

ID: CCA_2008081808031525

Number: **200910057**

Release Date: 3/6/2009

Office:

UILC: 01.00.00-00

From:

Sent: Monday, August 18, 2008 8:03:21 AM

To:

Cc:

Subject: RE: TC - 420 {EXAM FREEZE}

Sorry for the delay in responding to your inquiry. I attended the Counsel CLE in Atlanta and did not access this e-mail account until this morning (I assume that you received an out-of-office reply indicating as much).

I will reprint your question before analyzing it to make this CCA complete. You asked:

Hi

You provided advice to me previously re bankruptcy/statute considerations. I would appreciate your assistance in this case. The stat notice was issued to the taxpayer on . The last day to petition Tax Court expired on . TP filed bankruptcy on . As noted below, the TC 300 date is . The dilemma, if that is the right word, is that no extension of the time to petition Tax Court or statute exists in this situation since TP filed bankruptcy after the 90-day period for petitioning Tax Court expired. However, our assessment was done subsequent to the bankruptcy filing. Is there any prohibition on the assessment in this situation? I know where the automatic stay is in place, and TP has filed the bankruptcy petition prior to expiration of the 90-day period, that we are prohibited from doing a default (unagreed) assessment until the stay is lifted. I recently had an inquiry/request involving a situation similar to . I told the bankruptcy specialist in that case that we could not abate the assessment, for the reasons noted above.

Thank you,

Based on the facts presented below, there would have been no prohibition against the Service's assessment of the taxpayer/debtor's prepetition tax liability and so the Service need not abate the assessment. Although section 362(a)(6) of the Bankruptcy Code generally prohibits the assessment of any prepetition claim, there is an exception for the making of an assessment for any tax in section 362(b)(9)(D). The assessment exception in section 362(b)(9) was added by the Bankruptcy Reform Act of 1994, and is effective for cases filed after October 22, 1994. Because the bankruptcy petition was filed within a week of the expiration of the 90-day period within which the T/P may have petitioned the Tax Court, I would want to double check to make sure that there were no other suspensions in effect that might affect this conclusion (e.g. combat zone or disaster relief under IRC sections 7508 or 7508A, respectively, etc.).

Please feel free to call me directly at

if you further wish to discuss this matter.

Regards-