OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 18, 1999

Number: **199950001**
Release Date: 12/17/1999

CC:EL:GL:Br1
GL-604191-99

UILC:04.01.00-00
9999.98-00

MEMORANDUM FOR DELAWARE-MARYLAND ASSOCIATE DISTRICT COUNSEL

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

SUBJECT: Debtor, GL-604191-99

This responds to your request for advice dated June 7, 1999. This document is not to be cited as precedent.

LEGEND:

Debtor:
Date A:
Date B:
Date C:
Date D:
Date E:
Date F:
Date G:
Year A:
Year B:

ISSUE:

Whether the Internal Revenue Service (the "Service") could revoke a release of notices of federal tax lien such that the liens are reinstated and reattach to the prepetition property of the above-named debtor in a Chapter 7 bankruptcy case where, following the release, abatements were made of the underlying tax assessments.

CONCLUSION:

The abatements made in this case were made pursuant to the authority of I.R.C. § 6404(c). Accordingly, the tax liability may only be reestablished on the books of

the Service through the statutory and regulatory procedures for making a new assessment. Because the taxes at issue were discharged in bankruptcy, however, new assessments would be prohibited by the discharge injunction. Without valid assessments the release of liens in this case cannot be revoked and the liens cannot be reinstated.

FACTS:

The facts as you have provided them are as follows. The debtor filed a Chapter 7 bankruptcy petition on The debtor filed an adversary proceeding to determine whether certain tax liabilities were dischargeable. On Date B, an Agreed Order was entered that provided, in part, that the debtor's income tax liabilities for the Year A and Year B tax years were dischargeable, but that the Service's tax liens for those years remained attached to any prepetition exempt or abandoned property of the debtor.

Following the entry of the agreed order, the Service took the following actions: Date C, the lien was released; Date D, the liabilities for Year A and Year B were abated; Date E, the abated assessments were "reinstated", Date F, the release of lien was revoked; Date G, a new lien was filed.

The history notes maintained by Special Procedures clearly state that the periods at issue are dischargeable but that the tax lien remains attached to any exempt or abandoned prepetition property. Apparently, the technician who carried out the abatement and lien release did not understand the implications of such actions given the law as restated in the agreed order.

LAW AND ANALYSIS:

Bankruptcy Code section 522(c)(2)(B) provides that exempt property is generally not liable for a prepetition debt, except where such debt is secured by a properly filed tax lien. Accordingly, where a Notice of Federal Tax Lien is on file before the petition is filed, it may be possible to collect the dischargeable tax liabilities from prepetition assets that were exempted or abandoned in the bankruptcy. See In re Isom, 901 F.2d 744 (9th Cir. 1990).

In the present case however, the lien from which this in rem post-discharge collection authority is derived was released and the associated assessments were abated. You opine that the Service employee who took these actions misunderstood the legal authority to take further collection action with respect to the discharged liabilities. The assessments were subsequently "reinstated" and the release of the lien was revoked, pursuant to the authority of I.R.C. § 6325(f)(2). You now question whether, by taking these actions, the Service has revived its ability in this case to effectuate post-discharge collection from the debtor's exempt property.

As you note, the authority to revoke a release of lien under section 6325(f)(2) presupposes the existence of a valid assessment to support the reinstated lien. Accordingly, the validity of the revocation of release in the present case is contingent upon whether or not the abated assessments could be reinstated. In a prior memorandum from this office, dated January 22, 1999, a copy of which is attached, we concluded that where the Service reduces the assessed balance on tax modules for discharged taxes to zero, such as was done in the present case, such action generally constitutes an abatement pursuant to the authority of I.R.C. § 6404(c). Section 6404(c) provides that "[t]he Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due."

The January 22, 1999, memorandum further provides this office's position that once an abatement has been made pursuant to the authority of section 6404, the taxpayer's liability may only be reestablished on the books of the Service by making a new assessment. In cases of taxes discharged in bankruptcy, however, such as in the present case, the making of a new assessment is prohibited by the discharge injunction.

Courts have recognized that an attempted abatement made due to employee error is not a valid abatement, such that the assessment may be revived or reinstated without the necessity for a new assessment. In In re Bugge, 99 F.3d 740 (5th Cir. 1996), the court noted that, as a general rule, if the Service decides to reimpose a validly abated assessment, it must make a new assessment within the relevant statutory period. Under the facts of Bugge, the tax was abated in full because the revenue officer erroneously thought that the tax had been double counted in the computer and requested abatement of the duplicative tax. The court held, therefore, that no valid abatement occurred because abatement was not authorized under section 6404.

In concluding that the purported abatement was ineffective, the court in Bugge emphasized that there was no statutory authority to make an abatement. This was a purely accidental and unintended processing error. The court also distinguished the facts of Bugge from cases in which an error in judgment was made and there was a conscious decision to abate the tax liability. Id. at 745. See also Range v. United States, 99-1 U.S.T.C. ¶ 50,457 (S.D. Tex. 1999) (court, in dicta, limited Bugge to its facts, citing its holding as based upon lack of statutory authority); Crompton-Richmond Co. v. United States, 311 F. Supp. 1184 (S.D.N.Y. 1979)(abated assessment can be reinstated if abatement was ordinary clerical or bookkeeping error; distinction made where the abatement is based upon a substantive reconsideration of the tax liability).

We do not consider the Bugge opinion to provide support for an argument that the assessments in the present case may be reinstated. We do not think that the technician's error in abating the assessments constitutes the type of error contemplated by Bugge. Primarily, as previously discussed, the abatement was made pursuant to the statutory authority in section 6404(c). Furthermore, this was not an accidental or unintended error but a conscious decision to abate the taxes, albeit one based upon bad judgment and a misunderstanding of the law. The fact that the Agreed Order entered by the court expressly provides that the liens for Year A and Year B remained attached to certain prepetition property does not provide separate authority for reinstatement of the assessments. As you note, this provision merely restates the law. We consider the Bugge opinion to be a narrow opinion which should be limited to its facts.

Accordingly, we conclude that the abatements made in this case should not have been reinstated. The release of the liens for the Year A and Year B tax years should not have been revoked. Thus, there is no authority for the Service to take post-discharge collection action against the debtor's prepetition property in this case. If you have any further questions, please call the attorney assigned to this case, who may be reached at 202-622-3610.

Attachment:
Memorandum dated January 22, 1999(**199911042**).