



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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GL-801434-98

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MEMORANDUM FOR

DISTRICT COUNSEL

Attn:

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT:

This advice is in response to your memorandum concerning the above subject. This document is advisory only and is not to be relied upon or otherwise cited as precedent.

LEGEND:

City:
Taxpayer:
SSN:
Years:
Assessment Amount: \$ +

ISSUE:

Whether a notice of Revocation of Certificate of Release of Federal Tax Lien (notice of revocation) violates the automatic stay of section 362 of the Bankruptcy Code.

CONCLUSION:

A post-petition filing of a notice of revocation violates the automatic stay; accordingly, we recommend that the Service seek the lifting of the automatic stay prior to filing a notice of revocation.

FACTS:

The relevant facts are as follows.

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(taxpayer-debtor) operated several enterprises through an entity named .

Based on tax returns submitted, the Service assessed tax liabilities on , for employment taxes owed for the last three quarters of and an additional amount owed for unemployment taxes for . The Notice of Federal Tax Lien (NFTL) for these assessments was filed on . The NFTL was refiled in .

On , the taxpayer-debtor filed for relief under Chapter 11 of the Bankruptcy Code. The facts show the Service received notice of the bankruptcy filing; however, the caption of the case listed various businesses operated by the taxpayer-debtor but did not list . The Service did not realize that was part of the bankruptcy case until when the taxpayer-debtor's attorney sent the Service a proposed disclosure statement and plan of reorganization describing the activities of . Prior to receipt of this information, in the Service, believing that the ten-year collection period had expired for the assessments shown on the NFTL, abated the assessments shown on the NFTL and released the lien.

The taxpayer-debtor's Chapter 11 bankruptcy case was subsequently converted to Chapter 7.

LAW AND ANALYSIS:

We agree with your conclusions in your memorandum; however, we differ with respect to your view, noted in footnote 6 of your memorandum, that the filing of a notice of revocation is not a violation of the automatic stay. We believe that filing a notice of revocation is likely to be viewed as violating the automatic stay.

In footnote 6 of your memorandum, you suggest that since the refile of a NFTL is not a violation of the automatic stay, a revocation of an erroneous automatic release should not be considered a violation. Moreover, you posit that both notices are informational and are an attempt to maintain the status quo which is also the objective of the automatic stay. In support of your view you cite the case In re Stuber, 142 B.R. 435 (Bank.D.Kan. 1992). The court in Stuber noted that section 362(a)(4) operates only as a stay against acts to create, perfect, or enforce liens, and does not prohibit acts to extend, continue, or renew otherwise valid statutory liens. Id. at 438. However, the filing of a notice of revocation may be viewed as creating a "new" lien.

The filing of a notice of revocation reinstates the general tax lien "on and after the date the notice of revocation is mailed to the taxpayer." Treas. Reg. § 301.6325-1(f)(2)(iii). The reinstated lien has prospective, not retroactive, effect. I.R.C.

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§ 6325(f)(2); Treas. Reg. § 301.6325-1(f)(2)(iii). In other words, revocation does not restore the continuity of the original tax lien from the date of assessment. Thus, there is a period during which the Service has no effective statutory lien.

Accordingly, the revocation reinstating the tax lien might be viewed as creating a “new” lien that arises post-petition, thereby, rendering the filing of the notice of revocation in the instant case a violation of the automatic stay, B.C. § 362(a)(4), (5). 1/ Consequently, we recommend that a lifting of the automatic stay be sought from the bankruptcy court before filing the notice of revocation. 2/

If you have any further questions, please contact General Litigation, Branch 1 at (202) 622-3610.

1/ See Treas. Reg. § 301.6325-1(f)(2)(iii)(b) comparing the reinstated tax lien to the general tax lien that arises upon assessment of the tax liability as though they are different tax liens.

2/ Pursuant to B.C. § 362 (b)(9), a post-petition assessment tax lien is effective under certain conditions. This section, however, makes no provision for reinstated tax liens.