

WHEN HE OR SHE LEAVES YOU . . . WITH THE TAX BILL

By Arnie Wuhrman, Attorney At Law¹

He or she is gone – Mr. or Ms. Right. *Mr. or Ms. Always BLEEPING Right!* It took you months (or years) to figure out that you deserved better, and then still more time (and legal fees) for you to escape the *bonds* of matrimony. You’ve been through every one of Kubler-Ross’s stages of grief, one or two new wave separation rituals, and the obligatory night out with the guys or gals. You’re free – finally! Whew!!!!

But as you move on, one day, the doorbell rings. You open the door and greet the postman, sign for the letter from the Internal Revenue Service (IRS), and read those fateful words, “URGENT!! WE INTEND TO LEVY ON CERTAIN ASSETS. PLEASE RESPOND NOW.” After you recover from the shock, you remind yourself, “he/she *promised* to pay that tax bill as part of the divorce agreement.” You call the IRS at the number on the notice and notify them. Surprise, the IRS doesn’t care – *you* signed the tax return too, so you’re still on the hook. Now what?! Fortunately, there are a number of things you can do. Here’s a quick guide.

1. DON’T take a trip down that river in Egypt – *Denial*.

The most important thing you can, and must, do is to give the matter the attention it deserves. The IRS and, for that matter, state taxing authorities have powers that no other creditor in the world has. Unlike your bank, your mortgage company, or the issuer of your credit cards, the IRS can act without warning or without the necessity of a court order. You go to pull money out of the ATM, and there’s none in the account. You get a surprise note from your employer, *on payday*, telling you that your check has been garnished. If you’re in business for yourself, you get a call from one of

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your customers, telling you that they can't pay you anymore – the IRS told them to send what they owe you to the IRS. No one else can tie up your finances as quickly, and as surprisingly, as the “tax man.” But take heart – the IRS doesn't do these things *until you've ignored three or four letters saying that they want you to contact them*. So don't put it off, or hide your head in the sand. The IRS will find you *if you ignore them*.

2. DO find out if the tax problem is really your baby.

Once you resolve to act, it's important to find out what the *source* of the outstanding tax debt is. Is it just that the balance that was showing due on the tax return wasn't paid? Or was there an audit and a supplemental assessment (that is, tax added later after the IRS decided something was wrong with the return)? If the latter, did you get notice of the audit and an opportunity to participate? And was the additional tax assessed following the audit based upon *your* income and/or deductions, or those of your ex-spouse? These questions are crucial – they determine how you should next proceed.

3. Are you an Innocent Spouse?

Let's start with the situation where the tax bill is based upon an audit which turned up major problems on the return. Let's also assume that the additional tax bill was the result of something your ex-spouse did – taking a deduction he or she wasn't entitled to, or failing to declare all of his or her income on your joint tax return (after all, he or she *was that kind of guy or gal*). Under Section 6015(b) of the Internal Revenue Code, you can be granted relief from the additional tax if (a) the original underpayment of tax is attributable to the erroneous action(s) of your ex-spouse, (b) you did not know, and had no reason to know, that there was such an underpayment, and (c) taking into account all the facts and circumstances, it is inequitable to hold you responsible for the

underpayment of tax which resulted from your ex-spouse's action(s). In short, if you can show that your ex-spouse is solely responsible for the additional taxes assessed following the audit, and that you received no benefit from whatever was erroneously omitted from the original return, you may be able to get the IRS to let you off the hook.

4. Should you be given *equitable relief*?

Now, let's assume that there was no audit, just a large balance due on the tax return that didn't get paid. Let's also assume that your ex-spouse promised to pay the bill in the divorce settlement, but just didn't do it. Here, too, you may be entitled to consideration. Under Section 6015(c) of the Internal Revenue Code, you may be relieved of the tax debt if you can show the IRS that (a) the tax liability for which relief is sought was properly shown on the tax return but not timely paid, (b) you are separated or divorced from the other person who signed the return (that is, your ex), (c) you will suffer hardship if the relief is not granted (that is, it would cause you *significant* financial problems to have to pay the tax, not just be inconvenient), and (d) you had no reason to believe the tax would not be paid (that is, you can show that your ex-spouse had the means to pay the tax, as promised, and assured you that he or she would do so). In short, if you can show that your ex-spouse was supposed to pay the bill and had the ability to do so, but just didn't do it (maybe he or she blew the money on something else), the IRS, again, may let you off the hook.

5. Do you need to make an *Offer in Compromise*?

Perhaps you don't qualify for any of the relief shown above, but you still just can't pay the bill. Maybe you're not working, or not making a great deal of money, and there's just no way you'll ever be able to pay the debt off. The IRS has a program for this situation too – the *Offer in Compromise*. Under the Offer in Compromise program, you provide the IRS a completed financial

disclosure form and proof of your income and expenses for the preceding three (3) months. The IRS then compares your numbers to their Collection Financial Standards – a standardized set of “reasonable” expenses for a family the size of yours and in the same geographic area in which you live – and thereby determines whether or not you’re living extravagantly. The IRS then determines how much money you could afford to pay on a monthly basis after deducting your reasonable expenses and multiplies that number by twelve (12) months. They then agree to accept that amount in full satisfaction of your debt.

For example, let’s assume that you have a tax bill of \$50,000. Let’s also suppose that you make \$3,000 per month, and the IRS Standards show that you should be spending no more than \$2,800 per month. Multiplying your monthly surplus of \$200 by twelve (12) months, the IRS determines that it is reasonable to expect that they can collect no more than \$2,400 from you in the foreseeable future. Rather than put you (and their agents) through trying to collect the hard way (bank levies, wage garnishment, etc.), the IRS will accept \$2,400 in cash today in full satisfaction of your \$50,000 bill. In other words, you pay about five percent (5%) of what you owe, because that’s all that you can reasonably afford.²

6. Can you pay if you just have the time?

Perhaps the tax bill is “doable,” but you just need time to get it paid. The IRS will allow you to enter into an *Installment Agreement* to pay the debt in monthly installments for up to six (6) years. The amount of your monthly payment will depend upon your income and your “reasonable” living

²This example assumes that you do *not* have a substantial amount of assets aside from your income. Having significant equity in assets will cause the IRS to reject an Offer in Compromise *unless* you also take steps to liquidate or refinance that equity and pay it over to the IRS along with your surplus income. See, the IRS’s Form 656 Instructions for more information.

expenses (judged by the same Collection Financial Standards as those for Offers in Compromise). You will pay interest and penalties, but at least you won't have to worry about your bank account being unexpectedly emptied one day.

7. Maybe you should file bankruptcy.

“Tax debts don't go away in bankruptcy,” you're thinking to yourself. Surprise – many of them will! For instance, income tax debts usually can be erased in bankruptcy if they are: (a) at least three (3) years old (calculated from the due date of the return, including any extensions granted to the taxpayer); (b) based upon taxes for which the return was filed at least two (2) years before the bankruptcy case is commenced; and (c) based upon taxes which were assessed at least 240 days before the bankruptcy case is commenced. In short, if the tax bill is old enough, you may be able to dump it into bankruptcy and be done with it.

8. Do you need professional help?

I make my living helping individuals and small businesses implement the strategies discussed in this article, so it should be no surprise to the reader that I think that employing a competent tax professional is a good idea. After all, you are likely to face these challenges only once in a lifetime, and it will take you a substantial amount of time and energy to learn what you need to know and to complete the required forms. It seems to me that your time is probably spent on other things that *you're* good at – like your own job.

Nevertheless, I must tell you in all candor that the resources are out there to help you do everything described in this article on your own. Just go to www.irs.gov, and type in any of the topics I've discussed. The government is only too happy to provide you with the required information and links to the necessary forms. Furthermore, if your income is below certain

thresholds, you may be able to get free, or very low cost, help through an IRS-sponsored Low-Income Taxpayer Clinic. You can find the one nearest you on this website – www.irs.gov/advocate/low-income-taxpayer-clinics.

Conclusion.

Remember, your tax problem CAN be solved. All it takes proper representation (or diligent homework if you represent yourself) and a willingness to pursue the various options available to you. Notwithstanding their reputation for being “monsters,” the staff at the IRS are really just plain folks like you and me. Nothing makes them happier than to see a file wrapped up and removed from their desk. If you’re aggressive about working *with* them, rather than against them, you’ll achieve the results you’re entitled to in almost no time.