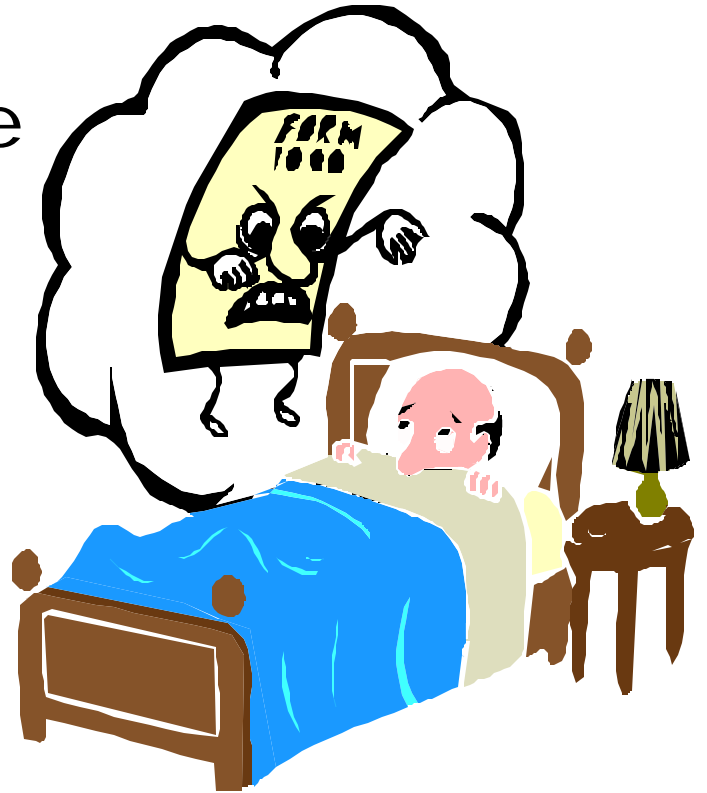


# Treatment for the Tax Nightmare



## Bankruptcy and the IRS

Chapter 13 bankruptcy offers powerful solutions for tax troubles. You can:

- **Get rid of tax penalties and tax liens** (or at least reduce tax liens to the current value of your assets)
- **Avoid paying interest** on your most recent tax bills
- **Avoid paying taxes** for the years for which you haven't yet filed a tax return.

Unlike installment plans or "offers in compromise" deals directly with the IRS, Chapter 13 bankruptcy requires less paperwork and is policed by a judge in the event of disagreements between you and the IRS.

## Overview of Chapter 13

Chapter 13 is a repayment plan, available only to individuals with regular income and debts below a certain amount

- \$807,750 in the kind of debt where your creditor can take your property if you fall behind on your debts such as mortgages and car payments (called "**secured debt**"),
- \$269,250 in the kind of debt where your creditor can't take your property if you fall behind on the debts (called "**unsecured debt**"). Most credit card debt is unsecured debt

You can present a repayment plan to the court that's based on your actual and reasonable current living expenses. When approved by the court, the plan forces all your creditors to accept the plan's terms as **payment in full** of their claim.

## The Plan

You can construct a plan for monthly payments over a minimum of three and a maximum of five years. You make your payments to a bankruptcy "trustee", who then makes payments to your creditors. Your creditors who can't take your property if you fall behind on your debts — called "**unsecured creditors**" — get either nothing, some, or all of what you owe them, depending on how much income you have left over each month after payment of your current living and business expenses.

How much your unsecured creditors end up getting also depends on the size of the debts that must be paid ahead of unsecured creditors and the value of your property that can be sold to pay creditors.

## Plan Approval

To be approved by the bankruptcy court, a Chapter 13 bankruptcy plan must be proposed in good faith and must meet certain tests:

- It must give creditors at least what they would have gotten if you had filed a Chapter 7 bankruptcy.
- If creditors are to get less than 100% of their claims, you must devote all of the income you have left over each month after payment of your current living and business expenses to the plan for at least three years.

- The plan must provide for payment in full of debt where your creditor can take your property if you fall behind on your debts, and high-priority taxes.

Court approval doesn't require creditor approval. Chapter 13 creditors are limited to objecting on the grounds that the plan doesn't satisfy the legal requirements for approval. Taxing authorities like the IRS or N.C. Department of Revenue have no greater voice in Chapter 13 bankruptcy than any other creditor.

## Taxes in Chapter 13

"**Priority taxes**" (those you need to pay first) are, broadly:

- those taxes which first came due within three years of the filing of the bankruptcy;
- those taxes assessed within 240 days of filing or that could be assessed at the date of filing;
- trust fund taxes of whatever age for which you're liable.

The priority amount includes the tax and the interest to the date of filing on the tax. Penalties associated with the tax are not considered priority claims and are treated just like any

other unsecured debt, which means they may get little or nothing through the plan.

Interest on all unsecured claims in bankruptcy stops running when you file the bankruptcy. Unsecured priority taxes are paid, then, without interest accruing after the filing of the bankruptcy.

### Unfiled Tax Returns

In contrast to Chapter 7 bankruptcy, Chapter 13 bankruptcy allows you to avoid taxes more than three years past due for which no return was filed or was filed within two years of the bankruptcy. In most cases, you don't have to file returns for more than three years past, even after the bankruptcy is filed.

### Taxes "Discharged"

When you've finished making your monthly payments under your Chapter 13 plan, you will be forever rid of:

- Taxes more than three years old (whether or not returns have been filed)
- Tax penalties
- Punishment for fraudulent returns or tax evasion

Avoiding tax liability doesn't depend on whether the IRS actually files a claim or receives payment.

### Tax Liens

The value of a tax lien, to be paid off through the plan, is determined at the time the Chapter 13 bankruptcy plan is filed. It is the value (at the time the plan is filed) of your assets to which the lien is attached. The goal is for you to come out of bankruptcy entitled to a release of all tax liens of record.

If the lien exceeds the value of the assets available to secure the tax, the portion of the tax exceeding the value of the assets is treated as either a priority claim (if recent) or an unsecured claim (if older).

The result is that tax liens that have grown huge over the years can be:

- Stripped down to the actual value of current assets
- Locked in as to value as of the start of your case
- Paid over three to five years through the Chapter 13 plan.

### Advantages of Chapter 13 Bankruptcy

Taxpayers with overdue taxes should consider the benefits bankruptcy offers:

- **It's a realistic payment schedule.** Payment of tax debts through the plan is based on financial reality: monthly payments reflect what is actually available in your budget after current living expenses, as opposed to arbitrary national standards.
- **Old taxes and all penalties are forgiven.** Taxes more than three years old and all tax penalties are treated the same as other unsecured debts and may be paid pennies on the dollar.
- **Unfiled taxes are forgiven.** You can get back into the tax system at the price of paying only the three most recent years' taxes and don't have to worry about all those years you didn't file tax returns.
- **Tax liens are frozen.** The value of a tax lien claim is limited to the value of your property at the time you filed for bankruptcy.
- **You can avoid other creditors.** Other creditors can't collect on debts while you're making payments on the plan, so your cash flow for payments into the plan is protected.
- **Avoidance of debts is unconditional.** All tax debt from before you filed for bankruptcy is wiped out at the completion of the case. In contrast to "offer in compromise" deals you might try to work directly with the IRS, there are no conditions or strings tied to future tax filing.

- **It's quick.** Plans are approved within a few months of filing, giving you fast action on the terms of the plan. Attorney's fees for Chapter 13 bankruptcy typically range from \$1300 to \$2500, and are payable in part from the payments you make to the trustee.

Bankruptcy shouldn't be your first choice if you're behind on your taxes, but it may offer significant advantages over installment plans and deals with the IRS if you have tax troubles.

FOR MORE INFORMATION  
OR TO SCHEDULE AN  
APPOINTMENT, CALL



[www.attorneygates.com](http://www.attorneygates.com)  
**336 724-0082**