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LAW LETTER NO. 5 APRIL 19 2016

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## IMPORTANT PRODUCT ANNOUNCEMENTS



Release 2016 # 1

# Morgan King's *Discharging Taxes* in

# **Consumer Bankruptcy Cases** BOOK ONLY -

**PRICE \$ 175.95 + s&h**

CD and video course also available

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## **IMPORTANT TOPICS ADDRESSED**

- PART 1 - Discharging Taxes Under BACPA
- PART 2 - Discharge in Chapter 7
- PART 3 - Discharge in Chapter 13
- PART 4 - The Automatic Stay
- PART 5 - Litigating Tax Issues in Bankruptcy Court
- PART 6 - Tax Liens & Levies
- PART 7 - Using Transcripts
- Appendix

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

**By Morgan D. King, Esq.  
Of the California Bar**

[BOOK: DISCHARGING TAXES IN CONSUMER BANKRUPTCY CASES](#)

### **PART 7: TRANSCRIPTS**

#### **§ 7.10 The Account Transcript**

#### **§ 7.10(c) Some Common Mistakes to Avoid With Transcripts**

Mistakes are easy to make with respect to tolling events that stop the clock on the running of the § 507(a)(8) time periods. See § 2.9. However, there are other mistakes that can be made

in using transcripts.

## 1. When did the taxpayer file his/her tax return"

### i. "Tax Return Filed" date with code 150

Account transcripts begin the tax history with transaction code 150. The short English explanation with the code entry often states "Tax return filed and tax assessed." This is misleading. The Code 150 does not show the date the return was filed, only the date the original tax liability was assessed (typically based on a filed return).

The actual date the tax return was filed appears on the account transcript above code 150, typically with the words "Return due date or return received date - whichever is later." This will be the date when the taxpayer filed the return, or the date the IRS filed a substitute for return.

The attorney's reliance on the code 150 language "Tax return filed" to commence the running of the two-year period referenced at § 523(a)(1)(B), has been rejected by at least one court. *In re Gosciniak* (Bkrcty. S.D.IND 1994).



### ii. Taxable return filed - with code 595 or 599

The account transcript showing a code 595, with the English explanation "Referred to Examination - Requires a three digit closing code for IDRS input" may not mean the *taxpayer's* return was referred to examination. To determine if it refers to the taxpayer's return, cross-reference with the "closing codes" found in Section 11 of the IRS "Document 6209 - ADP and IDRS Information."

Code 599 with the English explanation stating "Return secured - requires a three digit closing code for IDRS input," suggests that a taxpayer filed, but it may not be the taxpayer's return ... it may be an IRS Substitute For Return" (SFR). The SFR by itself does not satisfy the 2-year rule prescribed at § 523(a)(1)(B). To identify whether the 599 is a taxpayer return, or an SFR, one must cross-reference with the "Closing Codes" found in Section 11 "Document 6209 - ADP and IDRS Information," § 8A Master File Codes (Transaction Codes). The 2015 release of this document is in the CD with this book, or on the Materials Page for the Academy course on this topic (DischargeTaxes.com).

**TIP:** When in doubt, call the IRS Priority Hotline, and/or request the IMFOLI transcript which typically contains the dates the taxpayer's returns were filed (listed on the IMFOLI as "Posted").

### iii. Amended return filed - with code 976 or 977

Where the transcript narrative started with an SFR, in many cases the taxpayer will get around to filing his/her tax returns. One of the issues about post-SFR tax returns is, are they valid tax returns? The courts are in conflict about this. See

## [LateTaxReturn.com](http://LateTaxReturn.com)

When the taxpayer files the late tax return, it may show up as a code 599. But it may also appear as Code 976 or 977, "Amended tax return." Typically, a post-SFR filed return appears as an "amended" return on the transcript, when it actually is the taxpayer's original 1040, filed late. A call to the IRS hotline will verify that it is the original return and not an amended return.

### **iv. Audit in progress - 420**

Where an audit has been started (shows on the transcript as code 420), and the audit is concluded (shows on the transcript as code 421) the IRS will at some point assess additional taxes (shown as either code 290 or code 300).

Where an audit is in progress - indicated by code 420, but not closed - which would be indicated by code 421 on the transcript ... there may be an *additional tax assessed* upon conclusion of the audit. The author calls this a "sleeping assessment."

That tax would of course not be discharged in the bankruptcy. Let the client decide whether to go forward with the bankruptcy filing and take his chances that the audit will not show additional taxes owed, or wait until the audit is concluded, the additional tax (if any) is assessed, and at least 181 days from date of assessment, to assure discharge of that tax.

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## **THE LAW & CASE HOTWIRE**

### **UNITED STATES TRUSTEE POSTS NEW MEANS TEST FIGURES**

Updated Administrative Expense Multipliers & IRS Data

April 15, 2016

Effective May 1 2016

The Administrative Expense Multipliers and IRS's National Standards for Allowable Living Expenses and Local Standards for Transportation and Housing and Utilities Expenses accessible through the "Means Testing Information" page have been updated. The revised multipliers and standards will apply to cases filed on or after May 1, 2016.

[CLICK FOR NEW MEANS TEST FIGURES](#)

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**HELD: DEBT COLLECTOR'S RECORDED MESSAGE DID NOT VIOLATE THE FDCA****Peak v. Professional Credit Service**

A debt collector did not violate the Fair Debt Collection Practices Act (FDCPA) by leaving a voicemail message on a cell phone shared by the debtor with her boyfriend because it was not reasonably foreseeable that he would hear the message, a federal district court in Oregon has ruled.



In *Peak v. Professional Credit Service*, the plaintiff had entered into a payment plan with the debt collector providing for monthly automatic debits to repay a medical bill. When the collector's agent contacted the plaintiff on her cell phone to update her debit card information, the plaintiff affirmed that the cell phone number the agent had used was the best number at which to reach her.

Upon attempting to reach the plaintiff at that number on the following day, one of the collector's agents heard the plaintiff's personalized greeting indicating the caller had reached the plaintiff who was unavailable and inviting the caller to leave a name and phone number. The agent left a message indicating that she had an important message from the defendant and that her message was "a call from a debt collector."

The message was subsequently heard by the plaintiff's boyfriend, who had cancelled his cell phone service and used the plaintiff's phone when it was available.

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**HELD: OPINION UNDERCUTS CHAPTER 11'S USEFULNESS FOR INDIVIDUAL DEBTORS**

2/19/2016

by [Hopkins & Carley](#)

In an important decision, the Ninth Circuit Court of Appeal has settled a disputed question among California and other western bankruptcy judges to the advantage of lenders and other creditors. The court held that the long-standing "absolute priority rule" still applies in individual Chapter 11 cases, notwithstanding the 2005 amendments to the Bankruptcy Code. Under this rule, an individual Chapter 11 debtor must pay every objecting unsecured creditor in full before the debtor can retain any pre-bankruptcy property under a plan of reorganization. Because few individual debtors have the resources to pay in full, the ruling effectively removes

Chapter 11 as a reorganization tool for individuals.

In *Zachary v. California Bank & Trust*, the Chapter 11 debtors proposed to pay the bank, their largest unsecured creditor, only \$5,000 on its claim of nearly \$2,000,000. Objecting to its proposed treatment under the plan, the bank argued that the plan violated the absolute priority rule.

Adopting what the court described as "the narrow" view, the court said, "Under this view an individual debtor may not cram down a plan that would permit the debtor to retain prepetition property that is not excluded from the estate by § 541, but may cram down a plan that permits the debtor to retain only postpetition property."

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## IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

### CONSUMERS AMASSED \$71B IN CREDIT CARD DEBT IN 2015

CNBC

Sarah Whitten | @sarahwhit10

#### COULD 2016 BE THE NEXT 2008 FOR CREDIT CARD DEBT?

It's possible, according to new research by [CardHub](#).

America's outstanding credit card debt surpassed estimates in 2015, climbing to \$917.7 billion, up from a forecast of \$900 billion, the credit card comparison website said on Monday.



In 2015, consumers amassed around \$71 billion in credit card debt, up 24 percent from the previous year. In the fourth quarter alone, consumers racked up \$52.4 billion in credit card debts, nearly the cumulative amount of debts owed to credit card companies in 2014, which reached \$57.4 billion.

[CLICK FOR MORE STORY](#)

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## **CONSUMER FINANCIAL PROTECTION BUREAU ISSUES ITS 2016 REPORT**

[From JDSUPRA Business Advisor](#)

In the background section of the report, the CFPB provides various statistics about the debt collection industry and consumer debt. The CFPB observes that there has been a significant increase in consumer FDCPA litigation, with 4,316 cases in 2007 and 11,697 cases in 2015.

According to the report's section on debt collection complaints, the CFPB handled approximately 85,200 complaints in 2015, which was 3,100 fewer than in 2014. (It is unclear whether the 2015 number includes payday loan complaints which, according to recent testimony given by Director Cordray to the House Financial Services Committee, were wrongly classified as debt collection complaints.) The most common complaint was about attempts to collect a debt that the consumer claimed was not owed and the second-most-common issue was communication tactics.

The report breaks down the types of complaints that consumers made in 2015:

- Continued attempts to collect debt not owed - 40%
- Communication tactics - 18%
- Disclosure verification of debt - 15%
- Taking or threatening an illegal action - 11%
- False statements or representation - 9%
- Improper contact or sharing information - 7%

[CLICK FOR FULL 2016 REPORT](#)

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## **U.S. TRUSTEE ISSUES 2015 REPORT ON TRUSTEE AUDITS**

In Fiscal Year 2015, the USTP designated 2,897 cases for audit. Of the cases designated for audit, 53 were dismissed before the case was assigned to an audit firm and 52 audits were still in process as of January 26, 2016. Of the remaining 2,792 cases, 1,114 were random audits and 1,678 were exception audits (audits of cases with income or expenditures above a statistical norm). Reports of Audit were filed in 2,634 of the completed audits, and at least one material misstatement was reported in 23 percent of these cases. There were 158 Reports of No Audit filed. A Report of No Audit is filed when a case selected for audit is closed without completion either because the debtor failed to provide sufficient information to complete the audit or the case was dismissed while the audit was in process.

[CLICK FOR TRUSTEE AUDIT REPORT](#)

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**CONTACT**

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