**J. Edgar Murdock American Inn of Court**

**2014-2015 Season – January** **Presentation**

*The Collection Statute of Limitations and Suspension of the*

*Period of Limitations on Collection after Assessment*

*Code Sections 6502 & 6503(c)*

*Bankruptcy automatic stay – 11 U.S.C. Section 362*

* ***Statute of Limitations on Collection in General***
  + Under I.R.C. § 6502(a), the Service generally has 10 years to collect a properly assessed tax.
  + The Government may collect by filing suit to foreclose a tax lien on the taxpayer’s property. Such an action must be brought within the 10-year collection period. *See* I.R.C. § 6502(a)(1).
  + Prior to the IRS Restructuring and Reform Act of 1998 (“RRA98”), the statute of limitations could be extended by agreement between the taxpayer and the Service in a variety of situations. RRA98, however, limited the Service’s ability to obtain such extensions to two situations:
    - First, under section 6502(a)(2)(A), the statute of limitations for collection may be extended at the same time an installment agreement is entered into.
    - Second, under section 6502(a)(2)(B), if there has been a levy on a taxpayer’s property prior to the expiration of the collection period and if the extension is agreed upon in writing prior to the release of the levy under section 6343, the collection period may be extended.
  + It is the Service’s policy to obtain collection statute extensions only in conjunction with partial payment installment agreements and only in certain situations. *See* IRM 5.14.2.2(1).
* Section 6502 does not limit the length of time allowed for a statute extension for installment agreements. However, it is the Service’s policy to extend the collection statute based on the time it will take to make payments; the extension cannot exceed five years plus up to one year to account for changes in the agreement. IRM 5.14.2.2(8). Such extensions require the approval of a defined level of management. IRM 5.14.2.2(17).
* Waivers obtained in conjunction with installment agreements will expire 90 days following the end of the extension that was agreed to by the taxpayer. *See* IRM 5.14.2.2.2(1).
  + Form 900, Tax Collection Waiver, is used for extensions.
  + To avoid the expiration of the collection period, the Government may, prior to the expiration date, file a proceeding in court to collect the tax.
    - The issuance of a judgment extends the period during which the tax may be collected by levy until the liability or a judgment arising from the liability is satisfied or becomes unenforceable.
    - Filing a proof of claim in a bankruptcy or a receivership proceeding is treated as the commencement of a proceeding in court under section 6502. Rev. Rul. 70-555, 1970-2 C.B. 296; *In re Young*, No. 1:09CV814-LG-RHW, 2010 WL 1427584, at \*4 (S.D. Miss. Apr. 8, 2010).
  + When multiple persons owe taxes on account of the same events, the section 6502 statute of limitations governs the debt as a whole, under an “all-for-one, one-for-all” theory and not each obligor. *See United States v. Galletti*, 541 U.S. 114, 123 (2004); *United States v. Wright*, 57 F.3d 561, 563 (7th Cir. 1995) (holding the statute of limitations governs the debt, not the person against whom the tax is assessed).
    - For example, once a tax has been properly assessed, nothing in the Code requires the Service to duplicate its efforts by separately assessing the same tax against individuals or entities that are not the actual taxpayers but are, by reason of state law, liable for the taxpayer’s debt. *See Galletti*, 541 U.S. at 123 (the assessment’s consequences attach to the debt without reference to the special circumstances of the secondarily liable parties).
* **Suspension of the Collection Period:**

The ten-year period may be suspended under section 6503 by the following provisions:

* + Section 6503(a) - Issuance of statutory notice of deficiency -- The running of the period of limitations provided in section 6502 on the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 shall, after the mailing of a notice under section 6212(a), be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.
  + Section 6503(b) - Assets of taxpayer in control or custody of court -- The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any State or of the District of Columbia, and for 6 months thereafter.
  + Section 6503(c) - Taxpayer outside United States. The running of the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period during which the taxpayer is outside the United States if such period of absence is for a continuous period of at least 6 months.
    - *See* IRM 5.1.19.3.7 for additional information on policies concerning recalculating the statute of limitations on collection when taxpayers are outside of the US.
  + Section 6503(d) Extensions of time for payment of estate tax -- The running of the period of limitation for collection of any tax imposed by chapter shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161(a)(2) or (b)(2) or under the provisions of section 6163 or 6166.
  + Section 6503(e) - Extensions of time for payment of tax attributable to recoveries of foreign expropriation losses --The running of the period of limitations for collection of the tax attributable to a recovery of a foreign expropriation loss (within the meaning of section 6167(f)) shall be suspended for the period of any extension of time for payment under subsection (a) or (b) of section 6167.
  + Section 6503(f) - Wrongful seizure of or lien on property of third party.
    - Wrongful seizure. The running of the period under section 6502 shall be suspended for a period equal to the period from the date property (including money) of a third party is wrongfully seized or received by the Secretary to the date the Secretary returns property pursuant to section 6343(b) or the date on which a judgment secured pursuant to section 7426 with respect to such property becomes final, and for 30 days thereafter.
    - Wrongful lien. In the case of any assessment for which a lien was made on any property, the running of the period under section 6502 shall be suspended for a period equal to the period beginning on the date any person becomes entitled to a certificate under section 6325(b)(4) with respect to such property and ending on the date which is 30 days after the earlier of—
      * the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) by reason of such deposit or bond being used to satisfy the unpaid tax or being refunded or released; or
      * the date that the judgment secured under section 7426(b)(5) becomes final.
  + Section 6503(g) - Suspension pending correction -- The running of the periods of limitations provided in section 6502 on collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507, 4971, or shall be suspended for any period described in section 507(g)(2) or during which the Secretary has extended the time for making correction under section 4963(e).
  + Section 6503(h) - Cases under title 11 of the United States Code -- The running of the period of limitations provided in section 6502 on 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 collecting and for collection, 6 months thereafter.
    - The statute of limitations on collections, in a case under the Bankruptcy Code, is suspended while the Service is prohibited by reason of the case from collecting, and for six months thereafter. Thus, the statute of limitations is generally suspended while the automatic stay imposed by the bankruptcy is in effect. Even if the suspension of the statute of limitations under section 6503(h) no longer applies, expiration of the statute still may be suspended when substantially all the debtor’s assets remain in the custody or control of the bankruptcy court under section 6503(b).
  + Section 6503(i) - Extension of time for payment of undistributed PFIC earnings tax liability -- The running of any period of limitations for collection of any amount of undistributed PFIC earnings tax liability (as defined in section 1294(b) shall be suspended for the period of any extension of time under section 1294 for payment of such amount.
  + The ten-year collection period may also be suspended outside of section 6503 by the following provisions:
    - Collection due process hearings and appeals therefrom under sections 6320(c) and 6330(e).
      * The statute of limitations on collection is suspended from the date the Service receives a timely filed request for a CDP hearing to the date the taxpayer withdraws their request for a CDP hearing or the date the determination from Appeals becomes final, including any court appeals.
      * If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is extended to equal 90 days.
      * The collection statute is not extended for equivalency hearings.
      * For more information, *see* IRM 5.1.9.3.6, Suspension of Collection Statute of Limitations, and Treas. Reg. § 301.6330–1(g)(3), ex.1.
    - Innocent spouse claims and appeals from innocent spouse determinations under section 6015(e)(2).
      * Collection by levy or a proceeding in court against a spouse is suspended for the requesting spouse when he or she makes an election under section 6015(b), and/or section 6015(c).
      * Collection is suspended for claims filed under section 6015(f) if the liability was unpaid as of December 20, 2006, or the liability did not arise until after December 20, 2006.
      * The collection period is suspended from the filing of the claim until the earlier of the date a waiver is filed, or until the expiration of the 90 day period for petitioning the Tax Court, or if a Tax Court petition is filed, when the Tax Court decision becomes final, plus, in each instance, 60 days.
      * If a request for relief is made in response to collection due process procedures, there is also suspension of collection activity and the collection period provided for by section 6330(e) for the period during which any administrative hearings, and appeals therein, regarding the levy are pending.
    - The pendency of an offer in compromise or installment agreement under section 6331(k)(3)(B).
      * The Service is prohibited from levying, and the statute of limitations on collection is suspended
        + while an offer is pending with the Service,
        + for 30 days immediately following rejection of the offer, and
        + for the period that a timely filed appeal of a rejection is being considered in Appeals.
        + If only one party to a joint assessment files an OIC, then the statute of limitations on collection is suspended just for that person.
    - Section 7811(d) can suspend the statute of limitations if a taxpayer submits a Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order) with respect to collection or bankruptcy matters for the period beginning on the date of the taxpayer’s application and ending on the date of the National Taxpayer Advocate’s (NTA) decision, and any other period specified by the NTA in a TAO.
    - Sections 7508 and 7508A postpones the deadline for collecting any tax is postponed when the taxpayer serves as follows in a combat zone or other military operation, as well as if a Presidentially declared disaster or terroristic action.
    - Additional suspensions found in case of—
      * Deficiency dividends of a personal holding company, see section 547(f).
      * Receiverships, see subchapter B of chapter 70
      * Claims against transferees and fiduciaries, see chapter 71
      * Tax return preparers, see section 6694(c)(3).
      * Deficiency dividends in the case of a regulated investment company or a real estate investment trust, see section 860(h).
* **Bankruptcy automatic stay** – 11 U.S.C. Section 362
  + Bankruptcy petition operates as a stay, applicable to all entities, of:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

* See section 6503(h) discussed above for effect of bankruptcy on statute of limitations on collection
* Running of tax collections period established by parties through execution of written agreements pursuant to section 6502 was suspended during pendency of automatic stay in debtor's previous bankruptcy proceeding. *In re Klinshirn*, 147 F.3d 526 (6th Cir. 1998).