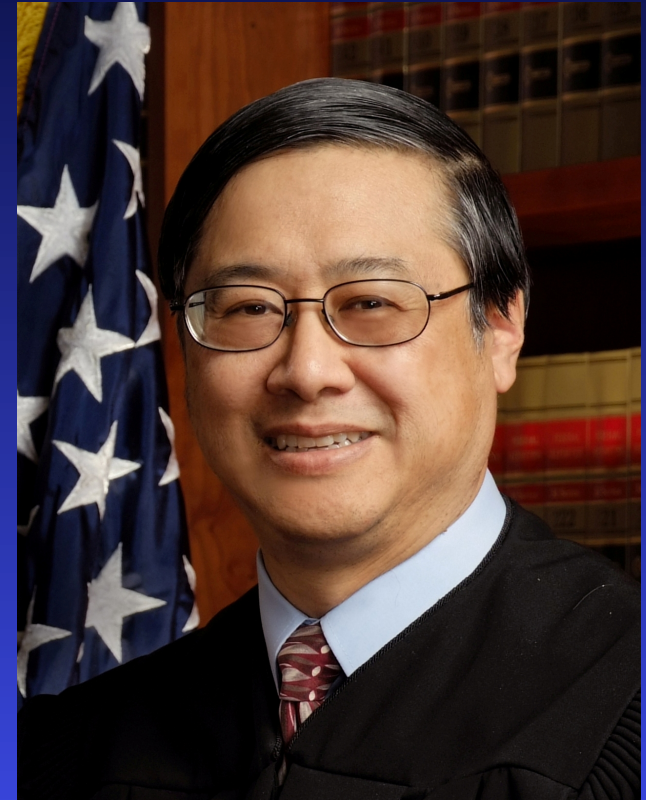


# Pre-Petition Tax Debt Planning and Post-Petition Problems

September 23, 2015

# Moderator: Hon. Robert Kwan

- U.S. Bankruptcy Judge,  
C.D. Cal., 2007-present
- Former tax attorney,  
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- Pre-Bankruptcy Planning for Tax Matters
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# Outline of Webinar

- Practical Tips for Handling Tax Debts in Filing Bankruptcy for Consumer Debtors
- 55 minutes of presentation, 20 minute question and answer period
- Submit questions through Go To Webinar

# What to file?

- Tax considerations in whether to file Ch. 7, Ch. 13 or Ch. 11
- Getting tax account information
- Considering potential tax claims (e.g., unfiled returns, capital gains)
- Considering Ch. 11 or 13 plan feasibility

# Tax Basics in Bankruptcy Court

## ■ Federal Tax Claim Classifications:

- ◆ Secured—Notice of Federal Tax Lien regarding liability filed pre-petition or liability subject to setoff
- ◆ Priority—BC 507(a)(8)
- ◆ General Unsecured—any liability that cannot be classified as priority or secured

## ■ POC Bar Date for Government

- ◆ Generally 180 days from petition date per BC 502(b)(9)



# Tax Basics in Bankruptcy Court

## ■ Dischargeability of Tax Liabilities/Penalties

### ◆ Priority Taxes

- ◆ Nondischargeable in Individual Ch. 7 or 11
  - BC 523(a)(1) and 507(a)(8) and (3)\*
- ◆ Dischargeable in Ch. 13 (except trust fund)
  - BC 1328(a)

### ◆ Tax Penalties

- ◆ Ch. 7/11--Generally nondischargeable if related to nondischargeable tax and incurred w/in 3 years of bankruptcy (BC 523(a)(7))
- ◆ Ch. 13--Dischargeable



# Unfiled & Late Filed Returns— Dischargeable?

## ■ General Rule

- ◆ Liabilities with respect to unfiled returns or late returns filed within 2 years of BK are NOT dischargeable per BC 523(a)(1)(B) & 1328(a)(2)

## ■ BAPCPA added “Hanging Paragraph” under BC 523(a) defining “return”

### ◆ What is meaning/impact?

- ◆ IRS view? (CC Notice 2010-016)
- ◆ Courts’ view?
  - Mallo (10th Cir.) (cert. denied June 2015)
  - McCoy (5<sup>th</sup> Cir.); Fahey (1<sup>st</sup> Cir.)

# Pre-Bankruptcy Planning Tax Debt Resolution Options

- Offer in Compromise
- Installment Agreement
- CDP
- Litigation

# Post-Bankruptcy Tax Debt Resolution Options

- Are they the same as Pre-Bankruptcy Options?
- Who are the Post-Bankruptcy players?

# Postpetition—Remaining in Tax Filing/Payment Compliance

- BC 521(j)—failure to file postpetition tax returns cause for dismissal
- Chapter 13
  - BC 1305 claims
  - Failure to pay postpetition liabilities cause for dismissal under BC 1307?
- Chapter 11
  - Failure to timely file/pay postpetition taxes cause for conversion/dismissal per BC 1112(b)(4)(I)

# Chapter 11 Tax Return

- Form 1040? Form 1041?
- Property of the Estate in Individual Ch. 11s
  - ◆ BC 1115

# Post-Bankruptcy Tax Debt Resolution Options

- Are they same as Pre-Bankruptcy Options?
- Who to talk to?

# Continue—Postpetition Matters

- Chapter 13, IRS collection of postpetition taxes on completed administration of plan
  - ◆ Postpetition interest on nondischargeable unsecured claims NOT paid through plan
    - ◆ BC 1322(b)(10)



# Questions?



# References for Research

- IRS website, [www.irs.gov](http://www.irs.gov)
- Practitioner hotline, 1-866-860-4259
- [www.findlaw.com](http://www.findlaw.com), currently free, but rumors that articles will be fee-based.
- “Federal Tax Litigation” (Law Journal Press 2001-updated biannually)(By Susan A. Berson)