

# How Bankruptcy Affects Your Right to File a Petition in Tax Court in Response to a Notice of Deficiency



This notice explains how your right to petition the Tax Court in response to a Notice of Deficiency may be affected by bankruptcy and the automatic stay. Failure to petition the Tax Court within the time provided by law in the Notice of Deficiency will result in the Tax Court lacking jurisdiction to hear your petition. Also, note that the rules set forth below only pertain to petitioning the Tax Court in response to a Notice of Deficiency. If you receive another Notice from IRS that provides you with an opportunity to petition the Tax Court, the bankruptcy may affect your rights, but other rules may apply as well. If you are represented by an attorney in your bankruptcy preceding, you should consult with him or her about how best to proceed. If you are not represented, you may obtain representation.

## THE AUTOMATIC STAY

The filing of a bankruptcy petition operates as an automatic stay. Generally, the automatic stay prohibits the commencement or continuation of a Tax Court proceeding and, as a result, may extend the deadline to file a petition with the Tax Court.

You may request the Bankruptcy Court lift the automatic stay so that you are able to file a petition in Tax Court to challenge the Notice of Deficiency while you are in bankruptcy. If you file a Tax Court petition while the automatic stay is still in effect, the Tax Court may dismiss the petition for lack of jurisdiction.

## SITUATIONS WHERE THE AUTOMATIC STAY MAY NOT BE IN EFFECT

### Bankruptcy Petitions filed by Individuals on or after October 17, 2005

- Tax Court proceedings to redetermine post-petition tax liabilities are not stayed.
- Tax Court proceedings for post-petition periods may be commenced or continued without regard to whether the taxpayer filed a petition in bankruptcy on or after October 17, 2005.
- Liabilities that are owed for tax periods which end after you file bankruptcy are post-petition tax liabilities.
- Generally, a liability for a tax period that straddles the date that you file bankruptcy is considered to be a post-petition tax liability.
- If you do not agree with the Notice of Deficiency with regard to a post-petition tax liability, then you may petition the Tax Court for redetermination by the date shown in the Notice of Deficiency.

### Serial Bankruptcy Filings by Individuals Who Filed Bankruptcy Petitions on or after October 17, 2005

- **One Prior Bankruptcy Petition Filed and Dismissed in the Year before the Current Bankruptcy Petition.**
  - The automatic stay will terminate 30 days after the current bankruptcy petition was filed.
  - The Bankruptcy Court may extend the automatic stay beyond the 30 day period if the debtor demonstrates that the current bankruptcy was filed in good faith.
  - If you do not agree with the Notice of Deficiency and the Bankruptcy Court has not extended the automatic stay, then you may petition the Tax Court for redetermination after the automatic stay has expired.
- **Two or More Prior Bankruptcy Petitions Filed and Dismissed in the Year before the Current Bankruptcy Petition.**
  - The automatic stay will not come into effect upon the filing of the current bankruptcy petition.
  - The Bankruptcy Court may provide an automatic stay.
  - The 90-day period (or 150-day period, if we mailed this letter to an address outside the U.S.) to file a petition with the Tax Court continued to run, unless the Bankruptcy Court provided an automatic stay.
  - If you do not agree with the Notice of Deficiency and the Bankruptcy Court has not provided an automatic stay, then you may petition the Tax Court for redetermination by the date shown in the Notice of Deficiency.

**Important: The serial filing rules explained above do not apply to current Chapter 11 or 13 bankruptcy petitions where the previous bankruptcy case was a Chapter 7 that was dismissed under 11 USC § 707(b).**

### When One or Both Spouses are in Bankruptcy

- If both spouses are in bankruptcy and the bankruptcy automatic stay is in effect, each spouse should request the Bankruptcy Court to lift the automatic stay before filing a Tax Court petition for redetermination of tax liabilities.
- If the automatic stay is lifted with regard to only one spouse, then the Tax Court would only have jurisdiction over that spouse's petition.
- If only one spouse is in bankruptcy, then only that spouse must request that the stay be lifted if that spouse wants to have the tax liability redetermined by the Tax Court.

- The spouse who is not in bankruptcy may file a separate petition in Tax Court and must be vigilant to file by the date shown in the Notice of Deficiency.
- The automatic stay does not extend protection to the spouse who is not in bankruptcy.
- If both spouses are in bankruptcy, it is possible for only one spouse to be considered a serial filer (as addressed above).

### FILING A TAX COURT PETITION AFTER THE AUTOMATIC STAY HAS TERMINATED

You may file a Tax Court petition after the automatic stay is lifted by the Bankruptcy Court or when the automatic stay is no longer in effect by operation of law.

**If the automatic stay was in effect as of the date of the Notice of Deficiency**, then once the automatic stay ends, you have 90 days (or 150 days if your address was outside the United States), plus an additional 60, to file your Tax Court petition requesting a redetermination of the deficiency.

Days to petition the Tax Court per the Notice of Deficiency	90 (or 150)
IRC section 6213(f) Days	+ 60
Number of Days to file a Tax Court Petition	= 150 (or 210)
Date Automatic Stay Was Lifted	+
<b>Last Date to File a Petition with the Tax Court</b>	=

**If the automatic stay was not in effect as of the date of the Notice of Deficiency** and you file a bankruptcy petition within the 90 day period (or 150 days if your address was outside the United States) in which you have to file a Tax Court petition, the bankruptcy automatic stay will extend the deadline for filing your Tax Court petition. Once the stay ends, you have the original 90 days (or if applicable, 150 days) less the number

of days that had expired prior to the filing of the bankruptcy petition, plus an additional 60 days, in which to file your Tax Court petition for redetermination of the liabilities for those tax periods that you were previously, by way of the automatic stay, prohibited from filing a petition in Tax Court.

Days to petition the Tax Court per the Notice of Deficiency	90 (or 150)
Number of days that expired prior to filing the bankruptcy petition	-
Number of Days left of the original 90 days (or 150 days)	=
IRC section 6213(f) Days	+ 60
Number of Days to file a Tax Court Petition	=
Date Automatic Stay Was Lifted	+
<b>Last Date to File a Petition with the Tax Court</b>	=

### CHALLENGING THE IRS'S DETERMINATION OF A TAX LIABILITY IN BANKRUPTCY COURT

Depending on the facts of your bankruptcy filing, the bankruptcy process may give you an alternative forum to determine your tax liabilities. The IRS may file a proof of claim with the Bankruptcy Court for the amounts reflected on the Notice of Deficiency plus applicable interest and additions to tax. You may object to the proof of claim by filing an objection with the Bankruptcy Court. In some bankruptcy petitions, you may be able to initiate a proceeding under Bankruptcy Code § 505 for the court to determine the amount of your tax liability. If your tax liability is determined either by an objection to the claim proceeding or by a § 505 determination by the Bankruptcy Court, then that determination is final, and the Tax Court would no longer have jurisdiction to consider an otherwise timely petition for redetermination after the termination of the automatic stay.