



ANNOUNCEMENTS FROM THE DESK OF MORGAN D. KING

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CONSULTING TO TAX PROFESSIONALS & TAXPAYERS

DEDICATED TO HELPING PEOPLE WITH DELINQUENT TAX PROBLEMS

California attorney Morgan D. King has been in practice for over 38 years, many of those years dedicated to finding legal remedies for delinquent tax liabilities. He is the author of the acclaimed [King's Discharging Taxes in Bankruptcy](#) and the recently released [King's Legal Deskbook For Offers in Compromise](#).

King consults with other tax professionals, evaluating cases and writing expert opinion letters to help guide lawyers, enrolled agents, and accountants with their clients. He also represents taxpayers. Among the services offered are:

- Offers-in-compromise
- Marital transmutation agreements
- Representation at collection due process hearings
- Innocent-spouse defense
- Analysis of tax collection statutes of limitations
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- Tax Advocate assistance
- Collection appeals
- Discharge in bankruptcy
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Mr. King consults with tax professionals and taxpayers in all states in association with local counsel.

Consulting to
professionals
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TAX ISSUES



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2012 BANKRUPTCY COURT RULING: LATE FILED RETURNS ARE NOT RETURNS - BIZARRE ISSUE RAISES ITS HEAD AGAIN!

BK COURT IN 5th CIRCUIT CITES MCCOY AS REASON TO HOLD LATE-FILED IRS RETURNS ARE NOT RETURNS - BUT COURT'S RULING IS DISCONNECT FROM THE ACTUAL ISSUE IN THE CASE

It's like a cheap horror movie, where the evil monster is dead and lumped on the ground, with the teen-age heroine realizing she's going to live after all, and then the monster stands back up! The audience shrieks ...

Bizarre opinion acknowledges that the debtor's late-filed returns in the case are discharged, but then holds that late-filed returns are not dischargeable! The opinion fails to draw obvious distinction between returns filed late but prior to assessment, and returns filed late and post-assessment.

The IRS does not argue that merely because a return is filed late it is not, for that reason alone, a valid tax return. (see the formal IRS position, set forth in Notice of Office of Chief Counsel CC-2010-016, click link below). Oddly, this fresh case from Texas cites the McCoy rule, but the actual holding in the case has nothing to do with the McCoy rule.

It's the blind leading the blind ... this new case in the 5th Circuit followed the ruling in McCoy, but for IRS taxes; In re Hernandez, Adv. No. 11-5126 (Bankr.W.D. Tex 01/11/2012) (click link below for full text of opinion).

But the irony here is that the IRS in Hernandez did not argue the late-filed returns were not returns merely because they were late, and the IRS did not contest the dischargeability of the taxes for years for which the returns were merely late.

The IRS, in fact, acknowledged that these late-filed



**Delinquent
tax law
UPDATE**

taxes were discharged! What the IRS argued in Hernandez was that taxes for *other years*, for which the returns were filed late *and the IRS had already assessed the liabilities*, were not dischargeable.

And yet the court, in holding the post-assessment liabilities nondischarged, flatly based its ruling on the McCoy holding, to wit, that they were not dischargeable merely because they were late!

If this rule made any sense, the court should have found the remaining liabilities, for which returns were filed late but where the 1040 were filed before the IRS assessed the taxes, equally nondischargeable. Thus, the court misinterpreted its own holding, as well as the IRS position in the case, and in so doing has advanced very poorly reasoned law. The important distinction between a merely late-filed return, and a return filed late *and for which an assessment was done before the 1040 was filed*, has been recognized in numerous cases, and clearly drawn in IRS position papers and memoranda, and yet it apparently flew right over the court's head in Hernandez.

There is not much the Bankruptcy Bar can do in the face of faulty judicial opinions such as the Hernandez ruling, other than hope that other judges at least read and grasp the arguments asserted not only by the defense, but also by the IRS!

It should be noted, as well, that the Hernandez opinion flatly announces that the 4-part Beard test to define a tax return (referred to in the opinion as the "Hindenlang" test) is "pre-BAPCPA law," and that post-BAPCPA courts have "discarded" this test. In fact, however, most post-BAPCPA bankruptcy opinions, and virtually all Tax Court opinions addressing the issue, continue to use the Beard test.

ED NOTE: I have previously addressed this issue in an article appearing in *Norton's Bankruptcy Law Advisor*, which may be accessed on the link below.

And, Austin Texas attorney **Stephen W. Sather** published his erudite views on this issue in his bankruptcy blog, *Yet Another Hanging Paragraph Creates a Taxing Situation*, which may also be accessed on the link below.

[CLICK HERE FOR FULL TEXT OF HERNANDEZ OPINION](#)

[CLICK HERE FOR FULL TEXT OF IRS NOTICE OF](#)

[OFFICE OF CHIEF COUNSEL CC-2010-016](#)

[CLICK HERE FOR FULL TEXT OF MORGAN KING'S ARTICLE - WHAT IS A TAX RETURN? NORTON 2010](#)

[CLICK HERE FOR FULL TEXT OF STEPHEN SATHER'S BLOG ON THIS CASE](#)

DISCHARGING TAXES IN BANKRUPTCY UPDATED TO 2012

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KING'S DESK REFERENCE FOR OFFERS IN COMPROMISE

KING'S LEGAL GUIDE FOR OFFERS IN COMPROMISE

by **Morgan D. King**
with
David Greenberg of the California Bar
Law Editor
&
Neil Deininger of the Arkansas Bar
Consulting Editor

Release 2009 / Soft Cover / 397 pages

Comes with CD containing full text of book plus important IRS materials for efficient research. This book is written for tax and bankruptcy professionals and contains a thorough explanation of the law and procedure in connection with processing offers-in-compromise with the Internal Revenue Service. It contains case-law comment and sample forms and checklists, and comes with a CD containing the text of the book and the complete text of the IRS offers-in-compromise "handbook" taken from the Internal Revenue Manual.

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& THE TAX INCREASE PREVENTION AND
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DENNIS BRAGER: NEW INNOCENT-SPOUSE OPPORTUNITIES

INNOCENT SPOUSE DEFENSE BECOMES A LITTLE EASIER

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January 13, 2012

In IRS Notice IR 2012-3 the IRS announced that innocent spouse defenses pursuant to IRC Section 6015(f) will become a little easier.

Generally there are three different kinds of innocent spouse defenses, each with its own rules and exceptions. IRS Notice 2012-8, which somewhat confusingly was announced in IRS Notice IR 2012-3, sets out a proposed new Revenue Procedure which will supersede Revenue Procedure (Rev. Proc.) 2003-61.

IRS Notice 20012-8 addresses the criteria used in making innocent spouse relief determinations under the equitable relief criteria of Internal Revenue Code Section 6015(f). The IRS Notice covers several topics. It provides for certain streamlined determinations; it creates new guidance on the potential impact of economic hardship, and the weight to be accorded to certain facts in determining equitable innocent spouse relief.

Importantly it also expands how the IRS takes into account abuse and financial control by the nonrequesting spouse in deciding whether to grant equitable relief. The IRS is inviting comments on the forthcoming proposed Revenue Procedure. The comments must be submitted by February 21, 2012. One important change is that under Rev. Procedure 2003-61, which previously provided guidelines for equitable innocent spouse determinations, lack of economic hardship was treated as a factor which weighed against granting



equitable innocent spouse relief.

Now if economic hardship exists that is still a factor which weighs in favor of granting innocent spouse relief. However, the lack of economic hardship will no longer be counted against a requesting spouse. Instead it will be treated as neutral. Another significant change is that the proposed revenue procedure provides that abuse or lack of financial control may mitigate other factors that might weigh against granting equitable relief under IRC Section 6015(f).

For example, even though a requesting innocent spouse has knowledge or reason to know of omitted income on a tax return if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and, therefore, because of the abuse or financial control the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency.

In the end, however, the granting of innocent spouse relief is based upon all of the facts and circumstances.

[CLICK HERE FOR FULL TEXT OF IRS NOTICE OF PROPOSED INNOCENT SPOUSE PROCEDURE](#)

KING'S TAXGRAM published by the Offices of Morgan D. King, attorneys & counselors at law, emphasizing legal remedies for taxpayers with delinquent taxes, and assisting attorneys with consultation and research. P.O. Box 2952 Dublin, CA 94568. FOR CONSULTATION CALL 925-829-6363 or e-mail morgan@morganking.com. Offices located in Dublin California, with consulting available to professionals and taxpayers in all states. [Visit our website at TaxJustice.com](#)

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