Internal Revenue Service
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Joint and several liability; relief under section 6015. This ruling discusses the issue of whether a taxpayer is precluded from raising a request for relief from joint and several liability under section 6015 by virtue of a previous Chapter 7 bankruptcy case in which the Service filed a proof of claim, but the bankruptcy court did not make an actual determination of tax liability.

ISSUE

Whether the taxpayer is precluded from raising a request for relief from joint and several liability under section 6015 by virtue of a previous Chapter 7 bankruptcy case in which the Internal Revenue Service (Service) filed a proof of claim, but the bankruptcy court did not make an actual determination of tax liability.

FACTS

Married taxpayers, H and W, sign and timely file a joint return for Year 1. During an audit, the Service determines that the joint return substantially understates the income attributable to taxpayer W. The Service issues a notice of deficiency, on which taxpayers default. In January of Year 3, the Service assesses against taxpayers income tax deficiencies, for which they are jointly and severally liable. Neither taxpayer pays the deficiency assessment. In October of Year 3, taxpayers file a voluntary joint petition for bankruptcy under Chapter 7 of Title 11 of the United States Code (Bankruptcy Code). In November of Year 3, the Service files a proof of claim asserting an unsecured priority claim for the deficiency. Neither taxpayer, nor any other party in interest, objects to the proof of claim, which is not discharged and is deemed allowed under section 502(a) of the Bankruptcy Code. Neither taxpayer requests relief from joint and several liability under section 6015 during the bankruptcy case. Neither taxpayer requests the bankruptcy court to adjudicate the merits of the tax liability under section 505 of the Bankruptcy Code.

After the bankruptcy case is closed, taxpayers H and W separate. Thereafter, H (requesting spouse) files a request for relief from joint and several liability under section 6015. No party in interest files a dischargeability proceeding.

LAW

The Bankruptcy Code provides rules for debtors to consolidate and resolve their debts to various creditors, including the Service, in various ways. Section 301 of the Bankruptcy Code allows debtors to commence a bankruptcy case by filing a voluntary petition with the bankruptcy court. Once a petition is filed, creditors have an opportunity to file proofs of claim. 11 U.S.C. § 501. A proof of claim asserts the right of a creditor to payment and can include rights that are fixed, contingent, liquidated, or unliquidated. *See* 11 U.S.C. § 101 (5). A properly filed proof of claim is *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). The proof of claim is deemed allowed, unless a party in interest objects. 11 U.S.C. § 502

(a). If a party in interest objects, the bankruptcy court, after notice and a hearing, determines the validity and amount of the claim as of the date of the petition and allows the claim in the proper amount. 11 U.S.C. § 502 (b).

Generally, the bankruptcy court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed and whether or not paid. 11 U.S.C. § 505 (a)(1). This includes the determination of the eligibility of a debtor for relief from joint and several liability under section 6015 in appropriate cases. *See In re French*, 242 B.R. 369 (Bankr. N.D. Ohio 1999). The determination of the bankruptcy court on the merits of a claim is a final judgment and, unless appealed, is binding on the parties to a contested matter. *See Freytag v. Commissioner*, 110 T.C. 35 (1998). The determination also precludes subsequent litigation by a debtor over the merits of the liability under principles of *res judicata*. *See id.* at 40. The Supreme Court in *Commissioner v. Sunnen* explained the rule of *res judicata*:

> [W]hen a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

333 U.S. 591, 597 (1948) (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876)).

Although filing a bankruptcy petition commences a case, "a bankruptcy case is simply an aggregation of controversies." *See In re Martin Bros. Toolmakers, Inc.*, 796 F.2d 1435, 1437 (11th Cir. 1986). In order to bring a controversy before the bankruptcy court, a party generally moves for relief in a contested matter under Federal Rule of Bankruptcy Procedure 9014 or initiates an adversary proceeding under Rule 7001. The merits of a tax liability are generally raised in one of two ways. Either the debtor or the Service can seek a determination of a tax liability under section 505 of the Bankruptcy Code, or a party in interest can object to a proof of claim listing tax liabilities under section 502(a). *See In re Taylor*, 132 F.3d 256, 262 (5th Cir. 1998). Unless a party in interest moves for relief or initiates a proceeding, the merits of a tax liability are not before the bankruptcy court, and the bankruptcy court does not inquire into the merits of the tax liability or enter a final judgment fixing the tax liability.

Certain taxes are excepted from discharge in a Chapter 7 bankruptcy case. *See* 11 U.S.C. § 523(a)(1), 727 (b). For example, income tax liabilities for tax years ending within three years of the bankruptcy petition are entitled to priority status and are excepted from the bankruptcy discharge under sections 523(a)(1)(A) and 507(a)(8)(A)(i). These tax liabilities are excepted from discharge under section 523(a)(1)(A) whether or not a claim was filed or allowed, and the principles of *res judicata* do not apply unless the merits of the tax liabilities were actually determined. *Hambrick v. Commissioner*, 118 T.C. 348 (2002).

A debtor or creditor may request the bankruptcy court to determine the dischargeability of a debt by initiating an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001. A dischargeability proceeding is a proceeding to determine whether a bankruptcy discharge includes the discharge of liability for certain debts. A determination of the bankruptcy court in a discharge proceeding that is a final judgment on the merits bars relitigation of dischargeability. *See Florida Peach Corp. v. Commissioner*, 90 T.C. 678, 682 (1988). However, a discharge determination generally does not include consideration of the merits of the debt. *In re Doerge*, 181 B.R. 358, 364 (Bankr. S.D. Ill. 1995). There are cases in which bankruptcy courts consider the merits of a tax liability, including relief from joint and several liability, during the course of determining whether the tax liability is dischargeable. *See, e.g., In re Brackin*, 148 B.R. 953 (Bankr. N.D. Ala. 1992). If the bankruptcy court were to make a determination on the merits of the tax liability, that determination generally would preclude the requesting spouse from later raising a request for relief under section 6015 if the requesting spouse was a debtor in the bankruptcy case and meaningfully participated in the dischargeability proceeding. *See* section 6015(g)(2).

ANALYSIS

Under the facts of this revenue ruling, the Service filed a proof of claim in the bankruptcy case and neither taxpayer, and no other party in interest, filed an objection to the proof of claim under 11 U.S.C § 502(a) or moved for the bankruptcy court to determine the liability under 11 U.S.C. § 505(a). Thus, the merits of the tax liability were not determined by the bankruptcy court and the requesting spouse is not precluded from raising a request for relief under section 6015 after the bankruptcy case is closed.

HOLDING

The taxpayer, H, is not precluded from raising a subsequent request for relief from joint and several liability under section 6015 by virtue of the prior bankruptcy case filed by H and W in which the Service filed a proof of claim, but the bankruptcy court did not make an actual determination of the liability.

DRAFTING INFORMATION

The principal author of this revenue ruling is G. William Beard of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division. For further information regarding this revenue ruling, contact Branch 2 of Collection, Bankruptcy & Summonses at (202) 622-3620 (not a toll-free call).

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