to settle the liability, but it has benefits of cramdown, retained equity in property, and termination of accruing interest and penalties.

Cramdown tax liabilities to lower rate of recovery. A Chapter 7 is really a total

cramdown—everything is eliminated if the taxes qualify for a bankruptcy discharge. A Chapter 13 can change the rate of recovery by the IRS to five percent or lower by monthly repayment, depending on cash flow availability and the classification of the taxes.

Bankruptcy can offer your clients alternatives and advantages in resolving IRS claims. It should be on every practitioner's list of potential remedies to discuss when that new client comes in the door. Understanding bankruptcy is not always easy, but it can be very rewarding for you and your client. It may not always be a client's first choice, but it is a choice, and a powerful one at that. **EA**

ENDNOTES

¹ Lawyers typically charge fees in the range of \$1,500–\$3,000 for a tax-related bankruptcy. This varies by state and the competition among bankruptcy attorneys. It can be more or less, depending on the complexities of the case and the sophistication of the attorney.

² In some situations, a substitute return may be considered a return for bankruptcy purposes. For instance, if the IRS issues an audit report filing a return for your client and calculating the tax that is due, and your client agrees with the changes and signs off on the report, this may constitute a return. Few clients, however, sign off on substitute return filings.

³ Trust fund taxes are the social security and medicare withholdings an employer takes out of an employee's paycheck and holds in trust for turnover to the IRS. Non-trust fund taxes are that portion of the social security and medicare withholdings the employer is required to contribute to the employee's account from his or her own pocket.

⁴ Tax liens filed by the IRS are not eliminated in a Chapter 7 bankruptcy. If the IRS has filed tax liens before the bankruptcy, the release of the liens is discretionary by the IRS. The enforcement of liens after a Chapter 7 is usually limited to retirement plans, as any other asset with equity will be taken by the bankruptcy court under Chapter 7. If there is no lien filed by the IRS before the Chapter 7, the IRS has no post-bankruptcy rights to your client's property.

⁵ Corporations are not eligible to file a Chapter 13.

⁶ Bankruptcy exemptions do not impair IRS tax liens. The value of an IRS secured claim in a Chapter 13 is calculated without deducting the exemptions.

⁷ If the IRS has a tax lien filed before a Chapter 13 is filed, the value of a retirement plan does not have to be repaid in the bankruptcy. It is not subject to the lien as retirement plans are not assets that are considered to be part of a bankruptcy estate. However, if your client has any rights to access the money in the retirement account, the IRS often seeks to enforce the lien post-bankruptcy as it has not recovered the value of the plan in the bankruptcy. Proving to the IRS that your client has no rights to the retirement money can be a successful defense. If there is no lien filed before the bankruptcy, the IRS cannot pursue the retirement plan post-bankruptcy (both in Chapter 7 and Chapter 13) as there would not be any security in it.

⁸ Non-trust fund taxes are treated like income taxes in a Chapter 13, meaning if they are old enough, they are subject to cramdown.

⁹ Although no interest accrues on unsecured priority claims during a Chapter 13 bankruptcy, it is the position of the IRS that accrued interest on unsecured priority trust fund taxes will be collectible after the bankruptcy is complete.

¹⁰ The IRS classifies substitute tax returns as general unsecured claims, if appropriate, but takes the position that accrued interest on substitute returns will be collectible after a Chapter 13 bankruptcy is over.