

vided under section 6658 of the Internal Revenue Code for the period during which a bankruptcy case is pending?

FACTS

In *Situations A, B, and C* described below: (1) an individual taxpayer files a bankruptcy petition under Chapter 7 or Chapter 11 of title 11 of the U.S. Code (“the Bankruptcy Code”) and has an income tax liability for a taxable year that ended prior to the filing of the bankruptcy petition; (2) the prepetition tax liability is excepted from discharge under section 523(a)(1)(A) of the Bankruptcy Code; (3) the tax liability is reported on a timely filed tax return, but is not paid in full; and (4) the failure to pay penalty under section 6651(a)(2) may be imposed except to the extent of the relief provided by section 6658 of the Internal Revenue Code for the period during which the bankruptcy case is pending.

Situation A. The taxpayer files a Chapter 7 bankruptcy petition on Date 1. The court enters an order granting the debtor a discharge on Date 2, which is six weeks after Date 1. Distributions from the bankruptcy estate are made and the Service receives partial payment of income taxes on Date 3, one year after Date 1. The court discharges the trustee and closes the case on Date 4, which is 30 days after receiving the trustee’s final report.

Situation B. The taxpayer files a Chapter 11 bankruptcy petition on Date 1. The plan is confirmed and the taxpayer receives a discharge on Date 2. Payments to the Service commence on Date 3. The court closes the case on Date 4, which is 30 days after Date 3. Payments under the plan are required to be made for several years after Date 4.

Situation C. The facts are the same as in *Situation B*, except that the court does not close the case on Date 4. Beginning approximately one year after Date 3, the taxpayer fails to make payments as required under the plan. Shortly after the default, the Service files a motion to dismiss the case and the court enters a dismissal order on Date 5.

to make timely payment of tax with respect to a period during which a case is pending under title 11 of the United States Code” Section 6658 applies to tax arising before the taxpayer files a bankruptcy petition if (1) the petition was filed before the due date of the return or (2) the date for making the addition to the tax occurs on or after the day on which the petition was filed. Section 6651 imposes penalties for failure to file a return or pay a tax, and sections 6654 and 6655 impose penalties for failure to pay estimated taxes. The term “pending” is not defined in section 6658.

A bankruptcy case is commenced by filing a petition with the bankruptcy court pursuant to sections 301 through 304 of the Bankruptcy Code. A case is “pending” for purposes of section 6658 after the debtor files a petition with the bankruptcy court. A bankruptcy case is no longer pending for purposes of section 6658 when it is closed or dismissed. *See Carey v. Saffold*, 536 U.S. 214, 219–220 (2002) (consulting Webster’s Third International Dictionary for the ordinary meaning of the word “pending,” the Court determined that a state court application for collateral review remains pending “until the application has achieved final resolution”).

Section 350 of the Bankruptcy Code requires the court to close a case once the estate is fully administered and the court has discharged the trustee. Bankruptcy Rule 5009 provides that in Chapter 7 cases, there is a presumption that the estate has been fully administered and the case may be closed if (1) the trustee has filed a final report and final account and has certified that the estate has been fully administered, and (2) within 30 days after the trustee’s filing and certification, no objection has been filed by the United States trustee or a party in interest.

Bankruptcy Rule 3022 provides that the court shall enter a final decree closing a Chapter 11 case after an estate is fully administered. The Advisory Committee Notes to the 1991 amendments to Bankruptcy Rule 3022 provide that the final decree closing the case should not be delayed solely because payments required by the plan have not been completed. Fed. R. Bankr. P. 3022 advisory committee notes.

Whether a case has been fully administered and should be closed presents a different question under Chapter 7 than under Chapter 11. Although a Chapter 7 case

Section 2056A.—Qualified Domestic Trust

The preamble of the final regulations under section 2032 of the Code describes a change in the position of the IRS on the availability of relief to make the section 2056A(d) election under sections 301.9100–1 and 301.9100–3 of the regulations. See T.D. 9172, page 468.

Section 6658.—Coordination With Title 11

26 CFR 301.6651–1: Failure to file tax return or to pay tax.
(Also §§ 6654, 6655.)

Bankruptcy cases; definition of “pending”. This ruling discusses the definition of “pending” regarding bankruptcy cases for purposes of the relief from the imposition of certain penalties provided under section 6658 of the Code.

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ISSUE

When is a bankruptcy case no longer “pending” for purposes of the relief from the imposition of certain penalties pro-

LAW AND ANALYSIS

Section 6658(a) provides, in part, that “[n]o addition to the tax shall be made under section 6651, 6654, or 6655 for failure

is not fully administered and generally is not closed until after final distribution of the property of the estate, a Chapter 11 case may be considered fully administered and may be closed shortly after payments commence under the plan even though the debtor will continue to make payments. However, in both Chapters 7 and 11, the closing of the case marks the end of the bankruptcy court's administration of the estate and is, therefore, the proper date on which a case is no longer pending for purposes of section 6658.

Similarly, the dismissal of a bankruptcy case terminates the case and the bankruptcy court's administration of the bankruptcy estate. The legislative history to section 349 of the Bankruptcy Code, which sets forth the effect of a dismissal of a bankruptcy case, provides that the purpose of section 349 is "to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." S. Rep. No. 989, 95th Cong., 2d Sess. 48 (1978).

In *Situation A*, the case is pending under section 6658 until the court closes the case on Date 4. The entry of the discharge order on Date 2 does not terminate the relief provided by section 6658 because the estate has not been fully administered.

In *Situation B*, the confirmation of the plan on Date 2 discharges the debtor from all pre-confirmation dischargeable debts. The confirmation of the plan does not terminate the administration of the estate. Under section 350 and Bankruptcy Rule 3022, the estate is not fully administered until it is closed on Date 4. As of Date 4, the administration of the estate is complete and the case is no longer pending even though the debtor is required to make payments under the plan for several years. Thus, the penalty relief provided by section 6658 ceases as of Date 4.

In *Situation C*, the bankruptcy court does not close the case 30 days after confirmation of the plan as in *Situation B*, but keeps the case open while the debtor complies with the terms of the plan. However, one year after confirmation, the debtor fails to make the payments required by the terms of the plan. The default does not terminate the case or end the court's involvement in the administration of the estate. The order dismissing the case terminates the administration of the estate.

The prohibition against imposition of the penalty ends on Date 5, the date on which the dismissal order is entered.

Although *Situations A, B, and C* describe bankruptcy cases filed under Chapters 7 and 11 of the Bankruptcy Code, the treatment of a case as no longer pending when the case is closed or dismissed as set forth in this ruling also applies to bankruptcy cases filed under Chapters 12 and 13 of the Bankruptcy Code.

HOLDING

A bankruptcy case is no longer pending for purposes of relief under section 6658 when the bankruptcy case is closed or dismissed.

DRAFTING INFORMATION

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