Bench & Bar Committee Lunch & Learn Program: Bankruptcy & Taxes

Vania Allen, U.S. Department of Justice Whitney Groff, Georgia Attorney General's Office Alyssa Whatley, Bomar Law Firm LLC

Thanks to Dale Goodman (Goodman & Goodman) and Craig Raber (U.S. Bankruptcy Court)

Bankruptcy & Taxes

- Tax transcripts
 - Types of transcripts and taxes
 - How to request a transcript/statement of account and how to read it
- Things to ask before filing bankruptcy
- Tax issues in bankruptcy
 - Exceptions to the automatic stay
 - Proofs of claim
 - Interest rates
- Discharge and exceptions to discharge
 - Statutory exceptions to discharge
 - Cases re: exceptions to discharge
- Post-petition taxes
- Tax liens

Types of IRS Transcripts

- Tax Return Transcript
- Tax Account Transcript
- Record of Account Transcript
- Wage and Income Transcript
- Verification of Non-filing Letter

Note: a transcript isn't a photocopy of your return.

Ways to Get IRS Transcripts

- Debtors can obtain tax transcripts by:
 - Visiting <u>https://www.irs.gov/individuals/get-transcript</u> to view, print, and download
 - Calling 800-908-9946
 - Faxing/mailing Form 4506-T, Request for Transcript of Tax Return, available at irs.gov
- Attorneys can get tax transcripts by:
 - Completing 2848 Power of Attorney Form
 - Faxing the 2848 form to CAF UNIT at 855-214-7519
 - Calling the Priority Practitioner Hotline at 1-866-860-4259
 - Registering for e-Services at <u>https://www.irs.gov</u> (can pull the transcripts online)

Types of Tax

Income tax

- Individual, Sole Proprietorships, Partnerships, LLCs, and S Corps 1040 (pass-through entities)
- S Corporation 1120S
- C Corporation 1120 (recognized as a separate taxable entity)

Employment taxes

- FICA 941 (Social Security and Medicare) (Quarterly)
- FUTA 940 (Federal Unemployment Tax Act) (Annually)

Excise tax

• EXCISE 720 (Quarterly) (paid when purchases are made on a specific good; often included in price)

Withholding/trust taxes

Civil Penalties (Trust Fund Recovery Penalties, include Employee's Portion of FICA Taxes)(Quarterly)

How to Read an IRS Transcript

Type of tax

Return filed

- Filed at least two years before filing bankruptcy
- Filed by Taxpayer and Not a Substitute for Return

Due date of return

- Tax return was originally due at least three years before filing for bankruptcy
- Filing an extension effectively changes the due date from April 15th to October 15th

Date of assessment

- IRS assessed tax at least 240 days before the debtor filed for bankruptcy
- If the IRS suspended collection activity during negotiation, the application date may be extended

This	Product Contains Sensitive Ta	axpayer Data
I	Account Trans	cript
	Request Date: Response Date: Tracking Number:	10-17-2016 10-18-2016
FORM NUMBER: TAX PERIOD:	1040 <ty Dec. 31, 2012</ty 	PE OF TAX
TAXPAYER IDENTIFICATION NUM	BER:	
SPOUSE TAXPAYER IDENTIFICAT:	ION NUMBER:	
CCCEDONED OF ATTODNEY/TAY IN	NFORMATION AUTHORIZATION (POA/	TTAL ON RILESSA
	US SIGN SHOWN BELOW SIGNIFIES	
ACCOUNT BALANCE:	30,392.46	
ACCRUED INTEREST:	23.26	AS OF: Oct. 31, 2016
ACCRUED PENALTY:	0.00	AS OF: Oct. 31, 2016
(this is not a payoff amoun) ** INFORMATION	L): 30,415.72	ED **
EXEMPTIONS	02	
FILING STATUS:	Married Filing Joint	
ADJUSTED GROSS INCOME:	187,843.00	
TAXABLE INCOME:	168,343.00	
TAX PER RETURN:	26,635.00	
SE TAXABLE INCOME TAXPAYER: SE TAXABLE INCOME SPOUSE:	0.00	
TOTAL SELF EMPLOYMENT TAX:	0.00	
RETURN DUE DATE OR RETURN RI	ECEIVED DATE (WHICHEVER IS LAT	YER) Aug. 15, 2013 Sep. 23, 2013
PROCESSING DATE		
PROCESSING DATE		
PROCESSING DATE	TRANSACT IONS	
		CYCLE DATE AMOUNT
CODE EXPLANA	TION OF TRANSACTION	<u>CYCLE DATE AMOUNT</u> 20133605 09-23-2013 \$26,635.00
CODE EXPLANA	TION OF TRANSACTION	
CODE EXPLANA 150 Tax return filed FII n/a 30221-627-00967-3 806 W-2 or 1099 withholding	TION OF TRANSACTION ING AND ASSESSMENT	> 20133605 09-23-2013 \$26,635.00 04-15-2013 -\$1,453.00
CODE EXPLANA 150 Tax return filed FII n/a 30221-627-00967-3 806 W-2 or 1099 withholding	TION OF TRANSACTION ING AND ASSESSMENT ng file tax return ext. Date	> 20133605 09-23-2013 \$26,635.00

276	Penalty for late payment of tax	20133605 09-23-2013	\$755.46
196	Interest charged for late payment	20133605 09-23-2013	\$335.43
971	Notice issued CP 0014	09-23-2013	\$0.00
530	Balance due account currently not collectable	09-12-2013	\$0.00
480	Received offer in compromise	10-22-2013	\$0.00
582	Lien placed on assets due to balance owed	11-08-2013	\$0.00
360	Fees and other expenses for collection	12-02-2013	\$12.00
971	Issued notice of lien filing and right to Collection Due Process hearing	11-12-2013	\$0.00
181	Denied offer in compromise 150 days + 30 days added	03-21-2014	\$0.00
180	Received offer in compromise	09-24-2014	\$0.00
181	Denied offer in compromise 203 days + 30 days added	04-15-2015	\$0.00
706	Credit transferred in from 1040 201312	04-15-2014	-\$833.00
706	Credit transferred in from 1040 201412	04-15-2015	-\$1,025.00
71	Notice issued CP 071A	10-26-2015	\$0.00
96	Interest charged for late payment	20154005 10-26-2015	\$1,645.40
276	Penalty for late payment of tax	20154005 10-26-2015	\$3,032.74
706	Credit transferred in from 1040 201512	04-15-2016	-\$1,102.00
71	Notice issued CP 071A	10-24-2016	\$0.00
96	Interest charged for late payment	20164005 10-24-2016	\$1,028.56
76	Penalty for late payment of tax	20164005 10-24-2016	\$1,360.87

ORM NUMBER: 1040A AX PERIOD: Dec. 31, 2005 AXPAYER IDENTIFICATION NUMBER: POUSE TAXPAYER IDENTIFICATION NUMBER: ANY MINUS SIGN SHOWN BELOW SIGNIFIES ANY MINUS SIGN SHOWN BELOW SIGNIFIES CCOUNT BALANCE: 4 CCRUED INTEREST: CCCRUED PENALTY: CCCUUT BALANCE PLUS ACCRUALS this is not a payoff amount): 5 ** INFORMATION FROM THE RETURN OR AS ADJUST XEMPTIONS: ILING STATUS: Married Filing DJUSTED GROSS INCOME: 16 AXABLE INCOME: 15 AX PER RETURN:	Request Response racking N A CREDIT 7 9,906.46 732.10	: Date: h Date: Humber:		6
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ILING STATUS: Married Filing DJUSTED GROSS INCOME: 16 AXABLE INCOME: 15 AX PER RETURN:	ED **			
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AXABLE INCOME: 15	Separate			
AX PER RETURN:	4,154.00			
	6,466.00			
E TAXABLE INCOME TAXPAYER: 4	0.00			
	0,998.00			
E TAXABLE INCOME SPOUSE:	0.00			
OTAL SELF EMPLOYMENT TAX:	6,273.00			
ETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS L	ATER)	Nov	. 16, 20	10
ROCESSING DATE		Dec	. 13, 20	10
TRANSACTIONS			1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	

<pre>n/a 19210- 460 Extens 10-15- 140 Inquir 570 Additi 494 Final 173 Penalt 290 Additi n/a 11254- 495 Resolv 599 Tax re 166 Penalt date 196 Intere 276 Penalt 971 Notice cp 002 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice cp 009 971 Collec ret 971 Notice CP 009 971 Collec ret 971 Notice CP 009 971 Final benefi</pre>	y for non-filing of tax return onal account action pending notice before tax is determined by IRS y for not pre-paying tax onal tax assessed 596-33166-1 ed tax determination turn secured y for filing tax return after the due st charged for late payment y for late payment of tax	20113008 20113008 20113008	12-13-2010 04-15-2006 04-09-2007 12-13-2010 02-22-2011 08-08-2011 07-12-2011 07-12-2011 08-08-2011	\$0.00 \$0.00 \$0.00 \$0.00 \$3,505.39 \$87,388.00 \$0.00 \$0.00	
460 Extens 10-15- 140 Inquir 570 Additi 494 Final 173 Penalt 290 Additi n/a 11254- 495 Resolv 599 Tax re 166 Penalt date 196 Intere 276 Penalt 971 Notice CP 002 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	ion of time to file tax return ext. Date 2006 y for non-filing of tax return onal account action pending notice before tax is determined by IRS y for not pre-paying tax onal tax assessed 596-33166-1 ed tax determination turn secured y for filing tax return after the due st charged for late payment y for late payment of tax	20113008 20113008 20113008	04-09-2007 12-13-2010 02-22-2011 08-08-2011 08-08-2011 07-12-2011 07-15-2011	\$0.00 \$0.00 \$3,505.39 \$87,388.00 \$0.00	
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495 Resolv 599 Tax re 166 Penalt 196 Intere 276 Penalt 971 Notice CP 002 706 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 971 Collec iss 971 971 Collec ret 971 971 Final benefi 971 971 Final benefi 971	ed tax determination turn secured y for filing tax return after the due st charged for late payment y for late payment of tax		07-15-2011		
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<pre>276 Penalt 971 Notice CP 002 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec ret 971 Notice 07 Collec ret 971 Notice 07 CP 009 971 Final benefi 971 Accoun 670 Paymen</pre>	y for late payment of tax	20113008		\$19,662.30	
971 Notice CP 002 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec ret 971 Collec CP 009 971 Collec C- ret 971 Collec CP 009 971 Final benefi 971 Accoun 670 Paymen			08-08-2011	\$36,313.21	
CP 002 706 Credit 1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	issued	20113008	08-08-2011	\$21,847.00	
1040 2 277 Reduce tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen			08-08-2011	\$0.00	
tax 971 Accoun 971 Notice CP 009 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	transferred in from 00612		04-15-2007	-\$39.24	
971 Notice CP 009 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	d or removed penalty for late payment of		12-05-2011	-\$7.46	
CP 009 971 Collec iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	t match for federal levy payment program		01-02-2012	\$0.00	
iss 971 Collec ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen	issued O		01-02-2012	\$0.00	
ret 971 Notice CP 009 971 Final benefi 971 Accoun 670 Paymen			01-02-2012	\$0.00	
CP 009 971 Final benefi 971 Accoun 670 Paymen	tion due process Notice of Intent to Levy urn receipt signed		01-09-2012	\$0.00	
benefi 971 Accoun 670 Paymen			03-12-2012	\$0,00	
670 Paymen	notice before levy on social security ts		03-12-2012	\$0.00	
	t match for federal levy payment program		05-28-2012	\$0.00	
670 Paymen	t.		05-16-2012	-\$250,95	
	t		06-20-2012	-\$250.95	
960 Appoin	ted representative		06-15-2012	\$0.00	
670 Paymen			07-18-2012	-\$250.95	
670 Paymen	t		08-15-2012	-\$250.95	
582 Lien p			08-17-2012	\$0.00	
360 Fees a			09-10-2012	\$12.00	

https://lal.www4.irs.gov/esrv/tds/requests/TdsProductAction.do?method=productDetails 2/25/2016

		А	ccount Trans	cript		
				Request	Date:	04-14-2016
				Response	Date:	04-14-2016
ORM		CIVIL PENAL	ΓΥ < Type of Ta	x		
'AX P	ERIOD:	Dec. 31, 2005				
AXP.	AYER IDI	ENTIFICATION	NUMBER:			
<<<<	POWER	OF ATTORNEY	TAX INFORMATI	ON AUTHOR	ZATION	(POA/TIA)
	ANY N	AINUS SIGN SH	ON FILE>>>> OWN BELOW SIGN	IFIES A CRED	IT AMOU	JNT
CCO	UNT BAL	ANCE		2,437.57		
	UED INTE				10.00	
CCR	UEDINII	CREDI.		74.22	AS OF:	Apr. 25, 2016
				74.22	AS OF:	Apr. 25, 2016
cco	UNT BAL	ANCE PLUS AC	CCRUALS	74.22 2,511.79	AS OF:	Apr. 25, 2016
ACCO this is	UNT BAL not a payo	ANCE PLUS AC	CRUALS	2,511.79		Apr. 25, 2016
ACCO this is	UNT BAL not a payo	ANCE PLUS AC		2,511.79 As adjusted		Apr. 25, 2016
ACCO this is	UNT BAL not a payo ** INFOR	ANCE PLUS AC ff amount): MATION FROM PLANATION O	THE RETURN OR A TRANSACTION	2,511.79 AS ADJUSTED S CYCLE	** DATE	Apr. 25, 2016
ACCO this is	UNT BAL not a payo ** INFOR E EX Miscella	ANCE PLUS AC ff amount): MATION FROM PLANATION O	THE RETURN OR A TRANSACTION F TRANSACTION OF TAX AND DATE OF A	2,511.79 AS ADJUSTED S CYCLE	** DATE	
ACCO this is CODI 240	UNT BAL not a payo ** INFOR E EX Miscella IRC 667	ANCE PLUS AC ff amount): MATION FROM PLANATION O TYPE neous penalty	THE RETURN OR A TRANSACTION F TRANSACTION OF TAX AND DATE OF A	2,511.79 AS ADJUSTED S CYCLE	** DATE 11-14-	AMOUNT
ACCO this is	UNT BAL not a payo ** INFOR E EX Miscella IRC 667 82254-6	ANCE PLUS AC ff amount): MATION FROM PLANATION O TYPE neous penalty 2 Trust Fund Rec	THE RETURN OR A TRANSACTION F TRANSACTION OF TAX AND DATE OF A	2,511.79 AS ADJUSTED S CYCLE	** DATE 11-14- 2011	AMOUNT
CODI 240 n/a 290	UNT BAL not a payo ** INFOR E EX Miscella IRC 667 82254-6 Addition	ANCE PLUS AC ff amount): MATION FROM PLANATION O TYPE neous penalty 2 Trust Fund Rec 97-52162-1	THE RETURN OR A TRANSACTION F TRANSACTION OF TAX AND DATE OF A	2,511.79 AS ADJUSTED S CYCLE SSESSMENT 20114408	** DATE 11-14- 2011 11-14-	AMOUNT \$2,196.70
ACCO this is CODI 240 n/a	UNT BAL not a payo ** INFOR E EX Miscella IRC 667 82254-6 Addition	ANCE PLUS AC ff amount): MATION FROM PLANATION O TYPE neous penalty 2 Trust Fund Rec 97-52162-1 mal tax assessed 97-52162-1 ssued	THE RETURN OR A TRANSACTION F TRANSACTION OF TAX AND DATE OF A	2,511.79 AS ADJUSTED S CYCLE SSESSMENT 20114408	** DATE 11-14- 2011 11-14-	AMOUNT \$2,196.70

582	Lien placed on assets due to balance owed	03-02- 2012	\$0.00
971	Issued notice of lien filing and right to Collection Due Process hearing	03-06- 2012	\$0.00
971	Notice issued CP 071C	04-30- 2012	\$0.00
530	Balance due account currently not collectable	03-04- 2013	\$0.00
971	Notice issued CP 071C	05-06- 2013	\$0.00
537	Account currently considered collectable	09-16- 2013	\$0.00
971	Collection due process Notice of Intent to Levy issued	10-25- 2013	\$0.00
971	Notice issued CP 071C	05-04- 2015	\$0.00
196	Interest charged for late payment 20151505	05-04- 2015	\$240.87
960	Appointed representative	01-11- 2016	\$0.00
520	Bankruptcy or other legal action filed < Bankruptcy Code	02-22- 2016	\$0.00
520	Bankruptcy or other legal action filed	02-22- 2016	\$0.00

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Georgia: Statement of Account

- Can be requested by:
 - Debtor or Power of Attorney through Georgia Tax Center online at https://gtc.dor.ga.gov/ /
 - Faxing GA Power of Attorney to GA DOR at 404-417-6589
 - It usually takes about 8-10 days
 - Then call 404-417-2122 to request GA Statement of Account to be faxed and/or emailed to you

This statement does not affect your rights to appeal or protest any of the listed periods. If you need additional help,

					etter ID: age Number:	2
					sued Date: 1	
TATEMENT OF 1	TAXPAYER'S	ACCOUNT(S)			
ndividual Income T	ax				SSN	1
Period	Tax	Penalty	Interest	Other	Credit	Balance
1-Dec-2014	\$8,551.00	\$720.41	\$297.77	\$0.00	-\$6,967.00	\$2,602.18
state tax execution has 1-Dec-2014	\$0.00	\$50.00	\$0.00	\$0.00	S0.00	\$50.00
state tax execution has 1-Dec-2015	\$14,599.00	\$3,561.81	\$860.43	\$0.00	-\$1,946.00	\$17,075.24
state tax execution has 1-Dec-2015	\$0.00	\$50.00	\$0.00	\$0.00	\$0.00	\$50.00
state tax execution has Totals	\$23,150.00	\$4,382.22	\$1,158.20	\$0.00	-\$8,913.00	\$19,777.42
f you have filed a p property. However,	the filing of a o determine y	bankruptcy pe our tax liability	tition does not sto , issuing a notice	op the Georgi of tax deficier	a Department o icy, demanding	of Revenue state tax
eturns, or generati	ng an assessm					
rom audring you t returns, or generati issessment. if your bankruptcy	petition is stil	FORGIA DEP CENTRAL C 1800 CENTUR	ARTMENT OF I OLLECTION SF Y BLVD NE, SU	REVENUE CTION ITE 9100	and return to:	
eturns, or generati ssessment.	petition is stil	EORGIA DEP CENTRAL C 1800 CENTUR ATLAN	ARTMENT OF I OLLECTION SE	REVENUE CTION ITE 9100	and return to:	

Filing date Chapter number (circle one): 7 11 13 Case number

Should You Wait to File?

Does the Debtor have something imminent?

- i.e. repossession, foreclosure, wage garnishment, etc.
- Will filing toll a Collection Statute Expiration Date (CSED) about to expire?
 - > The IRS has 10 years from the date of assessment to collect the tax.
 - > The date the statute runs on collecting the tax is commonly referred to as the CSED.
 - Bankruptcy tolls the CSED by the time in bankruptcy plus six months.
 - Other items that may extend the CSED:
 - Judgment/Litigation
 - Offers in Compromise
 - Collection Due Process
 - Installment Agreement

Georgia Dept. of Revenue 2015 Active Bankruptcy Cases

	Ch.II	Ch. 12	Ch. 13	Ch. 7	Ch. 7 No Asset	Grand Total
Corporation	70			15	34	119
Fiduciary	I					1
Individual	29	19	14,673	39	4,089	18,849
LLC	33	I		6	31	71
Partnership	7	I		3	3	14
Subchapter S Corp.	27	I		6	15	49
Grand Total	167	22	14,673	69	4,172	19,103

Tax Related Exceptions to the Automatic Stay

- Exceptions (II USCS § 362(b)(9))
 - Tax audit
 - Notice of tax deficiency
 - Demand for tax returns
 - Tax assessment and issuance of a notice and demand for payment
 - Pre-petition income tax refund offset against pre-petition income tax liability (§ 362(b)(26))

Georgia Dept. of Revenue <u>Proof of Claim</u>

- Depending on available resources, the Department tries to file proofs of claim within 90 days of petition date.
- If debtor's counsel has issues or questions regarding proofs of claim or other bankruptcy matters/motions, contact the Department directly, and if possible, prior to filing motion or objection.
- bankruptcy.notices@dor.ga.gov

Georgia Dept. of Revenue <u>Proof of Claim</u>

- > The Department does not file proofs of claim for non-filed tax period(s).
 - If other tax liability exists, then a note is added to the claim regarding non-filed period(s).
- > The Department does not generally file proofs of claim for minimal amounts.
 - Debtor's counsel may file a proof of claim on the Department's behalf.

Georgia Dept. of Revenue Contact information

- Preferred Address:
 - □ Georgia Department of Revenue
 - □ Compliance Division
 - □ ARCS Bankruptcy
 - □ 1800 Century Blvd NE, Suite 9100
 - Atlanta, GA 30345-3205
- Email: bankruptcy.notices@dor.ga.gov
 - $\hfill\square$ Emails usually returned by next business day
- Phone: (404) 417-6543

Statutory Interest Rate

- O.C.G.A. § 48-2-40 was amended in 2016, effective July 1, 2016
- Old Law: 12% per year or "at the rate of I percent per month"
- New Law:
 - Except as otherwise expressly provided by law, taxes owed the state or any local taxing jurisdiction shall bear interest at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January I of each calendar year. Interest shall begin to accrue from the date the tax is due until the date the tax is paid. For the purposes of this Code section, any period of less than one month shall be considered to be one month. This Code section shall also apply to alcoholic beverage taxes.
- > 2017 Interest Rate: 6.75% per year

II USCS § I328(a)(2) (non-hardship discharge)

... [a]s soon as practicable after completion by the debtor of all payments under the plan ..., the court shall grant the debtor a discharge of all debts provided for by the plan ... except any debt of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), ... of section 523(a)....

Chapter 7 Discharge

II USCS § 727

(a)(1) The court shall grant the debtor discharge, unless the debtor is not an individual.

(b) Except as provided in 11 USCS § 523, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief

II USCS § 523

A discharge ... does not discharge an individual debtor from any debt for a tax ...

of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

II USCS § 523

A discharge ... does not discharge an individual debtor from any debt 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....

Exceptions to Discharge

II USCS § 523

A discharge ... does not discharge an individual debtor from any debt for a tax ...

with respect to which a return, or equivalent report or notice, if required was not filed or given; or

was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition

In re Jones, 158 B.R. 535 (N.D.Ga. Bankr. 1993)

- Georgia law, O.C.G.A. § 48-7-82(e)(1), requires taxpayer/debtor to file an amended state tax return when the IRS reassesses/audits the taxpayer's/debtor's income upward for a particular tax year.
- State tax becomes non-dischargeable under II U.S.C. § 523(a)(I)(B)(i) when taxpayer/debtor fails to file an amended state tax return.

When a taxpayer's amount of net income for any year under this chapter as returned to the United States Department of the Treasury is changed or corrected by the commissioner of internal revenue or other officer of the United States of competent authority, the taxpayer, within 180 days after final determination of the changed or corrected net income, shall make a return to the commissioner of the changed or corrected income, and the commissioner shall make assessment or the taxpayer shall claim a refund based on the change or correction within one year from the date the return required by this paragraph is filed. If the taxpayer does not make the return reflecting the changed or corrected net income and the commissioner receives from the United States government or one of its agents a report reflecting the changed or corrected net income, the commissioner shall make assessment for taxes due based on the change or correction within five years from the date the report from the United States government or its agent is actually received.

Justice v. United States (In re Justice), 817 F.3d 738 (11th Cir. 2016)

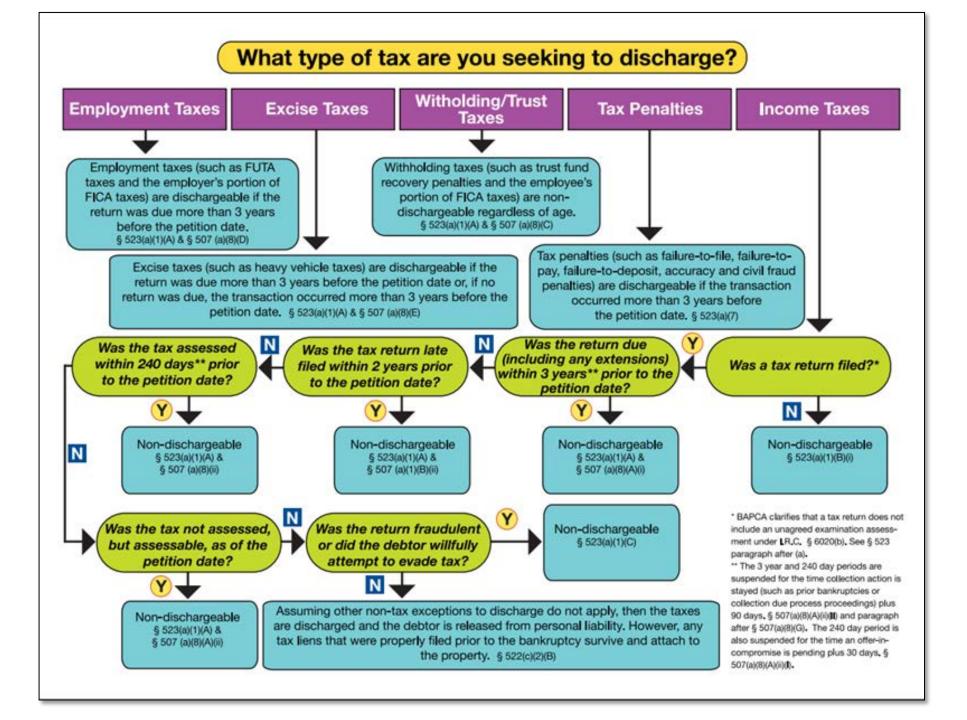
- In Justice, a Chapter 7 debtor sought a determination that the Form 1040's he filed many years after the deadline for filing the return, and after the IRS issued notices of deficiency, constituted returns.
- Issue: whether the Form 1040's that Justice belatedly filed constitute returns for purposes of 11 U.S.C. § 523.
- II U.S.C. § 523(a) provides that a debtor is not discharged from a tax debt with respect to which returns were not filed. The Code defines a return as "a return that satisfies the requirements of applicable nonbankruptcy law." II U.S.C. § 523(a).
- Tax law looks to the factors announced in Beard v. Comm'r of Internal Revenue, 82 T.C. 766, 777 (1984), aff'd sub nom., Beard v. C.I.R., 793 F.2d 129 (6th Cir. 1986), to determine whether a purported Form 1040 is a return.

Beard factors

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

Justice cont'd.

- The Court noted that only the fourth prong of the Beard test was at issue—that of whether delinquent filing of the returns represented an honest and reasonable attempt to satisfy the requirements of the tax law.
- The Eleventh Circuit joined the majority of federal appeals courts in holding that "where a taxpayer files many years late, without any justification at all, and only after the IRS has issued notices of deficiency and has assessed his tax liability, the taxpayer's behavior does not evince an honest and reasonable effort to satisfy the requirements of the tax law."
- "Late-filed Forms 1040 do not qualify as tax returns under the Beard test because they do not evince an honest and reasonable effort to comply with the tax law."



A Chapter 13 discharge generally has no impact on post-petition claims.

In re Hester, 63 B.R. 607, 609 (Bankr. E.D. Tenn. 1986).

Post-petition taxes survive Chapter 13 and Chapter 7 discharge.

- II U.S.C. § 524 only enjoins actions to collect on the personal liability of the debtor, but does not enjoin actions to renew or continue a lien's enforceability.
- ▶ In re McCorkle, 209 B.R. 773 (Bankr. M.D. Ga. 1997).

State and federal tax liens are **not** avoidable under § 522(f).

- Since Georgia or Federal tax liens are statutory liens and not judicial liens, they are not avoidable under § 522(f).
- In re Smith, No. 93-20164 slip op. (Bankr. N.D. Ga. Sept. 8, 1993);
 In re King, No. 92-41162 slip op. (Bankr. N.D. Ga. Aug. 22, 1995).

- State & federal tax liens are **not** voidable preferences under § 547(b).
- A tax lien is a statutory lien, that the trustee cannot avoid as a preference as the filing of the notice or recordation of the tax lien precludes the finding of a preference.
- In re Carolina Resort Motels, Inc., 51 B.R. 447 (Bankr. S.C. July 26, 1985).



- The opinions expressed herein are those of the presenters and do not necessarily represent the opinions of the IRS, the Georgia Attorney General's Office, and other entities of the United States and State of Georgia.
- The Georgia Attorney General's Office does not set policy for Agencies of the State of Georgia, including but not limited to, the Georgia Department of Revenue.