

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

MATTHEW D. BETTERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 8386-17 L
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

This I.R.C. §6330(d) case is before the Court on petitioner’s motion to dismiss, filed March 26, 2019. The procedural history of this case is easily summarized. In his petition, filed April 17, 2017, petitioner seeks review of the notice of determination concerning collection action dated March 31, 2017, issued with respect to his 2014 and 2015 Federal income tax liabilities. By Order dated November 13, 2019, the Court stayed the proceedings in this case pursuant to 11 U.S.C. §362(a)(8) after petitioner filed a petition with the U.S. Bankruptcy Court on November 8, 2018.

In his motion petitioner notes that: (1) on February 28, 2019, the bankruptcy case was converted to a Chapter 7 bankruptcy; (2) the IRS has filed a proof of claim in the bankruptcy case; and (3) respondent will be fully paid through the bankruptcy proceeding. Petitioner acknowledges that the case remains subject to the bankruptcy stay, but requests that the case be dismissed under Wagner v. Commissioner, 118 T.C. 330 (2002). By Order dated March 28, 2019, the parties were directed to advise the Court as to: (1) what application, if any, Settles v. Commissioner, 138 T.C. 372 (2012), should have to this case; and (2) whether 11 U.S.C. §362(a)(8) prevents the granting of petitioner’s motion. Both parties responded on April 18, 2019. According to both parties: (1) Settles should apply to this case; and (2) the automatic stay should not prevent this Court from granting petitioner’s motion to dismiss.

Specifically as relating to Tax Court cases, in pertinent part, 11 U.S.C. §362 provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, \* \* \* operates as a stay, applicable to all entities, of --

\* \* \* \* \*

(8) the commencement or continuation of a proceeding before the United States Tax Court 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.

In Settles, we dealt with a taxpayer's motions to voluntarily dismiss his collection cases where an automatic stay pursuant to 11 U.S.C. §362(a)(8) is pending and has not been vacated. In Settles, 138 T.C. at 377, we held that those motions to dismiss would be granted, and explained as follows:

Dismissing \* \* \* [the taxpayer's cases] does not require that we consider any issues related to the underlying cases. Consequently, consistent with the analysis of other courts, a dismissal of the instant case would not constitute a continuation of the judicial proceedings. See Dean [v. Trans World Airways, Inc.] 72 F.3d at 756 [(9th Cir. 1995)].

Additionally, granting \* \* \* [the taxpayer's] motions to dismiss the instant cases is entirely consistent with the purposes of 11 U.S. sec. 362(a)(8). Because the bankruptcy court has already adjudicated \* \* \* [the taxpayer's] liabilities, the goal of judicial economy has been satisfied. Indeed, that goal will be furthered by a prompt dismissal of the instant cases rather than by permitting them to languish on our docket until after the bankruptcy court resolves the remainder of \* \* \* [the taxpayer's] dispute with respect to his creditors. Similarly, the dismissal of \* \* \* [the taxpayer's] cases is not inconsistent with the dual purpose of protecting the debtor from harassment by creditors and protecting creditors from other creditors. [Ftn. citation omitted.]

Accordingly, we hold that 11 U.S.C. §362(a)(8) does not prevent the dismissal of the instant cases on motions of \* \* \* [the taxpayer].

The parties recognize that unlike the situation in Settles, the bankruptcy court in petitioner's related bankruptcy proceeding has not yet adjudicated respondent's claim with respect to petitioner's 2014 and 2015 Federal income tax liabilities. That distinction is meaningful and constrains us to disagree with respect to the parties' position that petitioner's motion may, and should, now be granted.

Either party, of course, can apply to the bankruptcy court for an order that modifies the automatic stay to allow the Court to dismiss this case or allow other appropriate relief related to this proceeding. See 11 U.S.C. §362(d)(1). Until then, or until the bankruptcy court adjudicates petitioner's 2014 and 2015 Federal income tax liabilities, the relief sought in petitioner's motion is unavailable.

Upon due consideration, it is

ORDERED that petitioner's motion is denied without prejudice. It is further

ORDERED that, on or before August 30, 2019, the parties shall report in writing concerning the then present status of the related bankruptcy proceeding.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

Dated: Washington, D.C.  
June 21, 2019