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From: Morgan King's Law Letter # 18 <morgan@morganking.com>
To: <milavetz@bankruptcybooks.com>
Cc:
Subject: The latest McCoy case (see Law & Case Hotwire)
Date: 8/24/2016
Time: 1:02 PM

Attachments: None

News for Tax, Bankruptcy, and Consumer Professionals

SEE also Rooker Feldman - Desperate Consumer Bankruptcy Lawyer

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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. 18 AUGUST 23 2016

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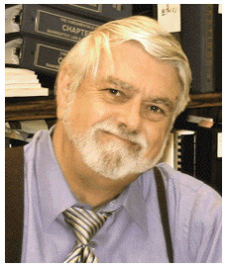
IMPORTANT PRODUCTS & EVENTS

Morgan King's

Tax Discharge



Morgan D. King of the California Bar

ANALYSIS
Consulting & Mentoring

Verbal & written opinions

- **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, the when?**
- **What is the effect of tax liens?**
- **Can the liens be stripped?**
- **Have you considered offer-in-compromise?**
- **How about innocent spouse?**
- **McCoy rule or Beard test?**
- **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 taxes**
- **Sales & excise tax issues?**

Morgan King is the "guru" of tax discharge in bankruptcy.
He has taught thousands of attorneys for 23 years.
The author of the "bible" of tax discharge -
Author - King's Discharging Taxes in Bankruptcy

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

Click to schedule a conference

or call 925 829-6363 (Pacific time)

SEE INFO ABOUT 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

DISCHARGING SALES & EXCISE TAKES IN BANKRUPTCY

NACBA BANKRUPTCY JOURNAL
CLICK TO VISIT THE NACBA JOURNAL
AND LOOK FOR KING'S ARTICLE ON PAGE 18

NACCT ACADEMY NEWS

Articles available on NACCT web page:

Bitcoins and Bankruptcy
Defining Fraud and Examining Discharge Exceptions
The Automatic Stay
Lost in Space - Navigating a Debtor Through a Chapter 13 Case
Firms Offer Cash to Help New Lawyers Pay Student Debt
Supreme Court Construes "Actual Fraud" Broadly

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7 Keys to Building a Referral-based Law Firm

DATE: Thursday, September 14, 2016, 3:00 PM EST / 12:00 PM PST

COST: FREE for NACBA Members

PRESENTER: Stephen Fairley, CEO, The Rainmaker Institute

REGISTER: HERE

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EXCERPT FROM

King's

DISHARGING 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(f) What is a "return"?

¶ 2.4(f)(8) Is a State "equivalent report" a "return"?

BAPCPA added the words "return or equivalent report or notice" to § 523(a)(1)(B)

In a nutshell, if a taxing entity requires that a document that is the "equivalent" of a return be filed to report taxes, the failure to file it may render the taxes that are suppose to be reported on it nondischargeable.

This issue has seldom arisen in connection with IRS taxes. However, it has been addressed in a fair number of cases involving state income taxes that are supposed to be reported to a state taxing entity for additional taxes assessed as a result of an IRS audit. Typically, if the IRS assesses additional taxes as a result of an audit, the state will require that the additional liability be reported to it so that it can assess additional state income taxes ... what is usually called the "piggy-back" tax.

About a dozen bankruptcy cases have endeavored to decide when the failure of the debtor to report the taxes to the state on a required form constitutes a failure to comply with § 523(a)(1)(B). Most of the cases have held that a failure to file the required state document is a failure to file a return or equivalent report or notice, resulting in non-discharge.

However, those same cases have not adequately addressed a threshold question, which is how do you determine that a document required by a state is the equivalent of a return?

Presumably, it is not identical to a return. The code text suggests that a document may not be a regular tax return, but may somehow be the "equivalent" of a return.

In order to answer that question, it would seem that first there should be some agreement on what constitutes a valid tax *return*. The obvious problem with that question is that the courts are not in agreement. For example, some jurisdictions follow the "McCoy" rule ... a return that is filed late is by definition not a return. Others apply the 4-pronged Beard test to determine whether the document is a valid return. Which of these governs whether something is or is not an "equivalent."

If a required document appears on its face to be equivalent, if filed past the date the state says it is to be filed is the McCoy rule applicable? What if the state, like the IRS, rejects the McCoy rule?

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THE LAW & CASE HOTWIRE

HELD: Bankruptcy court may approve modification of confirmed Chapter 13 plan to reflect debtor's post-confirmation increase in income

Although it is true, as the bankruptcy court pointed out, that no provision of the Bankruptcy Code expressly permits modification of a confirmed Chapter 13 plan when a change in the debtor's financial circumstances makes an increase in payments affordable, it does not follow that modification for this reason is forbidden. Indeed, the Code does not contain any provision that expressly identifies the grounds on which a trustee or an unsecured creditor may modify a plan. Because Congress did not provide express standards to govern modifications by trustees and unsecured creditors, it necessarily left the development of those standards to the courts.

And courts have long recognized that a trustee or an unsecured creditor may seek modification when the debtor's financial circumstances change after confirmation and result in the debtor's having the ability to pay more.

Thus, vacating In re Powers, 550 B.R. 414 (C.D. Ill., Sept. 30, 2015), which had affirmed In re Powers, 507 B.R. 262 (Bankr. C.D. Ill., March 28, 2014), the Court of Appeals held that a bankruptcy court may allow a modification to increase the debtor's payments if, in the court's discretion, it concludes that a change in the debtor's financial circumstances makes an increase in payments affordable. The court rejected the debtor's assertion that such a modification was permissible only when good faith "required" the modification.

***Germeraad v. Powers*, --- F.3d ----, 2016 WL 3443342 (7th Cir., June 23, 2016)**

HELD: Debtor's post-assessment tax return did not satisfy the "honest attempt" requirement of the "Beard test" - hence return was invalid for discharge purposes

Dicta: It was not necessary to address the "McCoy" issue because issue resolved based on Beard

Debtor with delinquent taxes did not file his tax returns timely. The IRS filed an SFR, followed up later with assessments based on other information. Debtor finally filed his returns, resulting in adjustments to the assessments. The IRS argued that the returns were not valid returns.

The court addressed the question in terms of the four "prongs" of Beard v. Comm'r IRS, which required, among other things, that the filings represented " ... a reasonable and honest attempt to comply with the requirements of tax law."

Based on, among other things, the fact that there was a 3-year delay between notice of the assessments and the taxpayer getting around to filing the returns, the court held that the returns failed the "reasonable and honest" prong of Beard.

The IRS argued that a post-assessment return was, as a matter of law, not a valid return. The court rejected that argument and essentilly held that the debtor could in some cases convince a court that the returns were valid based on the circumstances.

The court alluded to the McCoy issue but found it unnecessary to address because it found the matter disposed of with the Beard test.

***Earls v. United States*, 549 B.R. 871 (2016)**

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

NACBA & NCLC Laud CFPB for Stopping Illegal Practices by Student Loan Servicers & U.S. Dept. of Education Debt Collectors

NACBA & NCLC Laud CFPB for Stopping Illegal Practices by Student Loan Servicers & U.S. Dept. of Education Debt Collectors

Dan LaBert | Latest News | March 9, 2016

(BOSTON) Advocates at the National Consumer Law Center (NCLC) and the National Association of Consumer Bankruptcy Attorneys (NACBA) applauded the Consumer Financial Protection Bureau (CFPB) for taking action against debt collectors and servicers who took advantage of student loan borrowers by making illegal garnishment threats and using illegal automatic default provisions in loan contracts.

First, CFPB examiners found that one or more debt collectors threatened wage garnishment against federal student loan borrowers who were not eligible for garnishment. NCLC documented abuses by private collection agencies that the U.S. Department of Education hires to collect federal student loans in its 2014 report, Pounding Student Loan Borrowers:

The Heavy Costs Of The Government's Partnership With Debt Collection Agencies. "Unfortunately, we found that the contract between the Department of Education and its private collection agencies prioritize profit over borrower rights," says report co-author and National Consumer Law Center's Student Loan Borrower Assistance Project Director Persis Yu.

CLICK FOR MORE STORY

The South has the highest bankruptcy rates in the country

While the tide of bankruptcies in 2015 ebbed nationwide, bankruptcy rates are still high in some parts of the country

By Laura McMullen and Courtney Miller, NerdWallet

August 16, 2016

Personal bankruptcy filings in the U.S. last year fell to lows not seen since before the beginning of the Great Recession in 2007, according to the American Bankruptcy Institute. But while the tide of bankruptcies in 2015 ebbed nationwide, bankruptcy rates are still high in some parts of the country.

NerdWallet examined the most recent federal data to get a picture of bankruptcy filings at the state and county level.

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Louisiana Business Owners Convicted of Bankruptcy Fraud

From web site of National Association Association of Chapter 7 Trustees

SHREVEPORT, LA-Brian Scott Spurlin, 45, and Debra Fogleman Spurlin, 54, of Alexandria, Louisiana, were convicted by a federal jury of concealing assets during their bankruptcy and making a false statement under penalty of perjury. Additionally, Brian Spurlin was convicted on one count of bankruptcy fraud, United States Attorney Stephanie A Finley announced today.

According to trial testimony, Brian and Debra Spurlin filed for personal Chapter 7 bankruptcy in September 2005 and submitted various bankruptcy schedules and a statement of financial affairs, all signed as true and correct under penalty of perjury.

However, they failed to disclose real property as required, nor did they list all of the businesses they established and had an interest in, including Golden Choice Financial, LLC; Golden Athletics Financial Services, LLC; J&S Management and Marketing, Inc.; and International Oil, Gas and Mineral Management, Inc. No assets of these companies were listed, including the home in which the debtors lived and the vehicles they used.

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ROOKER FELDMAN

DESPERATE CONSUMER BANKRUPTCY ATTORNEY

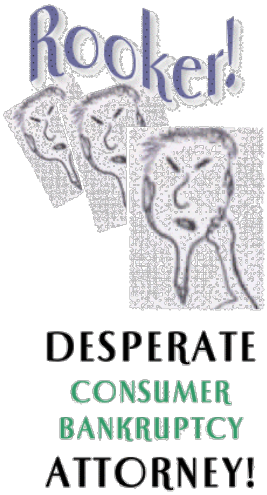
ROOKER'S MOJO

He has never lost fees in any of his bankruptcy cases.

His petition and schedules are lightly scented in mint and wintergreen ... even the ones filed electronically!

His hot front desk girl, Bling, has always dressed in an appropriate and professional manner, albeit braless from time to time.

He magically appears in all three courtrooms at once when he has matters calendared for the same date and time in each.



At Christmas time, he wears a Santa Claus costume to court, with little flashing lights on his bow-tie, and gets away with it.

Every court clerk (regardless of gender) has a crush on him.

In the Office of the U.S. Trustee, it is forbidden to mention his name in vain.

He sends his office staff out every Thanksgiving to deliver free turkeys and cranberry sauce to his clients, all of whom adore him.

At the conclusion of meetings of creditors all the debtors and the trustee carry him out on their shoulders, shouting Hossanna!

Mable, the office battlewagon, has never lost an argument with the IRS over the office payroll taxes.

His office rent has never once, ever never, been late.

Every time the trustee has moved to disgorge his fees, the judge has always ENHANCED his fees, instead.

The Court of Appeals has always understood exactly what the issues are, expressed gratitude for his erudite briefs, and ruled in his favor without bothering to hear the other side.

He takes 12 weeks off every year to go Whale Watching in the Sea of Cortez, and the judges automatically continue the matters when he doesn't show up in court.

His autobiography, *The Existential Whale Watcher*, is on the N.Y. Times top 10 book list.

He has never, ever never ... lost his Mojo!

He is, quite simply, The Most Interesting Consumer Bankruptcy Attorney in the World!

Yes, he is ROOKER FELDMAN!

"Mr. Feldman?" asked Mable, "Wake up - the U.S. Trustee is on the phone."

World without end.

Amen.

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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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