

For Whom the Tax Tolls: Significant Events That Extend IRS Collection Rights

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Michael and Zachary Fried outline the events that can extend or toll statutes of limitation on IRS collection actions and analyze the holding of the U.S. Supreme Court in *C.P. Young* and subsequent IRS pronouncements.

Introduction

The typical small business owner or professional walks into our office owing delinquent taxes for a variety of different years. Often, the liabilities are a mixture of unpaid personal income taxes, including penalties and interest, and trust fund recovery penalties, assessed against the client in connection with the failure of his or her business to pay federal income taxes, Social Security and Medicare taxes withheld from its employees' wages.¹ A number of solutions may be available to solve the problems, and selecting the best strategy will often depend on the various dates that the taxpayer's tax returns were due, when they were filed and when the delinquent taxes in question were assessed.

Statute of Limitation on Collection

Pursuant to Code Sec. 6502, the statutory period during which

the IRS is permitted to collect a delinquent income tax or trust fund recovery penalty is 10 years from the date of its assessment.² However, this 10-year collection statute of limitations can be extended for additional periods by a number of different events. For example, the filing of an offer-in-compromise³ or bankruptcy,⁴ an application for a Taxpayer Assistance Order,⁵ a taxpayer's absence from the country for more than six months,⁶ a voluntary waiver of the statute of limitations,⁷ a Collection due process appeal (appeal of the filing of a lien filed by the IRS pursuant to Code Section 6320⁸ or a

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proposed levy made pursuant to Code Section 6330⁹) will all result in extending the collection statute of limitations, each for different extension, or tolling, periods. The date on which the 10-year IRS collection period ends, as extended by these various tolling events, is referred to as the collection statute expiration date (CSED). Many times, particularly in connection with the collection of a trust fund recovery penalty, the IRS will engage in aggressive collection activity close to the CSED.¹⁰ It is important to note that trust fund recovery penalties are not dischargeable in a bankruptcy,¹¹ and expiration of the collection statute of limitations will sometimes be the only viable solution in connection with the client's trust fund recovery penalty problem.

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Discharge of Taxes in Bankruptcy

As opposed to the trust fund recovery penalty, however, individual income taxes are often dischargeable in either a Chapter 7 bankruptcy (sometimes referred to as a "straight bankruptcy") or a Chapter 13 bankruptcy (an individual payment plan bankruptcy), or a combination of the two (the serial filing of a Chapter 7 and a Chapter 13 is often called a "Chapter 20"). Use of these bankruptcy "tools" will often be the most efficient, most predictable and least costly alternative to solve or mitigate delinquent

income tax liabilities. Although slightly different timing rules apply to the ability to discharge a tax in a Chapter 7 versus a Chapter 13 bankruptcy, the ability to discharge a tax in bankruptcy, and selection of the proper bankruptcy chapter, is primarily determined by four dates:

- The date on which the taxpayer's return was due for the year of the delinquent tax¹²
- The date the taxpayer filed the applicable return¹³
- The date the tax was assessed by the IRS¹⁴
- The proximity of the foregoing three dates to the taxpayer's bankruptcy case filing date

These time requirements are found in the Bankruptcy Code.¹⁵

The bankruptcy discharge of a personal income tax liability is governed by the lapse of certain time periods measured from the taxpayer's tax return due date, filing date or tax assessment date, until

the date of the taxpayer's bankruptcy filing. Thus, these periods can be thought of as three separate statute of limitations periods governing the ability to discharge a delinquent tax in bankruptcy. Once these periods have expired, a delinquent tax will convert from a priority¹⁶ (nondischargeable) tax to a nonpriority (dischargeable) tax that may be abated in either a Chapter 7 or Chapter 13 bankruptcy case. In Chapter 7, an income tax can be discharged (subject to certain bad conduct rules)¹⁷ if all of the following time periods have expired:

1. The taxpayer's return was due (including all extensions) more than three years before

the bankruptcy filing¹⁸ (the three-year look-back rule).

2. The return was filed more than two years before the bankruptcy filing¹⁹ (the two-year filing rule).
3. The tax was actually assessed more than 240 days before the bankruptcy filing²⁰ (the 240-day assessment rule).

In a Chapter 13 case, only the three-year look-back rule (tax return due date) and the 240-day assessment rule apply to determine if the tax can be discharged for less than full payment, not the two-year filing rule (return filing date). In a Chapter 13 case, the taxpayer's return for the applicable tax year must have been due more than three years before the bankruptcy filing, and the tax to be discharged must not have been assessed within the 240-day period prior to the Chapter 13 case filing; however, there is no requirement that any tax return has been actually filed, or that the tax was assessed, before the bankruptcy filing in order for the delinquent tax to be eligible for discharge in a Chapter 13 case.

There are two significant advantages of Chapter 13 in connection with a tax discharge case: (1) the bad conduct rules do not apply,²¹ and a tax can be discharged in a Chapter 13 case even if the taxpayer engaged in fraud or a willful attempt to evade payment of the tax; and (2) the two-year filing rule is not applicable. In Chapter 13, the taxpayer's return can be filed at any time, e.g., the day before or even the day after, the taxpayer files for Chapter 13 relief. There are only two timing requirements to discharge a tax in Chapter 13: (1) the taxpayer's return was due more than three years prior to the bankruptcy filing; and (2) the tax was not assessed within the 240-

day window prior to the Chapter 13 filing. The 240-day assessment rule will be satisfied if the tax to be discharged was assessed either more than 240 days prior to the bankruptcy or the assessment occurred after the bankruptcy case was filed. In either case, assessment occurred outside of the window beginning 240 days before the bankruptcy filing and ending on the date of the filing.

Akin to the statute of limitations for collection, the taxpayer's right to discharge a tax in bankruptcy, whether in a Chapter 7 or Chapter 13 case, and the IRS's right to continue collection of a tax after bankruptcy, are governed by the lapse of time; the running of these bankruptcy discharge time periods can be extended, or tolled, by many of the same events that toll the running of the collection statute of limitations. For example, a prior bankruptcy stops the clock, or tolls, the running of the two-year filing and three-year look back periods²²; an offer in compromise will often, but not always, toll the running of the 240-day assessment period²³; and the collection due process appeal of a proposed assessment will toll the commencement, and hence, the running of the 240-day period.²⁴

Substantial amount of litigation and attention has recently been focused on the events that toll or extend these bankruptcy time periods, and often, the results have been favorable to the taxpayer.²⁵ However, the various time and limitation periods controlling the collection statute expiration date and the ability to discharge a tax in bankruptcy, and the possible occurrence of events that may toll the running of these limitation periods, are among the most important considerations in planning for and implementing strategies

to solve delinquent tax problems. The remainder of this article will focus on these limitation periods and the most significant events that toll their expiration.

Hypothetical Client

Recently, Dr. Ron Delinquent, a prominent local ophthalmologist, was referred to our office in connection with IRS collection activity for taxes owed for the period 1987 to 2000. After 2000, Dr. Delinquent, in his infinite wisdom, *sua sponte* spontaneously began to file returns and pay taxes in a timely manner. At the time of our first meeting on September 15, 2004, Dr. Delinquent's tax obligations totaled \$1.5 million, including income tax liabilities for all years 1987 through 2000, and trust fund recovery penalties ("trust fund taxes") assessed in 1989 as the result of the failure of his professional corporation to pay taxes withheld from employees' salaries. At the time of our meeting, Dr. Delinquent's personal bank account had been levied by the IRS, and he was having trouble making his mortgage payments.

Obtaining accurate information about the timing of the various assessments, return filing and due dates, and the intermittent activity of the client intended to ameliorate IRS collection procedures was crucial to determining the best strategy to solve the client's problems. Since Dr. Delinquent "recalled" that the trust fund taxes were assessed against him in 1988, it appeared that the collection statute of limitations had expired for the trust fund taxes. It also appeared that the collection statute of limitations would bar collection of the taxpayer's income tax liabilities for the delinquencies attributable to tax years 1987 to

1993. However, Dr. Delinquent, like most taxpayers facing IRS collection pressure, suffered from a lack of clarity concerning the filing and assessment of the taxes in question and could not accurately remember prior actions taken personally and through his advisors to solve his tax problems. Accordingly, our first step was to obtain tax transcripts for all years and all taxes owed.

Examination of the client's tax transcripts revealed the following facts:

- The pending trust fund taxes were assessed on July 15, 1989, and the outstanding balance of these taxes totaled \$100,000 at the time the transcripts were prepared by the IRS.
- The other delinquency balance of \$1.4 million was for income tax liabilities for the years 1987 to 2000.
- On May 1, 1994, the client filed a bankruptcy case that was not terminated until June 24, 1997.
- On December 9, 1998, the client filed an offer in compromise for the trust fund taxes and all other taxes owed for 1987 through 1997.
- The taxpayer's offer in compromise was not rejected by the IRS until December 9, 2003, five years after it was filed.
- Dr. Delinquent filed his 1999 and 2000 tax returns on March 15, 2002.
- On April 29, 2002, the IRS assessed a liability of \$10,000 for 1999 and a liability of \$25,000 for 2000.
- The transcripts contained no indication of any civil fraud penalty or problem.

Remarkably, Dr. Delinquent had very little recollection of the events shown on his the transcripts.

Collection Statute Expiration

It was apparent from an examination of the tax transcripts that the collection statute of limitations had not expired for either the trust fund taxes or for any of the other delinquent tax liabilities. Although the trust fund taxes were assessed on July 15, 1989, two significant events resulted in extending the collection statute expiration date for the 1989 trust fund taxes to October 8, 2007. Likewise, the collection statute of limitations

1997. The offer in compromise was not terminated until December 9, 2003, exactly five years, or 1,825 days later. The collection statute of limitations for all liabilities covered by Dr. Delinquent's offer in compromise was tolled for the entire 1,825-day period of the offer, plus an additional 30 days thereafter.²⁸ As a result of the taxpayer's serial bankruptcy and offer in compromise filings, the original July 15, 1999, trust fund tax collection statute expiration date was extended for 3,005 days (from July 15, 1999, to August 8, 2007). The collection statute expiration

date for the non-dischargeable trust fund taxes remained more than three years into the future. The extended tolling of the collection statute expiration date caused by the taxpayer's consecutive

bankruptcy and offer in compromise applied to almost all of the delinquent tax liabilities.

Bankruptcy Solutions and Tolling Issues

As a result of the August 8, 2007, collection statute expiration date for the nondischargeable (infinitely "priority") trust fund taxes (and most of his other tax liabilities) it was necessary to devise a strategy enabling Dr. Delinquent to apply his limited resources to payment of the trust fund tax, while substantially reducing or eliminating his other tax liabilities. Accordingly, we turned our attention to the possibility of

discharging the nontrust fund tax liabilities in a Chapter 7 or 13 bankruptcy, or a combination of the two. This strategy required that we examine the impact of the taxpayer's various activities on the running of the applicable bankruptcy discharge time periods—the three-year look back period, the two-year filing period and the 240-day assessment period.

1998, 1999 and 2000 Tax Liabilities

We began by examining the bankruptcy timing rules in connection with the client's 1998, 1999 and 2000 tax liabilities. The 1998 tax return was filed on October 15, 1999, and the tax owed for this period was nominal. The 1999 and 2000 tax returns were filed on March 15, 2002, and on April 29, 2002, the taxpayer was assessed a liability of \$10,000 for 1999, and a liability of \$25,000 for 2000. The taxpayer's liabilities for 1998, 1999 and 2000 were not included in his recently terminated offer in compromise. Since an offer in compromise only tolls the bankruptcy time periods for the taxes included in it,²⁹ the three-year look back, the two-year filing and the 240-day assessment periods were not tolled for Dr. Delinquent's 1998, 1999 and 2000 tax liabilities (despite the fact that the offer in compromise for his other tax liabilities was still pending when the 1998, 1999 and 2000 taxes were assessed).

Since the taxpayer's 1998, 1999 and 2000 tax liabilities were assessed after the client's bankruptcy was terminated in 1997 and none were included in his December 1998 offer in compromise, no tolling events applied to the tax

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for Dr. Delinquent's other tax liabilities was extended for a significant time period by the same two events.

Dr. Delinquent's 1994 bankruptcy case was filed on May 1, 1994, and terminated on June 24, 1997, a total of 1,150 days. During the entire 1,150-day bankruptcy case, the clock stopped on the running of the collection statute of limitations for all delinquent taxes owed by the taxpayer.²⁶ It is now settled law that a bankruptcy tolls the collection statute of limitations for the full period of the bankruptcy, but for no additional period.²⁷ In addition to his bankruptcy, the client filed an offer in compromise on December 9, 1998, covering the trust fund taxes and all income taxes owed for 1987 through

liabilities for those years. Accordingly, it seemed as if a straight forward calculation of the three-year look back (return due date), the two-year filing and the 240-day assessment periods would provide the answer to whether the 1998, 1999 and 2000 tax liabilities were eligible for Chapter 7 or Chapter 13 discharge. We were correct about our assumptions concerning the 1998 and 1999 tax liabilities, but wrong about the year 2000 assumptions.

Examining the three bankruptcy time periods in connection with the taxpayer's 1998 and 1999 liabilities proved simple. Taking into account all filing extensions, the tax returns for 1998 and 1999 were both due more than three years ago, satisfying the three-year look-back period. Additionally, the tax returns for these two years were both filed more than two years ago, and the taxes for these years were both assessed more than 240 days ago. Thus, the three-year look-back period, two-year filing period and 240-day assessment period had all expired for Dr. Delinquent's 1998 and 1999 tax liabilities, making them eligible for discharge in a Chapter 7 or Chapter 13 bankruptcy.

However, the pending 2000 liability was a bit more troublesome. The client wanted us to file a bankruptcy immediately to release the levy on his bank account and end other aggressive IRS collection activity. Although we were sure that the 240-day assessment and two-year filing periods had expired, we were concerned about the three-year look-back period applicable to both a Chapter 7 and a Chapter 13 discharge. The 2000 tax return was filed more than two years ago, thereby satisfying the two-year filing rule, and the related

tax liability was assessed more than 240 days earlier, satisfying the 240-day assessment rule. However, compliance with the three-year look-back rule was questionable. The taxpayer's request to extend the due date of his 2000 tax return from April 15, 2001, to October 15, 2001, was denied by the IRS. Therefore, we were hopeful that the original April 15, 2001, due date would apply to our calculation and that the taxpayer's liability for 2000 would qualify for discharge under the three-year look back rule. However, in reviewing case law, we discovered a problem. Although the taxpayer's extension request was denied by the IRS, the cases indicated that taxpayers cannot rely on the original due date for their tax return, April 15, but rather must use the extended due date shown in their extension requests (even if denied by the IRS) for purposes of calculating the three-year look back period.³⁰ Since our client had requested an extension of the due date for his 2000 tax return to October 15, 2001, the expiration of the three-year look back period in connection with his 2000 tax return would not occur until October 15, 2004, a date remaining one month in the future. For the next 30 days, this problem would disqualify Dr. Delinquent's 2000 tax liability from discharge in either a Chapter 7 or Chapter 13 bankruptcy.

1997 Tax Liability

Working backwards, we turned our attention to the dischargeability of the taxpayer's \$100,000 1997 income tax liability. The 1997 tax return was filed on October 15, 1998, the last available due date for filing, and related tax

was assessed on November 30, 1998. All of these events occurred after, and were unaffected by, the client's previous bankruptcy case. However, assessment of the 1997 tax liability occurred before December 9, 1998, and the 1997 tax liability was included in Dr. Delinquent's offer in compromise. Did the offer in compromise toll any of the three bankruptcy discharge time periods for this tax year?

Two Hundred and Forty-Day Assessment Period

Although tolling of the 240-day period is unsettled if an offer in compromise is made prior to the start of the 240-day assessment period,³¹ Bankruptcy Code Section 507(a)(8)(A)(ii)³² requires that an offer in compromise stops the clock on the running of the 240-day assessment period if the offer in compromise is made during the 240-day period. In the case of Dr. Delinquent's 1997 tax liability, assessment of the 1997 tax liability and commencement of the 240-day assessment period occurred just nine days prior to the day the taxpayer's offer in compromise was accepted for processing by the IRS. Pursuant to Bankruptcy Code Section 507(a)(8)(A)(ii), the 240-day assessment period was tolled for the entire time the offer was pending, and did not again begin running until the offer in compromise was rejected on December 9, 2003.

Fortunately, by September 15, 2004, the date of our first appointment with Dr. Delinquent, 258 days had expired since the December 9, 2003, offer rejection date. Despite the tolling effect of the offer in compromise,

the 240-day assessment period for the taxpayer's 1997 liability had already expired. Additionally, since termination of the offer in compromise occurred more than 240 days ago, the 240-day assessment period had expired for all of the taxpayer's pre-1997 tax liabilities.

Application of Three-Year Look Back Rule and Two-Year Filing Rule to 1997 Tax

Although we determined that the 240-day assessment period expired in connection with the 1997 tax liability, it remained necessary to determine whether the 1997 tax liability qualified for discharge pursuant to the three-year look back and the two-year filing rules. The taxpayer's 1997 tax return was due and filed on October 15, 1998, more than three years ago. Therefore, unless a tolling event stopped the running of the three-year look back period or the two-year filing period, the 1997

after his prior bankruptcy was terminated, and this prior bankruptcy did not affect the expiration of the two-year or three-year time periods for this tax year. However, the 1997 tax liability was included in the taxpayer's offer in compromise. If the offer in compromise tolled the running of the three-year look back and two-year filing periods, Dr. Delinquent's 1997 tax liability would not qualify for discharge under either Chapter 7 or 13. Since the due date and filing date for the 1997 tax preceded the commencement of the offer in compromise by 55 days, and the offer in compromise was terminated for only 258 days by the date of our first appointment with the client, the three-year look back and two-year filing periods would be 313 days old if tolled during the pendency of the offer in compromise, far short of the ages necessary to qualify for either a Chapter 7 or 13 discharge.

LTR 200404049

Prior to the IRS Restructuring & Reform Act of 1998³³ (RRA), the IRS was not prohibited from pursuing collection activity during the pendency of an offer in compromise. Hence, under pre-RRA law, there was no statutory or equitable basis for tolling the

three-year look back period or the two-year filing period during the pendency of an offer in compromise. However, the RRA changed the landscape. Pursuant to the RRA, after December 31, 1999,

the IRS is prohibited from engaging in collection activity once an offer in compromise is accepted for processing.³⁴ Accordingly, after December 31, 1999, commentators have suggested that the IRS may seek to impose an equitable tolling period on the running of the three-year look back period and the two-year filing period during the pendency of an offer in compromise.³⁵

Before January 28, 2004, the IRS provided no meaningful guidance on its position concerning the effect of an offer in compromise on the running of the three-year look-back or two-year filing periods. The Supreme Court, in the case of *C.P. Young*, held that a prior bankruptcy always tolls the three-year look-back period during the time of overlap.³⁶ Although *Young* was decided in connection with the affect of a prior bankruptcy on the three-year look-back period, not an offer in compromise, some commentators felt that the *Young* opinion would encourage the IRS to assert that the rationale of *Young* applied to the three-year look-back period and the two-year filing period during an offer in compromise, and that both of these time periods must be tolled during an offer's pendency.

Notwithstanding *Young*, on January 5, 2004, the IRS Chief Counsel issued CCA 200404049,³⁷ concluding that an offer in compromise does not toll the three-year look-back period. Although limited to the three-year look-back period, the rationale of the CCA also applies to the two-year filing period. Essentially, the IRS determined that equitable tolling of the three-year look-back period is inconsistent with the text of applicable Bankruptcy Code provisions. Furthermore, the IRS concluded that an asser-

Prior to Young, a majority of courts held that a prior bankruptcy tolled the running of the three-year look back period during the overlap of the look back period and the bankruptcy, plus an additional six months thereafter.

tax would qualify for discharge under all timing criteria necessary for either a Chapter 7 or Chapter 13 discharge.

As previously described, the taxpayer's 1997 tax liability arose

tion of equitable tolling would not be upheld by the courts because the IRS retained the ability to protect its claims during an offer in compromise by filing a notice of federal tax lien, using its right of setoff against an overpayment, and asserting levy rights in a jeopardy situation.

Application to 1997 Tax Liability

After reviewing CCA 200404049, we concluded that the three-year look-back and two-year filing periods related to our client's 1997 tax liability were not subject to any tolling period during the pendency of the offer in compromise, and that these periods had expired. Therefore, it was our judgment that this liability is eligible for discharge in a bankruptcy case. We conveyed this opinion to our client with the caveat that the law on the issue is not settled, and that a risk remains that the IRS or the courts could reach an opposite conclusion in the future.

1987 to 1996 Tax Liabilities

After concluding that the client's 1997 tax liability is eligible for Chapter 7 or Chapter 13 discharge, while acknowledging the still unsettled law concerning the tolling effect of an offer in compromise, we applied the principles of the *Young* case and CCA 200404049 to our evaluation of the eligibility of Dr. Delinquent's 1987–1996 tax liabilities for bankruptcy discharge. IRS collection of all the 1987–1996 tax liabilities was stayed during the client's 1994–1997 bankruptcy, and all of these liabilities were included

in the 1998 offer in compromise.

Prior to *Young*, a majority of courts held that a prior bankruptcy tolled the running of the three-year look-back period during the overlap of the look-back period and the bankruptcy, plus an additional six months thereafter.³⁸ In *Young*, the court held that the three-year look-back period of Bankruptcy Code Section 507(a)(8)(A)(i)³⁹ is a limitations period subject to equitable tolling, and that equitable tolling always applies when the IRS has been prevented by a prior bankruptcy from collecting. Therefore, the Court ruled that the three-year look-back period of Bankruptcy Code Section 507(a)(8)(A)(i) is always tolled during the pendency of a bankruptcy. Applying the rationale of *Young*, the IRS announced in a chief counsel notice⁴⁰ that it would no longer take the position that an additional six months must be added to the tolling period of Bankruptcy Code Section 507(a)(8)(A)(i), stating, "In light of the rationale of *Young*, the three-year look back period of B.C. §507(a)(8)(A)(i) should not be computed by including an additional six months, based on I.R.C. § 6503(h)." Equitable tolling would be applied only during the bankruptcy and not for any additional time thereafter.

Although *Young* and the chief counsel notice were limited to the three-year look-back period, it was our conclusion that the rationale contained in *Young* and the chief counsel notice also applies in the same way to the two-year filing period. Accordingly, we calculated both of these time periods for the 1987–1996 liabilities by tolling them during the taxpayer's bankruptcy but did not add any additional tolling time thereafter. Neither did we add any tolling

time to the two-year filing period or the three-year look-back period for the period of the taxpayer's offer in compromise pursuant to CCA 200404049. Based on our analysis, we concluded that all pending 1987–1996 income tax liabilities (other than the trust fund taxes) qualified for discharge under all three timing rules—the three-year look-back rule, the two-year filing rule and the 240-day assessment rule.

We advised our client of our opinion and, of course, we added the caveat that the law on the tolling of the three-year look-back and two-year filing periods during an offer in compromise remains unsettled, and that risk remains that the IRS or the courts could reach a different conclusion in the future. If tolling were applied to these time periods during the taxpayer's offer in compromise, in addition to the tolling time for his bankruptcy period, many of the 1987–1996 tax liabilities for 1987–1996 would not qualify under either the three-year look-back rule or the two-year filing rule.

Conclusion

Relying on our conclusions, we recommended the following strategy to Dr. Delinquent:

- File a Chapter 7 bankruptcy on October 16, 2004, seeking to discharge all of the client's nontrust fund tax liabilities.
- After receiving the Chapter 7 discharge, file a Chapter 13 case seeking to pay the remaining \$100,000 trust fund tax liability in a five-year Chapter 13 Plan.

The client accepted our recommendations, and we are currently preparing a Chapter

7 bankruptcy to be filed on the appropriate date. It is our expectation that implementation of our

strategy will reduce our client's tax liabilities by approximately 95 percent, and provide for pay-

ment of the remaining \$100,000 trust fund tax liability during his Chapter 13 case.

ENDNOTES

- ¹ Code Sec. 6672(a) provides, "Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to all other penalties provided by law, be liable to a penalty equal to the total amount evaded or not collected, or not accounted for and paid over." Code Sec. 7501(a) provides, "Whenever any person required to collect or withhold any internal revenue tax from any person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose."
- ² Code Sec. 6502(a)(1). Prior to 1990, the statute of limitations for collection was six years from the date of assessment, plus such suspended, extended or postponed period of time as, by law, may be applicable. The Revenue Reconciliation Act of 1990 (P.L. 101-508) extended the collection period to 10 years.
- ³ Code Sec. 6331(k); see Robert E. McKenzie, REPRESENTATION BEFORE THE COLLECTION DIVISION OF THE IRS (updated March 2004), at §3:9.
- ⁴ Code Sec. 6503(b).
- ⁵ Code Sec. 7811; see MORGAN D. KING, DISCHARGING TAXES IN BANKRUPTCY (2000 ed.), at §1; see also note 3, *supra*, at §3:9.
- ⁶ Code Sec. 6503(c).
- ⁷ Code Sec. 6502(a)(2)(A).
- ⁸ See note 3, *supra*, at §3:24.
- ⁹ *Id.*
- ¹⁰ See note 3, *supra*, at §3:12.
- ¹¹ 11 USC §523(a)(1)(A); 11 USC §507(a)(8)(C).
- ¹² 11 USC §507(a)(8)(A)(i).
- ¹³ 11 USC §523(a)(1)(B).
- ¹⁴ 11 USC §507(a)(8)(A)(ii).
- ¹⁵ 11 USC §§507(a)(8)(A)(i), 523(a)(1)(B) and 507(a)(8)(A)(ii).
- ¹⁶ 11 USC §§507(a)(8)(A)(i) and (ii), 523(a)(1)(B).
- ¹⁷ 11 USC §523(a)(1)(C).
- ¹⁸ 11 USC §507(a)(8)(A)(i).
- ¹⁹ 11 USC §523(a)(1)(B).
- ²⁰ 11 USC §507(a)(8)(A)(ii).
- ²¹ 11 USC §523 (Exceptions to Discharge) does not apply in Chapter 13 because 11 USC §1328, governing discharge in a Chapter 13 case, does not except from discharge any taxes under 11 USC §523. Therefore, the filing of a fraudulent return or a willful attempt to evade or defeat a tax exceptions to discharge found in 11 USC §523 does not apply to Chapter 13.
- ²² *C.P. Young*, Sct, 2002-1 USTC ¶ 50,257, 535 US 43, 122 Sct 1036; IRS Chief Counsel Notice, CC-2002-023, May 9, 2002.
- ²³ 11 USC §507(a)(8)(A)(ii).
- ²⁴ See note 3, *supra*, at §3:24.
- ²⁵ See CCA 200404049, Jan. 5, 2004; Chief Counsel Notice CC-20020023, *supra* note 22; see also *Young*, *supra* note 22.
- ²⁶ *Young*, *supra* note 22.
- ²⁷ *Id.*; see also Chief Counsel Notice CC-20020023, *supra* note 22.
- ²⁸ Code Sec. 6331(k); see note 3, *supra*, at §3:9.
- ²⁹ KING, *supra* note 5, at 1.8(c).
- ³⁰ *B.D. Hermann*, BC-DC Okla., 221 BR 944, BANKR. L. REP. ¶ 77,758 (1998); *J. Brustman*, BC-DC Calif., 217 BR 828 (1997). *Aff'd*, BAP-9, 99-1 USTC ¶ 50,348.
- ³¹ See *G.E. Aberl*, CA-6, 96-1 USTC ¶ 50,151, 78 F3d 241.
- ³² 11 USC §507(a)(8)(A)(ii).
- ³³ IRS Restructuring and Reform Act of 1998 (P.L. 105-206).
- ³⁴ Code Sec. 6331(k).
- ³⁵ The authors have attended a number of conferences and seminars in which the Supreme Court *Young* decision has been discussed. Many of the commentators and participants at these conferences and seminars have reached different conclusions concerning the application of equitable tolling principles to the three-year look-back period and the two-year filing period taking into account the suspension of the IRS right to levy during an offer in compromise.
- ³⁶ *Young*, *supra* note 22.
- ³⁷ CCA 200404049, *supra* note 25.
- ³⁸ See *W.J. Zecco*, BC-DC Mass., 97-2 USTC ¶ 50,910, 211 BR 109; *L. Tivaldo*, BC-DC Calif., 187 BR 673 (1995); *D.L. Brickley*, BAP-9, 87-1 USTC ¶ 9313, 70 BR 113, BANKR. L. REP. ¶ 71,703.
- ³⁹ 11 USC §507(a)(8)(A)(i).
- ⁴⁰ Chief Counsel Notice CC-20020023, *supra* note 22.

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