Discharging Tax Debts in Bankruptcy

By Daniel S. Rosefelt*

Many taxpayers are unable to resolve tax debts with the IRS or state taxing authorities because either their income and IRS reasonable collection potential are too high, or collection enforcement becomes unmanageable. Although the intersection of tax and bankruptcy law is complicated, taxes are often dischargeable, and bankruptcy may be the best solution to resolving a difficult tax debt problem. This article discusses the rules, strategies and current issues of discharging taxes in bankruptcy.

Common Tax Bankruptcy Misunderstandings

Most people, including many tax professionals, CPA's and attorneys, mistakenly believe federal and state income taxes are not dischargeable in bankruptcy. However, filing bankruptcy can immediately stop both IRS and state civil tax enforcement and potentially eliminate dischargeable income taxes. Compounding the misunderstanding is that many bankruptcy attorneys mistakenly conclude that high-income individuals with tax debts are "consumer" bankruptcy cases and not eligible to file a simple Chapter 7 bankruptcy to eliminate their tax and other debts (at least in part) to get a fresh start. Specifically, most bankruptcy attorneys summarily conclude that high-income taxpayers are subject to the bankruptcy "Means Test" and "presumption of abuse" provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). However, most high-income taxpayers can file and receive a Chapter 7 discharge of taxes as a "non-consumer" case because taxes are "non-consumer" debts.[1] More specifically, a case is "non-consumer" if a majority (greater than 50%) of all debts are non-consumer debts. Non-consumer cases are not subject to the Means Test, dismissal and conversion provisions of BAPCPA.[2] Instead, "non-consumer" individual Chapter 7 cases are subject to the less onerous pre-BAPCPA bad-faith dismissal and conversion provisions of the Bankruptcy Code.[3]

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Bankruptcy Overview

The objective in bankruptcy is for the debtor(s) to gain relief and get a "fresh start," not a "head start." This is most often accomplished through a plan of reorganization, elimination of debts, or a combination thereof. The most common categories or types of bankruptcy cases include:

- Liquidation of assets (if any) to pay off debts in Chapters 7 or 11; or
- Reorganization to pay creditors over time through a plan in Chapters 11 or 13.

The path to a fresh start through bankruptcy involves several important concepts and rules.

Automatic Stay

The Automatic Stay is perhaps one of the most powerful aspects of filing a bankruptcy. Upon filing a petition for relief under any of the available bankruptcy chapters, a temporary collection injunction goes into effect against all creditors, including the IRS. The Automatic Stay immediately stops all current and future collection activities during the bankruptcy case by creditors attempting to collect pre-petition debts against the debtor or from property of the bankruptcy estate.[4] The Automatic Stay stops all pending IRS and state civil collection and other actions including.

- Pending wage, bank and third-party levies (released);
- Filing federal and state tax liens (refiling permitted);
- Audits and examinations; and
- Revenue Officer investigations.

Pending IRS collection cases will be transferred internally from IRS Collections to the Insolvency Unit for processing of the case during the bankruptcy.

Bankruptcy Discharge

Achieving a "fresh start" through elimination of debt in bankruptcy is accomplished by entry of a "Discharge Order." The Discharge Order, entered at or near the end of most bankruptcy cases, is a permanent injunction that bars creditors (including the IRS) from collecting discharged debts, including certain taxes.[5] However, various debts (including some taxes) are excepted from the Discharge Order. After the Automatic Stay is lifted at or near the end of the case, creditors can then resume collection of these non-dischargeable debts.[6]

Exceptions to Discharge and Priority Debts

Bankruptcy Code Sec. 523, Exceptions to Discharge, sets forth the categories of unsecured debts (including taxes) that are excepted from the Discharge Order.[7] Tax debts excepted from Discharge are categorized as either "Priority" or "Non-Priority" and subject to various timing and conduct rules.[8] Under Bankruptcy Code Sec. 507, Priorities, certain categories of unsecured claims have priority over other unsecured claims (including certain tax claims) and may be satisfied out available assets (if any) of a bankruptcy estate.[9] All Priority taxes are Exceptions to Discharge under Bankruptcy Code Sec. 523.[10] Additionally, unsecured Trust Fund Taxes are Non-dischargeable Priority Debts and include a "tax required to be collected or withheld and for which the debtor is liable in any capacity."[11] Unsecured trust fund taxes include the trust fund portion of employment taxes and sales taxes.[12]

Chapter 7 Cases

Individuals or business entities are eligible to file under Chapter 7. Under BAPCPA, individuals with primarily consumer debts (consumer cases) are subject to a "Median Income" or "Means Test" provisions of Bankruptcy Code Sec. 707, Dismissal of a case or conversion to a case under Chapter 11 or 13. The U.S. Trustee Trial Counsel monitors cases and may litigate to force high-income debtors to dismiss or convert Chapters 11 or 13.[13] The U.S. Trustee and Trial Counsel are employees of the Department of Justice charged with supervision of the administration of all bankruptcy cases.[14] The U.S. Trustee has a statutory right to appear and be heard on any issue in any bankruptcy case.[15] A Panel Trustee is appointed by the U.S. Trustee to administer the case. The Panel Trustee liquidates or administers non-exempt assets with equity to pay creditors. Most Chapter 7 cases are "no-asset" cases, with no liquidation of assets and no payments to creditors by the Panel Trustee. The Panel Trustee typically "abandons" exempt and secured assets with no equity back to the debtor at end of the case. The typical no-asset Chapter 7 case lasts 3 to 4 months. Before the case closes, individuals may receive a discharge of their dischargeable debts not excepted from discharge.[16] Business entities typically file Chapter 7 to delegate the liquidation of the business to a Panel Trustee and are not eligible for discharge in Chapter 7.[17]

Chapter 13 Reorganizations

Only individuals can file a Chapter 13 bankruptcy to reorganize debts as either a wage earner or sole proprietor. There are debt limitations and filing a Chapter 13 is not eligible for debtors whose debts exceed:

- Secured debts of $1,184,200; and
- Unsecured debts of $394,725 for 2018 (adjusted annually).

A Chapter 13 must be voluntary. There are no involuntary "forced" conversions from other chapters. There is no liquidation of assets, and a Chapter 13 Trustee is appointed to administer the case and to disburse payments to unsecured creditors through a Plan up to 60 months. Payments made through the Plan are based on the Debtor's "Projected Disposable Income" ("PDI"). The PDI is based on 6 months average income preceding the filing of the case after deduction of the cost of living allowances under the Means Test.[18] The Means Test cost of living is based on the IRS Collection Financial Standards plus certain adjustments. The Chapter 13 Plan must also provide for payment to the unsecured creditors of a dividend equal to at least what would have been received in a Chapter 7 case. This is known as the "Chapter 7 Liquidation Test." Additionally, all Priority Debts (including Priority Taxes) must be paid through the Plan.[19] Debtors may receive a discharge of dischargeable debts (including taxes) upon the successful completion of Plan payments at the end of the case.[20]

Chapter 11 Reorganizations

Individuals or business entities can file a Chapter 11 reorganization. The plan of reorganization must be voted upon and approved by creditor(s) and the Court. The creditors are paid under a plan over time and the debtor must repay all Priority debts (including Priority taxes) over the life of plan. Individuals may receive discharge upon completion of the Chapter 11 plan payments at the end of the case.[21] Chapter 11 cases are a costly and complicated option for individuals. Generally, Chapter 11 is filed because the individual debtor exceeds the Chapter 13 debt limitations, is not eligible for Chapter 7, or has equity in assets subject to liquidation by a Panel Trustee. Non-individual Chapter 11 debtors generally receive discharge upon confirmation of the plan. Most Chapter 11 debtors, individuals and entities, act as the Panel Trustee and are considered a "Debtor in Possession." A Chapter 11 case can be voluntarily or involuntarily converted from other bankruptcy chapters.[22]

Discharging Taxes: Timing and Conduct Rules

The Three-Year Rule

To be eligible for discharge, a tax debt in connection with a tax return must have been due 3 years *before* the filing of the bankruptcy including extensions (subject to tolling).[23] For example, if no extension were filed for the 2013 Individual 1040 tax return, and the due date is April 15, 2014, a bankruptcy filed on or after April 16, 2017 would satisfy the Three-Year Rule. If an extension were filed for the 2013 1040 tax return, the due date, as extended, would have been October 15, 2014. A bankruptcy filed on April 16, 2017, would not satisfy the Three-Year Rule for the 2013 tax return (and associated tax debt). A bankruptcy filed on or after October 16, 2017, would satisfy the Three-Year rule for the 2013 tax return.

The Two-Year Rule

To be eligible for discharge, a tax debt in connection with a tax return or equivalent report or notice, if required, must have been filed by the taxpayer more than 2 years before filing the bankruptcy.[24] For example, if a bankruptcy was filed on April 16, 2017 and the Taxpayer filed their 2010 federal 1040 tax return late on April 15, 2015, the 2010 federal return satisfies the Two-Year Rule. However, if the bankruptcy was filed on April 16, 2017, and the Taxpayer filed their 2010 state tax return late on April 15, 2015 and resides in either the First, Fifth, or Tenth Circuits, under *McCoy* Rule (discussed below), the Taxpayer will fail the Two-Year Rule for purposes of discharging the 2010 state income tax because the late-filed state tax return is not considered a "return" for bankruptcy purposes.

The 240-Day Rule

The income tax must have been assessed more than 240 days before filing the bankruptcy (subject to tolling).[25] For example, if the Taxpayer filed their 2012 1040 on April 15, 2013, was subsequently audited by the IRS, agrees with the examination and is assessed on June 1, 2015, and files bankruptcy on March 15, 2016, the Taxpayer satisfies the 240-Day Rule. If the Taxpayer resides in Maryland and does not report the IRS assessment or file an amended return state return, and Maryland makes a piggy-back assessment by estimate, the Taxpayer fails the Two-Year Rule for state tax purposes because no equivalent report or notice was filed as required under state law. Accordingly, it is always important to check with the state requirements for reporting additional assessments resulting from additional federal assessments or deficiencies.

The Non-Fraudulent Tax Return and No Tax Evasion "Bad Boy" Rules

The tax return must not have been fraudulent. No tax is dischargeable for a tax "…with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax."[26] The IRS position is that it is not always clear what constitutes a willful attempt to evade or defeat taxes under Bankruptcy Code Sec. 523(a)(1)(C).[27] Further, that failure to file and pay taxes is usually not enough to demonstrate willful evasion; however, a debtor's voluntary, conscious, and intentional failure to file returns for an extended period, and a failure to pay taxes when the debtor had the ability to do so, may qualify as willful evasion under Bankruptcy Code Sec. 523(a)(1)(C).[28] The IRS will also consider that the standard to prove willful evasion in bankruptcy court requires a preponderance of the evidence and that "[s]ome courts require the Service to prove some affirmative misconduct, such as concealed or fraudulently transferred assets."[29] IRS "Insolvency must obtain written approval from IRS Area Counsel before returning cases to the collection stream where taxes were not discharged on the grounds of willful evasion."[30] Bankruptcy courts are split on what constitutes willful attempt to evade or defeat a tax under Bankruptcy Code Sec. 523. Some courts follow a criminal standard requiring affirmative misconduct, but other courts follow the civil standard that mere failure to file or pay is enough. Although not required, a criminal prosecution is likely enough. "Badges of fraud" include understatement of income, failure to file tax returns, late returns, implausible behavior and failure to cooperate with the IRS.[31] The assessment of a civil fraud penalty is likely enough establish the tax is excepted from discharge; however, civil fraud penalties may be dischargeable (discussed below).

Tolling Events

A Request for a Collection Due Process Hearing ("CDP") tolls both the Three-Year and 240-Day Rules for the time suspended plus 90-days, during which a governmental unit is prohibited under non-bankruptcy law from collection of a tax as result of a request by the debtor for a hearing and appeal of any collection action taken or proposed against the debtor.[32] Tolling applies only for CDP levy notices and not for CDP notices of federal tax liens. An Offer-In-Compromise ("OIC") tolls the 240-Day Rule and adds 30-days for any OIC pending or in effect.[33] A prior bankruptcy tolls both Three-Year and 240-Day Rules for any time during which the stay of proceedings was in effect in a prior case or during which collection was precluded by the existence of one or more confirmed plans, plus 90 days.[34] The filing of a tax return filing extension extends the Three-Year Rule. Tax litigation will delay the assessment of a deficiency and the start of the 240-Day Rule.

Bankruptcy Tax Discharge Issues

What Is a Return?

If no return is filed, then the tax is not dischargeable. To qualify as a tax return, the document must conform to the definition set forth in the four-part *Beard* Test[35] (even if filed late):

1. Must purport to be a return;
2. Must be executed under penalty of perjury;
3. Must contain sufficient data to allow calculation of tax; and
4. Must represent an honest and reasonable attempt to satisfy the requirements of law.

Substitute for Return

Assessment by Substitute for Return ("SFR") is generally not a "return" for bankruptcy purposes and not dischargeable.[36] A tax return filed after assessment by SFR is not a "return" for bankruptcy discharge purposes.[37] An agreed SFR signed by the taxpayer under Code Sec. 6020(a) may be a "return."[38] An SFR assessed by a U.S. Tax Court decision document is a "return" per Bankruptcy Code Sec. 523(a)(19) which includes a written stipulation to a judgment or a final order entered by a non-bankruptcy tribunal. An SFR with assessment by an agreed examination report should be a tax return and dischargeable if signed under penalty of perjury.[39]

Late-Filed State Returns

Under Bankruptcy Code Sec. 523(a), the term "return" means a return that satisfies the requirements of applicable non-bankruptcy law *including applicable filing requirements*.[40] Under *McCoy v. Mississippi State Tax Comm'r*, (the "*McCoy* Rule"), the Fifth Circuit held that a state income tax return filed late under applicable non-bankruptcy state law is not a return for bankruptcy discharge purposes under Bankruptcy Code Sec. 523(a).[41] In *McCoy*, the state timeliness requirement was determined to be an "applicable filing requirement."[42] The McCoy Rule was rejected by IRS in Notice CC-2010-016. However, the *McCoy* Rule is also followed in both the First and Tenth Circuits.[43]

Amended Tax Returns

An amended federal tax return is not a new return subject to the Two-Year Rule. However, state piggy-back tax assessments reporting requirements may be subject to the Two-Year Rule following IRS deficiency assessments. In *Ciotti v. Maryland*, a Maryland tax assessment was held not dischargeable where taxpayer failed to report within 90 days an additional IRS assessment as required by state law.[44]

Federal Tax Liens

A Notice of Federal Tax Lien ("NFTL") is a general lien, attaches to all property or rights to property.[45] A recorded NFTL attaches to the taxpayer's assets and "rides through" the bankruptcy (unless "stripped off" in a Chapter 13). A Chapter 7 Panel Trustee can avoid a NFTL, liquidate the asset(s) and pay Priority Debts.[46] In practice, this rarely occurs because most Chapter 7 cases are "no asset cases" and it is difficult for a Panel Trustee to justify Trustee commissions and fees for administering assets for the IRS, unless there are payments to benefit unsecured Priority Creditors other than the IRS. Bankruptcy Code Sec.

524 bars the IRS from seeking to collect taxes discharged from the debtors personally, even if subject to a NFTL. Taxes discharged against the Debtor individually (*in personam*) are not enforceable post-bankruptcy and barred permanently by the Discharge Order. The NFTL may be enforceable against the pre-petition property (*in rem*) of a Debtor, post-bankruptcy and are tied to the Collection Statute Expiration Date (CSED) plus tolling. Often, IRS Insolvency will negotiate post-bankruptcy release of a NFTL. Additionally, non-dischargeable taxes subject to a NFTL survive the bankruptcy and attach to the debtor's current and future property.

Discharge of Interest and Penalties

Pre-petition interest follows the underlying tax and is dischargeable if the tax is dischargeable.[47] Under Bankruptcy Code Sec. 523(a)(7) all Non-Pecuniary (Punitive) Loss Penalties are generally not excepted and are dischargeable in a Chapter 7 case if the transaction or event giving rise to the penalty occurred within three years before the petition of bankruptcy. These potentially dischargeable Non-Pecuniary Loss Penalties include the following:

- Failure to pay penalty.
- Failure to file penalty.
- Failure to deposit penalty.
- Failure to make estimated tax penalty.
- Civil fraud penalty.
- Negligence penalty.
- Substantial underpayment of tax penalty.

In Chapter 13, Non-Pecuniary Loss Penalties are dischargeable ("Super-discharge") even if the transaction giving rise to the penalty occurred within three years, or if the underlying tax is not dischargeable.[48] The dischargeability of Non-Pecuniary Loss Penalties is under attack by the IRS. As discussed below, we may continue to see the IRS challenge the dischargeability of penalties. Trust Fund Recovery Penalties ("TFRP") and FBAR penalties are examples of Pecuniary Loss Penalties and are non-dischargeable.[49]

Discharge Tax Adjustment by IRS Insolvency

Generally, insolvency will adjust tax accounts that are discharged in bankruptcy.[50] Insolvency will refer to Area Counsel for concurrence to withhold adjustment actions on an otherwise dischargeable tax liability based on the fraud or willful evasion exceptions to discharge under Bankruptcy Code Sec. 523(a)(1)(C).[51] If IRS insolvency does not correctly adjust the tax account and abate the dischargeable tax after the case is closed, the taxpayer may have to reopen the bankruptcy case and file an adversary proceeding to determine the dischargeability of the tax.

Recent Developments

In *Internal Revenue Service v. Murphy*, the IRS was held in violation of 26 USC §7433(e) for willfully violating the bankruptcy discharge order by engaging in enforced collection of taxes post-bankruptcy.[52] In that case, Murphy received a discharge and later filed an adversary proceeding and obtained a declaration that his taxes were discharged. Murphy sued for damages under 26 USC §7433(e). The First Circuit held that the IRS's reasonable and good faith belief that the discharge injunction did not apply was not relevant to determining whether it "willfully violate[d]" the discharge order. As a result of *Murphy*, we may see more adversary proceedings filed by the IRS challenging the discharge of taxes before the case closes and the discharge order is entered.

In *Andrews, et al. v. Michigan*, the Sixth Circuit affirmed that penalties assessed by a governmental unit due to fraud were non-dischargeable in a Chapter 13 case under Bankruptcy Code Sec. 523(a)(2). In two cases consolidated for oral argument, both involved Chapter 13 debtors who fraudulently obtained unemployment benefits and were assessed a penalty. In reaching its conclusion, the Sixth Circuit noted that subsection 523(a)(2) provides that "any debt" arising from fraud is excepted from discharge. The court agreed that where the debt arises from fraud, Bankruptcy Code subsection 523(a)(2) applies regardless of whether the debt could also fit under and be dischargeable under §523(a)(7).[53] Subsection 523(a)(7) excepts from discharge "any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty." The court reasoned that "subsection 523(a)(7) is more specific inasmuch as it deals with penalties owed to the government, where §523(a)(2) deals generally with fraud. But §523(a)(2) is in a sense more specific because it deals with fraud-related penalties, whereas §523(a)(7) applies to all penalties owed to a government entity."[54] It is important to note that even though *Andrews* is not a tax case, it may be an effective argument for the IRS to challenge the dischargeability of fraud penalties-based.

In *United States v. Bush*, the United District Court S.D. Indiana, affirmed the Bankruptcy Court's decision that "[b]ased on the plain language, the Court joins the majority of courts who have determined that a tax penalty is dischargeable if the penalty is described by either §523(a)(7)(A) or §523(a)(7)(B)."[55] The IRS has likely not given up on the argument that penalties are non-dischargeable whenever they relate to a non-dischargeable tax—stay tuned.

Strategic Issues and Pointers

There are often numerous advantages in resolving tax problems through bankruptcy, including, but not limited to:

- Taxpayers with high incomes that have a majority of non-consumer debts can likely file Chapter 7 as a non-consumer case and are not subject to the BAPCPA Means Test dismissal or conversion provisions under 11 USC §707(b).
- Avoid filing an IRS CDP administrative appeals in response to a Final Notice of Intent to Levy. This will toll the Three-Year and 240-Day Rule.
- If the taxpayer receives a Statutory Notice of Deficiency (90-day Letter) proposing an SFR assessment, consider filing a Tax Court petition and obtain a decision document to preserve the potential dischargeability of the tax as a "tax return" or "equivalent report" for bankruptcy persons.
- Always obtain account transcripts to verify returns, filing dates, assessments, and other timing issues to determine dischargeability under the discharge timing and conduct rules.
- Amended state tax returns should be filed timely after any federal amended return or additional assessment to preserve potential dischargeability of state income taxes.
- Civil fraud penalties may or may not be dischargeable and the IRS may begin challenging the dischargeability of fraud penalties based on *Andrews, et al. v. Mich. Unemployment Ins. Agency*.
- Failure to file and failure to pay penalties are likely dischargeable even if the underlying tax is not dischargeable because of assessment by SFR or other reasons. However, the IRS will likely continue to challenge the dischargeability of penalties as seen in *Bush*.
- The Automatic Stay can stop IRS and other tax agency collection activity, including wage and bank levies.
- Non-dischargeable unsecured taxes can be repaid through a Chapter 13 Plan without interest.
- Chapter 13 bankruptcies can be voluntarily filed and dismissed; however, Chapter 7 and Chapter 11 cases require permission of the court to dismiss.

Conclusion

Despite common belief, taxes can be discharged in bankruptcy. Although many taxpayers are unable to successfully resolve tax debts with the IRS or state taxing authorities directly, bankruptcy is often the only solution to resolve a difficult tax debt problem. Because taxes are non-consumer debts, most high-income tax debtors can file Chapter 7 and successfully resolve many difficult tax problems. Bankruptcy remains an important tool that every tax controversy professional should be aware of and possess a fundamental understanding of the tax discharge rules and provisions.

ENDNOTES

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[1] *In re Westberry*, CA-6, 2000-1 USTC ¶50,513, 215 F3d 589 (holding, taxes are not deemed to be "consumer" debts for purposes of a motion to dismiss a Chapter 7 on grounds of substantial abuse pursuant to 11 USC §707(b)).

[2] 11 USC §707(b).

[3] *See* 11 USC §§707(a) and 706(b).

[4] 11 USC §362 Automatic Stay.

[5] 11 USC §524 Effect of Discharge.

[6] 11 USC §523 Exceptions to Discharge.

[7] *Id.*

[8] *See* 11 USC §§507(a)(8) and 523(a)(1).

[9] 11 USC §507.

[10] 11 USC §523(a)(1)(A).

[11] *See* 11 USC §507(a)(8)(C) and (D).

[12] *Id.*

[13] *See* 11 USC §707(b).

[14] 28 USC §586.

[15] 11 USC §307.

[16] *See* 11 USC §727 Discharge, and 11 USC §523 Exceptions to Discharge.

[17] *See* 11 USC §727(a)(1).

[18] *See* 11 USC §1325.

[19] 11 USC §507.

[20] 11 USC §1328 Discharge.

[21] 11 USC §1141(d)(5)(A).

[22] *See* 11 USC §707(b) (consumer cases); §706 (non-consumer cases).

[23] 11 USC §507(a)(A)(i).

[24] 11 USC §523(a)(1)(B).

[25] 11 USC §507(a)(A)(ii).

[26] 11 USC §523(a)(1)(c).

[27] IRM §5.9.2.10.1(4)(d).

[28] IRM §5.9.2.10.1(5).

[29] *Id.*

[30] *Id.*

[31] *See In re Peterson*, 160 B.R. 385 (D. Wy 1993).

[32] 11 USC §507(a)(8)(G).

[33] 11 USC §507(a)(8)(A)(ii)(I).

[34] 11 USC §507(a)(8)(G).

[35] *R.D. Beard*, 82 T.C. 766, Dec. 41,237, *aff'd per curium*, CA-6, 793 F2d 139.
[36] 11 USC §523(a)(1)(B); *D'Avanza*, 132 B.R. 462 (M.D. Fla. 1991).
[37] *In re Rushing*, 273 B.R. 223 (Bkrtcy. AZ 2001) (subsequent return serves no valid purpose).
[38] 11 USC §523(a)(19); *D.W. Bergstrom,* CA-10, 949 F2d 341.
[39] *See* Rev. Rul. 2005-59.
[40] 11 USC §523(a)(flush language) (emphasis added).
[41] *McCoy v. Mississippi State Tax Comm'r*, CA-5, 666 F3d 924 (5th Cir. 2012).
[42] *Id*.
[43] *See In re Fahey,* 2015 WL 677033 (1st Cir. Feb. 18, 2015); *In re Mallo*, 2017 WL 7360130 (10th Cir. Dec. 29, 2014).
[44] *Ciotti v. Maryland*, CA-4, 683 F3d 276 (4th Cir. 2011).
[45] 26 USC §6321.
[46] *See* 11 USC §724.
[47] 26 USC §6601(e)(1); 11 USC §523 (a)(8).
[48] BAPCPA eliminated the "super-discharge" for various taxes and interest previously available in Chapter 13 but did not affect the super-discharge for Non-Pecuniary Penalties.
[49] Pecuniary Loss Penalties also include FBAR penalties which are not dischargeable under 11 USC §523(a)(7); The TFRP remains a Priority Debt under 11 USC §507(a)(8)(C).
[50] IRM 5.9.17.7(13).
[51] IRM 5.9.17.7.2.
[52] *Murphy*, No. 17-1601 (1st Cir. 2018) (Violation of discharge order by IRS).
[53] *Andrews v. Michigan et al.*, Nos. 16-2383/2680 (6th Cir. 2018).
[54] *Id*. at 8.
[55] *United States v. Bush*, 2016 WL 681517.