



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE)-LONG ISLAND

CC:SB:1:LI

FROM: Alan C. Levine
Chief, Branch 1, Collection, Bankruptcy, and Summonses

SUBJECT: Computation of CSED for Dismissed CDP Cases

In response to your memorandum received November 23, 2001, we have reviewed the questions you have asked regarding computation of the collection statute expiration date (CSED) in CDP cases where the Tax Court dismisses a petition for review as imperfect or untimely. Our analysis and recommendations follow. This document may not be used or cited as precedent. I.R.C. § 6110(k)(3).

ISSUES

1. Whether the CSED is suspended until 30 days after the date of a notice of determination or until 90 days after the date of the dismissal of the untimely petition to Tax Court where the taxpayer files an untimely petition and the Service moves to dismiss for lack of jurisdiction.
2. Whether the CSED is suspended in cases dismissed by the Tax Court due to an imperfect petition until 90 days after the date of the dismissal.

CONCLUSIONS

1. While the CSED is arguably only suspended until the 30th day after the notice of determination has been mailed, as a matter of caution we recommend that the CSED should generally be treated as suspended until the Tax Court dismissal becomes final.
2. The CSED is suspended until the 90th day after the decision is entered.

BACKGROUND

I.R.C. § 6330(e)(1) provides that if a CDP hearing is requested by a taxpayer, any levy actions which are the subject of the requested hearing and the running of any period of limitations under I.R.C. § 6502 are suspended for the period during which such hearing, and appeals therein, is pending. Treas. Reg. § 301.6330-1(g) states that the period of limitations relating to collection after assessment is suspended until the Service receives the taxpayer's written withdrawal of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or upon exhaustion of any rights to appeal following judicial review. I.R.C. § 6330(d) states that a taxpayer must file an appeal within 30 days of the date of the notice of determination.

According to I.R.C. § 7481, a decision of the Tax Court becomes final upon the expiration of the time allowed for filing a notice of appeal if no such notice has been duly filed within such time. Further, a review of a decision of the Tax Court by a United States Court of Appeals is obtained by filing a notice of appeal and the required filing fee with the clerk of the court of the Tax Court within 90 days after the decision is entered. I.R.C. § 7483; Tax Court Rule 190.

Your office keeps all unagreed Tax Court cases, including CDP cases which are either dismissed or where decisions have been filed, for 100 days from the decision or dismissal date before sending them to Appeals for closing. You state that these procedures raise problems concerning CDP cases dismissed for untimely or imperfect petitions. In such cases, Counsel is holding the cases for 100 days after the decision or dismissal date as if the CSED remained suspended for 90 days after the dismissal. The issue presented is whether the CSED is in fact suspended under these circumstances.

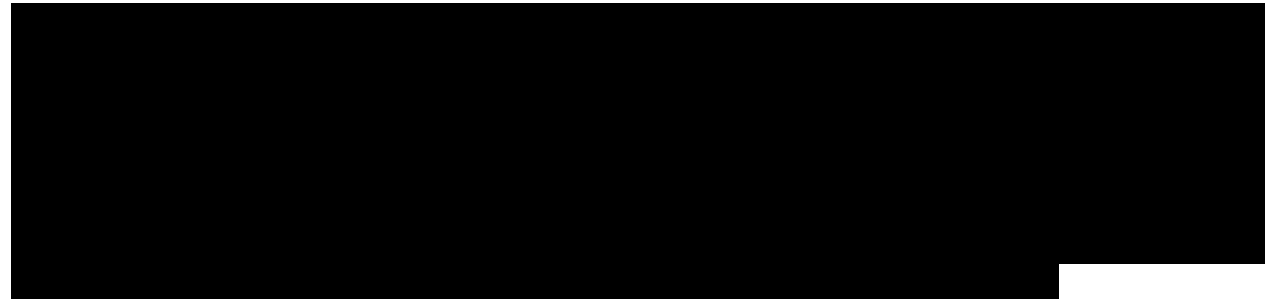
DISCUSSION

Tax court jurisdiction under I.R.C. § 6330(d) is predicated upon the issuance of a notice of determination and a timely filed petition. Lunsford v. Commissioner, 117 T.C. No. 16 (2001). If a petition for review is not filed within 30 days from the date of the notice of determination, the court does not have jurisdiction over the action. See Sarrell v. Commissioner, 117 T.C. No. 11 (2001); McCune v. Commissioner, 115 T.C. 114 (2000). Thus, if a taxpayer does not petition a court within the 30-day period, the Service's determination becomes final.

1. In the situation where a taxpayer files an untimely petition for review from a notice of determination, arguably the suspension is terminated 30 days after the determination pursuant to the plain language of I.R.C. § 6330(e)(1). ^{1/} That section provides that "if a

^{1/} This analysis is limited to CDP proceedings under I.R.C. § 6320 and 6330.

hearing is requested under subsection [I.R.C. § 6330] (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations . . . shall be suspended for the period during which such hearing, and appeals therein, are pending.” I.R.C. § 6330(a)(3)(B) states that a taxpayer has a right to request a hearing during the 30 day period from the date of the notice of determination. Thus, the filing of an untimely petition for review does not toll the suspension since the proceeding is no longer pending and the Tax Court would have no jurisdiction over a petition in such a situation.



2. In the case of an imperfect petition, the Court, at its discretion, gives the petitioner a set period of time to perfect the petition. If the petition is not perfected in this allotted time, the petition is dismissed. The question presented is to what point is the CSED suspended in such an action.

In the situation in which the Court gives a petitioner the ability to amend a petition, the Court retains jurisdiction during the period between the filing of the imperfect petition and the filing of the amended petition. The case is pending in the Tax Court and the CSED remains suspended. If the petitioner fails to file a properly amended petition, the case is dismissed for lack of jurisdiction, and the effect of such an order of dismissal is the same as if the Court had rendered a decision on the date of the dismissal. Hazim v. Commissioner, 82 T.C. 471, 476 (1984). A decision of the Court, absent an appeal, becomes final 90 days after it is entered. Absent an appeal, the CSED remains suspended until the expiration of the 90th day after the decision of dismissal has been entered. Therefore, we similarly recommend that your office's current policy be maintained in these situations.

If you have any questions, please call the attorneys assigned this case at 202-622-3610.