

## Section 6501.—Limitations on Assessment and Collection

26 CFR 301.6501(a)–1: Period of limitations upon assessment and collection.  
(Also section 6213, section 6503.)

### Statute of limitations, bankruptcy.

This ruling explains the effect of a bankruptcy on the running of the statute of limitations on assessment set forth in section 6501 of the Code. The ruling illustrates that when the IRS issues a

Notice of Deficiency less than 90 days before the taxpayer files a bankruptcy petition, the same day the taxpayer files a bankruptcy petition, or after the taxpayer files a bankruptcy petition, and before the termination of the automatic stay imposed by the bankruptcy, the assessment period is suspended not only by the 60-day period provided by section 6503(a), but also by the additional 60-day period provided by section 6213(f).

## Rev. Rul. 2003–80

### ISSUE

How is the running of the period of limitations for assessing a deficiency affected when the Internal Revenue Service (Service) issues a Notice of Deficiency before or after the taxpayer files a bankruptcy petition?

### FACTS

The issue presented arises in the three different situations described below. In each situation, the taxpayer files a bankruptcy petition on Date 1, and the automatic stay terminates on Date 2, the 100th day after Date 1. Also, the Notice of Deficiency is not addressed to a person outside the United States, and the taxpayer does not file a Tax Court petition for redetermination of the deficiency.

*Situation A.* The Service issues a Notice of Deficiency on or after Date 1 and before the termination of the automatic stay on Date 2.

*Situation B.* The Service issues a Notice of Deficiency less than 90 days before Date 1.

*Situation C.* The Service issues a Notice of Deficiency 90 or more days before Date 1.

### LAW AND ANALYSIS

Section 362 of title 11 of the United States Code (Bankruptcy Code) provides that certain acts are automatically stayed upon the filing of a bankruptcy petition. Section 362 does not stay the issuance of a Notice of Deficiency or the assessment of a tax by the Service. 11 U.S.C. § 362(b)(9)(B), (D). Section 362 does, however, stay the commencement or continuation of a Tax Court proceeding concerning the debtor. 11 U.S.C. § 362(a)(8). Pursuant to section 362(c)(2), the stay terminates upon the earliest of the time the bankruptcy case is closed, the time the case is dismissed, or the time a discharge is granted or denied.

Section 6501(a) of the Internal Revenue Code generally affords the Service three years from the time a return is filed to assess the tax for the return period. Under section 6503(a)(1) of the Internal Revenue Code, the running of the section 6501(a)

assessment period is suspended for any period during which the Service is prohibited from making an assessment (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

Section 6213(a) generally affords the taxpayer 90 days from the time a Notice of Deficiency is issued to file a Tax Court petition for redetermination of the deficiency. In addition, section 6213(a) prohibits the Service from assessing the deficiency during the 90-day period. Section 6213(f) suspends the running of the 90-day period while the taxpayer is prohibited by reason of the bankruptcy case from filing a petition in the Tax Court with respect to the deficiency, and for 60 days thereafter.

Section 6503(h)(1) provides that the running of the period of limitations on assessment is suspended while the Service is prohibited by a bankruptcy case from making the assessment, and for 60 days thereafter. Prior to 1994, section 362(a)(6) of the Bankruptcy Code, which generally prohibits assessment of claims against a debtor, operated to prevent the Service from assessing taxes for the period the stay was in effect. Section 362(b)(9)(D), which provides that the filing of a bankruptcy petition does not stay the making of tax assessments, was added to the Bankruptcy Code by section 116 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (1994), and is effective with regard to bankruptcy cases commenced on or after October 22, 1994. With the addition of section 362(b)(9)(D), the Service is no longer precluded solely by the automatic stay from assessing taxes during the pendency of bankruptcies. Thus, section 6503(h)(1) no longer has any impact on the running of the assessment period.

The following situations illustrate the application of these provisions.

*Situation A.* The Service issues a Notice of Deficiency on or after the day on which the bankruptcy petition is filed (Date 1) and before the termination of the automatic stay on Date 2.

Under section 362(a)(8) of the Bankruptcy Code, a Tax Court proceeding cannot be commenced while the automatic stay is in effect. Under section 6213(f), the running of the 90-day period for filing a Tax Court petition is suspended while the

automatic stay prevents the filing of a Tax Court petition, and for 60 days thereafter. Thus, the 90-day period for filing a Tax Court petition begins to run 61 days after Date 2. The period for filing a Tax Court petition ends on Date 3A, 150 (60+90) days after Date 2.

Under section 6213(a), the Service is prohibited from making an assessment during the period from issuance of the Notice of Deficiency through Date 3A, the last day for filing a Tax Court petition. Under section 6503(a)(1), the running of the period of limitations on assessment is suspended during this period. Also, under section 6503(a)(1), because no Tax Court petition was filed, the running of the period of limitations on assessment is further suspended for an additional 60 days after Date 3A. On the next day, which is 61 days after Date 3A and 211 (60+90+61) days after Date 2, any portion of the assessment period that had not run when the Notice of Deficiency was issued begins to run.

*Situation B.* The Service issues a Notice of Deficiency less than 90 days before the day on which the bankruptcy petition is filed (Date 1). In the discussion below, assume that the Notice of Deficiency is issued 10 days before Date 1.

As in *Situation A*, a Tax Court proceeding cannot be commenced while the automatic stay is in effect, and the running of the period for filing a Tax Court petition is suspended under section 6213(f) while the automatic stay prevents the filing of a Tax Court petition, and for 60 days thereafter. Here, however, only 80 days of the 90-day period for filing a Tax Court petition remain as of Date 1. Thus, the 80-day period remaining for filing a Tax Court petition begins to run 61 days after the termination of the automatic stay on Date 2. The period for filing a Tax Court petition ends on Date 3B, 140 (60+80) days after Date 2. This is 240 (100+60+80) days after Date 1, the date on which the bankruptcy petition was filed.

Under section 6213(a), the Service is prohibited from making an assessment during the period from issuance of the Notice of Deficiency through Date 3B, the last day for filing a Tax Court petition. Under section 6503(a)(1), the running of the period of limitations on assessment is suspended during this period. Also, under section 6503(a)(1), because no Tax Court

petition was filed, the running of the period of limitations on assessment is further suspended for an additional 60 days after Date 3B. On the next day, which is 61 days after Date 3B, 201 (60+80+61) days after Date 2, and 301 (100+60+80+61) days after Date 1, the portion of the assessment period that had not run when the Notice of Deficiency was issued begins to run.

*Situation C.* The Service issues a Notice of Deficiency 90 or more days before the day on which the bankruptcy petition is filed (Date 1).

Since the 90-day period for filing a Tax Court petition expired before the filing of the bankruptcy petition, the Service may assess the deficiency at any time after the expiration of the 90-day period, including while the automatic stay is in effect. See section 362(b)(9)(D) of the Bankruptcy Code. Section 6213(f) does not apply because the 90-day period for filing a Tax Court petition expired before the filing of the bankruptcy petition. The bankruptcy case has no effect on the running of the period of limitations on assessment or on the suspension of the running of this period under section 6503(a)(1).

## HOLDING

The timing of the issuance of a Notice of Deficiency and the filing of a bankruptcy petition determines whether and how the running of the period of limitations on assessment is affected by the bankruptcy. When the Notice of Deficiency is issued on or after the day on which the bankruptcy commences and before the termination of the automatic stay, or is issued less than 90 days before the bankruptcy commences (*Situations A and B*, respectively), the bankruptcy has an effect on the running of the period of limitations on assessment because of the application of section 362(a)(8) of the Bankruptcy Code and section 6213(a) and (f) of the Internal Revenue Code. When the Notice of Deficiency is issued 90 or more days before the bankruptcy commences (*Situation C*), the running of the period of limitations on assessment is not affected by the bankruptcy.

## DRAFTING INFORMATION

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