

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

Number: 20050202F

Release Date: 1/14/05

CC:SB:3:NAS:1:JLMay

GL-157064-04

UILC: 9115.38-03

date: December 01, 2004

to: Technical Support Section – Area 8

from: Associate Area Counsel (Nashville, Group 1)  
(Small Business/Self-Employed)

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subject: Limitations Period - Bankruptcy

This memorandum responds to your request for assistance dated October 28, 2004. This advice may not be used or cited as precedent.

ISSUE

The effect of I.R.C. § 6213(f) on calculations of the last date to file a petition with the Tax Court upon dismissal or discharge from bankruptcy and the statute of limitations date for making an assessment of tax.

FACTS

Your memorandum asserted the following facts:

- income tax return filed
- Statutory notice of deficiency issued regarding the tax return
- 1<sup>st</sup> bankruptcy petition filed
- Dismissal/discharge from the 1<sup>st</sup> bankruptcy
- 2<sup>nd</sup> bankruptcy petition filed
- Dismissal/discharge from the 2<sup>nd</sup> bankruptcy

LAW AND ANALYSIS

Revenue Ruling 2003-80 (copy attached) provides guidance on the effect of a bankruptcy on the running of the statute of limitations on assessment and on the

running of the 90-day period for filing a petition with the Tax Court from a notice of deficiency. Based on the facts assumed herein, which closely match those in Situation B in Rev. Rul. 2003-80, we would calculate the deadline for filing a petition with the Tax Court as \_\_\_\_\_ and the statute of limitations date for making an assessment of tax as \_\_\_\_\_ (note that we start with the date of dismissal from the 2<sup>nd</sup> bankruptcy because the 60 days allowed under I.R.C. § 6213(f)(1) reset to a full 60 days upon the filing of the 2<sup>nd</sup> bankruptcy):

plus 60 days provided under § 6213(f)(1) = \_\_\_\_\_ ; plus 84 days left on the notice = \_\_\_\_\_ ( \_\_\_\_\_ also note that this date does not contemplate the actual assessment date which is apparently made 15 days later, according to your memorandum); plus 60 days provided under § 6503(a)(1) = \_\_\_\_\_ ; plus the remaining time left on the original limitations period (approximately 662 days)<sup>1</sup> = \_\_\_\_\_ .

These calculations can obviously be somewhat complicated. Please feel free to contact me at \_\_\_\_\_ if you have any questions regarding this matter.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

NANCY W. HALE  
Associate Area Counsel  
(Small Business/Self-Employed)

By: \_\_\_\_\_  
James L. May  
Attorney (Nashville, Group 1)  
(Small Business/Self-Employed)

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<sup>1</sup> Calculated as 1095 days (3 times 365 days) less 433 days (the period elapsing between the filing of the return and the issuance of the notice of deficiency).