**Office of Chief Counsel**
**Internal Revenue Service**

# Memorandum

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to: Associate Area Counsel
Small Business/Self-Employed CC:SB:1

from: Senior Technician Reviewer, Branch 2 (Collection, Bankruptcy & Summonses)
Procedure and Administration

subject: **Significant Service Center Advice**

This Chief Counsel Advice responds to your memorandum dated [Month DD, YYYY]. In accordance with I.R.C. 6110(k)(3), Chief Counsel Advice may not be used or cited as precedent.

ISSUE

You have requested advice on an issue pertaining to the determination of the collection statute expiration date (CSED) in cases of back-to-back bankruptcy filings. The issue presented is whether any time should be added to the CSED in a situation where a second bankruptcy petition is filed less than six months after the automatic stay terminated in the first bankruptcy. Under I.R.C. § 6503(h)(2), the running of the collection statute is suspended during bankruptcy and for six months after termination of the automatic stay. You ask whether the Service, in addition to being entitled to the six-month suspension arising from the second bankruptcy, is entitled to a suspension representing the “unused” portion of the six-month period attributable to the first bankruptcy.

CONCLUSION

The statute is not suspended by the unused portion of the six-month period. Thus, this period should not be “tacked on” to the CSED.

LAW AND ANALYSIS

The issue presented may be illustrated by the following example. A taxpayer files a bankruptcy petition on September 2, 2003. At that time 100 days remain on the collection statute. The automatic stay imposed by the bankruptcy terminates on October 2, 2003, when the bankruptcy is dismissed. On December 16, 2003, 75 days later, the taxpayer files a second bankruptcy petition. The second bankruptcy is dismissed, and the automatic stay in the second bankruptcy terminates, on January 15, 2004. The running of the collection statute continues to be suspended for an additional six months, until July 15, 2004, pursuant to I.R.C. § 6503(h)(2). We conclude that the 100 days remaining on the collection statute begins running at that time. No additional suspension is afforded the Service because the second bankruptcy petition was filed only 75 days after the first case was dismissed and approximately 105 (180 – 75) days of the six-month suspension period was "unused." If the Service were to receive the benefit of the unused suspension period, the running of the statute would be suspended for approximately 105 days after July 15, 2004, or until October 28, 2004. At that point, the 100 days remaining on the CSED would begin to run.

Your request for advice indicates that a Service employee was instructed on one occasion to routinely add four months to the CSED if a second bankruptcy is filed within six months of the termination of the automatic stay in the first, and on another occasion to add no time to the CSED. We reject the notion that four months should routinely be tacked on to the CSED in this type of back-to-back bankruptcy situation. The amount of the unused portion of the section 6503(h)(2) six-month period, and thus any period potentially "tacked on" to the CSED, differs from case to case, in that it is dependent on the exact number of days between the termination of the automatic stay in one bankruptcy and the imposition of the stay in a subsequent bankruptcy. Accordingly, even if we agreed that the unused portion of the section 6503(h)(2) period should be tacked on to the CSED, we would reject the notion of categorically deeming this unused period to be four months.

The Service normally is afforded ten years to collect a tax liability by levy or court proceeding once the liability has been properly assessed. I.R.C. § 6502(a). The filing of a bankruptcy petition by a taxpayer, pursuant to Title 11 of the United States Code, gives rise to an automatic stay of collection activity, which is generally in effect until the earliest of the time the bankruptcy case is closed, the time the case is dismissed, or the time a discharge is granted or denied. B.C. § 362(a)(6), (c)(2).

I.R.C. § 6503(h) provides:

> CASES UNDER TITLE 11 OF THE UNITED STATES CODE – The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United

> States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and –
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> (1) for assessment, 60 days thereafter, and
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> (2) for collection, 6 months thereafter.

Thus, when the Service is prohibited from engaging in collection activity in a bankruptcy case by reason of the automatic stay, the running of the statute of limitations on collection is suspended. Further, upon the termination of the automatic stay, the running of the collection statute remains suspended for an additional six months. The apparent purpose of the additional six months is to afford the Service time to become aware of the termination of the stay and to initiate collection action. As stated in In re Dodson, 191 B.R. 869, 874 (Bankr. Ore. 1998), "Legislative history identifies that the purpose of the government's additional six month tolling period after bankruptcy is to provide it adequate time to pursue collection of the tax debt."

As we have previously stated, it is our opinion that the unused portion of the six-month suspension period resulting from the first bankruptcy should not be tacked on to the CSED. The primary rationale for reaching this result is that this situation involves suspension periods that overlap, rather than suspension periods that run consecutively. The periods overlap in that the suspension period resulting from the second bankruptcy starts to run before the suspension period resulting from the first bankruptcy has stopped running. The time during which the periods overlap should operate to suspend the running of the statute only once.

This rationale is employed in case law addressing an analogous issue involving overlapping suspension periods, how to determine the CSED where successive offers in compromise are submitted and successive suspensions of the running of the collection statute are effected. In United States v. Morgan, 213 F. Supp. 137 (S.D. Tex. 1962), each offer in compromise form submitted by the taxpayer included an agreement to suspend the running of the collection statute for the period during which the offer was pending, the period during which any installment remained unpaid, and for one year thereafter. [1] The taxpayer in Morgan submitted an offer in compromise for the Service's

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[1] Prior to the enactment of the IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. 105-206, the Internal Revenue Code permitted the Service to enter into agreements with taxpayers (collection waivers) whereby the taxpayer agreed to extend the collection period beyond the last date otherwise permitted for collection, namely, 10 years from the date of assessment. See I.R.C. § 6502(a)(2) (1997); Treas. Reg. § 301.6502-1(a)(2)(i) (1992). Moreover, it was the Service's practice to condition consideration of an offer in compromise on the execution by the taxpayer of a collection

consideration in April 1954. In June 1955, before the Service acted on the offer, the taxpayer submitted an amended offer. Both offers were rejected by the Service in August 1955. In January 1956, less than one year after the rejection, the taxpayer submitted a second offer, which was amended in May 1956. This offer was accepted in September 1956. The Government maintained that the suspension of the running of the collection statute contained in each offer should be read as extending the limitations period for the number of days the Service held each offer under consideration, as well as for an additional 365 days for each offer. The district court observed that "… the net effect of the Government's contention is to calculate separately each period of the statute's interruption; and to tack one on to the other, thus treating them as though they were consecutive." 213 F. Supp. at 139-140. In rejecting this construction of the waivers, the court stated:

> It seems sufficient answer to this argument to point out that this is not the way the waiver reads; and that it fails to distinguish between an agreement to extend the statutory period for a given number of days, on the one hand, and an agreement that the operation of the statute may be suspended or interrupted during an uncertain interval, on the other.

Id. at 140. In a later case presenting the same legal issue, United States v. Newman, 405 F.2d 189 (5th Cir. 1968), the United States Court of Appeals for the Fifth Circuit recognized, albeit in a footnote, that the Government had abandoned the position it had taken in Morgan, and again distinguished between a suspension of the running of the collection statute and an extension of the CSED. 405 F.2d at 194 n.6. See also United States v. Malkin, 317 F.Supp. 612, 614 n.4. (E.D.N.Y. 1970) (period of overlap of suspension periods resulting from multiple offers in compromise counted only once).

The reasoning of Morgan applies to the issue presented here. When the running of the collection statute is suspended on multiple occasions, either by agreement or by statute, the suspension periods normally run in full, provided that they do not overlap. For example, assume a taxpayer files a bankruptcy petition on September 2, 2003, and that

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waiver suspending the collection statute for the period an offer in compromise was under consideration, while any term of an accepted offer was not completed, and for one additional year. See Treas. Reg. 301.7122-1(f)(1960). Pursuant to RRA 98, collection waivers generally may no longer be accepted by the Service. See I.R.C. § 6502(a)(2003). In addition, under RRA 98 suspensions of the running of the collection statute in the offer in compromise context are governed by statute, specifically by I.R.C. § 6331(k)(1) and (3). Under these provisions, the Service is prohibited from levying, and the collection statute is suspended, while an offer is pending with the Service, for 30 days immediately following rejection of the offer, and for any period while a timely filed appeal from the rejection is being considered by Appeals after rejection. See Treas. Reg. § 301.7122-1(g)(1) and (i)(2003).

the bankruptcy case is dismissed on October 2, 2003, as in our previous example. In this example, however, assume that a second bankruptcy is filed 10 months later, on August 2, 2004. The collection period would be suspended from September 2, 2003, until six months after October 2, 2003, and would again be suspended from August 2, 2004, until six months after the termination of the automatic stay in the second bankruptcy.

In the situation presented, however, the suspension periods overlap, in that the suspension imposed by section 6503(h)(2) in the first bankruptcy has not yet fully run before the suspension imposed by section 6503(h)(2) in the second bankruptcy is in effect. As was the case of the suspensions in Morgan, the section 6503(h)(2) suspensions under consideration do not have the effect of extending the CSED for a set number of days and, as in Morgan, any period of overlap of the suspension periods should be counted only once. Accordingly, the unused portion of the six-month suspension period from the first bankruptcy is not tacked on to the CSED. Our conclusion is consistent with the purpose of section 6503(h)(2) in that, even without the tacking, the Service is afforded a full six-month suspension of the collection statute after the termination of the stay in the second bankruptcy, thus providing adequate time for Service employees to learn of the termination of the stay and to ready themselves to take collection action.

Thank you for soliciting our advice on this matter. Please call if you have any further questions.

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