

WHEN HE LEAVES YOU . . . WITH THE TAX BILL¹

[TO ALL YOU *GUYS* WHO ARE READING THIS -- I'M SORRY! THIS ARTICLE IS WRITTEN FROM THE WOMAN'S POINT OF VIEW BECAUSE, IN MY EXPERIENCE, WOMEN ARE HURT BY THEIR EX-HUSBAND'S TAX PROBLEMS *10 TIMES* MORE OFTEN THAN MEN ARE HURT BY THEIR EX-WIVES' TAX PROBLEMS. IF YOU'RE ONE OF THE 10% WHO ARE MEN, HOWEVER, READ ON -- THERE'S HELP FOR YOU
HERE TOO.]

By Arnie Wuhrman, Attorney At Law

He's gone – Mr. Right. *Mr. 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 girls. 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 *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.

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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 State taxing authorities, for that matter) has 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, and 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 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 notices 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-husband? 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-husband did – taking a deduction he wasn't entitled to, or failing to declare all of his income on your joint tax return (after all, he *was that kind of guy*). 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-husband, (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-husband's action(s). In short, if you can show that your ex-husband is solely responsible for the results of the audit, 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-husband 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-husband had the means to pay the tax, and assured you that he would do so). In short, if you can show that your ex-

husband was supposed to pay the bill and had the ability to do so, but just didn't do it (maybe he 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 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 six (6) 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 making an income equal to yours – 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 48 months. They then agree to accept that amount plus one dollar 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 \$3000 per month, and the IRS Standards show that you should be spending no more than \$2900 per month. Multiplying your monthly surplus of \$100 by 48 months, the IRS determines that it is reasonable to expect that they can collect no more than \$4800 from you in the coming four years. Rather than put you (and their agents) through that, the IRS will accept \$4801 in cash today in full satisfaction of your \$50,000 bill. In other words, you pay about 10% of what you owe, because that's all that you can reasonably afford.

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. The amount of your monthly payment will depend upon your income and your “reasonable” living 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 and sales tax debts usually can be erased, or substantially reduced and paid off over time, 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 two hundred forty (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.

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, you'll achieve the results you need in almost no time.