

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

DRB

GEORGETTE M. KLAT-GINEX,)
)
Petitioner(s),)
)
v.) Docket No. 17275-13S.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On April 28, 2014, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was filed in violation of the automatic stay imposed under 11 U.S.C. section 362(a)(8). The record reflects that respondent issued a notice of deficiency to petitioner on April 29, 2013. On June 13, 2013, petitioner filed a petition with the United States Bankruptcy Court for the Western District of Washington (Docket No. 13-43918-PBS). On July 29, 2013, petitioner filed the petition herein. A discharge in bankruptcy was issued on September 23, 2013.

Respondent asserts in his motion that the petition was filed during the period of time that the automatic stay was in place. Respondent further asserts that while the running of the time for filing a petition is suspended under section 6213(f)(1), that the automatic stay was lifted at the time of issuance of the bankruptcy discharge and that any extended period for filing a petition with this Court has now passed. 11 U.S.C. sec. 362(c)(2).

Respondent first filed his motion when this case was called for trial at the trial session in Seattle, Washington on April 28, 2014. The Court questioned the timing of the filing of respondent's motion. Counsel for respondent advised that he only became aware of the bankruptcy when it was discussed by petitioner's representative at a meeting the week prior to the trial session. Respondent's counsel proceeded to review bankruptcy records and discovered that the petition herein was filed during the prohibited period of the stay.

There is no doubt that it would have been helpful to this pro se petitioner if respondent had filed his motion to dismiss at some earlier point in time thus permitting petitioner to file a petition after the automatic stay had been lifted but within the extended period provided by section 6213(f). However, our jurisdiction can be questioned by either party at any time, and the failure to do so by a certain point in time does not constitute a waiver of this right. Charlotte's Office Boutique, Inc. v. Commissioner, 121 T.C. 89, 102 (2003), aff'd, 425 F.3d 1203 (9th Cir. 2005); Meruelo v. Commissioner, 132 T.C. 355, 362 (2009).

SERVED Jun 18 2014

Given the circumstances of the timing of the filing of respondent's motion and the fact that petitioner did not have an opportunity to have a judicial review of the adjustments set forth in the notice of deficiency the Court encouraged petitioner to pursue an audit reconsideration. Counsel for respondent advised that the Commissioner would be receptive to such reconsideration.

Premises considered, it is hereby

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction, filed April 28, 2014, is granted and this case is dismissed for lack of jurisdiction.

**(Signed) Peter J. Panuthos
Special Trial Judge**

ENTERED: **JUN 18 2014**