



AMERICAN
BANKRUPTCY
INSTITUTE

Consumer Practice Extravaganza

Tax Issues in Bankruptcy

H. David Cox

Cox Law Group PLLC | Lynchburg, Va.

Ari D. Kunofsky

U.S. Department of Justice, Tax Division | Alexandria, Va.

Jolene Tanner

U.S. Attorney's Office (C.D. Cal.) | Los Angeles

Tax Issues in Consumer Bankruptcy

David Cox, Cox Law Group, Lynchburg, Virginia

Ari D. Kunofsky, U.S. Dept. of Justice, Washington, D.C.

Jolene Tanner, U.S. Attorney's Office, Tax Division (C.D. Cal.) Los Angeles

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Disclaimers

- The views and comments expressed during this webinar do not express the positions of the Attorney General, Department of Justice, U.S. Attorney's Office, Internal Revenue Service, or Tax Division.

Introduction

- Introduction to federal income and employment taxes
- How to obtain relevant information from the IRS
- How federal tax claims are treated in bankruptcy for individuals
- Litigation of tax claims in bankruptcy

A Very Short Introduction to Federal Income and Employment Taxation

Basics of Income Tax

- Based on all income, whatever source derived
- Taxes must be paid by April 15
- Tax return also due April 15
- Automatic extension granted on time to file through October 15

Tax Assessment Process

- IRS assesses tax due on return.
- IRS may also audit within three years of return's filing.
- If there is a deficiency at the end of an audit, the taxpayer can challenge the deficiency in Tax Court.
- If no challenge in Tax Court or after Tax Court case ends, IRS may assess taxes.
- Assessment starts the IRS collection process.

What happens if the Taxpayer never files a return?

- IRS will assess without a return.
- Taxpayer will be Single or Married Filing Separately.
- Assessment based on third-party information.
- Taxpayer will be treated as not having timely filed a return.
- If Taxpayer files a Form 1040 later, the IRS may accept this information.

Basics of Employment Tax

- Non-Trust Fund
 - Employer's Social Security
 - Employer's Medicare
- Trust Fund
 - Employee's Social Security
 - Employee's Medicare
 - Employee's Income Tax Withholding



Trust Fund Taxes

- Held in “special trust” for the United States
- Persons responsible to “collect, truthfully account for, and pay over” the trust funds who willfully fails to do so can be held personally liable
- Often called the 100% penalty or trust fund recovery penalty

- 26 U.S.C. §§ 6672, 7501

How to obtain IRS transcripts and records

Who's who?

- **IRS Bankruptcy Specialist** - This person works for IRS Field Insolvency. Prepares and files all proof of claims, works on bankruptcy cases, reviews plans and schedules, makes collection determinations, and negotiates with debtors, refers cases to the Department of Justice if litigation is appropriate
- **IRS Revenue Officer** – collect taxes before bankruptcy or may be assigned in certain cases
- **IRS Revenue Agent** – handle audits and may be assigned to assist in certain cases
- **DOJ Attorneys** – your local Assistant United States Attorneys and Trial Attorney from the Tax Division cover tax litigation in bankruptcy

Telephone Numbers

IRS Contact Information:

- IRS Practitioner Priority Service. 866-860-4259
- Centralized Insolvency: 800-973-0424
- Attorneys need Form 2848 Power of Attorney or 8821
- IRS Taxpayer Advocate – File IRS Form 911

IRS

- **IRS Form 2848**, Power of Attorney and Declaration of Representative
- **Alternatively, IRS Form 8821**, Tax Information Authorization (limited authority)
- Submit forms online at IRS website (or fax to IRS)

If you have a question, ask IRS Field Insolvency, who drafted the claim. Most questions can be answered. No need to file an objection if you can get your question answered. The contact information for the Bankruptcy Specialist is below

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IRS e-Services

The screenshot displays the IRS e-Services website. On the left, a sidebar for 'Tax Professionals' includes a link to 'E-Services' and an 'Access e-Services' button. The main content area features the 'Transcript Delivery System (TDS)' page, which lists enrolled agents and provides a link to 'Access TDS'. On the right, a 'Sign In or Create a New Account' page is shown, with options to 'Sign in with an existing account' or 'Create a new account'.

IRS e-Services (cont.)

- To register, consider calling e-Services Help Desk 1-888-841-4648
- Tax Return Transcript
- Wage and Income
- Account Transcript

The screenshot shows the IRS.gov 'Taxpayer Information' form. It includes fields for 'First Name', 'Middle Initial', and 'Last Name'. Below these, there are fields for 'First Name', 'Middle Initial', and 'Last Name' for the taxpayer's current information. The 'Product Type' is set to 'Account Transcript' and the 'Request Purpose' is 'Fastest Tax'. A table at the bottom shows the 'Tax Form', 'Beginning Tax Year', 'Beginning Tax Month/Qty', 'Ending Tax Year', and 'Ending Tax Month/Qty' for various forms.

Tax Form	Beginning Tax Year *	Beginning Tax Month/Qty *	Ending Tax Year	Ending Tax Month/Qty
1040	<input type="checkbox"/>	DEC	<input type="checkbox"/>	DEC
CNSL PENALTY	<input type="checkbox"/>	DEC	<input type="checkbox"/>	DEC
1040 SEPARATE ASSESSMENT	<input type="checkbox"/>	DEC	<input type="checkbox"/>	DEC
706	<input type="checkbox"/>	DEC	<input type="checkbox"/>	DEC
5329	<input type="checkbox"/>	DEC	<input type="checkbox"/>	DEC



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 08-25-2016
Response Date: 08-25-2016
Tracking Number: 9999999

FORM NUMBER: 1040
TAX PERIOD: Dec. 31, 2019

TAXPAYER IDENTIFICATION NUMBER: 123-45-6789
SPOUSE TAXPAYER IDENTIFICATION NUMBER: 987-65-4321

John Q. Public
123 Main St.
Anytown, USA

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	12,500.00
ACCURED INTEREST:	2,430.33 AS OF: Sep. 1, 2016
ACCURED PENALTY:	3,890.44 AS OF: Sep. 2, 2019
ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	17,820.77

--- INFORMATION FROM THE RETURN OR AS ADJUSTED ---

EXEMPTIONS:	03
FILING STATUS:	Married Filing Joint
ADJUSTED GROSS INCOME:	143,773.00
TAXABLE INCOME:	113,270.00
TAX PER RETURN:	28,417.00
SE TAXABLE INCOME TAXPAYER:	0.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER): Apr. 15, 2011
PROCESSING DATE: May 30, 2011

Account Transcript Example #1

TRANSACTIONS				
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed		05-30-2011	429,417.00
804	M-2 or 1099 withholding		04-15-2011	-28,185.00
613	Payment with return		04-18-2011	-8500.00
611	Dishonored payment with return		04-18-2011	8500.00
286	Penalty for dishonored payment		05-11-2011	825.00
766	Credit to your account		04-15-2011	-8800.00
276	Penalty for late payment of tax		05-31-2011	1195.23
196	Interest charged for late payment		05-31-2011	392.48
971	Notice issued CP 0114		05-31-2011	00.00



This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 02-13-2018
Response Date: 02-13-2018
Tracking Number: 99999

FORM NUMBER: 1040A
TAX PERIOD: Dec. 31, 2009

TAXPAYER IDENTIFICATION NUMBER: 123-45-6789

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	4,142.00
ACCURED INTEREST:	563.24 AS OF: FEB. 28, 2018
ACCURED PENALTY:	0.00 AS OF: FEB. 28, 2018
ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	4,705.24

--- INFORMATION FROM THE RETURN OR AS ADJUSTED ---

EXEMPTIONS:	01
FILING STATUS:	Single
ADJUSTED GROSS INCOME:	23,304.00
TAXABLE INCOME:	14,333.00
TAX PER RETURN:	0.00
SE TAXABLE INCOME TAXPAYER:	23,304.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	3,012.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER): Apr. 01, 2015
PROCESSING DATE: Apr. 29, 2015

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Substitute the return prepared by taxpayer		04-25-2015	00.00
140	Inquiry for non-filing of tax return		03-25-2011	00.00
971	Notice issued		04-13-2011	00.00

Account Transcript Example #2

766	Credit to your account		04-15-2010	-8400.00
390	Additional tax assessed by examination 01-17-2016 17247-425-01142-6		02-17-2016	\$5,622.00
421	Closed examination of tax return		02-17-2016	\$0.00
336	Interest charged for late payment		02-17-2016	\$1,712.55
276	Penalty for late payment of tax		02-17-2016	\$1,602.50
971	Notice issued		02-17-2016	\$0.00
539	Balance due account currently not collectable		05-12-2016	\$0.00
766	Credit transferred in from 1649 291612		03-28-2017	-34,981.57
537	Account currently considered collectable		03-28-2017	\$0.00
971	Installment agreement established		02-28-2017	\$0.00
971	First Levy issued on Module		04-18-2017	\$0.00
971	Tax period blocked from automated levy program		10-31-2017	\$0.00
971	No longer in installment agreement status		10-24-2017	\$0.00
539	Balance due account currently not collectable		01-23-2018	\$0.00

IRS Publications

- **IRS Publication 908** - This publication explains the basic federal income tax aspects of bankruptcy.
- **IRS Publication 5082**, What You Should Know About Chapter 13 Bankruptcy and Taxes.
- **IRS Publication 594**, The IRS Collection Process
- **Internal Revenue Manual, Part 5.9** - discusses Bankruptcy and Other Insolvencies.

Effect of Bankruptcy on Taxes

Bankruptcy Implications for the Tax Liabilities

- Chapter choice
- Dischargeability
- Automatic stay
 - Collection ceases
 - Tax Court stayed
 - Audits continue
 - Pre-petition offset of income tax permitted
- Liens
- Cash collateral
- Means Test (consumer vs. nonconsumer debts)

Tax Claims in Bankruptcy – Priority & Discharge

Statutory Framework:

- 11 U.S.C. § 523 (exceptions to discharge)
- 11 U.S.C. § 507 (priority claims)

The Income Tax Priority Questions

- The Three-Year Rule. Was the due date for filing the return that results in the tax claim more than three years prior to the date of the bankruptcy filing?
- The 240-Day Rule. Was the tax claim assessed at least 240 days prior to the bankruptcy filing?
- Tax Assessable. Was the tax assessable but not assessed (and not otherwise dischargeable)?

Discharging Taxes Quick Reference Guide

Type	Description
8 th Priority Taxes Under 11 U.S.C. § 507(a)(8)	<ul style="list-style-type: none"> • Prepetition priority income taxes or gross receipt taxes (including sales taxes) • Property taxes • Trust fund / withholding taxes • Employment taxes • Excise taxes • Customs duties • Penalty related to a tax claim and in compensation for actual pecuniary loss • Responsible person liability for taxes (personal liability for entity employment or sales tax liabilities) <p><i>Must pass 3-year rule, 240-day rule, and not be tax liability that is assessable but not yet assessed.</i></p>
Unfiled Returns	Not dischargeable. 11 U.S.C. § 523(a)(1)(B)(i)
Late-Filed Returns	Two-year rule. 11 U.S.C. § 523(a)(1)(B)(ii)
Fraudulent Returns	Not dischargeable. 11 U.S.C. § 523(a)(1)(C)
Trust Fund Recovery Penalty or Responsible Person Liability	Not dischargeable. 11 U.S.C. §§ 523(a)(1), 507(a)(8)(C)
Recorded Notice of Federal Tax Lien or State Tax Lien	Lien rides through bankruptcy and taxing agency can take collection action against lien property post discharge (but not collectible <i>in personam</i>). See <i>In re Isom</i> , 901 F.2d 744 (9th Cir. 1990)

Determining Tax Return Due Date

- Starts the clock
- Extensions
- Holidays & weekends



Tolling

- 11 U.S.C. § 507(a)(8) (flush paragraph)
 - Requests for Collection Due Process hearings and appeals
 - Prior bankruptcies
 - Offer in Compromise
- **Planning Pointer:** IRS installment agreements do not toll the bankruptcy priority periods

Audits and Assessments

- Multiple assessments possible
- New 240-day clock
- Clock is tolled if debtor filed offer in compromise
- Reporting Federal adjustments to the state

Discharge of Income Tax

- Priority taxes
- Tax return (i) is not filed or (ii) was late-filed and filed within two years of the bankruptcy
- Fraudulent return or willfully attempted in any manner to evade or defeat such tax

Defining a Return for Discharge Purposes

- 523(a)(1)(B)
- The two-year period initiates upon the filing of a return
- Circuit split – when is a return not a return?
- Flush paragraph to 11 U.S.C. § 523(a)
 - For purposes of this subsection, the term “return” means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

Return for Discharge Purposes- Circuit split

- McCoy v. Mississippi State Tax Comm’n, 666 F.3d 924 (5th Cir. 2012)
 - “Form 1040” that is late filed does not satisfy the requirements of the tax law
- Justice v. United States, 817 F.3d 738 (11th Cir. 2016); In re Smith, 828 F.3d 1094 (9th Cir. 2016)
 - “Form 1040” filed after IRS already assesses does not satisfy the requirements of tax law.

Fraud and Willful Evasion

- § 523(a)(1)(C) – “made a fraudulent return or willfully attempted in any manner to evade or defeat such tax”
- Some of the badges of fraud for willful evasion include:
 - repeated underpayment;
 - large understatements of income made consistently over time;
 - failure to keep adequate records;
 - failure to file tax returns;
 - implausible or inconsistent behavior by the taxpayer;
 - luxurious lifestyle;
 - misrepresentations to the IRS;
 - concealing assets; or
 - failure to cooperate with taxing authorities.

Employment Taxes – Priority and Discharge

- Trust Fund Portions
 - Always priority, including TFRP
 - Never discharged
- Non-Trust Fund Portions
 - Return due within three years (including extensions)
 - Discharge rules similar to income tax

Interest and Tax Liens

- “Interest follows the tax”
- Tax liens arise upon failure to pay after demand made
- Notice of Federal Tax Liens
- Impact of the NFTL

Federal Tax Lien

- **Federal tax lien** arises at time of assessment of the tax after any person neglects or refuses to pay after notice and demand. 26 U.S.C. § 6321.
- IRS records lien by filing a **Notice of Federal Tax Lien**. 26 U.S.C. § 6323. Filing office can be set by state law. Often:
 - **Real Property** –county where property subject to lien is situated
 - **Personal Tangible or intangible property** –recorder where taxpayer resides at time of filing
- **Period of Lien**: Arises at time of assessment and continues until liability is satisfied or become unenforceable by reason of lapse of time. 26 U.S.C. § 6322.
- **Length of Period**: Ten years after assessment of tax. 26 U.S.C. § 6502(a). DOJ can bring suit to reduce IRS tax assessment to judgment, which can extend collection period.

Tax Liens Survive Bankruptcy

- Not all taxes are forgiven!
- Discharge does not apply to prepetition lien property *in rem*
 - *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991)
 - *In re Snyder*, 343 F.3d 1171, 1176-77 (9th Cir. 2003)
- So, if there is prepetition property subject to a perfected tax lien that survives the bankruptcy, and the prepetition taxes are not paid, even though the taxpayer technically has a discharge of the underlying liability, the IRS can enforce the lien against prepetition lien property.
- Practice Tip: Especially in Chapter 13 cases, it is the debtor's responsibility to obtain lien information and to provide for liens in a Chapter 13 plan.

Category #1: Nonpriority AND Dischargeable

- All three tests of dischargeability have been met
- The tax does not involve fraud or willful evasion
- Fully dischargeable in a Chapter 7 or 13

Category #2: Nonpriority AND Nondischargeable

- The tax satisfies the 3-year and 240-day tests, but it is not dischargeable under § 523(a)(1)(B) or (C)
- In an individual Chapter 7, 11 or 13, the tax claim and the post-petition interest are not discharged
- **Planning Pointers:**
 - Can you fix the problem?
 - Has IRS assessed without a return yet?
 - Should your client file a Form 1040 to reduce the liability?

Category #3A: Nondischargeable Because Priority

- Nondischargeable under § 523(a)(1)(A) ONLY (because Priority)
- Taxes of individuals are not dischargeable in a Chapter 7 or 11
- Taxes are dischargeable in a non-hardship Chapter 13
- Since dischargeable in a Chapter 13, the interest that would otherwise accrue during the plan is discharged upon plan completion.
- **Planning Pointer:**
 - Can you delay filing the bankruptcy to let the tax drop out of priority status?
 - Is negotiating with the IRS a better alternative?

Category #3B/C: Priority AND Nondischargeable in a Chapter 13

- Scenarios:
 - TFRP
 - Income taxes:
 - Nondischargeable under § 523(a)(1)(B) or (a)(1)(C), and
 - Priority because taxes were recently assessed or return due within three years
- In Chapter 13, although the allowed priority tax claim will be paid under the plan, the post-petition will accumulate and not be discharged.

Key Practice Pointer: Get the Transcripts Before Every Case

- IRS proof of claims do not state what claims are dischargeable
- Taxpayer may have forgotten tax years or tax issues (such as a failed offer in compromise)

Don't Rely on a Proof of Claim to Determine Dischargeability

Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-1234	INCOME	12/31/1999	11/23/2005	\$4,833.56	\$8,050.04
XXX-XX-1234	INCOME	12/31/2000	12/14/2005	\$14,694.00	\$11,887.73
XXX-XX-1234	INCOME	12/31/2001	12/14/2005	\$6,742.00	\$4,223.98
XXX-XX-1234	INCOME	12/31/2002	12/14/2005	\$43,187.00	\$26,481.17
XXX-XX-1234	INCOME	12/31/2003	11/08/2006	\$21,795.00	\$11,493.95
XXX-XX-1234	INCOME	12/31/2004	11/08/2006	\$49,687.00	\$2,817.44
				<u>\$140,092.56</u>	<u>\$84,644.31</u>

Penalty to date of petition on unsecured priority claims (including interest thereon) \$15,936.05

Penalty to date of petition on unsecured general claims (including interest thereon) \$85,988.53

Total Amount of Unsecured General Claims: \$326,661.45

Some General
Unsecured Claims
may still be
nondischargeable

SE TAXABLE INCOME TAXPAYER:	\$9,490.00			
SE TAXABLE INCOME SPOUSE:	0.00			
TOTAL SELF EMPLOYMENT TAX:	13,468.00			
RETURNS DUE DATE OR RETURNS RECEIVED DATE (WHICHEVER IS LATER):	Jan. 26, 2005			
PROCESSING DATE:	Feb. 16, 2005			
TRANSACTIONS				
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
130	Substitute tax return prepared by IRS 49213-888-60000-5		02-16-2005	\$0.00
140	Inquiry for non-filing of tax return		03-28-2004	\$0.00
555	Tax return referred for review		02-16-2005	\$0.00
570	Additional account action pending		02-16-2005	\$0.00
420	Examination of tax return		02-05-2005	\$0.00
540	IRS can assess tax until 03-10-2006		11-20-2003	\$0.00
270	Penalty for late payment of tax		12-14-2005	\$5,342.93
2011/12/09 16:47:02 3 / 4				
170	Penalty for not pre-paying tax		12-14-2005	\$1,364.40
140	Penalty for filing tax return after the due date		12-14-2005	\$9,580.37
306	Additional tax assessed by examination 49247-725-21624-5		12-14-2005	\$43,870.00
421	Closed examination of tax return		12-14-2005	\$0.00
336	Interest charged for late payment		12-14-2005	\$7,802.90
571	Notice issued CF 071C		09-24-2008	\$0.00

Proof of Claim (cont.) – Making a Claim Priority

INTEREST PAYABLE ON SECURED CLAIM(S) PER IRC 6621 & 6622.

Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)								
<i>Taxpayer ID Number</i>	<i>Kind of Tax</i>	<i>Tax Period</i>	<i>Date Tax Assessed</i>	<i>Tax Due</i>	<i>Penalty to Petition Date</i>	<i>Interest to Petition Date</i>	<i>Notice of Tax Lien Filed: Date</i>	<i>Office Location</i>
XXX-XX-1234	INCOME	12/31/1999	11/23/2005	\$1,562.00	\$0.00	\$0.00	03/15/2011	Amherst County

Total Amount of Secured Claims:

\$1,562.00

Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code						
<i>Taxpayer ID Number</i>	<i>Kind of Tax</i>	<i>Tax Period</i>	<i>Date Tax Assessed</i>	<i>Tax Due</i>	<i>Interest to Petition Date</i>	
XXX-XX-1234	INCOME	12/31/2005	06/29/2011	\$23,144.00	\$8,552.89	
XXX-XX-1234	INCOME	12/31/2006	07/06/2011	\$1,629.00	\$540.40	
XXX-XX-1234	INCOME	12/31/2009	05/31/2011	\$1,440.00	\$98.36	
				\$26,213.00	\$9,191.65	

Total Amount of Unsecured Priority Claims:

\$35,404.65

Know Your Limitations!

- CSED dates can be obtained with the Practitioner Priority Phone Line
- 1-866-860-4259

521	Removed bankruptcy or other legal action	11-21-2012	\$0.00
971	Notice issued CP 071A	12-04-2013	\$0.00
196	Interest charged for late payment	12-04-2013	\$32,248.97
971	Notice issued CP 071A	12-03-2014	\$0.00
196	Interest charged for late payment	12-03-2014	\$3,460.50
971	Notice issued CP 071A	12-10-2015	\$0.00
196	Interest charged for late payment	12-10-2015	\$3,619.82
537	Account currently considered collectable	05-11-2016	\$0.00
971	Notice issued CP 071C	09-28-2016	\$0.00
196	Interest charged for late payment	09-28-2016	\$3,351.34
583	Removed lien	12-11-2016	\$0.00
971	First Levy Issued on Module	04-19-2017	\$0.00
608	Write-off of balance due	05-31-2017	-\$120,943.54

This Product Contains Sensitive Taxpayer Data

Litigation/Claim Procedures

Proper Service

- Service of process on the United States or its agencies generally requires service on:
 - the Attorney General,
 - local United States Attorney's Office,
 - the underlying agency at its official address.
 - Fed. R. Bankr. P. 3007(a)(2)(A), 7004(b)(4)-(5), 9014(c).
- You may give additional notices to specific government employees, but that cannot substitute for official service.
- Bankruptcy Clerks of Court must keep a register of Governmental addresses per Fed. R. Bankr. P. 5003(e). Check your local rules, court manual, court websites, etc.
- Practice Tip: More service is better than less service. Must comply with Fed. R. Bankr. P. 7004(4) and (5)(federal) and (6) (state) and/or 9014 anyway.

Litigation on the Amount of a Tax Liability

- Objections to Proof of Claim
 - USA may seek to withdraw reference or stay the contested matter

- Section 505(a)
 - Court **may** determine the amount or legality of any tax, fine, or addition to tax, whether or not previously assessed.
 - Section 505(a) does not mention whose taxes are at issue

Limits on Section 505(a)

- Section 505(a)(2) expressly limits the Court's review
 - 1) cannot determine taxes previously adjudicated by another tribunal
 - 2) cannot seek a refund without first exhausting admin. remedies
 - 3) cannot determine *ad valorem* taxes if period to contest the tax is still open

- Section 505(a) has additional limits
 - Court's "related to" jurisdiction
 - Section 505(a) is discretionary

Discretionary 505(a) Review

- What is the effect of the litigation be on the bankruptcy estate?
- What bankruptcy purpose is served by having the Bankruptcy Court hear this issue?
- *E.g.*, Bush v. United States, 939 F.3d 839 (7th Cir. 2019); In re Luongo, 259 F.3d 323, 330 (5th Cir. 2001).

Tax resolution in and out of bankruptcy

Outside of Bankruptcy

- IRS audits continue
- Administrative claim resolutions possible
 - *E.g.*, OIC/Installment Agreements
- Tax Court- deficiency only
- District Court/Fed. Cl.- for refund only
 - Must prepay
 - Limited to matters raised in admin. claim for refund

During the Bankruptcy

- IRS audits continue— 11 U.S.C. § 362(b)(9)
- Administrative claim resolutions cease
- Tax Court proceeding stayed— 11 U.S.C. §362(a)(8)
- Bankruptcy Courts
 - Bankr. Ct. may hear most tax claim not previously litigated
 - Discretionary jurisdiction

THE END

Faculty

H. David Cox is the founding member of Cox Law Group PLLC in Lynchburg, Va., and practices bankruptcy law throughout the Western District of Virginia. Prior to entering private practice, he clerked for the late Hon. William E. Anderson. He co-edits the treatise *Bankruptcy Practice in Virginia*, co-authored the fourth edition of ABI's *Consumer Bankruptcy: Fundamentals of Chapter 7 and Chapter 13 of the U.S. Bankruptcy Code*, and has lectured at numerous regional and national CLE programs. Mr. Cox is a member of the National Bankruptcy Conference, a Fellow of the American College of Bankruptcy and a faculty member of the mandatory Virginia State Bar Harry L. Carrico Professionalism Course, and he serves on ABI's Board of Directors. He received his B.A. in 1992 from Virginia Tech and his J.D. in 1995 from the University of Richmond - TC Williams School of Law.

Ari D. Kunofsky is a trial attorney with the U.S. Department of Justice's Tax Division in Alexandria, Va. He previously was an Honor's Program attorney with the Pension Benefit Guaranty Corporation (PBGC). Mr. Kunofsky received his Bachelor's degree in 2002 in political science and government from The University of Texas at Austin, and his J.D. in 2005 from The University of Texas School of Law.

Jolene Tanner is an Assistant U.S. Attorney in the Tax Division of the U.S. Attorney's Office in Los Angeles, where she primarily handles bankruptcy tax litigation in the Central District of California. She also serves as the Office's Criminal Bankruptcy Fraud Referral Coordinator. Ms. Tanner is frequently sought after as a bankruptcy tax expert to present at bar events and to train others, including law students, the IRS and other federal agencies, as well as chapter 7 trustees, chapter 13 trustees, subchapter V trustees, other AUSAs and private practitioners, on important bankruptcy matters. In addition, she has taught multiple courses on bankruptcy-related matters at the National Advocacy Center. Within her office, she takes an active mentorship role and assists in training the externs in the Tax Division. Prior to joining the U.S. Attorney's Office, Ms. Tanner was a judicial law clerk for Hon. Mark D. Houle and Hon. Deborah J. Saltzman in the U.S. Bankruptcy Court for the Central District of California. She was Judge Houle's law clerk when he sat *pro tem* on the Ninth Circuit Bankruptcy Appellate Panel. Ms. Tanner is a Certified Specialist in Bankruptcy Law by the California Board of Legal Specialization, State Bar of California. She was selected by the National Conference of Bankruptcy Judges as a "Next Generation" attorney in 2020, and she is a 2021 honoree of ABI's "40 Under 40" program. She received her B.A. *cum laude* from the University of California, Santa Barbara and her J.D. from Loyola Law School.