

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel **N o t i c e**
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CC-2003-026
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August 15, 2003

Treatment of Petitions Filed Upon Incorporation
Subject: During Automatic Stay Cancellation Date: Into the CCDM

Purpose

To reemphasize procedures for handling petitions filed during the pendency of an automatic stay in bankruptcy. Current CCDM procedures for handling these petitions are located in CCDM 35.4.8.

Discussion

If a taxpayer files a bankruptcy petition and then files a Tax Court petition, the automatic stay provisions of 11 U.S.C. § 362(a)(8) operate to prevent the commencement of a suit in the Tax Court during the pendency of the stay. Even though a notice of deficiency may be issued while a stay is in effect without violating the stay, the taxpayer-debtor cannot petition the Tax Court from the notice while the stay is operative. If the taxpayer files a Tax Court petition in violation of the automatic stay, the case must be dismissed on jurisdictional grounds. See CCDM 35.4.8.3(2). Accordingly, if a petition is filed in violation of the automatic stay, a motion to dismiss for lack of jurisdiction should be filed, not a notice of proceeding in bankruptcy. See Exhibit 35.4.2-1(g).

To determine if any jurisdictional defect exists, all of the relevant information, as described in CCDM 35.4.8.2(4), should be assembled and reviewed. Relevant information includes complete factual information concerning the timing of the petition in bankruptcy, the date the statutory notice was issued, the date on which there was a lifting of the stay from the

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