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# TAX AUDIT & DEBT

**February 25, 2020**

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# TAX DEBT INDEX

1. Introduction
2. Burden of Proof
3. Tax Debt Rules
4. Conclusion

# INTRODUCTION

Tax debt can arise from:

01. Earned Income

02. Excise tax

03. Penalties & Interest

# INTRODUCTION

Tax debt can arise from:

04. Debt Cancellation

05. Payroll Responsibilities

06. Worker Mis-classification



# INTRODUCTION

Tax debt can arise from:

07. Failure to file a return

08. Omitting estimated  
payments

# INTRODUCTION

Tax debt can arise from:

09. Retirement fund  
withdraw/rollover

10. Audit discovered  
unreported problems

# INTRODUCTION

Tax debt can arise from:

11. Problems with State  
Return

12. Legitimacy of Dependents

# INTRODUCTION

## Negative Consequences of Tax Debt:

01. Annoying notices of proposed debt

02. Annoying notices of assessed debt

# INTRODUCTION

## Negative Consequences of Tax Debt:

03. Involuntary refund conversion

04. Non-deductible interest

# INTRODUCTION

## Negative Consequences of Tax Debt:

05. Failure to pay penalty

.5%=>25%

06. Federal tax lien,

Value>\$10k

# INTRODUCTION

## Negative Consequences of Tax Debt:

07. Levy banks (once or perpetual)

08. Levy personal property

# INTRODUCTION

## Negative Consequences of Tax Debt:

09. WageGarnishment

10. Intrusion on your property

11. Private Debt Collectors



# INTRODUCTION

Most debt is different from tax debts, generally:

Most debts require a creditor to:

(1) Sue

# INTRODUCTION

(2) Prove notice to the debtor  
(that real efforts were  
made to notify the debtor)

(3) Prove the existence &  
legitimacy of the debt in court  
Use the court to collect the  
debt (levy, attachment, etc)

# INTRODUCTION

Most Tax debts require a tax agency to:

(1) Obtain some indication that a tax is owing

(2) Only notify the taxpayer at a last known address

# INTRODUCTION

(3) Assess the tax even if taxpayer doesn't know of it.

(4) Use administrative acts to collect the debt (levy, attachment, etc)

# INTRODUCTION

Most non-tax debts are:

(1) Voluntary

(2) Inaction Statute of  
limitation

(3) Nondischargeability in BK  
not time dependent

# INTRODUCTION

Most Tax debts:

(1) Involuntary

(2) Not affected by collection  
inaction

(3) Early time prohibition of  
bankruptcy dischargeability

# BURDEN OF PROOF

Creditor must establish:

(1) existence of a debt

(2) identity of the debtor

(3) proper computation of amount

# BURDEN OF PROOF

Tax agency creditor:

(1) taxpayer has burden of production & proof for base tax debt.



# BURDEN OF PROOF

## Burden of Production & Proof

Meaning:

-If taxpayer produces no evidence, it loses, and

# BURDEN OF PROOF

## Burden of Proof...(cont'd):

-If tax agency joins in producing evidence against the taxpayer, taxpayer proof must overcome tax agency proof by a preponderance (51 / 49).

# BURDEN OF PROOF

## Burden of Proof

(2) It is also sometimes said that a tax agency assessment is “presumed to be correct”

# Complicated Simple Example:

If someone submits a 1099 in error indicating a taxpayer & amount of income.

How can this injustice / error be overcome?

# Complicated Simple Example: (cont'd)

The tax agency has a 1099,  
and it computed a “presumed  
to be correct” assessment.

Taxpayer states it knows  
nothing of the 1099 issuer.

# Complicated Simple Example: (cont'd)

Taxpayer would need affidavits and sworn testimony to prevail.

Taxpayer can't tell IRS to prove it.

# Complicated Simple Example: (cont'd)

In a court contest, if taxpayer gave testimony (Burden to produce), the IRS would have to call the issuer to testify.

# Complicated Simple Example: (cont'd)

In a court contest, if taxpayer gave testimony (Burden to produce), the IRS would have to call the issuer to testify.



# Complicated Simple Example: (cont'd)

But in reality, who is responsible for contacting the 1099 issuer?

What if the issuer will not admit a mistake?

# Complicated Simple Example: (cont'd)

What if the IRS doesn't investigate? What if the issuer refuses to talk with the taxpayer? Who wants to take this controversy to Tax Court?

# Complicated Simple Example: (cont'd)

Its closer to reality to assume that IRS does “some” defensive checking, regardless of the “legal” burden, to avoid the expense of going to court.

# Complicated Simple Example: (cont'd)

Challenging the IRS to cause IRS to “check its position” can resolve the controversy in the taxpayer’s favor more quickly.

# Complicated Simple Example: (cont'd)

Challenging the IRS at the earliest possible time in the process can be critical to prevent IRS to become “entrenched” in its position.

# TAX DEBT RULES

It is important to know, analyze, and challenge the correctness of IRS positions at the earliest possible moment to have a best chance to prevail.

# TAX DEBT RULES

- 1 – 2 – 3 – 4 – 5 -

A process can be thought of as a series connected set of steps. If a taxpayer prevails at any point in the series, that part of the controversy is gone.

# TAX DEBT RULES

- 1 – 2 – 3 – 4 – 5 -

A process can be thought of as a series connected set of steps. If a taxpayer prevails at any point, that part of the controversy is over.



# TAX DEBT RULES

→ 1 → 2 → 3 → 4 → 5 →

However, since each step in the process costs in terms of time, money and uncertainty,

Wouldn't it be better to engage & prevail at - 1 - ?

# TAX DEBT RULES

Regardless of whether there is an IRS error, taxpayer mistake or any disagreement, the TAX DEBT rules affect every taxpayer.

# TAX DEBT RULES

Tax Debt Rules may include:

Statutes of Limitation (SOL) that prevent actions after or before a certain period of time, usually measured at tax return filing.

# TAX DEBT RULES

Tax Debt Rules may include:

1. A limited time after tax filing & assessment during which IRS can assess new debt against the taxpayer.

(Assessment SOL)(after filing)

# TAX DEBT RULES

Tax Debt Rules may include:

2. A limit on the total time during which a tax debt exists after assessment.

(Collection SOL) (after filing)

# TAX DEBT RULES

Tax Debt Rules may include:

3. Opportunities for the taxpayer to eliminate tax debt based upon solvency.

(Bankruptcy SOL)(after tax filing & before bankruptcy filing)

# TAX DEBT RULES

Further, within this framework, there are even more smaller rules that can be utilized to benefit the taxpayer in resolving tax debt in smaller advantages.

# TAX DEBT RULES

STOP. YOU NEED TO  
KNOW EVERYTHING IN  
YOUR RECORD FIRST.

Thesis: When dealing with the  
IRS, you need to know more  
about your account than they  
do....



# TAX DEBT RULES

Why?

(1) IRS will use what you don't know to bargain against you.

# TAX DEBT RULES

Why? (cont'd)

(2) If you know the “problem areas” before IRS does,

(a) it may be fixable & give a best first impression.

(b) it may eliminate an impression of hiding something.

# TAX DEBT RULES

STOP. YOU NEED TO  
DISCOVER TAXPAYER  
TOLLING EVENTS TO  
KNOW AND BETTER  
CHOOSE WHEN AND HOW  
TO TAKE ACTION.

# TAX DEBT RULES

Thesis: All of the limitation dates on the collection statute, the assessment statute, and the bankruptcy discharge statute are “tolled” (paused) upon happening of certain events.

# TAX DEBT RULES

It also means that you need to learn something about leaving a margin of safety before taking action.

Error can creep into everything.

# TAX DEBT RULES

## SOURCES of TAX ACCOUNTS:

(1) FOIA

(2) TAX ACCOUNT  
TRANSCRIPTS

(3) TAXPAYER RECORDS

# TAX DEBT RULES

When a taxpayer discovers a variance in these three sources related to the controversy, it might be used to cause IRS (in fairness) to compromise the government's position.

# TAX DEBT RULES

DECIDING TO TAKE ACTION  
BEFORE AN INDEPENDENT  
ANALYSIS COULD COST  
DEARLY



# TAX DEBT RULES

Predominantly, practitioners are statistically split between attorneys that think bankruptcy is the solution, versus “offer-in-compromise.”

# TAX DEBT RULES

Most are interested in quick action, without exploring optimization & don't provide an independent analysis that could allow the taxpayer a third choice: to continue to monitor and move forward without tolling action.

# TAX DEBT RULES

Perhaps the taxpayer would like to take some risk in order to try to reach a more distant milestone before taking action.

# TAX DEBT RULES

A milestone might be trying to reach a point in time when an ordinary debt would be barred.

Another milestone might be trying to pass a collection SOL time expiration.

# TAX DEBT RULES

See “Bankruptcy & Offer-In-Compromise - The Hot Dog Stand Paradigm” at  
<https://rebrand.ly/TDABlog>

(For more in depth treatment)

# Conclusion

CHECK YOUR IRS TAX ACCOUNT

Attention should be given an IRS tax account the same as a bank account or credit card account.

Early detection enables early engagement & better result.

# Conclusion

CHECK YOUR IRS TAX ACCOUNT

What is the risk of  
ignoring a tax account?

It is the taxpayer's risk!

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