

Can Taxes Be Discharged in Bankruptcy?

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A fairly common question is whether income taxes can be discharged through a bankruptcy case. In general most types of taxes cannot be discharged (or eliminated) but income taxes can be discharged if they meet the following five rules:

1. The most recent due date for filing the tax return is over three (3) years old.

This three year period begins on the most recent date when the tax return is due, including extensions. So for instance, for federal income taxes the three year period will begin on April 15, August 15, or October 15 following the taxable year. For example, if you incurred tax debt in 2009 as shown in the tax return you filed on April 15, 2010, you would have to wait until after April 15, 2013 for the taxes to be eliminated in bankruptcy.

2. The tax return for the year in question must have been filed more than two (2) years ago.

The two year period begins on the date the tax return is actually filed.

3. The tax must have been assessed by the IRS more than 240 days prior to the filing of bankruptcy.

The 240 period begins with the tax is officially assessed by the IRS. This is not the same date as when you filed your tax return, but when the IRS actually states that you owe money.

4. The tax return that was filed must not have been fraudulent.

This one is pretty self explanatory. If you filed a fraudulent tax return, the bankruptcy court is not going to reward bad behavior (and you may have other legal problems headed your way as well).

5. The taxpayer must not be guilty of a willful attempt to evade the tax.

This, like Rule #4, provides that the bankruptcy court will not reward bad behavior.

Discharging taxes can be very complex, but if you owe significant income taxes that appear to comply with the above five rules they may be dischargeable in a bankruptcy case.

Attorney John Skiba offers a free consultation to discuss your specific situation and help you determine if your debts can be discharged in bankruptcy. Mr. Skiba can be reached at (480) 559-8131.