

IRS Solutions
SOFTWARE
A Tax Pro's Best Friend

Can Filing Bankruptcy Discharge My Tax Liability?




February 22, 2024

Upcoming Webinars

<p>What's New What's Cool</p> <p>Tuesday, April 16, 2024 10 AM PST or 1 PM EST</p>	<p>Can they really take my clients Assets & Passport? Could this be legal?</p> <p>Thursday, April 18, 2024 10 AM PST or 1 PM EST</p>
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Meet the Team

David, Suzanne & Missi



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CPE Policy

- Per NASBA regulations you **MUST** register for webinar and answer three of the four polling questions and be on the line for at least 50 minutes.
- CPE certificates will be emailed to those who qualify by the end of next week.
- Must answer 3 out of the 4 questions and be on line for at least 50 minutes.

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Can Filing Bankruptcy Discharge My Tax Liability?



February 22, 2024

After completing this course:

- Understand basic bankruptcy rules
- Various rules to getting taxes discharged
- Ways to use bankruptcy to help your clients
- What to look for in the software to assist you

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Polling Question #1 IRS Solutions SOFTWARE



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What is Bankruptcy? IRS Solutions SOFTWARE

Bankruptcy is a legal process that eliminates all or part of your debt.

Bankruptcy is handled in federal courts and rules are outlined in the U.S. Bankruptcy Code.

There are various types of bankruptcy, commonly referred to by their chapter within the U.S. Bankruptcy Code.

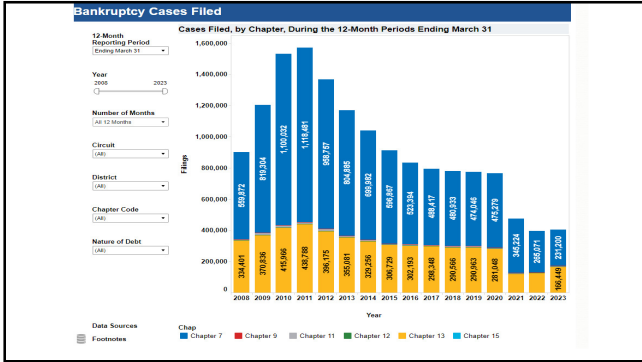
Bankruptcy can allow you a fresh start, but it will stay on your credit reports for a number of years and make it difficult to borrow in the future.

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Types of Bankruptcies IRS Solutions SOFTWARE

- In **Chapter 13** provides for adjustment of debts of an individual with regular income. Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.
- **Chapter 11** (Corporations, partnership, business) usually proposes a plan of reorganization to keep its business alive and pay creditors over time.
- In **Chapter 7** you ask the bankruptcy court to discharge (forgive) most of the debts you owe. In exchange for this discharge, the bankruptcy trustee can take any property you own that is not exempt from collection, sell it, and distribute the proceeds to your creditors.

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Discharge of Tax Debt

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- Section 727 of the Bankruptcy Code permits the discharge of debts in Chapter 7 bankruptcies
- Income Tax
- Some taxes are NOT dischargeable
 - Trust Fund Tax (Employment or Excise)
 - Fraud penalties
 - Erroneous tax refunds
 - Property Taxes

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Discharge

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There are 4 rules that must be met in order to determine if your Income Taxes are dischargeable.

- 3-Year Rule
- 2-Year Rule
- 240-Day Rule
- No Tax Fraud or Willful Evasion

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3-Year Rule IRS Solutions SOFTWARE

There are 4 rules that must be met in order to determine if your Income Taxes are dischargeable.

1. 3-Year Rule
2. 2-Year Rule
3. 240-Day Rule
4. No Tax Fraud or Willful Evasion

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3-Year Rule IRS Solutions SOFTWARE

The taxes must be from a tax return that was **due** (including all valid extensions) at least three years before you filed for bankruptcy.

i.e. 2019 (Due 4/15/20) return is dischargeable on 4/15/23 unless an extension was filed then 10/15/23

(using this rule)

2019 taxes due 7/15/20 = 7/15/23	\$10,000.00
2020 taxes due 5/17/21 = 5/17/24	\$10,000.00
2021 taxes due 4/18/22 = 4/18/25	\$10,000.00

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2-Year Rule IRS Solutions SOFTWARE

That "return" was **filed more than two (2) years prior** to the bankruptcy petition date. Tax debts from years for which a return wasn't filed are not dischargeable.

¹¹USC §523(a)(1)(B)(i).

You must have **filed** the tax return at least two years before filing for bankruptcy.

This is where Controversy exists.

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What is a Return?



1. signed under the penalty of perjury
2. Contained information sufficient to determine tax liability
3. Was an honest and reasonable attempt to satisfy the tax law requirements
4. Not be an Substitute for Return (SFR)

*Colsen, 446 F. 3d (8th Cir. 2006);
Beard v. Commissioner, 82 T.C. 766 (1984)*

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240-Day Rule



The taxing authority must have **assessed** the tax (entered the liability on the taxing authority's records) against you at least 240 days before you filed for bankruptcy (Think audit.)

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Polling Question #2



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Why File Bankruptcy

Once you file a bankruptcy petition an automatic stay is triggered.

If your house, business or bank account has been seized, in most cases you will get an automatic release.

If you owe taxes post petition, there is no automatic stay for that period.

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Equitable Tolling Event

Tolling is what would stop the IRS from taking action against a taxpayer.


For taxes not discharged: Bankruptcy extends the period for collection for the time during which the automatic stay was in effect plus 6 months. IRC §6503(h)

It is unfair to the government for a debtor to "hide out" in a proceeding that precludes IRS collection action, while the time periods are clicking away. So, the court equitably tolled the 3-year period for the time that the government was precluded, by reason of bankruptcy, from taking collection action against the debtor.

Young v. United States, 535 US 43 (2002)

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Calculate CSED						
CSED Events For 2001						
Code	Assessment	Date	Amount	Estimated CSED*		
150	Substitute tax return prepared by IRS	06/11/2007	0.00	01/09/2025		
170	Penalty for not pre-paying tax	12/28/2009	1,516.79	01/09/2025		
300	Additional tax assessed by examination 01-09-2025	12/28/2009	37,954.00	01/09/2025		
Tolling Extenders						
Code	Explanation of Transaction	Start Date	End Date	Days Extra	Extra End	Status
971	Pending installment agreement	07/11/2013	01/22/2014	195	0	01/22/2014 Closed
480	Received offer in compromise	09/14/2015	07/27/2017	682	0	07/27/2017 Closed
971	No longer in installment agreement status	08/21/2017	08/21/2017	0	30	09/30/2017 Closed
520	Bankruptcy or other legal action filed	02/13/2019	07/25/2019	162	184	01/25/2020 Closed
520	Bankruptcy or other legal action filed	10/14/2019	02/03/2020	112	182	08/03/2020 Closed
520	Bankruptcy or other legal action filed	04/09/2021	07/14/2021	96	184	01/14/2022 Closed
520	Bankruptcy or other legal action filed	10/25/2021	11/09/2021	15	181	05/09/2022 Closed
Consolidated Tolling						
Start Date	End Date	Days	* All CSED calculations are estimates and may not correspond to the exact date determined by the IRS. For absolute certainty, please contact the IRS.			
07/11/2013	01/22/2014	195				
09/14/2015	07/27/2017	682				
08/21/2017	09/20/2017	30				
02/13/2019	08/03/2020	537				
04/09/2021	05/09/2022	395				
		Total Extra Days	1839			

Notice of Federal Tax Lien 

If your taxes qualify for discharge in a Chapter 7 bankruptcy case, your victory may be bittersweet. You Can't Discharge a Federal Tax Lien (a.k.a. Secured Debt.)

This is because **bankruptcy will not wipe out prior recorded tax liens**. A Chapter 7 bankruptcy will wipe out your personal obligation to pay the debt, and prevent the IRS from going after your bank account or wages, but if the IRS recorded a tax lien on your property before you file for bankruptcy, the lien will remain on the property. In effect, this means you may have to pay off the tax lien in order to sell the property.


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Notice of Federal Tax Lien 

Note: A taxpayer whose tax debt has been discharged but who has a filed NFTL can obtain a release of lien by offering "an acceptable amount."

IRM 5.9.17.5.3(8), (9) (10/10/2019)

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Why File Bankruptcy 

Debtors filing for bankruptcy are instructed to use the IRS's Allowable Expense standards to calculate income and expenses.

However, Congress has allowed for additional expenses beyond the ALE standards. Notably, debtors may deduct expenses for protection from family violence and an extra five percent for food and clothing (if the extra expense is necessary).

Does not make sense to file BK just for tax debts.
Review alternatives (OIC, IA, CNC)

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Polling Question #3 IRS Solutions SOFTWARE



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What can the Software Do? IRS Solutions SOFTWARE

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Polling Question #4 IRS Solutions SOFTWARE



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The IRS is trying to collect my corporate liabilities from ME!

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