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Memorandum

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subject: Application of Automatic Stay to Tax Court Proceeding Where Debtor Intervenes in Innocent Spouse Case

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

ISSUE

Do the automatic stay provisions of section 362 of the Bankruptcy Code prohibit a debtor from intervening in a current or former spouse's Tax Court case which involves only relief from joint and several liability under section 6015 of the Internal Revenue Code?

CONCLUSION

No. Because a Tax Court proceeding to determine whether a nondebtor, requesting spouse is entitled to relief from joint and several liability under section 6015 does not directly affect or "concern" the tax liability of the debtor, the automatic stay does not apply.

FACTS

Assume the following facts: A husband and wife file a joint income tax return for the tax year. The Service issues a statutory notice of deficiency to them. They do not petition the Tax Court and the deficiency is assessed. Shortly thereafter, the husband and wife divorce, and the wife timely files with the Service a Form 8857 seeking relief from joint and several liability under section 6015. In response, the Service issues a Final Notice of Determination denying relief under section 6015 to the wife, and the wife files a petition with the Tax Court seeking review of the Service's denial of section 6015 relief. After the Tax Court case is commenced, the husband files a petition in bankruptcy. As required under T.C. Rule 325, the Service serves the debtor husband with a Notice of Filing of Petition and Right to Intervene. This Notice advises the debtor husband of his right to intervene in the Tax Court proceeding. The debtor husband wants to intervene in the Tax Court case. Is intervention prohibited by the automatic stay?

LAW AND ANALYSIS

The Automatic Stay Under Bankruptcy Code Section 362(a)(8)

Prior to its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the BAPCPA), Bankruptcy Code section 362(a)(8) provided that "the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor" was prohibited by the automatic stay. The BAPCPA amended section 362(a)(8) to clarify the taxable periods to which the stay applies for individual and corporate debtors. For cases filed on or after October 17, 2005, section 362(a)(8) prohibits "the commencement or continuation of a proceeding before the United States Tax Court ... concerning the tax liability of a debtor who is an individual for a taxable period ending before the order for relief under this title." While the taxable periods to which the stay applies was clarified under the new law, the type of proceeding that is stayed has not changed. In order to be stayed under section 362(a)(8), there must be a Tax Court proceeding "concerning the debtor" or "concerning the tax liability of a debtor." Thus, the issue presented here is whether a Tax Court proceeding concerning the Service's denial of the wife's section 6015 claim may also be considered a Tax Court proceeding concerning the debtor husband's tax liability so that the automatic stay of section 362(a)(8) of the Bankruptcy Code would prohibit the debtor husband's intervention in the Tax Court proceeding.¹

Joint Liability under section 6013(e)

¹ Because intervening in a Tax Court proceeding is an action taken *by* the debtor husband, as opposed to the commencement or continuation of an action or proceeding *against* the debtor husband, section 362(a)(1), which stays the commencement or continuation of proceedings *against* the debtor, does not apply. Furthermore, the other stay provisions set forth at section 362 of the Bankruptcy Code are inapplicable, and therefore, such stay provisions are not addressed in this memorandum.

Married couples may choose to file either joint or separate federal income tax returns. I.R.C. § 6013(a). When a married couple chooses to file a joint return, each spouse is jointly and severally liable for the taxes. I.R.C. § 6013(d)(3). Accordingly, if a joint return is filed, both spouses are individually liable for the entire tax liability. And as a joint and several debt, the Service may collect the entire debt from either spouse. Therefore, in this case, the husband will be liable for the same amount regardless of whether his former wife is granted relief from the joint and several liability because is no provision for reducing a taxpayer's liability based on the joint and several obligation of the taxpayer's spouse. See Estate of Ravetti v. United States, 37 F.3d 1393, 1394 (9th Cir. 1994). Furthermore, the debtor husband cannot obtain contribution from the wife in the Tax Court proceeding, "because the tax code has no provision enabling a spouse to obtain contribution from an 'innocent spouse.'" Id. at 1395.

Intervention in Tax Court Proceedings to Determine Innocent Spouse Relief

When one spouse files a Tax Court petition seeking review of an administrative denial of relief, the Service must notify the nonrequesting spouse of the action and the right to become a party to the case. I.R.C. § 6015(e)(4); see T. C. Rule 325; Corson v. Commissioner, 114 T.C. 354, 364 (2000); King v. Commissioner, 116 T.C. 198 (2001). The nonrequesting spouse may then intervene by filing a "notice of intervention" with the Tax Court. See T.C. Rule 325. Intervention in the Tax Court proceeding by the debtor spouse does not change the issue being determined in the Tax Court proceeding. If the debtor husband intervenes in the stand-alone Tax Court proceeding, the Tax Court proceeding will only address whether the wife, a nondebtor, is entitled to relief from joint and several liability under section 6015. As such, this proceeding does not directly affect or "concern" the tax liability of the nonrequesting spouse. As described above, under section 6013, the nonrequesting spouse remains liable for the entire amount of the joint tax liability regardless of whether relief under section 6015 is granted to the requesting spouse. See Baranowicz v. Commissioner, 96 AFTR2d 2005-7519 (9th Cir. 2005) (stating that the Tax Court's determination regarding relief under section 6015 does not affect the nonrequesting spouse's personal tax liability).

Application of Automatic Stay When Nonrequesting Spouse Intervenes

A Tax Court proceeding to determine whether the requesting spouse is entitled to relief from joint liability does not directly affect or "concern" the tax liability of the intervening nonrequesting spouse. The intervenor remains liable for the entire amount of the joint tax liability regardless of whether relief from joint and several liability is granted to the requesting spouse. The Service will file a proof of claim for the entire amount of the joint income tax liability remaining unpaid in the nonrequesting spouse's bankruptcy case regardless of the outcome of the Tax Court proceeding. Intervention in the Tax Court proceeding by the debtor husband does not change this result. Thus, a Tax Court proceeding to determine the nondebtor wife's entitlement to relief from joint and several liability is not a Tax Court proceeding "concerning" the debtor husband's tax liability,

even if the debtor husband intervenes in the Tax Court proceeding. The automatic stay, therefore, does not prohibit the debtor husband from intervening in a Tax Court proceeding concerning the nondebtor wife's entitlement to section 6015 relief. Similarly, the automatic stay does not prohibit the continuation of a Tax Court proceeding concerning a nondebtor wife's relief from joint and several liability when the debtor husband has intervened in the Tax Court proceeding and subsequently files bankruptcy.

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