

# KREKELER LAW REPORT



APRIL 2018

VOL. 4 NO. 2

## WHAT HAPPENS TO TAXES AND TAX LIENS IN BANKRUPTCY?



Because this is tax month, we thought we would discuss this question which is often raised by our clients and causes them great concern.

There are four possibilities when we are talking about taxes and tax liens in bankruptcy.

### Taxes – Nondischargeable. No Lien.

- These taxes will be owed after the bankruptcy case, but there is no present lien upon the property. The debtor will have to deal with the taxes and a lien could be placed later.

### Taxes – Discharged. No Lien.

- The taxpayer has nothing to pay and nothing to fear about liens on the property.

### Taxes – Not Discharged. Liened.

- The lien applies only to property owned at the time of the bankruptcy filing. Property acquired after the Bankruptcy filing is not subject to the tax lien.

### Taxes – Discharged. Liened.

- The debtor does not have to pay the taxes but the lien survives. This is the same as having a car loan or a mortgage loan which is not reaffirmed. The debtor need not pay because the debt is discharged, but the creditor could still collect by enforcing the lien. Fortunately for most debtors, the tax authorities are not particularly aggressive about enforcing their liens.
- The lien applies only to property owned at the time of the bankruptcy filing. Property acquired after the Bankruptcy filing is not subject to the tax lien.

Fortunately, there are ways to deal with all four of these scenarios. Each case is different, of course, so the remedy needs to be fashioned to fit the particular facts.

### In This Issue

- *What Happens to Taxes and Tax Liens in Bankruptcy?*
- *Divorce Debt: Maintenance or Property?*
- *Gun Maker Remington Files Bankruptcy*
- *Sitcom Provides Tips to Avoid IRS Scams*
- *IRS Interest Rates and Other Rates of Interest*
- *Where's Krekeler?*
- *Business Tip: Protect Your Limited Liability*



# DIVORCE DEBT QUESTION: MAINTENANCE OR PROPERTY?

Divorce settlements and judgments result in two types of obligations. One is support obligations, such as maintenance and child and family support. The other is everything else, which we generally characterize as property division. This property division includes both assets and debts.

Negotiating a divorce settlement often involves adjusting these two types of obligations, perhaps getting a little less of one in return for a little more of the other. I was recently asked whether it would be better for my client to receive a higher maintenance award or to do a larger property division. The answer, like so many answers in our profession, is that "it depends."

The general rule is that any obligations awarded in a divorce are not dischargeable in bankruptcy. For support obligations, which in bankruptcy we call domestic support obligations, this is uniformly true.

But there is an exception in Chapter 13 bankruptcy cases which allows for the discharge of debts which would fall in the property division category.

This means that getting a higher award of maintenance might result in an obligation which the paying spouse could never discharge in bankruptcy. But

maintenance can terminate for other reasons, such as death or remarriage.

A property division generally remains enforceable, even if the recipient remarries or the payor dies. Property division obligations can also be made more likely to be collected, by securing them with valuable collateral. A \$10,000 payment obligation secured by \$100,000 of equity in the payor's home is well secured and thus likely to be paid.

Another factor could be the timing of payments. A dollar in your hand today is worth more than the promise of a dollar in your hand tomorrow. We must therefore consider over what period of time maintenance would be paid and when and how the property division would be received.

If the recipient has financial problems, we need to ensure that we will be able to protect any assets received. We might also need to consider whether the receipt of maintenance will cause the recipient to be ineligible for the type of bankruptcy he or she wishes to file.

These are all issues which can be weighed and decided, but only after careful consideration.

## GUN MAKER REMINGTON FILES FOR CHAPTER 11 BANKRUPTCY

200-year old gun manufacturer Remington Outdoor Brands recently filed for bankruptcy. The company owns both the Remington and Smith & Wesson brands. Like many large businesses that enter Chapter 11, its largest creditors are pension plans.



Remington is also facing lawsuits from family members of the Sandy Hook 2012 mass shooting victims, since one of its AR-15s was used by the shooter. And a committee of unsecured creditors will include a number of parties alleging that Remington guns discharge accidentally, injuring the guns' owners or third parties.

Sturm Ruger, another major gun manufacturer, is also seeing reduced earnings over the past year and is experiencing very significant layoffs of workers.

# SITCOM PROVIDES TIPS TO AVOID IRS SCAM CALLS

Life in Pieces is a sitcom about the lives of three generations of a Los Angeles family. A recent episode, "Renter Portrait Plagiarism Scam", involved an elderly couple receiving scam phone calls from someone pretending to be from the IRS.

Thanks to some last minute communication between the older couple and their adult daughter, they avoided paying thousands of dollars to a scam artist. But real life families and individuals aren't as lucky. According to one recent article in *Moneywatch*, tax scam calls are up 1,218 percent over 2017!

## What the Callers Say

Callers pretend to be from an IRS Taxpayer Assistance Center location or leave voicemails to callback about a lawsuit about to be filed. Caller ID shows these numbers often appearing with a Washington D.C. area code.

Threats include police action, seizing a driver's license, or taking other steps to collect on a past due tax debt. I know this because I and other attorneys get these calls too!

## What the IRS Will Actually Do

The IRS will almost always communicate by U.S. mail. The IRS rarely calls. The IRS doesn't have the capability of calling the thousands of taxpayers who owe money.

The IRS will direct payments made to the United States Treasury. It will not suggest using gift cards, debit cards, or wire transfers. The IRS will not send local police to arrest people at home or work. There are standard appeals processes for legitimate disputes over taxes owed.

## Protect Yourself

If you receive a call like this, you do not need to return a voice mail. If you speak with someone, do not disclose your social security number, bank account number, or other personal information. Scammers use this information to file phony tax returns in the name of real taxpayers, collecting refunds. Make sure to file your taxes as early as possible, file electronically and have your refund, if any, directly deposited. The IRS has a Fact Sheet with more information at [How to Know It's Really the IRS Calling or Knocking on Your Door](#).

# IRS INTEREST RATES REMAIN AT 4%

Interest rates for underpayment of taxes will remain at 4% for the second quarter of 2018, which began April 1, 2018. The IRS rate of interest is determined quarterly, and for taxpayers other than corporations, the rate is determined by adding 3 percentage points to the Federal Short-Term Rate.

While this interest rate is quite low, delinquent taxpayers do not get off quite so easily. The IRS also imposes a monthly penalty of .5% of the unpaid tax for each month the tax remains unpaid (6% per year).

Taxpayers also do not fare as well with the Wisconsin Department of Revenue. The interest rate imposed by statute for Wisconsin taxes is 12% on non-delinquent taxes and 18% on delinquent taxes.

Some taxes, and the accompanying interest and penalties can be discharged in bankruptcy. Be sure you know all of your options before entering into an installment agreement or submitting an offer in compromise to either tax authority.

# OTHER INTERESTING RATES OF INTEREST

**LEGAL RATE** Did you know: The legal rate of interest in Wisconsin is set by statute at 5% per annum per §138.04, Wis. Stats. This rate applies to loans or goods that you owe for. This rate is good for liquidated damages but not on amounts of damages not yet determined.

**CONSUMER RATE** For consumer transactions, a higher rate of interest may be charged, but it must be disclosed in writing *before* the transaction is consummated or the account opened per §422.302(2) and §422.308, Wis. Stats.

**PAYDAY LOANS** Payday loan interest rates are not capped per §138.14(10), Wis. Stats., but the entire liability for principal, interest, charges and fees may not exceed \$1,500 or 35% of the customer's gross monthly income – whichever is less. AVOID THESE!

**JUDGMENT RATE** The interest rate on judgments is set by statutes and varies with the Federal Prime Rate. The current rate on judgment is 5.50%, and it changes every 6 months, on January 1 and July 1. Judgments entered prior to December 2, 2011 still bear interest at the old 12% per annum.

# WHERE'S KREKELER?

**KOHLER RETREAT** Most of our bankruptcy lawyers were gone for two days last month at the 13<sup>th</sup> Annual Bankruptcy, Insolvency and Creditor's Rights Section Educational and Social Retreat. Our firm is proud to have sponsored this signature event of debtor and creditor attorneys in Wisconsin. Special recognition goes to Attorney Eliza Reyes, who has long been one of the organizers of the event. Topics covered at this year's retreat included bankruptcy appeals, mediation, ethics, and both National and Wisconsin case law updates.



**GAMBLING AND THE DEBTOR** was a presentation given by David Krekeler last month at the Western District Bankruptcy Bar Association. The presentation included a brief history of the law and gambling, as well as tips on how best to help clients who may be compulsive or problem gamblers.

**"As Dairy Crisis Crushes Farmers, Wisconsin's Rural Identity in Jeopardy"** was the headline of an April 13 article in the Milwaukee Journal Sentinel. David Krekeler was interviewed for and quoted in the article, which can be found online at [Dairy Crisis Crushes Farmers](#).

**36<sup>th</sup> ANNIVERSARY** - David Krekeler and his wife, Mary, celebrated their 36<sup>th</sup> wedding anniversary on April 24. Here is a picture from their wedding. While Mary still looks great, David seems to show some serious wear and tear.



Then



Now

## ***BUSINESS TIP:***

# PROTECT YOUR LIMITED LIABILITY

One of the principal reasons business owners incorporate or create limited liability companies is to protect themselves from personal liability for the debts and obligations of the business. This protection can be lost, however, if the creditors of the business entity do not know that the business is in fact a corporation or an LLC.

The leading Wisconsin case on this issue might be *Benjamin Plumbing*. In that case, the agent of a corporation ordered goods and services for the corporation, but did not disclose that the buyer was in fact a corporation. As a result, the agent was held to be personally liable.

To prevent this from happening to you, be sure that all of your purchase orders and other written materials designate your business as a corporation or an LLC. Your checks should show that status, as well.

If you receive an invoice addressed to you personally, or even to your business name but without the corporate or LLC designation, return the invoice and ask that it be corrected. You could instead make the payment (with that corporate or LLC check) and include a letter indicating the error in billing and ask that all future invoices be corrected.



Have a question? Idea for a future article?

**If you ask for it – we will write it!**

Contact Deanna at

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