

Client Newsletter

Dibble & Miller, P.C.

June 1, 2013 – No 070

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D&M^{P.C.}

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Is Bankruptcy An Option to Discharge Taxes Due?

There is a common misconception that taxes due to the Internal Revenue Service or New York State Department of Taxation and Finance cannot be discharged in bankruptcy. Although the rules for how taxes are handled in a bankruptcy are very complex, nevertheless, in the proper circumstances, a bankruptcy filing may work to discharge both taxes and penalties due to federal and state taxing authorities.

Must I be Insolvent to File for Bankruptcy?

When you file for bankruptcy, you are declaring that you are not solvent, meaning that you cannot continue to pay your outstanding debts when they are due. Frequently, the largest debt that places an individual into a situation of insolvency is a tax assessment filed by either the Internal Revenue Service or the New York State Tax Department.

How Did I Fall so Far Behind on My Taxes?

It is rarely the intent of an individual debtor to place themselves in a situation where they have a significant tax debt; rather it is a combination of several unanticipated factors that combine to cause this insolvency.

Many individuals will remain current on their day to day expenses, however in order to do so, they may fail to have sufficient withholding taken from their wages or fail to make estimated tax payments on a quarterly basis. Other times a taxpayer may be audited by either the IRS or New York State, and as a result of that audit may be assessed a significant additional tax. Still other taxpayers may have attempted to start their own business, and failed due to difficult economic times, after taking on substantial business debt and delayed or failed to pay business related taxes.

Although there are a myriad of reasons to fall behind on taxes due, the result is much more predictable. Unpaid taxes and possible collection activity cause stress, both personal and marital, damages one's credit rating, and often results in wage garnishments and/or tax liens filed against one's real and/or personal property.

When Should I Seek Assistance?

If you have unpaid taxes, you are likely under a great deal of stress. You may or may not have discussed the tax situation with your spouse or significant other. You may or may not presently be subject to collection activity from the taxing authorities. However, at some point, you should seek the

services of a tax attorney to assist you with a resolution of this matter. Until such time as tax matters are resolved, interest and penalties continue to accrue, notices continue to be issued, some with important deadlines, which if missed, could negatively impact your rights.

The sooner you seek assistance, the sooner you can get your life, both financial and personal, back in order and the greater the likelihood that lien filings may be prevented.

What Can Be Discharged?

In many instances it may be possible to fully discharge tax liabilities in a Chapter 7 bankruptcy filing. Taxes are considered non-consumer debt. If the majority of your debt is non-consumer debt, the "means test," a tool used by the courts to determine if a debtor has or should have disposable income, does not apply. The means test, if it did apply, could force a debtor to file a Chapter 13, rather than a Chapter 7, bankruptcy. In a Chapter 13 bankruptcy, you have to pay certain debts over time.

Although some taxes may be fully dischargeable, it is often the case that a portion of the tax debt may be non-dischargeable. In those instances, it may be possible for a debtor to enter into a repayment schedule by filing a Chapter 13 bankruptcy petition. A repayment schedule under a Chapter 13 bankruptcy filing allows for repayment of the non-dischargeable tax with no additional interest accruing during the repayment period, provided the Chapter 13 Plan is completed.

How Can I Tell if My Taxes Are Dischargeable?

The dischargeability of any tax depends on many variables including, but not limited to, the following:

- The type of tax due i.e. income tax, sales tax, withholding tax, etc.;
- Whether a tax return was filed by the taxpayer or the tax was assessed by the IRS or New York State without a return;
- The due date of the tax return;
- The filing date of the tax return;
- Whether the filed tax return was accepted by the IRS or NYS tax authorities; and
- Whether additional tax was imposed either at audit or upon the taxing authority determining that there was unreported income, e.g., the IRS received 1099 forms which are not included in the taxable income stated on the return.

Depending on the answers to the above questions, the general rule is that income taxes could be dischargeable. Sales taxes and employee payroll taxes owed by an employer are not usually dischargeable.

Is Bankruptcy the Right Path for Me?

Although filing bankruptcy is not always the appropriate vehicle to handle delinquent taxes, it is a very important tool in the arsenal. These are legal issues and you should consult with Dibble & Miller, P.C. which has a skilled and experienced tax staff, including IRS Enrolled Agents and a Tax Attorney available for the consultation. There are several other possibilities including an offer in compromise, a simple repayment schedule, or a request for a currently not collectible status. It is very important that you meet with a tax attorney to determine the best avenue for your situation. At Dibble & Miller, P.C., we deal with these issues and with the IRS and the New York State Tax Department on a daily basis, and can often reach a favorable resolution of a client's tax problem. The sooner you bring the problem to us, the better the chances for a positive outcome.

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WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney; Medicaid and Estate Planning; and Estate Administration*
- **Family Law** — *Divorce, Custody, Visitation, Child Support, Paternity, Pre-Nuptial Agreements, Separation Agreements, and Family Mediation*
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- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
 - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

*** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION ***