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From:

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To:

Cc:

Subject: CDP and the collection period

, this is reply to your request for an informal advisory regarding a Collection Due Process proceeding and the collection period. Please call me if you have any questions.

Issue: If a taxpayer files an untimely petition with the tax court after receiving a notice of determination, is the CSED only suspended until the end of the 30-day period that the taxpayer had to timely petition under IRC 6330(d)(1) or is it suspended until 90 days after the Tax Court dismisses the untimely petition for lack of jurisdiction?

Response: The CSED is only suspended until the end of the 30-day period that the taxpayer had to petition under IRC 6330(d)(1). I'm not aware of any case directly on point, but McGowen v. Commissioner, T.C. Memo 2008-125 makes a general statement to this effect. Generally, this is not a problem given the length of the collection statute. This result regarding the collection statute is in contrast with the comparable situation regarding the assessment statute. If a taxpayer files an untimely petition after receiving a statutory notice of deficiency, the placing of the deficiency proceeding on the Tax Court's docket suspends the assessment period under IRC 6503(a)(1). See Martin v. Commissioner, 436 F.3d 1216, 1220-1 (10th Cir. 2006). There is nothing comparable in IRC 6330(e)(1).

You mentioned that this exact question was addressed in CCA 200215050 which concluded that the CSED is, arguably, only suspended until the 30th day, but advised that "as a matter of caution we recommend that the CSED should generally be treated as suspended until the Tax Court dismissal becomes final."

