

Test of Bankruptcy Appeals Process

Announcement 97-111

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DRAFTING INFORMATION

SECTION 1. SUMMARY

This Announcement describes a process for quickly resolving certain IRS-related disputes connected with a taxpayer's Bankruptcy Case. This administrative process does not alter existing Bankruptcy Court jurisdiction or procedures. With this process, the IRS offers an administrative method to eliminate litigation by resolving IRS-related bankruptcy disputes that are raised by debtors (or debtors' estates) against the Service in Bankruptcy Court. Debtors can be individuals, corporations, trusts, or partnerships. This process combines two Internal Revenue Service functions to review these disputes: the Office of Special Procedures within the Collection Division, and the Office of Appeals. The process in this announcement is effective during the six month to one-year test period beginning on November 6, 1997, the date this announcement is released to the public. The test will be conducted in four Internal Revenue Service Districts: Houston, Indiana, New England (Massachusetts Bankruptcy courts only), and Southwest (Arizona Bankruptcy Courts only).

SECTION 2. PURPOSE AND SCOPE

.01 Purpose

This process is being tested as a response to the growing volume of bankruptcy cases nationwide. It is intended to alleviate Service-related litigation in U.S. Bankruptcy Courts (established under Title 28 U.S.C. § 151) and to provide debtors with a fast and effective means to resolve their disputes. These procedures provide for a thorough review of the debtor's dispute with the Service and offer an expedited appeal of any adverse determination. Service representatives will have substantial authority to settle disputes under these procedures as well as the authority to make all appropriate changes to taxpayer accounts. If a bankruptcy dispute is also eligible for the Collection Appeals Program (CAP - see IRS Publication 1660), taxpayers are requested to use this bankruptcy process instead because it is specifically designed to resolve bankruptcy disputes.

.02 Disputes Eligible for Consideration Under the Bankruptcy Procedures

The following issues may be considered under the Bankruptcy Appeals Process:

- ❖ Dischargeability determinations
 - other than when the Service asserts lack of dischargeability under B.C. § 523 (a)(1)(C) for willful evasion of taxes
- ❖ Proof of Claim and administrative claim issues
- ❖ Automatic stay violation issues
- ❖ Setoff and refund issues
- ❖ Preferences

This process is designed to resolve disputes between the Service and a debtor or a debtor's estate at the earliest possible date after the debtor has commenced the bankruptcy proceeding. Only the debtor or the debtor's estate may seek resolution of the issue with the Service by

following the procedures set forth in this announcement. The Bankruptcy Appeals Process is not available to third parties, such as competing creditors, creditors' committees, responsible persons of the debtor, or other interested parties because of potential disclosure of taxpayer information that is protected by I.R.C. § 6103. These third parties can address their concerns, including those regarding any settlement between the debtor or the debtor's estate and the Service, through existing Bankruptcy Court procedures.

.03 The Bankruptcy Appeals Process

Disputes will be reviewed initially by the Office of Special Procedures within the Collection Division (SPf). SPf will evaluate the merits of the debtor's position and make a determination of the IRS's position. If this decision is adverse to the debtor, SPf will review the determination at the debtor's request. If the final decision of SPf is adverse to the debtor, the debtor may appeal the decision to the Office of Appeals. The Office of Appeals will then review the matter and make an independent decision. Where appropriate, Appeals may offer a settlement in order to avoid litigation. During processing of the dispute, the debtor will have an opportunity to confer with IRS representatives. However, due to the volume of bankruptcy disputes, it is anticipated that all conferences will be conducted over the telephone. The processing for disputes should be about 15 days if no appeal is needed, and will generally be 30 days if an appeal is requested.

SECTION 3. ENTERING THE PROCESS

.01 Requirements to Enter the Bankruptcy Appeals Process

In order to enter the Bankruptcy Appeals Process, a debtor must have filed a petition in Bankruptcy Court in one of the test districts and the bankruptcy case must be open at the time this Process is initiated (except in limited circumstances where the bankruptcy case has been closed out but the debtor believes that Service actions are inconsistent with Bankruptcy Court orders). A debtor may begin the process even though the debtor has begun contesting the dispute in Bankruptcy Court by filing an adversary proceeding or objecting to the Service's proof of claim. If the issue has already been litigated before the Bankruptcy Court, however, the Bankruptcy Appeals Process is not available. SPf will advise the debtor whether the debtor may begin the Bankruptcy Appeals Process or must wait until other Service functions complete their work.

.02 Contacting the IRS for Information or Entry into the Bankruptcy Appeals Process

Information about the Bankruptcy Appeals Process will be provided by the Office of Appeals. The Appeals site on the World Wide Web contains a reprint of this Announcement and may contain other useful information. The address is:

http://www.irs.ustreas.gov/prod/ind_info/appeals/index.html

Appeals can also be contacted directly at each test site with inquiries about this Process. The Appeals office phone and FAX numbers are:

Boston: (617) 565-7900
FAX: (617) 565-8775

Houston: (281) 721-7241
FAX: (281) 721-7220

Indianapolis: (317) 226-6540
FAX: (317) 226-5340

Phoenix: (602) 207-8114
FAX: (602) 207-8116

To enter this Process, a debtor must generally contact, either in writing or by telephone, the Office of Special Procedures in the test district where the debtor filed the bankruptcy petition. These Special Procedures offices will not be able to provide general information about the Bankruptcy Appeals Process. They will only assist with entering the Process and will only provide information that directly relates to entering the Process. The offices are:

Houston District:
IRS Insolvency
ATTN: ADR
1919 Smith
Stop 5020 HOU
Houston, TX 77002
Telephone: (713) 209-3883

Indiana District:
IRS Insolvency
ATTN: ADR
P.O. Box 44211, Stop 41
Indianapolis, IN 46244
Telephone: (317) 226-6273

New England District
(Massachusetts Bankruptcy Courts):
IRS Insolvency
ATTN: ADR
PO Box 9112
Stop 20800
John F. Kennedy Building
Boston, MA 02203
Telephone: (617) 565-1589

Southwest District
(Arizona Bankruptcy Courts):
IRS Insolvency
ATTN: ADR
210 E. Earll Drive
Stop 5012
Phoenix, Arizona 85012
Telephone: (602) 207-8546

.03 Required Documentation

Debtors must provide copies of their Bankruptcy Court documents to begin the Bankruptcy Appeals Process. Income tax returns that have not been filed and are past due must be filed before the Bankruptcy Appeals Process can consider the dispute, if evaluation of the dispute requires their review. The returns may be filed with SPf. The debtor must also present any other documents or information pertinent to the Service's review of the dispute upon beginning the Bankruptcy Appeals Process. Within two workdays of meeting all documentation requirements, SPf will begin its review of the dispute.

SECTION 4. PROCESSING A BANKRUPTCY DISPUTE

.01 SPf Procedures

SPf will complete its initial review within ten workdays. Additional time will be provided, when necessary, if SPf must request documents from within the Service (such as a return) or ask the debtor to provide additional documentation. The IRS may cease processing the debtor's dispute if the debtor fails to provide necessary documentation. If the IRS ceases case processing because the debtor failed to provide necessary documentation, the debtor may begin the Process again as described under Section 3.02 if the debtor submits the necessary documentation.

If SPf agrees with the debtor's position on the dispute, SPf will determine what actions are necessary to correct the matter and will commence these actions immediately and complete them within 30 workdays. If SPf disagrees with the debtor, SPf will contact the debtor and inform the debtor of SPf's determination. At this time, the debtor will be offered the right to request that SPf review its decision. If the debtor requests it, this review will be completed within five workdays. If, after reviewing its decision, SPf agrees with the debtor, any actions to correct the matter will be commenced immediately and will be completed within 30 workdays.

If the second review by SPf does not support the debtor, SPf will immediately advise the debtor by letter. The letter will include an appeal request form which the debtor must complete and mail back to SPf within 10 workdays in order to obtain an appeal. If the request is timely mailed, the case will be forwarded to Appeals.

.02 Appeals Procedures

In order for a dispute to reach Appeals under the Bankruptcy Appeals Process, the dispute must have received a second review by SPf under the Bankruptcy Appeals Process (as described in Section 4.01). The second review by SPf must have reached a determination that is adverse to the debtor's interest, and the debtor must have requested Appeals' consideration.

Case processing times by Appeals will be as follows (except as extended by agreement):

- For dischargeability determinations, within 45 workdays of receipt in Appeals
- For all other issues specified in Section 2.02, within 10 workdays of receipt in Appeals.

After reaching a decision, Appeals will send a letter to the debtor describing the decision. The letter will state whether or not Appeals agrees with the debtor's position and will describe any actions that will be taken to correct the matter. Any corrective actions will be commenced by SPf within three workdays after Appeals reaches a decision and will be completed within 30 workdays. In the event of a decision that is adverse to the debtor, no further administrative recourse is available to the debtor through the IRS.

SECTION 5. NO USER FEE

There is no user fee for this Process.

SECTION 6. EFFECTIVE DATE

These procedures are effective for disputes of which SPf is notified during the six months to one-year test period beginning on November 6, 1997, the date this announcement is released to the public. At the end of the test period, the Service will evaluate the Process and determine whether to extend the test or to adopt the Process on a nationwide basis, and whether the Process may consider additional issues.

DRAFTING INFORMATION

The principal author of this announcement is Gary Slayen, analyst for the Office of Field Services, National Office Appeals. For further information regarding this announcement, please contact Mr. Slayen at (202) 401-6155 (not a toll-free number).