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From:

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To:

Cc:

Subject: FW: Bankruptcy/Automatic Stay/LDP/ASED

The Service should not calculate the LDP or the ASED based on the BC section 362(c)(3)(A) termination of the automatic stay. The Chief Counsel Bankruptcy Deskbook explains that section 362(c)(3)(A) should be interpreted as applying only in cases in which the Service is taking collection action prior to the filing of the second case. (2-28 to 2-29.) The relevant IRS action at issue in your case is the issuance of the statutory notice of deficiency prior to the debtor's first Chapter 13 case. Because the issuance of the statutory notice of deficiency was part of the tax determination process, and not a collection action, the stay would not have terminated pursuant to BC 363(c)(3)(A) as to stat. notice-related matters (e.g., the running of the periods for the LDP and ASED). The Service, therefore, will need to retain the case in bankruptcy suspense until the debtor receives a discharge or her Chapter 13 case is dismissed.

This conclusion is buttressed by the discussion in CC-2008-007. The heading of part II. reads "[u]nder B.C. [section] 362(c)(3)(A), the stay terminates with respect to *all actions to collect* a debt against the debtor personally..." (Emphasis added.)

I hope this answers your question. Feel free to contact me if you have any questions about or further wish to discuss this matter.