



FAUCHER LAW
TAX & BANKRUPTCY

—
Helping individuals & small businesses
resolve debt and tax problems.

HOW TO HANDLE LARGE TAX DEBT

John D. Faucher

Presented to the Contra Costa County Bar Association

March 16, 2022

DOES THE ASSESSMENT EVEN EXIST?

- Audit reconsideration
- Challenge the statutory notice: was it mailed correctly?

IF THERE'S AN ASSET THAT CAN FULL-PAY

It will be difficult –
not impossible – to
avoid liquidating
the asset.



**"ASSET"
INCLUDES
FUTURE
INCOME**



YOUR JOB IS
TO NEGOTIATE
A PEACE
TREATY
BETWEEN THE
IRS AND THE
TAXPAYER



IS THE ASSET MONEY IN THE BANK?

If so, then pay it
over!



IS THE ASSET MONEY IN A FOREIGN BANK?

If so, then you have
some leverage



IS THE ASSET A RETIREMENT ACCOUNT?

If so, then you have
leverage



IS THE ASSET A RARE COLLECTIBLE?

The IRS would rather you
sell it. It can seize and sell,
but would rather not.



ARE THERE SEVERAL WAYS TO FULL PAY?

Make it easy for the
IRS – propose a plan



IS THE ASSET HOME EQUITY?

If yes, then the IRS
will ask for a
HELOC



WHAT IF YOU
DON'T HAVE
ANY ASSETS
WITH WHICH TO
PAY THE TAX
DEBT?

Then there are
generally three
options.



INSTALLMENT AGREEMENT

This is the most frequently used option – it's a peace treaty with the IRS. Taxpayer commits to pay regularly, IRS commits to leave taxpayer alone.



BANKRUPTCY

Easier than you
may imagine – the
second most
common solution.



TWO DIFFERENT HOUSES

FMV: \$1 million; \$500,000 mortgage

2. FMV: \$1 million, \$500,000 mortgage,
\$400,000 NFTL



OFFER IN COMPROMISE

Rarely granted by
IRS unless taxpayer
has no or little
future earning
power.



DISAGREEING WITH IRS ACTION

Collection Due Process
Request (CDP)

Collection Appeals Program
(CAP)

Haranguing the manager



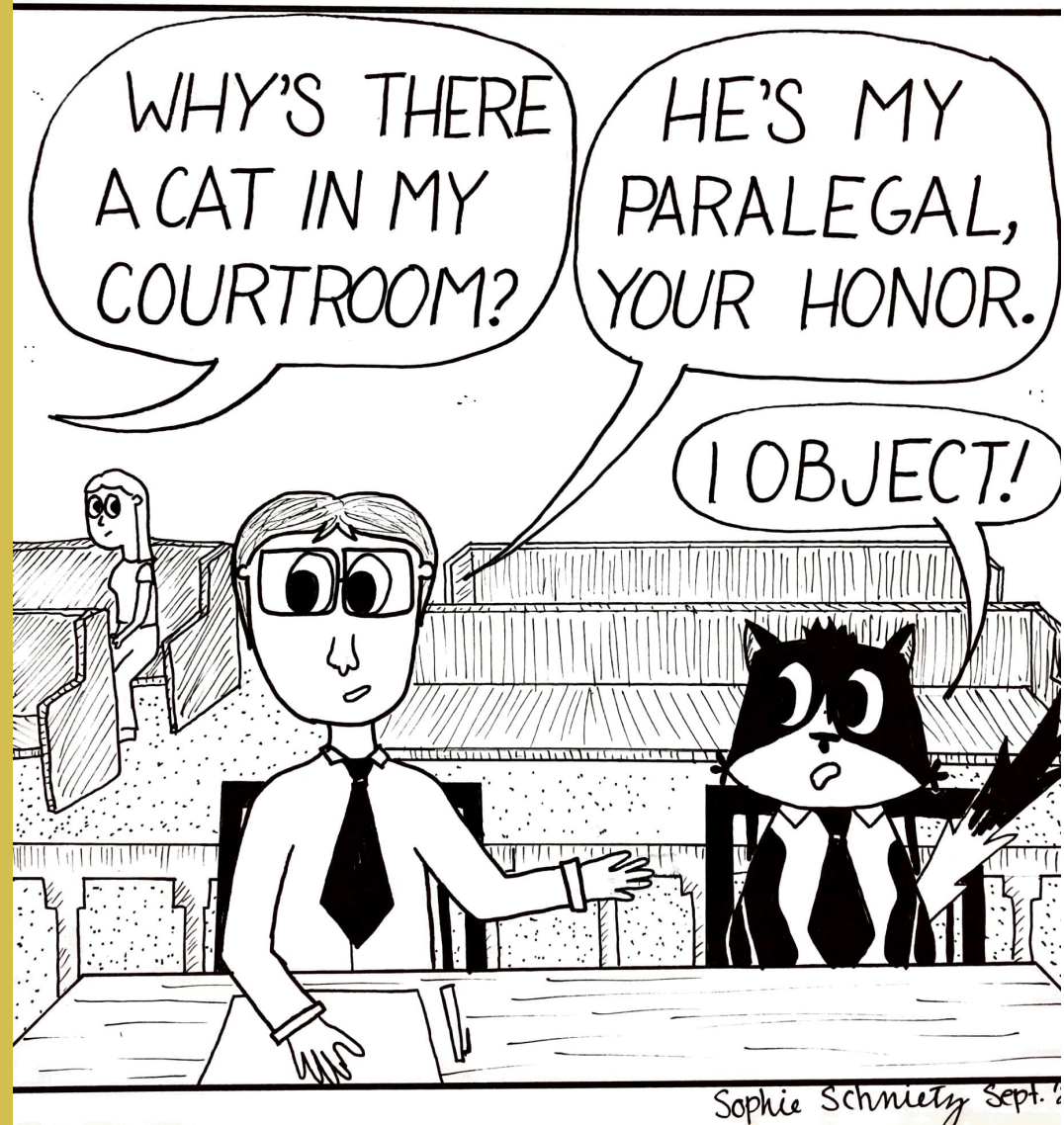
SEBASTIAN, MY FELINE PARALEGAL

We are both always happy
to answer your questions.

818/889-8080

jdf@johndfaucher.com

Instagram:
@Sebastian.the.feline.paralegal



How to handle a large tax debt?

If there is an asset that can full-pay, it will be difficult not to liquidate the asset to pay in full.

“Asset” includes future income.

Your job as an attorney is to negotiate a peace treaty between the IRS and the taxpayer.

If IRS goes to war against the taxpayer, it has a lot of weapons: lien notices, garnishments, levies, shutting down your passport, shutting down your business, criminal prosecutions. Best to pay it; generally, IRS is bigger than you are. Your job is to reach a peace treaty with the government as the enemy, and to manage how the asset pays the tax bill.

One very useful authority to look to: the Internal Revenue Manual, Part 5.

<https://www.irs.gov/irm/part5>

This tells you how the IRS is likely to act and to react to your offers.

If the asset is money in the bank, pay it over!

IRS can't stop interest

Failure-to-pay penalty increases by .5 percent per unpaid month, to a maximum of 25 percent (thus after more than four years). I.R.C. § 6651(a)(2).

If the asset is money in a foreign bank, you have some leverage.

What does the client want to do? Will the IRS require a large payment in order to start the installment agreement?

Is there a tax treaty allowing the IRS to seize money from a foreign account? If so, it's a long and ponderous process.

Is the asset a retirement account? If so, you have leverage. IRS can seize this money, but usually does not; often it will place a lien on it rather than seize it, which creates a stalemate. Will the underlying liability expire by the time the client turns 72?

Is the asset a rare collectible? If the asset is personal property (Mercedes Gullwing, original artwork, rare coins), negotiate a time period to sell the property. IRS has property liquidation specialists, but they'd rather you sell.

Are there several ways to full-pay? If there are several different types of asset that could full-pay, including future income, propose a plan; make it easy for IRS.

Is the asset home equity?

If the asset is home equity, IRS will ask for a HELOC. Does the client want that? If yes, great – gets the IRS off their back. If not, get three loan denial letters and IRS will go away, make an installment agreement based on income alone.

What if you don't have the assets to pay the debt?

Installment Agreement. Installment agreement – peace treaty with the IRS. Does the installment agreement full-pay the liability? Can you get a zero installment agreement, aka “uncollectible”?

IRC § 6159, https://www.irs.gov/irm/part5/irm_05-014-001r.

Bankruptcy.

Three-year, two-year, 240-day rule.

11 U.S.C. § 523(a)(1), 507(a)(8).

Caution: if there is a lot of home equity, you might have the house sold away from you even if your exemption covers you. House with \$400,000 equity and \$500,000 tax bill: trustee and IRS can carve up that house. Better to get the HELOC, then file bankruptcy.

Offer in Compromise.

Disfavored; bankruptcy much easier. This is a contract with the IRS; it changes the dynamic quite a bit, and IRS is not required to agree with you.

IRC § 7122; IRM 5.8.1 https://www.irs.gov/irm/part5/irm_05-008-001 .

Disagreeing with IRS action.

Collection Due Process (I.R.C. §6330, IRM 8.22.4

https://www.irs.gov/irm/part8/irm_08-022-004), Collection Appeals Program.

Running out the clock.

IRC §6502(a) gives 10 years to collect an assessment. See also I.R.M. 5.1.19,

https://www.irs.gov/irm/part5/irm_05-001-019