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DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR DISTRICT COUNSEL, VIRGINIA-WEST VIRGINIA

FROM: Joseph W. Clark
Acting Chief, Branch 2 (General Litigation)

SUBJECT: Voluntary Payments by Debtors for Prepetition Tax Liabilities - Automatic Debits

In our prior memorandum dated March 30, 1999, we concluded that where an individual debtor continues to make voluntary payments by check from post-petition income of a prepetition nondischargeable tax liability pursuant to an installment agreement, after the filing of a Chapter 7 petition, the Service can continue to accept such payments without violating the automatic stay. As a follow up question, you ask whether the Service can continue to accept such payments made pursuant to automatic debit agreements. Such agreements may involve automatic deductions from the taxpayer's wages, or monthly electronic debits from the taxpayer's bank account. See IRM Handbook 105.1, §§ 2.4.5, 2.4.6. For the following reasons, we agree with your conclusion that the Service can continue to accept such payments.

We based our advice on our conclusion that acceptance of voluntary payments from the debtor by check does not interfere with any purposes of the automatic stay since there is no harassment or coercion on the part of the Service, and the making and sending of the check is a voluntary, express indication by the debtor that he or she wishes to pay the prepetition debt. We noted, however, that continuation of automatic debits presents a more difficult issue in light of case law holding that where a creditor is receiving payments on a dischargeable debt through automatic deductions from the debtor's pay, the creditor's continued acceptance of payments after the bankruptcy filing violates subsection (a)(6) unless the debtor formally and voluntarily agrees to the continuation of the automatic debits. See, e.g., Matter of Hellums, 772 F. 2d 379 (7th Cir. 1985); In re Raper, 177 BR 107 (Bankr. N.D. Fla. 1994).

Absent a reaffirmation agreement which complies with the requirements of B.C. § 524(c) and (d), a creditor cannot enforce collection of a discharged debt. See Arnold v. Stevenson Federal Credit Union, 206 BR 560 (Bankr. N.D. Ala. 1997). Automatic debits for payment of dischargeable debts can be viewed as inconsistent with the requirements of sections 524(c) and (d) regarding reaffirmation agreements. Since the debtor remains liable for a nondischargeable debt after discharge, a nondischargeable debt presents different considerations from the dischargeable debts at issue in cases like Hellums. Compare Hellums, 772 F.2d 381 ("[a]n automatic wage assignment that lulls an unthinking debtor into paying off a dischargeable debt defeats" the purpose of the automatic stay "no less than threats and intimidation from sophisticated creditors.") (emphasis added) with Henry v. United States, 213 BR 45 (Bankr. M.D. Ala. 1997) (automatic debits with respect to nondischargeable restitution debt permitted).

We conclude that installment payments of nondischargeable tax debts made by automatic debits should be considered voluntary payments which are not prohibited by the automatic stay, and that it is not necessary for the Service to obtain an express indication from the taxpayer that he or she wishes to continue to pay the debt in order to continue to receive the payments. As discussed in our prior memorandum, this advice only applies to payments of nondischargeable debts in a Chapter 7 case from post-petition earnings or funds deposited in a bank account from post-petition earnings.

cc: Assistant Regional Counsel (Southeast)