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MORGAN D. KING EDITOR

The King Law Letter

**NEWS – EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS
& CONSUMER PROTECTION ATTORNEYS**

LAW LETTER NO. 19 SEPT. 27 2016

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IMPORTANT PRODUCTS & EVENTS



Learn from the Guru of discharging taxes!

MORGAN KING'S WEBINAR
DISCHARGING
CALIFORNIA
TAXES

Friday Oct. 21 2016
2 hours

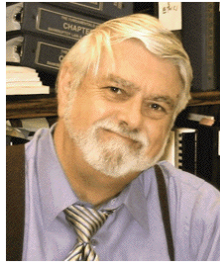
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[SEE INFO ABOUT KING'S 3 VOL. TAX PRACTICE LIBRARY](#)

Morgan King's

Tax Discharge Analysis



Morgan D. King
of the California Bar

Consulting & Mentoring

- Have clients with delinquent taxes?
- Are the taxes dischargeable?
- Does the tax transcript tell the whole story?
- Red-flags on the transcripts
- Has the client told you the whole story?
- If not dischargeable now, then when?
- Are there "sleeping assessment" flags?
- Stripping tax liens
- Can the liens be attacked?
- Pending offer-in-compromise?
- How about innocent spouse?
- McCoy rule or the Beard test?
- Navigating the "tolling" events
- Where does *equitable tolling* come in?
- Is there an "equivalent report or notice" issue?
- Is there a state "piggy-back" tax issue?
- Is the client's conduct "evasion"?
- State income tax issues?
- Sales & excise tax issues?

Morgan King asks ... How can I help you?



[Click to schedule a conference](#)

or call 925 829-6363 (Pacific time)



[SEE KING'S 3 VOL. TAX PRACTICE LIBRARY](#)

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NACBA NEWS



National Association of Consumer Bankruptcy Attorneys

NACBA's Summit at Sea - Members Only

October 7-10, 2016

[CLICK FOR MORE INFORMATION](#)

READ MORGAN KING'S ARTICLE

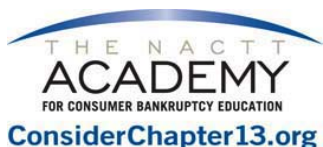
*Sales Tax Discharge Issues
In Bankruptcy*

AS APPEARED IN THE NACBA BANKRUPTCY JOURNAL
Summer 2016

[CLICK IMAGE TO VISIT THE NACBA JOURNAL](#)



NACBA JOURNAL



NACTT ACADEMY NEWS

Articles available on NACTT web page:

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Dan Pilla's

Dealing with IRS Problem Resolution

October 31 & November 1, 2016
Luxor Hotel & Casino in Las Vegas Nevada

\$595 fee includes all classroom sessions,
CE credits and lunch each day*

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**EXCERPT FROM
King's
DISCHARGING TAXES
In Consumer Bankruptcy Cases**

Book Release 2016 # 3
KingLawPublishing.com

KING'S DISCHARGING TAXES IN CONSUMER BANKRUPTCY CASES

PART 2: DISCHARGING TAXES IN CHAPTER 7

¶ 2.4(g)(10) Post-Petition audit & assessment

PART 7: TAX TRANSCRIPTS

¶ 7.10(b)(12) Sleeping Assessments

New: ¶ 2.4(g)(10) Sleeping Assessments

The term "sleeping assessment" is a phrase adopted by the author to identify several situations where the inattentive attorney and his client are blindsided by a new tax assessment coming soon after the petition is filed; if an additional tax is assessed postpetition, obviously the assessment has not been assessed more than 240 days before the petition is filed, and hence the assessed taxes are not discharged in the case.

The sleeping assessment rises in two different but similar contexts.

IRS AUDIT STARTED BUT NOT FINISHED

In some cases the debtor may appear in your office with taxes that are being audited, or not then being edited but the IRS still has some time on the 3-year statute of limitations in which to commence an audit (the statute commences on date the return is filed).

What may happen, then, is at the time you are looking at the tax history the IRS has started an audit but not completed it. If the bankruptcy is filed because the original taxes satisfy all the rules for discharge, then the audit is completed post-petition and assesses additional taxes, those taxes are not discharged.



A variation on that theme is, as said above, where the IRS has not even commenced an audit, but still has time in which to do so. If the bankruptcy is filed before the statute of limitations to audit or assess additional taxes has expired, then the IRS audits the taxpayer, additional tax liabilities are likely to be assessed and they would not be discharged.

STATE "PIGGY-BACK" TAXES

A sleeping assessment may also arise in connection with state income taxes. Where the IRS has assessed additional taxes pursuant to an audit, most if not all states require that the additional assessment be reported to the state so that the state can assess its additional taxes based on the IRS assessment.

The problem arises where the taxpayer has either not reported the audit results to the state, or may have reported them to the state without using the form prescribed by state tax statutes.

If the required form is a return or "equivalent" of a return, then the tax will probably not yet have been assessed. Once the state tax is assessed, it starts a new 240-day period for those taxes.

However, an argument can be made that if the form is deemed a return, then a new 3-year due date or deadline to file it will arise, and a new two-year period from date the return is filed.

This is an easy "trap" to miss. For one thing, although there are a dozen cases that hold that the required state form is the equivalent of a return and hence failure to file it renders the additional taxes nondischargeable, the author has not come across a case that addresses these additional time rules. Hence, all I can say is they may, or may not, apply.

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THE LAW & CASE HOTWIRE

HELD: POST ASSESSED STATE TAXES NOT DISCHARGEABLE DUE TO FAILURE TO SATISFY TIME RULES

COURT FOLLOWS THE McCOY RULE

[Boykin v. Miss Dept. Rev. \(BankrS.D.Miss 2016\)](#)

If the facts described in the published opinion in this case are accurate, it demonstrates, among other things, the debtor's (or debtor's lawyer's) seemingly total misunderstanding of the rules for discharge.

" ... the debtor alleges that these taxes are dischargeable in the Bankruptcy Case because "[s]aid taxes are more than three (3) years old, have not been assessed within the last 180 days[,] and tax returns were filed more than a year prior to the bankruptcy filing."

3 strikes and he's out!

Of course, the correct rules are, (1.) the due date for the tax (not simply "tax is more than three years old") must be over 3 years old; (2.) the tax must have been assessed over 240 days; (3.) the taxpayer must have filed his/her return more than 2 years prior to the petition filing.



This case is another "**sleeping assessment**" case in which the IRS assessed additional taxes pursuant to an audit, and the taxpayer was supposed to report it to the state taxing entity. The opinion is a convoluted treatment of the facts and the rules, and ultimately took the easy way out by apparently adopting the McCoy rule (i.e., a return that is filed late is not a valid return).

HELD: DEBTOR'S FAILURE TO FILE REQUIRED STATE "AMENDED RETURN" TO REPORT POST - IRS AUDIT ASSESSMENT IS A FAILURE TO FILE AN "EQUIVALENT REPORT."

[Berry v. Mass. \(Bankr.Mass 2016\)](#)

The taxes satisfied the time rules but - the debtor failed to file required 'amended return' hence tax is nondischargeable, *notwithstanding the original taxes ostensibly satisfied the three time rules*. The required form was "Form CA-6."

HELD: TAX PENALTIES DISCHARGEABLE IF SATISFY § 523(a)(7)(A) or (B) (event causing the

penalty is over 3 years old, or the underlying tax is dischargeable).

[In re McCarthy \(Bankr.Mass. 2016\)](#)

The opinion quotes *Burns v. United States* 887 F.2d 1541 (11th Cir. 1989):

"While the language of this subsection frames nondischargeable tax penalties as an exception to an exception, once the triple negative is taken into account the meaning of the provision gains clarity. A tax penalty is discharged if the tax to which it relates is discharged, (in the precise terms of the statute, not nondischargeable) or if the transaction or event giving rise to the penalty occurred more than three years prior to the filing of the bankruptcy petition. Since the statute uses the disjunctive, a tax penalty that does not qualify for discharge under one of the two aforementioned circumstances may still qualify under the other."

The MDOR argued that the penalties imposed were based on the novel theory that debtor's failure to file returns and pay the taxes timely, hence, these were "continuing violations," and the 3-year time period never expired because new time periods commenced every day.

The court disagreed, stating that Massachusetts state law defined the triggering events as discrete events that occurred one time on specific dates.

CAVEAT: This case appears to represent the theory that the respective state tax statutes may defined whether a triggering event is a one-time, discrete event, or a continuing event. If a continuing event, then theoretically the 3-year period required for discharge might never occur.

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

IRS Picks Private Debt Collection Contractors

Washington, D.C. (September 26, 2016)
By Michael Cohn

The Internal Revenue Service has chosen four private debt collection agencies to help collect unpaid tax debts as the IRS gears up to resurrect the controversial program.

The three agencies are CBE Group of Cedar Falls, Iowa, Conserve of Fairport, N.Y., Performant of Livermore, Calif., and Pioneer of Horseheads, N.Y. The IRS is required to revive the private debt collection program this year because of a provision in a highway funding bill that Congress passed last December. The program is expected to start up again next spring.

EDITOR'S NOTE: Don't be surprised when all kinds of scams appear claiming they are one of the approved collection agencies. And, keep in mind that the Fair Debt Collection Practice's Act applies to the designated collectors.

[CLICK FOR MORE STORY](#)



Research data files relating to Chapter 7 Trustee Final Reports and the USTP's Language Assistance Program are published for public use on the USTP Chapter 7 Trustee Final Reports page and on the Data.gov Web site.



A quick look at the U.S. Trustee's August 2016 audit report shows the top five errors or other mistakes:

1. Scheduled assets on Form 1 do not match petition / schedules
2. Repeat filings/ prior errors not cured
3. Inaccurate uniform transaction codes
4. Bank accounts not adequately reviewed
5. Asset values not adequately determined

[CLICK HERE FOR MORE STORY](#)

CFPB: One Million Complaints Handled and Counting

Slightly more than five years after opening its doors in July 2011, the Consumer Financial Protection Bureau (CFPB) has handled more than one million complaints.

The Bureau surpassed the one million complaint-handled milestone this month, according to a release announcing the September 2016 Monthly Complaint Report (Volume 15), published on Tuesday.

"Since opening our doors in 2011, we have handled over one million complaints from consumers about their problems with financial products and services," said CFPB Director Richard Cordray. "Not only have we achieved substantial relief for consumers, but hearing directly from consumers is fundamental to our mission. We can better protect all consumers because of what we learn from those who have submitted complaints and shared their experiences with us."

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ROOKER FELDMAN

DESPERATE CONSUMER BANKRUPTCY ATTORNEY

Rocky is in court and cross-examining the Trustee's witness. The witness's face had turned red and he was perspiring heavily.

Feldman: So, you admit she was coming around the mountain, but still insist she was not riding six white horses?

Witness: Well, uh, they looked more pink to me.

Pause: And I only counted five.

Feldman: So, you admit it was gone, but still insist it was not in the wind?

Witness: Well, uh ...

Feldman: And you claim it was high water, yet still refuse to admit it might



have been hell!

Witness (voice rising). That's my story, and I'm sticking to it!

Judge: Mr. Feldman, where are you going with this line of questions?

Rooker: Yes, your honor, I hope to prove . . .

Mable, sticking her head in the door: Mr. Feldman, wake up . . . the U.S. Trustee's office is on the phone. She says it could have been helter, but also possibly be skelter. And ...

Rooker, waking from his daydream ...

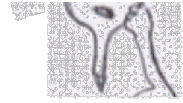
"Yes? And?"

He admits life is short, but still insists art is, too.

Big sigh: Okay, Mable, put the call through.

World without end.

Amen.



**DESPERATE
CONSUMER
BANKRUPTCY
ATTORNEY!**

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CONTACT

The King Law Letter is published by King Law Publishing (KingLawPublishing.com - formerly Kings-Press). It has three formats - the Bulletin (product & event announcements), the Law Letter (news and updates), and The TaxGram. King Law Publishing Box 2952 Dublin, CA. Morgan@morganking.com. 925 829-6460.



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