



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR DISTRICT COUNSEL, DELAWARE-MARYLAND
(BALTIMORE)

FROM: Joseph W. Clark
Acting Chief, Branch 2 (General Litigation)

SUBJECT: Assessments against Taxpayers in Bankruptcy

ISSUE: Can assessments be made against taxpayers who have filed bankruptcy petitions?

CONCLUSION: The automatic stay does not prohibit the making of tax assessments. No assessments can be made prior to the expiration of the time for filing a Tax Court petition; however assessments can be made if the taxpayer consents to the assessments.

LAW AND ANALYSIS: You have referred to us a copy of a bankruptcy handbook which the Chief Compliance Officer of the Southeast Region recently distributed to examiners and bankruptcy coordinators in the Southeast Region. You have noted that several provisions in the handbook erroneously state that assessments are prohibited by the automatic stay, and that cases where the taxpayer agrees to assessment must be placed in suspense without assessment until the automatic stay is lifted. You request our confirmation that the handbook is erroneous and must be corrected.

We agree. As you point out, B.C. § 362(b)(9), which is applicable to bankruptcy cases filed on or after October 24, 1994, permits tax assessments during the pendency of the automatic stay. Thus, the period for making an assessment is not generally suspended during bankruptcy. However, the automatic stay still prohibits the filing of a Tax Court petition. B.C. § 362(a)(8). Where the automatic stay prohibits the filing of a Tax Court petition, the taxpayer's period for filing the petition is suspended during the pendency of the prohibition plus 60 days. I.R.C. § 6213(f)(1). The Service is accordingly prohibited from making an assessment until the period for filing the Tax Court petition expires. I.R.C. § 6213(a). Also, the period for making the assessment will be suspended during this time plus 60 days. I.R.C. § 6503(a)(1). However, if the taxpayer consents to the assessment on Form 870 or any similar form, then section 6213(a) no longer prohibits

the assessment. The assessment can be made and the period for assessment is no longer suspended.

These matters are properly explained in the Internal Revenue Manual/Bankruptcy Handbook at 5.9.4.2.2 and in Chief Counsel Notice N(35)(13)(10)-1 (12/1/98).

We, thus, agree that the handbook is erroneous and should be revised consistent with the Bankruptcy Handbook. We are also referring this matter to the Office of Assistant Commissioner (Collection) so that office can take appropriate action to ensure that correct information is being provided to the districts.

Regarding your question as to whether the Form 870 must be used to secure an agreement to assessment from a debtor, or whether a consent to assessment on the Form 4549-E is sufficient, we agree with your conclusion that the Form 4549-E waiver is legally sufficient to permit an assessment.

Please contact this office at (202) 622-3620 if you have any questions or comments concerning this memorandum.

cc: Assistant Commissioner (Collection)
Assistant Regional Counsel (GL), Southeast Region