

## The Newsletter



# FAUCHER LAW

## TAX & BANKRUPTCY

### *Avoiding Asset Seizure by the Bankruptcy Trustee:*

## Don't Raid Retirement Accounts to Pay Off Credit Card or Tax Debt!

### INSIDE STORIES

- John's Annual "Best Of" List!
- Brown Butter Cookie Recipe
- Sebastian On Why Not to Sell Retirement Accounts to Pay Off Debt

You should never sacrifice your retirement security to pay current debt if you qualify for bankruptcy. Why? **Bankruptcy allows you to erase credit card and (most) tax debt AND keep your retirement accounts.**

So why would anyone cash in retirement accounts they will need in the future to pay off today's debts, if today's debts can be discharged in bankruptcy? Because most people don't know better.

**Bankruptcy Process.** In a bankruptcy, the Bankruptcy Trustee, who is like a judge, cannot cash in retirement accounts to pay off creditors, the way s/he can liquidate most other assets to pay creditors. When a debtor files bankruptcy, legal ownership of everything they own and owe is transferred to the Trustee. The Trustee can use any of the debtor's assets to pay creditors *except* for: clothing and household goods; wedding jewelry under \$10,000; \$7,200 in value in a vehicle; the full value of 401k/403b accounts; and up to \$1.5 million in IRAs. California debtors may also claim either the "Homestead Exemption" (exempt from the Trustee's use) which allows a debtor to keep up to \$750,000 in equity in a primary residence, or the "Wildcard Exemption" which allows a debtor to keep \$32,000 in any assets they chose such as a mutual fund, a vintage car, etc. To the extent that creditors cannot be fully paid by the sale of a debtor's assets, any remaining debts are written off by the Trustee at the end of the bankruptcy process. Legal ownership of the assets the debtor is entitled to keep is transferred back to the debtor at the conclusion of the bankruptcy, and their debts are legally discharged.

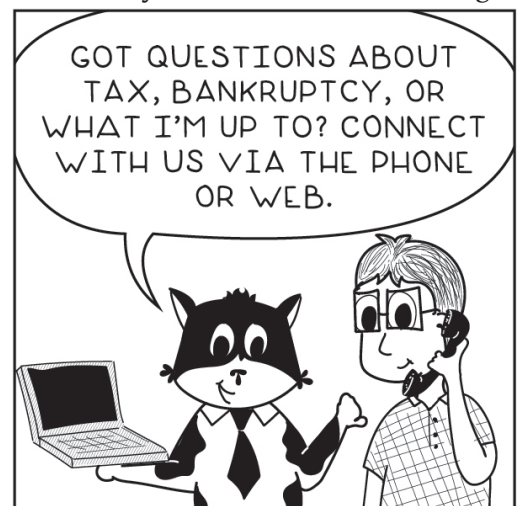
**Retirement Accounts & Houses the Only Large Assets Allowed Through Bankruptcy.** Why? Congress (which writes US bankruptcy laws) doesn't want to make Americans with debt problems homeless, or financially

insecure in retirement when their earning ability is reduced; this increases debtors' risk of becoming financial burdens on the government. Notice that debtors must draw down most of their assets (and generally meet income limitations) before they qualify for bankruptcy. In my experience, few debtors want to go through bankruptcy if they have assets the Trustee would be able to sell to pay creditors. *This is why it's so important that people with big debts should NEVER use retirement savings to pay off debt. Keep that money, file bankruptcy and discharge that debt instead.*

**The Case of Tax Debt.** As readers of this *Newsletter* know, tax debt older than three years can (usually) be discharged in bankruptcy. Despite this, I sometimes hear from clients that IRS or California FTB agents have pressured a taxpayer to cash in retirement savings to pay off their tax debt. *There is no legal requirement to do so, not even if an IRS or FTB agent tells you to.* This is a pressure tactic to collect, but taxpayers aren't obligated to comply with this request. In fact, the IRS has the legal right to levy and place liens on a delinquent taxpayer's retirement account (though the FTB doesn't), but the IRS almost never does so. It's an administratively cumbersome process, and the political optics are horrible. Take away (future) Grandma's ability to house and feed herself? To what end? So that the IRS can collect the tax money it was owed, only to spend it on feeding Grandma in a community soup kitchen? Many debtors come to me having unnecessarily

liquidated the entirety of their retirement savings to pay off their debts and avoid bankruptcy.

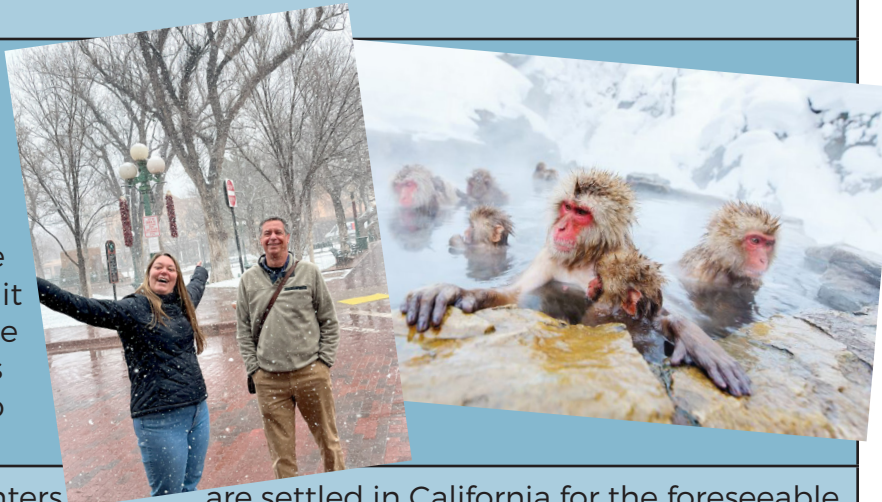
**Don't Liquidate Retirement Savings to Pay Debt, or at least not until you call me!**

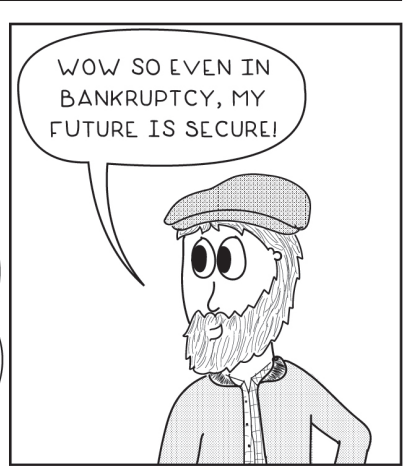
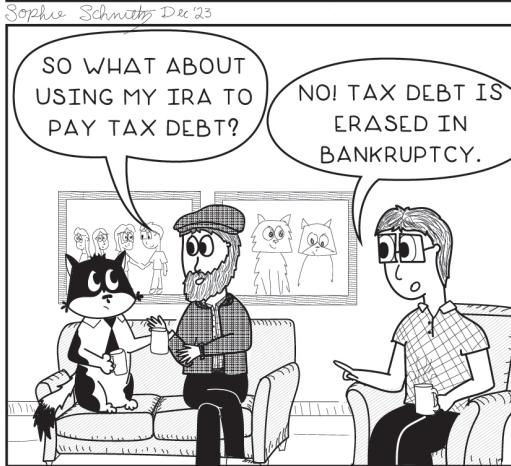
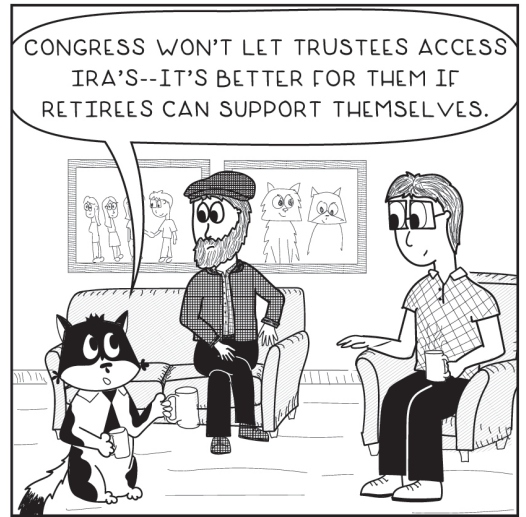


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# John's "Best of 2023" List

<p><b>Book</b></p>	<p><i>Why We Drive: Toward a Philosophy of the Open Road</i>, by Matthew Crawford. This overeducated author argues that physical skill and tradecraft grant us more liberty than book learning does, and that society's drive to regulate our world withers our spirit as we fail to learn self-sufficiency. Oh, and there is a wonderful and amusing description of teaching rats to drive little race cars that doesn't reference Stuart Little.</p>
<p><b>Case Outcome</b></p>	<p>My client lost close to a million dollars when he tried to open a cannabis testing facility and his partners scammed him. When I first met him, he could barely speak coherently: oversharing, obsessive, obviously traumatized. He wanted to fight his partners, as well as a former employee who sued for wrongful termination, but he had no funds left. We filed a chapter 7 bankruptcy case for him, stopped the lawsuit, and brought him peace. When I last spoke to him, he was calm and in a much better mental space.</p>
<p><b>Trip</b></p>	<p>While in Santa Fe last winter, my wife, oldest daughter Sophie, and I spent an afternoon in outdoor hot tubs at Ten Thousand Waves Spa. While we were enjoying the soak, it began to snow; I felt like one of those Japanese monkeys who bathe in hot springs to keep warm in the winter.</p>
<p><b>Family Experience</b></p>	<p>At long last, both my daughters are settled in California for the foreseeable future! Sophie, will be graduating from UC Berkeley in May with her Master's in architecture and my younger, Rose, recently moved to Orange County. I've been enjoying spending some of my weekends helping Rose and her boyfriend design their patio and garden--and helping Sophie with her condo's garden.</p>
<p><b>Wine</b></p>	<p>On a recent trip to visit Rose, I stumbled upon a local wine merchant hosting a Cabernet Sauvignon tasting. Of the dozen cabs we tried (before we called an Uber), the 2019 <b>Bec Hardy Pertaringa</b> Lakeside Cabernet Sauvignon from Australia was the most delicious and a great value.</p>
<p><b>New Hire</b></p>	<p>This Summer at Faucher Law we welcomed a new (human) paralegal to the team. Paris has been a huge help and a pleasure to have in the office. I have loved passing on my wisdom to the next generation of stellar potential lawyers and we can't wait to see where she goes next!</p>
<p><b>Tea</b></p>	<p>Big Snow Mountain of Mengku black tea. This actually brews a bit red; it has a sweet and fruity taste, as well as a more viscous feel than the average black tea.</p>
<p><b>TV show</b></p>	<p>I so enjoyed the new series <b>Shrinking</b> on Apple TV this year. Jason Segel is a therapist who, after losing his wife, flouts ethical boundaries and starts intervening in patients' lives to get their problems fixed faster. Screamingly funny, thought-provoking, and further cements my satisfaction in my own career choice: I <b>do</b> get to intervene on clients' behalf.</p>





## Brown Butter Cookies

These cookies have a shortbread-like texture, nutty flavor, and a delightful crunch and flakiness at the center, topped with a sprinkle of salt. The cookies keep well, but you'll have eaten most of them by the time they're cool. If you've never browned butter before, watch an online tutorial. Best of all, it comes together in about 30 minutes!



### Instructions:

- Preheat oven to 350°F. In a large bowl, combine the brown sugar and vanilla. In a second bowl, combine the flour, baking soda and cinnamon and whisk together. Set these aside.
- In a small saucepan brown the butter, stirring constantly with a silicone spatula. When butter has developed a dense foam covering, smells lightly nutty, and milk solids are golden brown, remove saucepan from heat and immediately pour into the bowl with sugar mix.
- Let the butter cool to a workable temperature, about 5-10 minutes. Mix the butter and sugar briefly. Add the dry ingredients about 1/3 at a time and stir until well combined after each addition. When all the ingredients have been added you should have a wet dough that can roughly hold a shape.
- Shape the dough into about 24 - 1½ diameter inch balls. If your dough is having a hard time keeping its shape, just add some more flour, about ¼ cup at a time until the spheres can hold their shape. Set these about 1½ inches apart on an ungreased, unlined metal baking-sheet and sprinkle the tops with a pinch of coarse salt (I like Morton's kosher). Bake cookies in preheated oven for 10-12 minutes. The cookies will begin to crack slightly and brown at the bottom when they're ready.

¾ cup butter (1 ½ sticks)	1 ½ cup flour
½ cup brown sugar	1 teaspoon baking soda
¼ teaspoon cinnamon	1 teaspoon vanilla extract

Makes two dozen

## WELCOME TO FAUCHER LAW

**John D. Faucher** worked for 10 years as an IRS trial attorney and has been in private practice since 2008. He and his team speak the legal language. They know the **tax and bankruptcy systems** and can help you get the best result. Have other legal issues? Call us. We'll find the lawyer who's right for you, your friends, or family.

**(818) 889-8080**  
**FaucherLaw.com**

*"It's the Most Wonderful Time of the Year..."*

## John's Annual "Best Of 2023" List!



Taking down Christmas decorations makes Sebastian and me wistful, but we like to reflect on the past year while doing so. Inside this issue of *The Newsletter* is my **Best of 2023** list. Readers await the verdict on my favorite new tea with trembling hands, I'm sure. *The Newsletter's* main article focuses on **why you should never, EVER cash in retirement accounts to pay off debt** (retirement accounts are one of the few major assets that won't be used by a bankruptcy Trustee to pay off creditors). Sebastian the Feline Paralegal instructs some clients who did not know this (as most people don't). And there's a **brown butter cookie recipe** for those of you who, like me, didn't get enough sweets the past few weeks.