

# IRS Radio Hour: January 4, 2015

## Can a Chapter 7 Trustee take my tax refund if I file bankruptcy?



**Video:**

Click Here to go to YouTube.com: <http://youtu.be/5UrIvZ0JMEo>

**Audio:**

Click Here to go to Soundcloud:

<https://soundcloud.com/irs-radio-hour/the-irs-radio-hour-january-4-2015#t=27:57>

**Audio/Video Transcript:**

[Click Here to move to Transcript text within this PDF](#)

Transcript – January 4, 2015 – Ask Dr. Fader

Steve:

Welcome back, I am your host, Attorney Steven Leahy, and this is the IRSRadio Hour on AM560 The Answer.

Jim:

Well Steve, this is the section where our friend, Dr. Richard Fader from Fort Wayne, Indiana, gets to ask you a question. His question to you, Steve, is if I file chapter 7, will the IRS take my tax return money?

Steve:

Well, that's a good question

Jim:

Thank you very much

Steve:

That's right, Dr. Fader, we want to thank you for your participation in this show.

Jim:

A doctor in what?

Steve:

We talked about that last week didn't we?

He didn't want to tell us. Anyway, the answer is, you know, it really depends on what time of year it is. Because what happens in I usually get a tax refund, and at the beginning of the year, I don't really have much of a refund coming back, right? Because every time I get paid my employer takes money out of my paycheck and sends it to the IRS, then the IRS is holding my money.

Jim:

Do they give you interest on that money?

Steve:

No Jim, the only interest they have is that they want more.

Jim:

Do they charge interest on the money I owe them?

Steve:

Oh absolutely, from the day that you owe it, until the day that you pay it back.

Jim:  
Until the day you die.

Steve:  
Until the day you die, if you're lucky that's when you pay them back.

Jim:  
If you're lucky!

Steve:  
Anyway, so what happens here is, remember now, chapter 7, the title of chapter 7

Jim:  
It comes right after chapter 6 and right before chapter 8, we said this before.

Steve:  
I have to agree with you, that's true. But the title of chapter 7 is liquidation. So what happens under a chapter 7 liquidation is the trustee will take any assets you have above a certain level of exemptions allowed by law, so those exemptions change from state to state, every state has a different exemption.

So I am going to talk about here in Illinois, in Illinois we have state exempt laws, some states use federal law, but we use state. So here in Illinois everybody who files is entitled to what they call a "wild card" exemption.  
And this is an exemption that you can use for any kind of assets you have.

Jim:  
Is that gambling?

Steve:  
What do you mean?

Jim:  
Wild card-is that gambling?

Steve:  
Oh ya, okay I get it, no, but it's wild card in that you can use it for anything, because there are other exemptions-homestead, so I can use that for my house where I live, they have a car exemption, you know they have a worker's comp exemption. So there's different types of exemptions. The wild card-

Jim:  
So it's like wheel of fortune

Steve:  
That's right

Jim:

You just take it out when you need it.

Steve:

Exactly, the wild card, that's right. Joker, joker, joker!

Jim:

That's a different show.

Steve:

That's a different show. So here again, here in Illinois, everybody who files can get four thousand dollars. If a couple file, they both get four thousand dollars. Now usually people use a big portion of this to protect their furniture or some other asset in the house. But if you have money coming back from the IRS, you can use it to protect that money coming back from the IRS. But what happens is, especially people who file on-"I don't need a lawyer to help me with this," and then they'll file right around the first of the year, and this is always the time of the year when the trustees always ask, and you remember, part of the documents you have to provide for bankruptcy now include your tax returns. So you're going to show him your tax returns, they know what you got last year in tax refund.

Jim:

Hold on. Let me ask you something, I don't understand what you mean, you get four thousand and you can use it to do, I mean for a wildcard, but..

Steve:

This is the art of bankruptcy law. And this is why you need help if you own, if you have any kind of assets, you have to get help because you can't go into this just thinking, oh I'll just file bankruptcy

Jim:

Like J-Lo?

Steve:

I'll just file bankruptcy and everything will be right. And I had someone come in the other day who was referred to me, and she said she was divorced, not really making any money, the one thing that she got from her divorce was a car, but they car's worth \$15,000. So if she would have run out and filed bankruptcy on her own, thinking hey I don't have anything, I don't have any income, I can't pay my bills, she wouldn't know that you're giving up that car, they're coming to take your car. Another thing, they're going to come and they're going to ask you, well do you have a tax refund coming? So even if I have a child, the earned  
Income.

Jim:

Exemptions, and the earned income tax credit too?

Steve:

That's right, now there's some exemptions for it, the earned income, and they'll ask you, how much money are you getting back from the IRS? And all of a sudden its like, oh wait a minute, I need that money. But you don't understand, it's part of the estate.

Jim:

Won't they just take one of the kids?

Steve:

No, they want to money Jim. So you're going to give up your tax refund. Now the part about bankruptcy is, that you have the power to file bankruptcy whenever you want. Now sometimes people are forced into it and they have to file because their wages are being garnished, for instance, or something else is happening, and they need the protection from the court, but most people can wait a month or two months. Usually I tell people, you want to wait until you really have to file. I always liken it to a nuclear button, so you want everything to be on you, and then you hit the button, don't do it too much in advance because it can really hurt you in the long run. So you want to time it correctly, and the courts say you're the master of the timing.

So if you wanted to wait, for instance, file your tax return, get your refund back, use it to pay bills that you have to pay, and then you file bankruptcy, maybe that makes sense, and that's why you have to get somebody who's going to help you, who's got a strategy.

Jim:

If you owe the IRS, you're not getting the refund.

Steve:

Well that's true, if you owe the IRS money the IRS is going to keep the refund. You're not going to get the refund. Even if you file bankruptcy, because they have that money and they're not going to give it back to you. Even if those tax debts are dischargeable in bankruptcy, because they're already holding it, they're not going to give it back to you. So, but again, it's all about planning, it's all about strategy, and meeting someone who understands what the law is, and can use these exemptions to your best advantage. You need help, don't do this on your own. Bankruptcy's way too important, and too deadly-I just said deadly, but it could be very hurtful if you do it wrong, and you can you what little you have, you could lose it to a good trustee.

So if you're having problems with any finances, IRS, credit card, then you should give us a call and give Opem Tax Resolution and the Law Office of Steven A. Leahy a call. 312-664-6649, visit us on the web at [ChicagoTaxTeam.com](http://ChicagoTaxTeam.com).

Jim:

Be right back.