

**UNITED STATES TAX COURT**  
**WASHINGTON, DC 20217**

Gary Martell & Johanna Hernandez,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket Nos. 10312-14,
	)	22347-14.
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

The petition in this case was filed on April 23, 2014. On June 23, 2014, petitioners filed an Amended Petition. Attached to the Amended Petition is a copy of a notice of deficiency dated April 14, 2014, issued with respect to petitioners' taxable year 2010.

On July 22, 2014, respondent filed a Motion To Dismiss for Lack of Jurisdiction as to Gary Martell. Respondent contends in the motion that the petition was filed in violation of the automatic stay provisions of 11 U.S.C. section 362(a)(8). In support of the motion, respondent states that (1) on January 17, 2014, petitioner Gary Martell filed a petition with the United States Bankruptcy Court for the District of Massachusetts under 11 U.S.C. Chapter 7, and (2) on May 20, 2014, petitioner Gary Martell received a discharge in his bankruptcy case.

By Order dated July 24, 2014, the Court directed petitioners to file an objection, if any, to respondent's motion. Petitioners failed to file an objection.

Generally, section 6213(f)(1) of the Internal Revenue Code provides that the running of time for filing a Tax Court petition is suspended during the time the automatic stay prohibits the filing of a Tax Court petition, and for 60 days thereafter. The automatic stay is lifted upon the earliest of (1) the date the bankruptcy case is closed, (2) the date the bankruptcy case is dismissed, or (3) the date a bankruptcy discharge is granted or denied. 11 U.S.C. sec. 362(c)(2).

**SERVED Sep 26 2014**

Petitioner Gary Martell received a discharge in his bankruptcy case on May 20, 2014. Inasmuch as the Amended Petition, filed June 23, 2014, was filed after petitioner Gary Martell received discharge in his bankruptcy case, that Amended Petition shall be filed as a petition at Docket No. 22347-14.

Upon due consideration, it is

ORDERED that respondent's Motion To Dismiss for Lack of Jurisdiction as to Gary Martell is granted, and this case is dismissed for lack of jurisdiction as to Gary Martell. It is further

ORDERED that the caption of this case is amended to read: "Johanna Hernandez, Petitioner v. Commissioner of Internal Revenue, Respondent". It is further

ORDERED that the Clerk of the Court shall remove the Amended Petition, filed June 23, 2014, at Docket No. 10312-14, and file that document as of that date as a Petition to commence the case at Docket No. 22347-14, and the caption of the case at Docket No. 22347-14 shall read: "Gary Martell, Petitioner v. Commissioner of Internal Revenue, Respondent". It is further

ORDERED that the filing fee for the case at Docket No. 22347-14 is waived, and Boston, Massachusetts, is designated as the place of trial of that case. It is further

ORDERED that, on or before October 17, 2014, petitioner Johanna Hernandez shall file an Amended Petition in the case at Docket No. 10312-14.

**(Signed) Michael B. Thornton**  
**Chief Judge**

Dated: Washington, D.C.  
September 25, 2014