

## Morgan King

### TOLLING THE 2-YEAR PERIOD PRESCRIBED AT 11 U.S.C. § 523(a)(1)(B)(ii) For Discharge of Taxes

Late-filed and more than 2 years before filing bankruptcy

Does a prior bankruptcy, to the extent it's automatic stay overlaps the running of the 2-year period, stop the clock on the two-year period?

Nothing in the Bankruptcy Code that provides that anything tolls the 2-year period.

Prior bankruptcy tolls the 3-year and the 240-day periods for the time the stay is in effect plus 90 days. 11 U.D.C. § 507(a)(8)(G) (“hanging paragraph”)

Prior rule – nothing suspends the clock on the 2-year period.

New IRS position – automatic stay of the period stops the clock based on **equitable tolling** and **11 U.S.C. § 108(c)**.

Equitable tolling is based on the aphorism the Code allows the IRS two years to collect the taxes before they become dischargeable. First used in *Young v. United States*, 535 U.S. 43 (S.Ct., 2002) (*plus 6 months*).

Rule: a statute of limitations is tolled by equitable tolling.

The two-year period is a statute of limitations.

Rule adopted in [Putnam v. United States](#)

Main arguments against:

1. 523(a)(1)(B)(ii) is not a statute of limitations. IRS does not lose ability to collect after the period expires; it depends on if or

**when the taxpayer filed bankruptcy. Is it a “statute of repose”?**

**2. Congress addressed tolling in BAPCPA amendments that specifically addressed both the 2-year rule and tolling, and did not include the 2-year period. Hence, lack of adding tolling to the 2-year rule suggests legislative intent to not toll the 2-year period.**

**Putnam rejects both theories.**