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Discharging Taxes in Bankruptcy Has Evolved

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Bankruptcy court, oftentimes described as a court of equity, can be a court of inequity when confronted with issues dealing with federal income taxes and the discharge of the same. This article reviews a recent Eleventh Circuit decision and expounds upon its meaning to bankruptcy practitioners and how the new decision will affect wealthy debtors' future attempts to discharge taxes in the bankruptcy forum, how the ruling increases the disparity between rich and poor debtors, and how the disparity appears inequitable to the wealthy debtor.

Bankruptcy clients too often arrive at bankruptcy practitioners' offices with alarming news about the Internal Revenue Service.1 Any layman will tell his or her friends that the one creditor that they never can discharge is the Internal Revenue Service. Bankruptcy clients often come to "get rid of" their other creditors so that they can concentrate on their liabilities to the Internal Revenue Service.1 The experienced bankruptcy practitioner, though, may add sweetener to the client's bankruptcy filing. For a fee of a few thousand dollars, a bankruptcy attorney can offer the client something the client never dreamed could be done - discharge the federal income tax liabilities. But remember that bankruptcy court can be a court of inequity when dealing with the issue of discharging federal income taxes. In the perspective of the party seeking to discharge federal income taxes, the rule of thumb may be that the uninformed or poor receive a discharge while the relatively wealthy do not.

If the bankruptcy client has not filed tax returns, that may be good news to the poor or uninformed. To the rich, a failure to file tax returns is not good news. A review of bankruptcy Sections 523(a)(1)(A) and (B)2 outlines the focus of the discharge. After reading those sections, the practitioner must then distinguish the debtor who receives a 1099 from his employer3 from the debtor who receives a W-2 from his employer.3 The difference is astounding. The client's answer could easily deliver enough information to enable counsel to make an immediate and appropriate response about whether or not his or her client should file a bankruptcy and discharge his taxes under Chapters 7, 11 or 13.4

A Chapter 7 debtor can only discharge taxes if he or she filed the tax returns more than two years prior to the filing, no lien5 is placed against the debtor in relation to those taxes,6 and the taxes have not been subject to an assessment within the past 240 days. Lastly, the debtor must not have made an Offer in Compromise to alter these time frames.7

A Chapter 13 debtor can only discharge the taxes if the amount owed to the Internal Revenue Service is less than $290,5258- and that amount is reduced by every penny of unsecured debt owed to credit card companies, signature loans, deficiency judgments and other unsecured creditors. For instance, if a debtor owes $120,000.00 to unsecured creditors and $175,000.00 of federal income taxes, the Debtor would not be able to file a Chapter 13.9

REVIEW OF WHAT TO DO IF CLIENT CANNOT FILE CHAPTER 13

So, what do you do if the client owes a bundle to the Internal Revenue Service, and has not filed the returns? Easy you say, file the returns, lay low for two years, don't make any Offers in Compromise, and when the two-year period expires run like a mad dog to the nearest bankruptcy

court and sigh an expression of relief because you can obviate the problem of § 523(a)(1)(A) or (B).10 Then, from the back of your mind, you hear a voice shout "wrong." The Eleventh Circuit, you discover, is the voice.

Recently, Dr. Fretz went to his attorney and informed counsel that he had not filed taxes for a period of 11 years (1982 through 1992). United States v. Fretz (In re Fretz), 244 F.3d 1323 (11th Cir. 2001). Because his debt to the Internal Revenue Service was large, he was incapable of utilizing Chapter 13.11 Knowing that the Doctor cannot go into a Chapter 13 , and that §§ 523(a)(1)(B)(i) and (ii) required the filing of tax returns, counsel did the right thing - filed the returns and told his client to lay low for three years.12

If Dr. Fretz chose not to file a tax return, he would have created a prima facie case to disallow his discharge under 11 U.S.C. § 523(a)(1)(B)(i). If the return was filed late, but within two years of the filing of the bankruptcy, Doctor Fretz would not be discharged under 11 U.S.C. § 523(a)(1)(B)(ii). If the return was filed late, but more than 2 years prior to the filing of bankruptcy (and not subject to audit or assessment within 240 days), the only issue would be whether or not the doctor willfully attempted to evade or defeat such tax so as to deny the discharge of taxes under 11 U.S.C. § 523(a)(1)(C).13

Doctor Fretz and his bankruptcy attorney understandably (and perhaps rightfully) thought that waiting three years was enough.14 After all, they won in the bankruptcy court. But, the appellate courts were not as gracious. The issue ultimately went before the Eleventh Circuit. The issue wasn't the "time between filing the returns and the time of the petition." The issue was "willfulness." To be specific, the issue was "willfulness to evade tax." Doctor Fretz thought willfulness was a nonissue. Doctor Fretz believed he was incapable of having the requisite ability to "willfully attempt to evade."

Three factors existed for Dr. Fretz: first, he was a 1099 employee; second, he was educated; and lastly he was not poor.

While working in the emergency room for 11 years, Dr. Fretz was an independent contractor who received 1099's from the hospital. As stated above, the difference between a 1099 employee and a W-2 employee is significant. A 1099 employee has no withholding - either for federal income tax or for social security/medicare. The 1099 reports, of course, annually alerted the Internal Revenue Service that Dr. Fretz was not filing his returns. Eventually, the Internal Revenue Service followed up on those 1099 reports and delivered a letter to the Doctor stating that he had a problem in regard to the same. Criminal actions were actually brought against this Doctor and in January of 1994, Doctor Fretz pled guilty to one criminal charge (regarding the 1988 taxes) and filed tax returns for all 11 years.

Doctor Fretz did not file immediately. He was not stupid. Doctor Fretz filed accurate returns. He was honest. Doctor Fretz earned a decent living. He was not poor. Some may argue that his character traits were inappropriate for obtaining a discharge of taxes: honesty, intelligence and capacity to earn money.

After waiting more than three years, Dr. Fretz filed bankruptcy. Thinking that he waited long enough to avoid 11 U.S.C. § 523(a)(1)(B)(i) or (ii), he thought a discharge was automatic. He was right at the time. The Internal Revenue Service, however, created new law as it sought to have his discharge excepted under 11 U.S.C. § 523(a)(1)(C). Changes in the law occurred

between the time of his filing and his appeal. The issue under § 523(a)(1)(C) significantly changed about what to review to determine if the debtor, "...willfully attempted in any manner to evade or defeat such tax..."

THE EVOLUTION OF § 523(a)(1)(C) IN THE ELEVENTH CIRCUIT

An earlier Eleventh Circuit case held that the term "tax" used in § 523(a)(1)(C) did not mean "payment." In short, the Eleventh Circuit ruled that an attempt to evade or defeat payment of taxes is different than an attempt to evade or defeat a tax. Hass v. Internal Revenue Service (In re Haas), 48 F.3d 1153, 1159 (11th Cir. 1995).15 Thereafter, the Eleventh Circuit reversed itself in the year 2000 (three years after the Dr. Fretz filed his bankruptcy) in Griffith v. United States, (In re Griffith), 206 F.3d 1389 (11th Cir.), cert. denied, 531 U.S. 826 (2000).16 As explained in the Fretz case, Griffith did not attempt to evade or defeat the assessment of tax, but he started transferring property to his family members in an attempt to avoid payment of tax. The intrafamily transfers were rightfully deemed the equivalent to evading or defeating a tax. It became obvious to the Eleventh Circuit that the other Circuits' criticisms of the Haas decision were valid in light of the fact that a tax is nothing more than a "payment." Evading a payment of a tax is the equivalent to evading a tax.

Moreover, the Griffith case determined that if attempts to evade payment were to be allowed because of the nomenclature of 11 U.S.C. § 523(a)(1)(C), then debtors would always be discharged of taxes so long as they filed their returns more than two years prior to the filing of bankruptcy. Of course this was why Fretz waited the period of time that he did and is probably why he filed bankruptcy thinking that his taxes would be discharged (other than the 1988 taxes where criminal liability existed).17 By filing tax returns without paying taxes, debtors were led - by the Haas decision - to believe they would avoid the dischargeability provisions of § 523(a)(1)(B)(i) and (ii) and compel the IRS to be limited to the nondischargeablity clause of the first half of 11 U.S.C. § 523(a)(1)(C) which denies a debtor the ability to be discharged of taxes for those debtors who file "fraudulent return(s)."

Between the time of Haas to the time of Fretz, the law evolved. Haas: If one filed a tax return and did not pay, they would probably be discharged so long as the tax return was filed more than two years prior to the bankruptcy petition date, the tax was not the subject of a lien, and the tax was not the subject of an assessment or audit within 240 days of the filing of the bankruptcy petition. See also United States v. Fegeley, (In re Fegeley), 118 F.3d 979, 984 (3d Cir. 1997). Griffith: If the debtor makes intrafamily transfers while tax liability exists, but files tax returns, the transfers would evidence evasion of taxes, as the evasion of payment is the equivalent to evasion of taxes. Fretz: If the debtor failed to file the tax returns and failed to pay the tax when the returns were filed, but the nonpayment was merely because of an inability to gather the cash - and there were no intrafamily or other transfers involved - a problem under § 523(a)(1)(C) would exist. See also Toti v. United States, (In re Toti), 24 F.3d 806, 809 (6th Cir.), cert. denied, 513 U.S. 987 (1994).

All is not lost for the wealthy taxpayer whose unsecured liability may be $300,000 or more and whose tax debt is more than two years old. Those who did not pay taxes are distinguishable from those who did not personally pay taxes, but had someone else pay the taxes (or at least 80% of those taxes and probably all social security and medicare responsibilities). A debtor who receives a W-2 probably can ignore the harsh result of Fretz. If the debtor reveals that he has not filed tax

returns for a period of years, but has had taxes withheld by his employer and received W-2 forms, the debtor may be absolved of a harsh result. That debtor paid all of the FICA.18 That alone is a tremendous improvement. The 1099 wage earner has to pay 15.3% of his or her gross income to satisfy his FICA liability above. That 15.3% debt is in addition to the tax liability. In addition, so long as the W-4 delivered to the employer appropriately recited the number of deductions and the type of taxpayer he or she is,19 the withholding should be adequate.20

Unlike the problems in Toti or Fretz, a W-2 employee paid his or her FICA and probably a good percentage of the taxes were paid or withheld.21 Such a debtor has been paying taxes but maybe has not filed returns. Such a debtor who makes some regular "payment" cannot and should not be deemed to be "willfully attempting" or "evading" tax or tax liability or payment.22 The Fretz court looked at the language of § 523(a)(1)(C) which will deny the discharge if there is "any manner" to evade or defeat such tax. The word "any" means "all" as previously determined by the Eleventh Circuit. Merritt v. Dillard Paper Co., 120 F.3d 1181,1186 (11th Cir. 1997). The Court concluded that "in any manner" means any act of commission or act of omission will deny the debtor's discharge of the tax liability as the failure to file tax returns coupled with the debtor's failure to pay satisfies the requirement of § 523(a)(1)(C).

Dr. Fretz's argument was that he could not voluntarily, consciously, knowingly or intentionally seek to evade or defeat taxes. Alcoholism, he stated, prevented him from having the requisite intent. Such arguments may be successfully employed in contract or criminal law. But the Eleventh Circuit was not sympathetic of such argument in tax law. The panel only had three elements to review before determining whether or not the requirements of willfulness were met: (1) that there was a duty to file the return and pay taxes; (2) the debtor knew about such duties; and (3) that the duty was violated by an intentional23 or voluntary act. Any American who has lived in this society for any period of time knows about the duties to pay and file returns. Alcoholism is not enough to disprove the violation of the voluntary act. As the Court wrote:

Put bluntly, someone who can control his drinking enough to perform medical procedures during twelve-to-twenty-four hour shifts in an emergency room over a period of years can control his drinking enough to file tax returns and pay taxes during that same period. Instead of doing that, as Dr. Fretz himself put it, he "just totally ignored" his tax responsibilities.

THE LITTLE GUY - UNINFORMED OR POOR - WILL PROBABLY BE DISCHARGED

The inference in light of Fretz may be that the little guy, unlike the Dr. Fretz, can probably be discharged . If instead of Dr. Fretz, an orderly from the hospital comes to your office, think bankruptcy. Even if: (1) he too does not have taxes withheld; (2) he too has not filed returns for 11 years; or (3) he too only received 1099's. The major difference for this debtor is the amount of tax. Because the amount of taxes he owes will probably be well under the $290,525 limit for unsecured debt allowed in Chapter 13, the taxes associated for the majority of those years will be discharged - even if the debtor willfully intended not to pay. The Chapter 13 debtor's rights exceed those of a Chapter 7 or Chapter 11 debtor. Chapter 13 is afforded to those who cannot afford to run up a big tab with the Internal Revenue Service or their unsecured creditors. If a debtor's unsecured liabilities are less than $290,525.00, the debtor's intent to "evade" taxes is not an issue.

If the orderly's taxes were filed with a fraudulent return, that tax could be discharged. If the orderly admits that he willfully attempted to evade or defeat taxes, that tax could be discharged.

You may wonder how. Bankruptcy sometimes is not the most equitable jurisdiction. The Bankruptcy Code has paradoxes. Section 1328(a)(1)(2)(3) may be the greatest of those paradoxes. Section 1328 is not called the "discharge." The Section 1328 discharge is affectionately called the "superdischarge" or "embezzler's discharge." Neither of those names is improper.

Under § 1328(a)(1)(2)or (3), a debtor will be discharged from all liability but those liabilities listed in those subsections. The nondischargeable debts included in those subsections are: (1) alimony; (2) child support; (3) program funded student loans; (4) DUI personal injury obligations; and (5) restitution or criminal fines included in the debtor's conviction. Section 1328 does not except from the discharge that provision discussed by Fretz - § 523(a)(1) taxes. Therefore, if the Internal Revenue Service has not filed a lien against the Debtor, and the debtor's taxes remain to be the subject of a fraudulently filed or willfully evaded tax, that tax could be discharged in a Chapter 13 petition.

Not everything goes out the window in bankruptcy. Some taxes must be paid - even in Chapter 13. Some taxes are administrative debts. Any tax which is the subject of a return filed within three years of filing of the petition is an administrative tax.24 This includes the returns that were not filed within that three-year period.25 A priority tax, as defined under 11 U.S.C. § 507(a)(8, must be fully paid in the Chapter 13 plan as required under 11 U.S.C. § 1322(a)(2). But, to a debtor who filed no taxes for 11 years, paying three years of taxes is a bargain. Paying a fraction of the full amount, obtaining a discharge in relation to the same through a federal court order, and discharging the unsecured creditors at the same time makes bankruptcy extremely palatable.

CONCLUSION

If the debtor is a small debtor to the Internal Revenue Service, think about utilizing Chapter 13's superdischarge for taxes. The uninformed and poor 1099 employee can be discharged in Chapter 13. If the debtor is a large debtor to the Internal Revenue Service, file the tax returns for your client as fast as you can. That way you can avoid the nondischargeablity provision of 11 U.S.C. § 523(a)(1)(B)(i). To avoid the evasion of tax issue, you must know whether the client is a W-2 employee or a 1099 employee. If the affluent client is a W-2 employee, think strongly about filing a bankruptcy. If the client is a high salaried 1099 employee, you may have to work outside of the bankruptcy forum. Especially, for someone with a debt like Dr. Fretz. Rarely, will you find an affluent 1099 employee client who could avoid the harsh results of 11 U.S.C. § 523(a)(1)(C)26 - even if the tax returns were filed to repair the damage made.

The affluent client, whose past is the mixture of failing to file returns and failing to pay, will have the necessary intent to evade taxation so as to deny his or her discharge of the tax liability under 11 U.S.C. § 523(a)(1)(C). If such a client comes to you, and the client cannot utilize Chapter 13, commencing a payment plan27 for those taxes may bring about the best result for the client.

Also, bankruptcy and its discharge are not in whole an Internal Revenue Service issue. Other liabilities may require the filing of a bankruptcy petition. Discharging the other liabilities may permit the debtor/taxpayer to afford payments to the Internal Revenue Service. Although the filing may not permit the debtor to get the "home run" in bankruptcy by discharging all of his or her taxes, discharging the "other debt" may be significant in dollar amount and equated to a "triple." The client should be satisfied with such a result if the consequences of his bankruptcy

are merely to concentrate on the taxes which he failed to pay.

The Eleventh Circuit's decision of In re Fretz compels counsel to give the best advice to the client. The two-year safety period of Haas is no longer magical in relation to debtors who cannot file Chapter 13. Filing returns, without payment, and waiting two years is not enough for the affluent any more. Instead, the client who has not paid, and owes a bundle, must address the problem so as to avoid grotesque growth of penalties and interest in the future as well as collection issues.

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[1.] And this is not a bad approach to the issue of discharge and taxes. In fact, in the conclusion you'll see that this may be the client's only choice.

[2.] Those respective sections state:

523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty--

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required--

(1) was not filed; or

(2) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date

of the filing of the petition;

. . .

[3.] These are forms created by the Internal Revenue Service which trigger income recognition to the computers of the IRS. Upon filing either form with the IRS, the IRS awaits the recipient to file a 1040 return which includes income to match the information on the forms. A 1099 is delivered to the independent contractor and does not involve any withholding. A W-2 is similar with one exception, it includes complete withholding for FICA and should have more than enough withholding for earned income.

[4.] This simple box outlines the issue under simple terms whether or not a discharge can be obtained:

Debtor Type

W-2 withheld 80% or more

1099 paid estimated of 80% or more

W-2 with improper withholding

1099 and no estimated paid

WEALTHY DEBTOR - CHAPTER 7 OR 11 OR POOR DEBTOR CHAPTER 7

Probably Okay - make sure returns are filed

Probably Okay - make sure returns are filed

Could be a problem - unknown. Make sure returns are filed.

Fretz

Do not dare.

POOR DEBTOR - CHAPTER 13

Gets rid of all taxes but those of 3 years within filing - must pay those taxes in full in plan of 3 to 5 years

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[5.] Any lien under 26 U.S.C. § 6321 affects all property but the exempt property of the taxpayer as recited in § 6323.

[6.] Liens create problems as the tax may be dischargeable but the lien is not avoidable. See 11 U.S.C. § 522(c)(2)(B).

[7.] § 523(a)(1) combined with § 507(a)(8) makes this formula. 523(a)(1)(a) states:

523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty--

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

Section 507(a)(8)(A)(ii) states:

507(a)(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for -

(A) a tax on or measured by income or gross receipts -

. . . .

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of filing the petition;

. . .

[8.] 11 U.S.C. § 109(e)

[9.] The debt must noncontingent and liquidated. See 11 U.S.C. § 109(e). There can be abuse with the schedules where the debtor

claims the creditor to be unliquidated or contingent, even after a judgment has been entered. Moreover, a disputed creditor apparently is deemed to be included in the formula for the $290,525 while only the contingent and unliquidated are excluded from the formula.

[10.] The filing of the return prevented the problem of § 523(a)(1)(B)(i). The filing more than two years prior to the petition prevented the problem of § 523(a)(1)(B)(ii). The decision of not filing an Offer in Compromise and filing after 240 days from assessment prevented the problem of § 523(a)(1)(A) and § 507(a)(8).

[11.] See 11 U.S.C. § 109 which explains Chapter 13 debtor's unsecured creditor amount.

[12.] Bankruptcy says you wait 2 years for the discharge under § 523(a)(1) and 3 years to avoid the tax from being a priority claim - § 507(a)(8).

[13.]1. That section states:

523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(1) for a tax or a customs duty--

. . .

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

. . .

[14.] To avoid dischargeability issues, you wait 2 years. §523(a)(A) or (B). To avoid the tax from being a priority claim, you wait 3 years. § 507(a)(8).

[15.] The Eleventh Circuit in Griffith, 206 F.3d 1389, 1392 (11th Cir. 2000) wrote:

Subsequent to the bankruptcy court's decision, we decided In re Haas, 48 F.3d 1153 (11th Cir.1995). Haas had filed accurate tax returns, but had not paid the taxes due; instead, he used his income to pay business and personal debts. Upon filing for bankruptcy, he sought discharge of the tax debts, which the government opposed on the basis of § 523(a)(1)(C). Noting the "fresh start" policy underlying the bankruptcy laws, the Haas panel found that a literal reading of the statute, including the broad phrase "in any manner," would conflict with the goals of bankruptcy. See id. at 1156. Thus, the panel looked to provisions of the Internal Revenue Code ("I.R.C.") and found that they referred to "willfully attempting in any manner to evade or defeat any tax or the payment thereof." See id. (quoting 26 U.S.C. § 6531(2)) (emphasis added); see also id. (quoting 26 U.S.C. §§ 6653, 6672, & 7201, which contain the identical language as that emphasized in the above quote). The panel relied on the absence of the phrase "or the payment thereof" from § 523(a)(1)(C) to conclude that the provision precludes discharge when the debtor "willfully attempted ... to evade or defeat" the tax at the assessment stage, but does not preclude discharge when there has been such evasion at the payment stage. See id. at 1159. Thus, Haas' debt was dischargeable.

Note, Dr. Fretz filed bankruptcy June of 1997. He relied on Haas, but was tripped up when Griffith became the law after his victory in bankruptcy and before his loss in the District and Circuit Courts.

[16.] The Griffith court ruled:

It is undisputed that Griffith engaged in intra-family transfers of property for little to no consideration. In light of our holding in this case, we find that the district court did not err in affirming the bankruptcy court's finding that Griffith had engaged in conduct covered by § 523(a)(1)(C). See id. at 952 (affirming bankruptcy court's finding of an attempt to evade taxes where debtors transferred property into trust for no consideration while still maintaining control over the property); [Dalton v. Internal Revenue Service, 77 F.3d 1297, 1303] (holding that transfer of property to betrothed for insufficient consideration with knowledge of tax investigation supported finding of willful attempt to evade or defeat taxes); In re Sternberg, 229 B.R. 238, 248 (S.D.Fla.1998) (finding that transfer of property to wife for little consideration while maintaining control over the property constituted a willful attempt to evade or defeat taxes); [In Re Jones, 116 B.R.810, 815 & n. 1(Bankr. D. Kan. 1990)] (finding that transfer of property to others constituted an attempt to evade or defeat taxes).

In re Griffith at 1396 (footnote omitted).

[17.] 11 U.S.C. § 523(a)(14).

[18.] Federal Insurance Contributions Act. The tax is withheld from employees by the employer. The employer removes from the paycheck 6.2% of gross taxable income for Social Security and 1.45% of gross taxable income for medicare. The employer pays a "matching" 6.2 for Social Security and 1.45% for medicare which is not withheld from the employee's paycheck. The full amount of the withholding is 15.3%. A 1099 employee has to pay the entire 15.3% out of his own pocket and file an SE form with his 1040 tax return to reflect payment of the same.

[19.] For instance, a cohabiting married person cannot file "head of household" or a single person cannot claim to be "married."

[20.] A great number of tax consequences occurring this millennium are from those exercising stock options. Afterward, as the market drops, they are unable to sell other securities to pay the income tax. These securities are intended as ordinary income and have no capital asset complexion. Therefore, the tax on the options can be amount to a large sum.

[21.] If the employer reports the withholding, but does not pay the IRS, the employee is still given the credit. The IRS has recourse against the "responsible party(ies)" of the corporation as well as the corporation to pay the money which was wrongfully not paid by the employer to the IRS.

[22.] Most W-2 earners don't have tax liability. Because a great percentage of W-2 earners have too much tax withheld, their failure to file a tax return within two years will probably only subject them to forfeit their rights to a refund. See 26 U.S.C. § 7403

[23.] The Internal Revenue Service only needs to prove an intent - which is not equated to a "fraudulent intent."

[24.] 11 U.S.C. § 507(a)(8).

[25.] 11 U.S.C. § 507(a)(8)(A)(iii).

[26.] Some 1099 wage earners pay estimated taxes and, by such action, avoid a Fretz fact pattern.

[27.] Try to avoid an Offer in Compromise as such an agreement tolls the dischargability period under § 507(a)(8).