

Office of Chief Counsel
Internal Revenue Service

Memorandum

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date: December 10, 2003

to: Associate Area Counsel
Small Business/Self-Employed CC:SB:5:LV

from: Chief, Branch 2 (Collection, Bankruptcy & Summonses)
Procedure and Administration

subject: **Bankruptcy Code Section 507(a)(8)(A)(i): Construction of the Three-Year Rule**

This Chief Counsel Advice responds to your request that we prereview a memorandum forwarded to our office on October 16, 2003. We agree with the following conclusions reached in your memorandum. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

ISSUES

1) Assuming a debtor files a Chapter 7 bankruptcy petition on April 15, 2002, owes income taxes for the 1998 tax year, and did not obtain an extension for filing the 1998 return, does the 1998 income tax liability fall within the three-year rule of Bankruptcy Code § 507(a)(8)(A)(i) so as to render the tax liabilities nondischargeable priority claims?

2) Assuming a debtor files a Chapter 7 bankruptcy petition on April 15, 2003, owes income taxes for the 1999 tax year, and did not obtain an extension for filing the 1999 return, does the 1999 income tax liability fall within the three-year rule of Bankruptcy Code § 507(a)(8)(A)(i) when April 15, 2000, the due date of the 1999 return, fell on a Saturday?

CONCLUSION

1) Because the tax return for the 1998 income tax liabilities was last due on April 15, 1999, rather than after April 15, 1999, the 1998 income tax liabilities will not be entitled to priority status under section 507(a)(8)(A)(i) and excepted from discharge under section 523(a)(1)(A).

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2) Because the tax return for the _____ income tax liabilities was last due on April 15, _____ rather than after April 15, _____, the _____ income tax liabilities will not be entitled to priority status under section 507(a)(8)(A)(i) and excepted from discharge under section 523(a)(1)(A). The fact that April 15, _____, fell on a Saturday does not change the due date for filing the _____ income tax return for purposes of applying section 507(a)(8)(A)(i).

LAW AND ANALYSIS

Section 523(a)(1)(A) of the Bankruptcy Code, 11 U.S.C., excepts from discharge taxes afforded priority treatment under Bankruptcy Code § 507(a)(8)(A)(i). Under section 507(a)(8)(A)(i), income taxes “for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition” are entitled to priority treatment. Thus, in order to determine whether an income tax liability for a year ending on or before the date of the bankruptcy petition is entitled to priority classification under section 507(a)(8)(A)(i), the last due date of the income tax return must be determined and that date must be after three years before the date of the filing of the petition.

Situation 1

In the first scenario, the debtor files a Chapter 7 bankruptcy case on April 15, _____, owing income taxes for the _____ tax year. Three years before the bankruptcy petition date is April 15, _____. Accordingly, in order for the _____ income tax liabilities to be entitled to priority status under section 507(a)(8)(A)(i), the last due date of the return must be after April 15, _____. Assuming that the debtor did not obtain any extensions, the income tax return for 1998 was last due on April 15, _____, not after April 15, _____. I.R.C. § 6072(a). Thus, the three-year rule will not give the 1998 liabilities priority classification and will not cause them to be excepted from discharge under section 523(a)(1)(A). In re Luke, 142 B.R. 160 (Bankr. W.D. Mich. 1992). Section 507(a)(8)(A)(i) would only give the 1998 income tax liabilities priority classification and cause them to be excepted from discharge if the bankruptcy petition was filed on April 14, 2002, or earlier in the year.

Situation 2

In this scenario, the debtor files a Chapter 7 bankruptcy petition on April 15, _____, owing income taxes for the _____ tax year. Three years before the date of the petition is April 15, _____. Accordingly, in order for the _____ income tax liabilities to be entitled to priority status under section 507(a)(8)(A)(i), the last due date of the return must be after April 15, _____. Assuming that the debtor did not obtain any extensions, the income tax return for _____ was last due on April 15, 2000, not after April 15, _____. However, April 15, _____, fell on a Saturday, which raises the issue of whether the last due date of the _____ income tax return was extended to the following Monday, April 17, _____.

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Because April 15, _____, fell on a Saturday, returns filed by the following Monday, April 17, _____, were treated as timely filed. I.R.C. § I.R.C. § 7503; Treas. Reg. § 1.7503-1. However, I.R.C. § 7503 does not change the due date for filing the return. See Rev. Rul. 81-269, 1981-2 C.B. 243 (section 7503 does not change computation of the three-year limitation period for making an assessment even though the statutory due date of the return falls on a Saturday, Sunday, or holiday). Thus, the income tax return for 1999 is still treated as last due on April 15, _____, for purposes of applying section 507(a)(8)(A)(i). As a result, and consistent with the first situation, the _____ income tax liabilities will not receive priority classification under the three-year rule of section 507(a)(8)(A)(i) and be excepted from discharge under section 523(a)(1)(A).

Note, however, that the operation of I.R.C. § 7503, which does not change the due date of returns but treats them as timely filed in the case of Saturdays, Sundays, and legal holidays, should be distinguished from the operation of I.R.C. § 6081, which governs extensions of time for filing returns and does change the due date of returns. An extension of time for filing returns under I.R.C. § 6081 will change the priority/discharge calculations under sections 507(a)(8)(A)(i) and 523(a)(1)(A). Gidley v. United States (In re Gidley), 151 B.R. 952 (M.D. Fla. 1992).

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