

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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subject: Collection Statute Expiration Date and Revocation of Bankruptcy Discharge

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether section 6503(h) of the Internal Revenue Code (Code) suspends the period of limitations on collection for dischargeable tax liabilities during the period that a discharge in a Chapter 7 bankruptcy case is granted to the time the discharge is revoked.

CONCLUSION

Section 6503(h) does not suspend the period of limitations for collection during the period that a discharge in a Chapter 7 bankruptcy case is granted to the time the discharge is revoked. Section 6503(h) generally suspends the period of limitations for collection in a bankruptcy case until the automatic stay terminates under section 362(c)(2)(C) of the Bankruptcy Code plus an additional six months. However, when the

Internal Revenue Service (Service) ceases collection activities due to a discharge order in a Chapter 7 bankruptcy case that is later revoked, equitable estoppel should generally apply to prevent a debtor from asserting that the period of limitations for collection ran during the period that the discharge order was effective.

FACTS

Debtor files for Chapter 7 bankruptcy. At the commencement of the bankruptcy case, Debtor owes a tax liability to the Service that is dischargeable. The Bankruptcy Court grants Debtor a discharge, which includes a discharge of the tax liability Debtor owes to the Service. Nine months later, the trustee files a request to revoke the discharge. After notice and a hearing, the bankruptcy court enters a judgment revoking Debtor's discharge, which includes a revocation of the discharge of the tax liability Debtor owes to the Service.

LAW AND ANALYSIS

Upon the filing of a bankruptcy petition, section 362 of the Bankruptcy Code operates as a "stay, applicable to all entities," of various actions listed in section 362. Section 362(a)(6) prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the [bankruptcy] case." Section 362(b)(9), however, provides that filing a bankruptcy petition does not operate as a stay under section 362(a) of making an assessment of any tax. Section 362(c)(2)(C) provides that the automatic stay continues in an individual Chapter 7 case with respect to any act under section 362(a), other than an act against property of the estate, until the time the bankruptcy court grants or denies a discharge.

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). A bankruptcy court, however, may revoke a discharge order in a Chapter 7 bankruptcy case pursuant to section 727(d) of the Bankruptcy Code.

Section 6503(h) of the Code suspends the period of limitations on collection or assessment of federal taxes for the period in which collection or assessment is prohibited by a bankruptcy case, plus an additional 60 days for assessment or six months for collection.

Courts have taken different positions on the issue of when the suspension period under section 6503(h) ends. Two courts interpreting section 6503(h) have held that the suspension period ends on the date the automatic stay is lifted. See Clark v. Commissioner, 90 T.C. 68, 73 (1988) (The Senate and House "reports seem to equate the suspension period with the period during which the automatic stay is in effect."); Wekell v. United States, 144 B.R. 503, 505 (W.D. Wash. 1992), citing Galanis v. Commissioner, 92 T.C. 34 (1989) ("Congress intended 26 U.S.C. §6503(i) [now 6503(h)] to toll the period of limitation on collection during the period the automatic stay

under 11 U.S.C. §362(a) was in effect.”)¹ One court interpreting section 6503(h) held that the Secretary is prohibited from collecting the tax under section 6503(h)(2) until six months after the bankruptcy case is closed. See United States v. Breaux, 2000-1 U.S.T.C. 50,286 (E.D. La. 2000). Another court held that the period of limitations for collection was extended for the period when the bankruptcy court granted the discharge order to the time the bankruptcy court set aside the discharge order. See Nelson v. United States, 94-1 U.S.T.C. 50,206 (E.D. Mich. 1994). That court also found that, even if the limitations period were not suspended during the time that the discharge order was effective, equitable estoppel would apply to prevent the debtor from claiming the period of limitations for collection expired. Id.

The legislative history to section 6503(h) supports the position that the suspension period for collection in a bankruptcy case ends on the date the automatic stay is lifted under section 362(c)(2)(C). The period of limitations is suspended if “the Internal Revenue Service is prohibited for a period of time by reason of a bankruptcy case from assessment or collection of tax (for example, because of the automatic stay under new 11 U.S. Code sec. 362(a)(6)).” S. Rept. No. 1035, 96th Cong., 2d Sess. 50 (1980). “[I]f the automatic stay under new 11 U.S. Code section 362(a)(6) precludes the Internal Revenue Service from assessment or collection of tax, the running of the period of limitations is suspended,... for collection, during the period of the stay and for six months thereafter.” H.R. Conf. Rep. No. 833, 96th Cong., 2d Sess. 45 (1980). “The statute of limitations on assessment and collection are suspended until the earlier of the determination of tax and the close of the case, plus 60 days in the case of assessment and six months in the case of collection.” The Bankruptcy Tax Act and Minor Tax Bills: Hearing on H.R. 5043 Before the Subcomm. on Select Revenue Measures of the Comm. on Ways and Means House of Representatives, 96th Cong. 185 (1979).

Based on the case law and the legislative history to section 6503(h), we think the suspension period for collection in a bankruptcy case under section 6503(h) ends on the date that the automatic stay terminates under section 362(c)(2)(C) plus an additional six months that section 6503(h) requires to be tacked onto the suspension period. However, when a bankruptcy court revokes a discharge order in a Chapter 7 bankruptcy case pursuant to section 727(d) of the Bankruptcy Code, we think the principles of equitable estoppel generally would apply to prohibit a debtor from claiming that the period of limitations for collection ran during the period the discharge order was effective.

Equitable estoppel will prevent a party from claiming the expiration of the statute of limitations as a defense when that party’s conduct caused the other party not to bring suit within the period of limitations. See Leavell v. Kieffer, 98-2 U.S.T.C. 50,806 (S.D. Ill. 1998), citing Ashafa v. City of Chicago, 146 F.3d 459, 462 (7th Cir. 1997); Costa v.

¹ Clark and Galanis viewed the suspension period as separate from the 60 day period or the six month period that section 6503(h) requires to be added to the suspension period. Therefore, Clark and Galanis require that the additional period for assessment or collection be tacked onto the suspension period.

I.R.S., 99-2 U.S.T.C. 50,799 (E.D. N.Y. 1999). The traditional elements of equitable estoppel are that:

(1) There must be a false representation or wrongful silence; (2) the error must be in a statement of fact and not in an opinion of law; (3) the person claiming the benefits of estoppel must be ignorant of the true facts; and (4) he must be adversely affected by the acts or statements of the person against whom an estoppel is claimed.

Estate of Emerson v. Commissioner, 67 T.C. 612, 618 (1977), citing Underwood v. Commissioner, 63 T.C. 468 (1975), affd. 535 F.2d 309 (5th Cir. 1976); see also I.R.S. v. Kaplan (In re Kaplan), 104 F.3d 589, 601 (3rd Cir. 1997); United States v. Hemmen, 51 F.3d 883, 892 (9th Cir. 1995); Durant v. United States, 16 Cl. Ct. 447, 451 (Cl. Ct. 1988). Equitable estoppel may also apply when a party's willful or negligent acts or conduct cause the other party to detrimentally rely upon the state of things so indicated. FDIC v. Harrison, 735 F.2d 408, 413 (11th Cir. 1984), citing Dooley v. Weil (In re Garfinkle), 672 F.2d 1340, 1347 (11th Cir. 1982).

Section 727(d) of the Bankruptcy Code authorizes a bankruptcy court to revoke a discharge order in a Chapter 7 bankruptcy case only after a debtor obtains a discharge through fraud, disobeys a court order, or refuses to respond to a material question approved by the court or to testify.² We think the principles of equitable estoppel would generally prohibit the debtor from benefiting from any wrongful conduct that results in a bankruptcy court revoking a discharge pursuant to section 727(d). Therefore, equitable estoppel should generally apply in these cases to prevent the debtor from asserting that the period of limitations for the Service to collect a tax liability ran during the period that the discharge order was effective. See Nelson, 94-1 U.S.T.C. 50,206.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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² Section 727(d) of the Bankruptcy Code provides that a bankruptcy court shall revoke a discharge at the request of the trustee, a creditor, or the United States trustee in three situations. First, where the debtor obtains the discharge through fraud and the requesting party does not know of the fraud until after the court grants the discharge. Second, where the debtor knowingly and fraudulently fails to deliver, surrender, or report to the trustee the acquisition of property of the estate or entitlement to property that, if acquired, would be property of the estate. Third, where the debtor refuses to: (1) obey any lawful order of the court, other than an order to respond to a material question or to testify; (2) to respond to a material question approved by the court or to testify on the ground of privilege against self-incrimination after the debtor has been granted immunity with respect to the matter on which the privilege was invoked; or (3) to respond to a material question approved by the court or to testify on a ground other than the properly invoked privilege against self-incrimination.

Please call (202) 622-3620 if you have any further questions.