OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE), AREA 4, INDIANAPOLIS

FROM: Mitchel S. Hyman
Acting Senior Technician Reviewer, Branch 2
(Collection, Bankruptcy and Summonses)

SUBJECT: Annual Installment Agreement Statements in Bankruptcy

This Chief Counsel Advice responds to your memorandum dated August 27, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

1. Whether the Internal Revenue Service ("Service") must send annual installment agreement statements ("statement") pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 1998") to taxpayers in bankruptcy.

2. Whether sending the statement to a taxpayer in bankruptcy violates the automatic stay.

CONCLUSIONS

1. The Service is not required to send annual installment agreement statements to taxpayers in bankruptcy because the installment agreement is not considered in effect while the bankruptcy case is pending.

2. Sending the statement to a taxpayer in bankruptcy would not violate the automatic stay.

FACTS

Section 3506 of RRA 1998 provides:

> The Secretary of Treasury or the Secretary's delegate shall, beginning not later than July 1, 2001, provide each taxpayer who has an installment agreement in effect under section 6159 of the Internal Revenue Code of 1986 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

P.L. 105-206, 112 Stat. 685, 771-72 (1998) (emphasis added). The first of these statements were sent out a few months ago. Apparently, these statements were also sent to some taxpayers in bankruptcy.

According to your memorandum, such a statement, termed an annual installment agreement statement, was sent to a Chapter 13 debtor with a confirmed plan. Attached to the statement is a payment detail page showing what payments have been received and where they had been applied, as well as an installment agreement activity page showing what taxes are owed, including interest and penalties. The statement goes on to say:

> If you'd like to pay the full amount you owe, please call us . . . so we may give you a current payoff figure. Your future statements will be mailed to you annually, for as long as you have installment agreement activity.
>
> As always, we appreciate your timely payments.

Although the statement contains a large notification "**THIS IS NOT A BILL**" and "**THIS IS FOR YOUR INFORMATION**," the debtor's attorney expressed concern because the statement lists penalties and interest that have accrued post-petition. According to your memorandum, local Service personnel have received similar complaints from other debtors' attorneys.

LAW AND ANALYSIS

"In Effect" Requirement

RRA 1998 requires that annual statements be sent to taxpayers with installment agreements that are "in effect." P.L. 105-206 § 3506, 112 Stat. 685, 771-72 (1998). Neither RRA 1998 nor its legislative history define "in effect", however it seems that Congress was prompted by concern that taxpayers making payments pursuant to an installment agreement should be kept informed of how much they are paying and how much they still owe. See Senate Committee on Finance, S. Rep. No. 105-174, 105th Cong., 2nd Sess. (1998). In light of Congress' intent, "in effect" seems to refer to active installment agreements pursuant to which taxpayers are making payments on outstanding tax debts.

Generally, once a taxpayer enters bankruptcy his or her installment agreement is suspended. The taxpayer usually does not continue making payments pursuant to the installment agreement. In this case, the debtor is making payments through his confirmed Chapter 13 plan instead. Thus, even though the installment agreement is not terminated it should be regarded as suspended. Because the installment agreement is suspended and payments are not being made pursuant to the agreement, the installment agreement is not "in effect" for purposes of section 3506.[1]

The above analysis applies to pre-petition installment agreements. Nothing in this memorandum is meant to imply that notices should not be sent to taxpayers who enter into post-petition installment agreements. According to our analysis, those installment agreements would be considered "in effect" since the debtor continues to make payments pursuant to the agreement during the pending bankruptcy case.

The Automatic Stay

We conclude that sending an annual installment agreement statement does not violate the automatic stay. The automatic stay bars any act to collect pre-petition debts. B.C. § 362(a)(6). The purpose of the automatic stay is to prohibit attempts to compel a debtor to pay pre-petition debts outside of the bankruptcy process. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340, 342 (1977). Specifically, section 362(a)(6) is designed to prevent creditors from harassing the debtor in attempts to collect on pre-petition debts. See 124 Cong. Rec. H11092 (daily ed. Sept. 28, 1978); S17409 (daily ed. Oct. 6, 1978) (remarks of Rep. Edwards and Sen. DeConcini).

The annual installment agreement statement is not an attempt to collect a pre-petition debt. As noted above, the statement contains conspicuous notification that it is not a bill and is for information purposes only. The notice is intended to help the taxpayer by keeping him informed of the status of his account. See Senate Committee on Finance, S. Rep. No. 105-174, 105th Cong., 2nd Sess. (1998). Similar notices have been held not to violate the automatic stay. For example, reaffirmation letters sent to debtors do not violate subsection (a)(6). Matter of Duke, 79 F.3d 43 (7th Cir. 1996); Brown v. Pennsylvania State Employees Credit

[1]Section 6159(b) of the Internal Revenue Code says "Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term or the agreement." This section deals with the termination of installment agreements, thus we understand "in effect" here to be referring only to the events that can lead to termination of agreements. "In effect" is not a term of art and is not defined in the Code. Thus, we emphasize that for purposes of RRA 1998 section 3506 an installment agreement is not in effect in bankruptcy.

Union, 851 F.2d 81 (3d Cir. 1988); Sears Roebuck and Co. v. Epperson, 189 B.R. 195 (E.D. Mo. 1995). The purpose of the automatic stay is not to prevent all communication with a debtor, but to protect the debtor "from the threat of immediate action by creditors, such as foreclosure or a lawsuit." Brown, 851 F.2d at 86; see also Morgan Guaranty Trust Co. of New York, 804 F.2d 1487 (9th Cir. 1986), cert. denied 482 U.S. 929 (1987) (finding a creditor did not violate the stay by presenting the bank with a promissory note signed pre-petition after the debtor had filed for bankruptcy).

Thus, the stay is not violated by sending the annual statements. However, because pre-petition installment agreements are not considered "in effect" during the bankruptcy case, to avoid any litigation hazards, we recommend against sending the statements to taxpayers in bankruptcy.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any further questions please call the attorney assigned to this matter at (202) 622-3620.