

Chapter 13 Bankruptcy

There are many reasons why people choose Chapter 13 bankruptcy instead of Chapter 7 bankruptcy. Generally, you are probably a good candidate for Chapter 13 bankruptcy if you are in any of the following situations:

1. You have a sincere desire to repay your debts, but you need the protection of the bankruptcy court to do so. You may think filing Chapter 13 bankruptcy is simply the "Right Thing To Do" rather than file Chapter 7.
2. You are behind on your mortgage or car loan, and want to make up the missed payments over time and reinstate the original agreement. You cannot do this in Chapter 7 bankruptcy. You can make up missed payments only in Chapter 13 bankruptcy.
3. You need help repaying your debts now, but need to leave open the option of filing for Chapter 7 bankruptcy in the future. This would be the case if for some reason you can't stop incurring new debt.
4. You are a family farmer who wants to pay off your debts, but you do not qualify for a Chapter 12 family farming bankruptcy because you have a large debt unrelated to farming.
5. You have valuable nonexempt property. When you file for Chapter 7 bankruptcy, you get to keep certain property, called exempt. If you have a lot of nonexempt property (which you'd have to give up if you file a Chapter 7 bankruptcy), Chapter 13 bankruptcy may be the better option. You filed a Chapter 7 bankruptcy within the previous eight years. You cannot file for Chapter 7 again until the eight years are up.

.A Chapter 13 can be filed if:

- The debtor received a discharge under Chapter 7, 11 or 12 more than four years ago; or
- the debtor received a discharge under Chapter 13 more than two years ago.
- You have a co-debtor on a personal debt. If you file for Chapter 7 bankruptcy, your creditor will go after the co-debtor for payment. If you file for Chapter 13 bankruptcy, the creditor will leave your co-debtor alone, as long as you keep up with your bankruptcy plan payments.
- You have a tax debt. If a large part of your debt consists of federal taxes, what happens to your tax debts may determine which type of bankruptcy is best for you.

You can discharge (wipe out) debts for federal income taxes in Chapter 7 bankruptcy only if all of these five conditions are true:

1. The taxes are income taxes. Taxes other than income, such as payroll taxes Trust Fund Recovery Penalty or fraud penalties, can never be eliminated in bankruptcy.
2. You did not commit fraud or willful evasion. You did not file a fraudulent tax return or otherwise willfully attempt to evade paying taxes, such as using a false Social Security number on your tax return.
3. You pass the three-year rule. The tax return was originally due at least three years before you file for bankruptcy.
4. You pass the two-year rule. You actually filed the tax return at least two years before filing the bankruptcy -- having the IRS file a substitute return for you doesn't count unless you agreed to and signed the substitute return.
5. You pass the 240-day rule. The income tax debt was assessed by the IRS at least 240 days before you file your bankruptcy petition, or has not yet been assessed.

If any of the following situations apply to you, you will have to add time to the three-year, two-year or 240-day rules for your debts to qualify for discharge in bankruptcy:

1. If you submitted an Offer in Compromise, the 240-day rule is delayed by the period of time from when the Offer is made until the IRS rejects it or you withdraw it, plus 30 days.
2. If you obtained a Taxpayer Assistance Order from an IRS Problems Resolution Officer preventing the IRS from collecting, the bankruptcy court may require that you add the time collection was suspended to the three-year, two-year and 240-day requirements.
3. If you filed a previous bankruptcy case, all three time periods stopped running while you were in the prior bankruptcy case. You must add the length of your case plus six months to all three.

Caution! A Chapter 7 bankruptcy will wipe out only your personal obligation to pay the debt. Any lien recorded before you file for bankruptcy remains.

After your bankruptcy, the IRS can seize any property you owned at the time the bankruptcy was filed. But this doesn't mean that after your bankruptcy case is over the IRS will come and grab your property. Post-bankruptcy, the IRS tends to seize only real estate and retirement accounts or pensions. And even then, IRS seizures generally take place only when a taxpayer has made no efforts to otherwise resolve the problem. Furthermore, IRS collectors must obtain approval from their supervisors before seizing a house or pension. The IRS is very concerned about negative publicity.

New Bankruptcy Law taking effect on October 17, 2005:

- **Chapter 13 cannot be filed unless:**
 - The debtor received a discharge under Chapter 7, 11 or 12 more than four years ago; or
 - the debtor received a discharge under Chapter 13 more than two years ago.
 - When a motor vehicle was purchased within 910 days (2 1/2 years) of the filing and a secured creditor has a lien on it, the creditor retains the lien until payment of the entire debt has been made.
- The following debt is NOT discharged:
 - debt for trust fund taxes;
 - taxes for which returns were never filed or filed late (within two years of the petition date);
 - taxes for which the debtor made a fraudulent return or evaded taxes;
 - domestic support payments;
 - Student loans;
 - Drunk driving injuries;
 - Criminal restitution;
 - Civil restitutions or damages awarded for willful or malicious personal actions causing personal injury or death.
- All tax returns for the four years prior to filing Chapter 13 must be filed.
- Debtors must provide to the trustee, at least seven days prior to the 341 meeting, a copy of a tax return or transcript of a tax return, for the period for which the return was most recently due.