# AMERICAN TAX RESCUE

## TAX BANKRUPTCY

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Income tax debts may be eligible for discharge under Chapter 7 or Chapter 13 of the Bankruptcy Code. Filing for bankruptcy is one of five ways to get out of tax debt, but you should consider bankruptcy only if you meet the requirements for discharging your taxes.

Chapter 7 provides for full discharge of allowable debts. Chapter 13 provides a payment plan to repay some debts, with the remainder of debts discharged. Under the new bankruptcy laws, tax debts are treated the same way in both Chapter 7 and Chapter 13 petitions. Not all tax debts are capable of being discharged in bankruptcy. The bankruptcy petitioner must have tax debts that meet five criteria for discharge.

Tax debts are associated with a particular tax return and tax year. The bankruptcy law lays out specific criteria for how old a tax debt should be.

### Five Rules to Discharge Tax Debts

If the income tax debt meets all five of these rules, then the tax debt is dischargeable in Chapter 7 and Chapter 13 bankruptcy petitions.

1. The due date for filing a tax return is at least three years ago.
2. The tax return was filed at least two years ago.
3. The tax assessment is at least 240 days old.
4. The tax return was not fraudulent.
5. The taxpayer is not guilty of tax evasion

### Return Due At Least Three Years Ago

The tax debt must be related to a tax return that was due at least three years before the taxpayer files for bankruptcy. The due date includes any extensions.

### Return Filed At Least Two Years Ago

The tax debt must be related to a tax return that was filed at least two years before the taxpayer files for bankruptcy. The time is measured from the date the taxpayer actually filed the return.

### Tax Assessment At Least 240 Days Old

The IRS must assess the tax at least 240 days before the taxpayer files for bankruptcy. The IRS assessment may arise from a self-reported balance due, an IRS final determination in an audit, or an IRS proposed assessment which has become final.

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**Tax Return was Not Fraudulent**
The tax return cannot be fraudulent or frivolous.

**Taxpayer Not Guilty of Tax Evasion**
The taxpayer cannot be guilty of any intentional act of evading the tax laws.

**Some Tax Debts Not Dischargeable**
Tax debts that arise from unfiled tax returns are not dischargeable. The IRS routinely assesses tax on unfiled returns. These tax liabilities cannot be discharged unless the taxpayer files a tax return for the year in question.

**Other Tax Issues in Bankruptcy**
Before a Chapter 7 or Chapter 13 bankruptcy can be granted, the bankruptcy petitioner is required to prove that the four previous tax returns have been filed with the IRS. The four previous tax returns must be filed no later than the date of the first creditors' meeting in a bankruptcy case. Additionally, bankruptcy petitioners are required to provide a copy of their most recent tax return to the bankruptcy court. Creditors can also request a copy of the tax return, and petitioners must provide a copy to them.

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