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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL SBSE - SAN FRANCISCO
CC:SB:7:SF:1
Attn: TRMackinson

FROM: Alan C. Levine
Chief, Branch 1 (Collection, Bankruptcy & Summonses)
CC:PA:CBS:Br1

SUBJECT: _____

This memorandum responds to your request for advice dated June 7, 2001. This document is not to be cited as precedent. I.R.C. § 6110(k)(3).

QUESTION PRESENTED

Can a federal tax lien that self-releases, after the debtor receives a bankruptcy discharge of the related tax liabilities, be reinstated against pre-petition property in accordance with the procedures under I.R.C. § 6325(f)(2)?

CONCLUSION

The lien can be reinstated. Reinstatement of an erroneously self-released federal tax lien under I.R.C. § 6325(f)(2) against a debtor's pre-petition property does not violate the discharge injunction of B.C. § 524(a)(2), since the tax liability underlying the notice of federal tax lien is unaffected.

BACKGROUND

The debtor, , had unpaid federal income tax liabilities for tax years 1982, 1983, 1984, 1988 and 1989. In 1995, she received a discharge of these liabilities in a Chapter 7 bankruptcy case. The bankruptcy court determined that the federal tax liens, however, still attached to pre-petition property (her residence and an adjacent, undeveloped parcel), and this holding was upheld on appeal to the district court.
. On , the debtor filed an administrative claim for innocent spouse relief with the Internal Revenue Service (Service). After her claim was rejected, she filed an action in Tax Court under I.R.C. § 6015(e).

This action is still pending, and has suspended the expiration of the collection statute of limitations, under I.R.C. § 6015(e)(2).

The United States brought a suit to foreclose the tax liens against the pre-petition property on After the initiation of the suit, the notices of federal tax lien for three tax periods, 1982, 1983, and 1984, erroneously self-released. When the mistake was discovered, the Service issued a revocation of the certificate of release, in order to reinstate the assessment liens imposed by I.R.C. § 6321. A new notice of federal tax lien was filed in place of the erroneously-released notices of federal tax liens relating to the three tax years. The Service estimates the current value of the real estate to be $1,200,000.00. The total amount of the encumbrances against the property, including the tax liens, is about $600,000.00.

ANALYSIS

A discharge order in bankruptcy discharges the debtor from a personal obligation to pay, and creates an injunction barring creditors from attempting to collect discharged debts from the debtor personally. B.C. § 524(a)(1), (2). The discharge, however, does not destroy the pre-petition liability. Johnson v. Home State Bank, 501 U.S. 78, 111 S. Ct. 2150 (1991) ("a bankruptcy discharge extinguishes only one mode of enforcing a claim–namely, an action against the debtor in personam"); see also In re Conston, 181 B.R. 769, 773 (D. Del. 1995) (collecting cases). Consequently, although the Service generally may not collect the discharged tax debts from the debtor's pre-petition property, it is not prohibited from collection from exempt, abandoned or excluded property. B.C. § 522(c)(2). In addition, in this case, as with other Chapter 7 cases, the federal tax liens pass through bankruptcy unaffected, in spite of the discharge given to the debtor. See Dewsnup v. Timm, 502 U.S. 410, 417 (1992); United States v. Alfano, 34 F. Supp.2d 827, 837 (E.D.N.Y. 1999); In re Deppisch, 227 B.R. 806, 808 (S.D. Ohio 1998). The liens continue to attach to the debtor's pre-petition property, including parcels of real estate. Following the close of the case, the automatic stay is lifted, and the United States may proceed to take action to enforce the liens. See B.C. § 362(c)(2)(A); In re Isom, 901 F.2d 744 (9th Cir. 1990).

In 1999, the United States filed a suit to foreclose the tax liens, but the liens self-released, during the pendency of the suit. While a self-release may operate to extinguish a federal tax lien under I.R.C. § 6325(f), the release does not extinguish the underlying liability. We have found no authority for the position that the release of a lien has any impact on the liability. To the contrary, there is specific authority for the position that a certificate of release, while conclusive that the lien is extinguished, does not conclusively establish that the underlying tax liability is not owed or has been paid. See Urwyler v. United States, 95-1 U.S.T.C. ¶ 50,238 at 87,862 (E.D. Cal. 1995); Miller v. Commissioner, 23 T.C. 565 (1954), aff'd, 231 F.2d 8 (5th Cir. 1956); Commissioner v. Angier Corporation, 50 F.2d 887, 892 (1st Cir. 1931), cert. denied, 284 U.S. 673 (1931). See also In re Goldston, 104 F.3d

1198 (10th Cir. 1997) (distinguishing the liability for tax from the assessment); Rev. Rul. 85-67, 1985-1 C.B. 364 (same); In re Doerge, 181 B.R. 358, 362 (Bankr. S.D. Ill. 1995) (distinguishes determination of tax liability and collection of the tax as two distinct steps in the taxation process).

The argument that the release of a lien extinguishes the tax liability is also inconsistent other aspects of section 6325. Section 6325(a)(2) provides that, in addition to when the liability is satisfied or unenforceable, the Service is authorized to release the lien upon acceptance of a bond. Clearly, in this circumstance, the lien may be released, but the liability remains until paid or unenforceable. It would be incongruous to assert that a release of a lien under section 6325(a)(1) extinguishes the underlying liability, but a release of a lien under section 6325(a)(2) does not. In addition, section 6325(f)(2) provides the Service with the authority to revoke a certificate of release and reinstate the lien in certain circumstances by mailing and filing notice of the revocation. Conceptually, the argument that the liability is extinguished upon issuance of a certificate of release seems inconsistent with the Service's authority to make such a revocation without having to reassess the liability. See also William D. Elliot, Federal Tax Collection, Liens and Levies at 6-13 (Prentice Hall 1988) (citing Treas. Reg. § 301.6325-1(a)(1) for the statement that "when a lien is released, however, the underlying tax liability is not extinguished until (1) the tax has been paid in full or (2) the statutory period for collection of the tax expires."). Accordingly, because neither the release of the lien nor the discharge extinguishes the pre-petition liability, we conclude that a discharge in bankruptcy does not affect the Service's ability to revoke an erroneous lien release. See, e.g., United States v. Peterson, 71 A.F.T.R.2d 1136, 93-1 U.S.T.C. ¶ 50,230 (1993) (in lien foreclosure suit, district court did not identify as an issue the Service's erroneous release of liens based on the taxpayer's bankruptcy discharge, because release was properly revoked).

In an analogous context, we have previously concluded that a taxpayer's bankruptcy discharge does not affect the Service's ability to reverse an abatement of an assessment and proceed with collection against certain pre-petition assets. See Notice CC-2001-014. Following bankruptcy, it is the Service's normal policy to abate such discharged taxes, to prevent inadvertent collection. See generally IRM 5.9.12.5 (describing procedures for evaluating and processing discharge). However, sometimes, the abatement is performed in error because, for example, there exists pre-petition property against which a notice of federal tax lien was filed, from which all or a portion of the liability can be satisfied. In order to collect from these sources, the Service may reverse the discharge abatement under I.R.C. § 6404(c). See Notice CC-2001-014; United States v. Langrehr, 2001 U.S. Dist. LEXIS 2374 (D. Neb. Jan. 29, 2001). The Service may reverse the abatement because, as described in Notice CC-2001-014, a tax debt exists as long as it has not been satisfied and the period for collection has not expired. In a similar manner, because release of a lien under section 6325(a) does not extinguish the

liability, the tax lien may be reinstated by mailing and filing notice of the revocation under section 6325(f)(2), even though the taxpayer has received a discharge.

Although the released federal tax lien can be reinstated, the released notice of federal tax lien, and the priority status the notice provides, cannot. Treas. Reg. § 301.6325-1(f)(2)(iii)(b). See United States v. Winchell, 793 F. Supp. 994 (D. Colo. 1992); United States v. Reid, 2000-1 U.S.T.C. ¶ 50,340; 2000 U.S. Dist. LEXIS 5106. Thus, after revocation, the Service must refile the erroneously self-released notices of federal tax lien to establish a new priority date. Although refiling is required to reestablish priority, the reinstated tax lien nevertheless attaches to the pre-petition property. Treas. Reg. § 301.6325-1(f)(2)(iii)(b). The United States could foreclose on the property, even without refiling the notices, by relying on the assessment liens. Refiling does not create a new liability, nor is it an effort to collect directly from the debtor. See In the Matter of Hansen, 1993 U.S. Dist. LEXIS 5593 (W.D. Tex. Apr. 14, 1993). Discharge in bankruptcy affects only the Service's ability to effect certain methods of collection. In this case, the Service's ability to collect from the pre-petition property of the debtor was unaffected by the discharge. The self-release and subsequent refiling of the notices of federal tax lien does not alter this ability.

If you have any questions, please call (202) 622-3610.