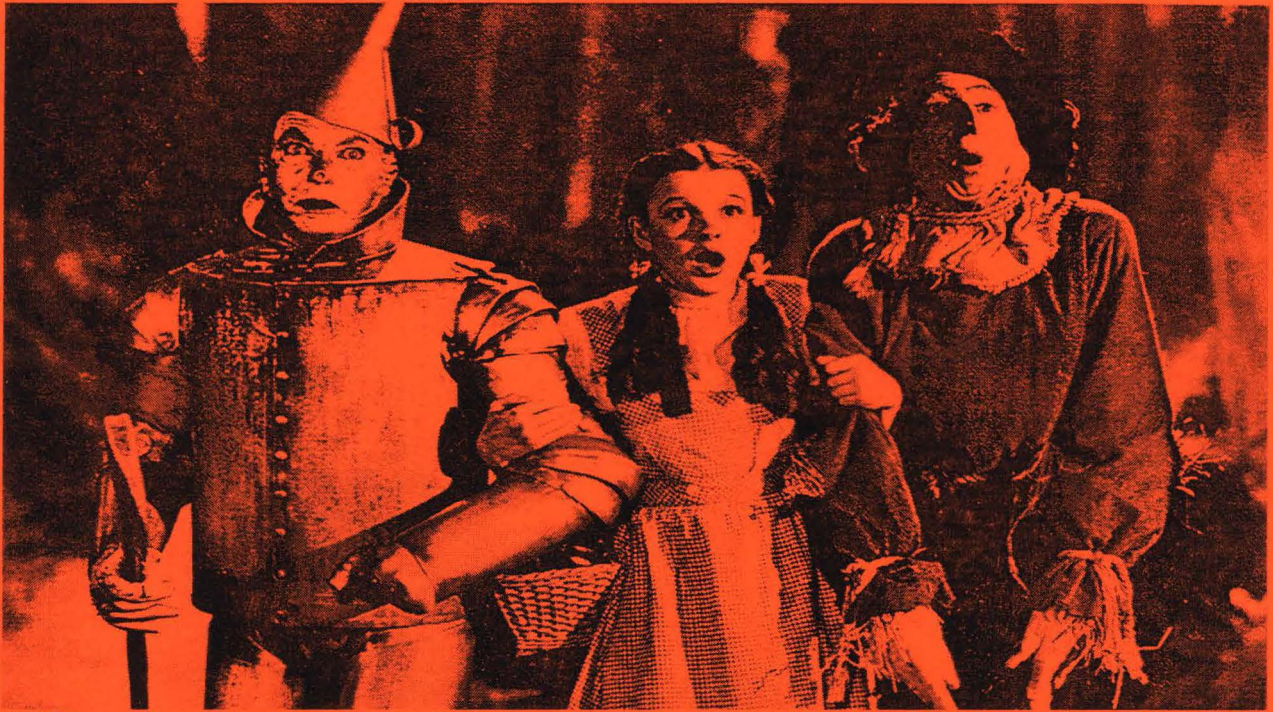


* CDPH *

Collection Due Process Hearing

What is a CDPH?



"What do you mean I can't have my court reporter and witness?... Oh my!"

What do I have to do to obtain a hearing?

What takes place at the CDPH?

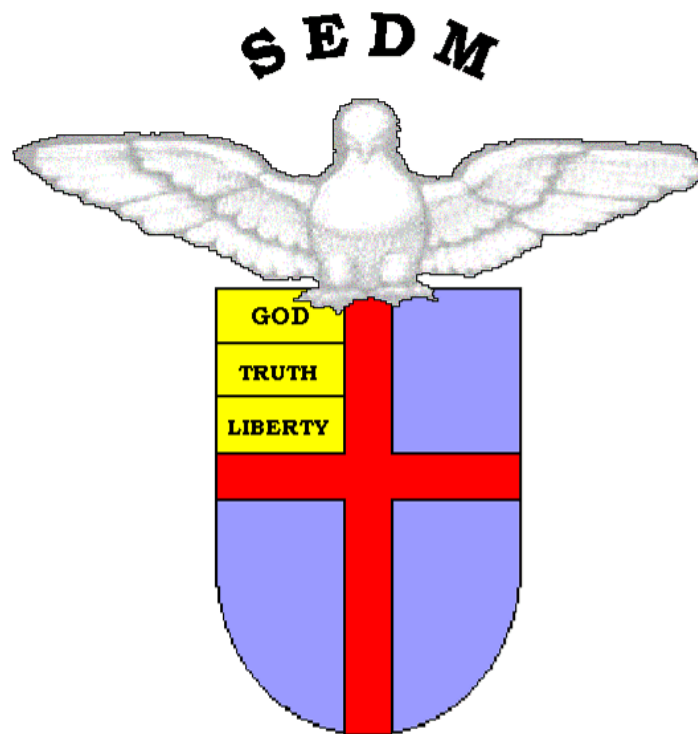
What do I need to prepare for a CDPH?

Volume 14, March/April 2003

DOWNLOADED FROM:

***Sovereignty Education and Defense Ministry
(SEDM) Website***

<http://sedm.org>



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The Collection Due Process Hearing

- A. One of the positive outcomes to come out of the senate hearings held in 1997 (see number on our list) which resulted in the 1998 Tax Reform Restructuring Act (TRRA) was the ability to ask for and receive an administrative hearing.
- B. We ask for hundreds of hearings in 2001 and none of those requests were granted. Although none of those requested were granted, none of those people were liened or levied.
- C. Starting in January of 2002 the IRS started to grant these hearings to some people. Then, in February and March these hearings picked up to the point that today, when you ask for a hearing, you can expect that hearing in 30 to 45 days after your request is received.
- D. There are some groups and individuals telling people not to request a hearing or not to go to it if they have already requested the hearing. They will try to give you a number of idiot reasons why not to ask or attend a hearing.
- E. We are in this issue of the 2003 VIP Dispatch going to educate you about the Collection Due Process Hearing (CDPH).
 - 1. What it is.
 - 2. When to ask for one.
 - 3. Why you want to ask for one.
 - 4. How do you prepare for the hearing?
 - 5. What will happen at the hearing?
 - 6. How do you conduct the hearing?
 - 7. What do you do after the hearing?
- F. If you do not show up for the hearing then you can count on being liened or levied.
- G. If you send request as hearing by sending in the IRS form 12153 then all lien or levy action is to stop until after the hearing.

- H. We have helped lots of people with these hearings only about one percent have been liened or levied that we are aware of for the year or years in question.
 - 1. Now if they come back for different years or even in a few cases the IRS will come back again you have to request another hearing.
 - 2. We have a large number of people who have not heard from the IRS after they attended the hearing.
- I. One very important procedure we emphasize is that you make sure you use a court reporter at these hearings.
 - 1. Make sure the documents you use in the hearing conform with the Federal Rules of Evidence.
 - 2. The court reporter will put you under oath if you make the request. We are not aware of any IRS taking an oath at any of these meetings.
- J. This is not an easy process and will probably cost up to \$800.00 to complete the entire process.
- K. If you make the decision to move ahead with your hearing you want to be as prepared as possible.

Due Process Notices

The Collection Due Process (CDP) hearings were created by the 1998 Reform Act to give taxpayers additional rights to appeal collection actions.

A. The IRS is required to notify a taxpayer in writing at least five days after it files a Notice of a Tax Lien. IRC §6320. The IRS must also send the taxpayer written notice at least 30 days prior to a proposed levy. IRC §6330. These notices must specify the amount of the tax liability and must state that the taxpayer has a right to request a CDP hearing within 30 days. The notice must also outline the administrative appeals rights of the taxpayer and the provisions and procedures to obtain the release of the levy or lien. These notices are called the Collection Due Process Hearing Notice (CDP Notice).

Unlike decisions in CAP hearings, the determination of the Appeals Officer following a hearing is subject to judicial review. The IRS is required to either serve the CDP Notice in person, either at the taxpayer's home or office, or send a notice to the taxpayer's last known address by certified or registered mail, return receipt requested, not less than 30 days before the day of the levy. If a taxpayer does not receive a properly transmitted notification, the 30-day period to request a hearing does not begin to run. If the notice is not received because it was improperly transmitted, the IRS must provide a substitute notice, and the 30 day period starts the day after the date of the correct notice

B. Once a hearing has been requested, the IRS may not execute the levy on the taxpayer's property. If a deficiency that generated the liability is at issue, the collection activity is also suspended while the judicial appeal is pending. However, the IRS is permitted to seize property immediately following the issuance of a Notice and Demand for payment under IRC §6331 if the collection of the tax is in jeopardy. If the collection of tax is in jeopardy or the IRS is levying on a state tax refund, a CDP Notice prior to the levy is not required. However, the IRS will provide a post-levy CDP notice, and the taxpayer will be entitled to a hearing.

1058 Letter

A. What is a 1058 Letter?

1. Go to Exhibit A, 1 of 8 for a sample of a 1058 letter.
2. Top of the letter will say, "call immediately to prevent property loss", "Final Notice and notice of your right to a hearing."
3. Bottom right side shows your letter 1058 (Rev. 05-2002 (LT-1)).

B. Depending upon your situation you might also receive a Letter 3172. See Exhibit A, 2 of 2, "Notice of Federal Tax Lien Filing and your Rights to a hearing under IRC 6320."

1. This letter tells you that you have a right to a hearing.
2. At the arrow at the bottom of the page it says "you must request your hearing by 04/14/2003. At the top of this letter it has a letter Date of 03/11/2003 so you have 30 days to request this hearing.
3. At the end of the second page of this letter it lists the enclosures that are provided with this mailing.

C. Exhibit A, 4 of 8, they will send you a "Notice of Federal Tax Lien."

1. In our 2002, VIP Dispatch for the month of ^{July}XXXX covering Liens we provided you with some beginning FOIA's to ask for.
2. STOP! If you do not have liens placed against you at this point and this Exhibit A, 4 of 8 is only an example of what they are going to File IF you DO NOT request a Collection Due Process Hearing then DO NOT send in those FOIA'S.
3. If the IRS jumped the gun and filed the Lien in your courthouse, get a copy of it. Then do a letter stating "I have requested a Collection Due Process Hearing and that under the 1998 IRS reform and Restructing Act the Internal Revenue Service is not allowed to place a Lien against my property until after this Due Process Hearing and only if it can be shown that I actually owe the tax. A letter of determination must be issued after the hearing stating the facts. I there for request that the lien with serial number XXXXXXXXXXXX be removed immediately.
4. When you bring this to their attention they will usually remove the lien at the courthouse.

D. Exhibit A, 7 of 8, "Request for a Collection Due Process Hearing."

1. This is the form you need to fill out and send in to request a hearing.
2. If you do not request this hearing they will assume that you have waived it and proceed with Collection activities.
3. We have had a number of people call us who have been liened or levied because they had someone tell them to:
 - a. Refuse the hearing for fraud.
 - b. Refuse the hearing and instead send in their expatriation treparation papers.
 - c. Accept the hearing for value under the UCC.
 - d. Ignore the request as it doesn't do any good to request a hearing.
 - e. Don't send in the request because you will be giving the IRS jurisdiction over you.
 - f. Stamp on the paperwork "refused for cause without dishonor" and send it back.
 - g. Right back to the IRS telling them you are a nonresident alien and your paperwork does not pertain to me.
 - h. Do not open any IRS correspondence and have the post office send it back.
 - i. Take down your mailbox so you cannot receive any mail.
 - j. Offer to pay if you send me a verified bill.
 - k. They had my name spelled all in caps so that was not actually me on that 1058 letter.
4. These are just a few of the more common ones people calling us have been told to do by someone else. Then they get liened or levied and they call us. We ask, "did you get a 12153 form from the IRS for a Due Process Hearing?" Many don't even know if they did or did not.
5. That is the Purpose of this Dispatch; So that you will know how to recognize a Collection Due process Hearing Notice (Form 12153) and be able to respond on your own.
6. Then contact us if you need help with the hearing and the follow up.
7. One more caution we want to make you aware of. If you have signed a power of attorney with anyone to take care of all your tax problems, make sure you have them send a copy of any letters they receive from the IRS pertaining to your case back to you. Also ask them what they do if they receive a 1058 letter in your name from the IRS? You want to know all of their procedures in dealing with the 1058 letter from the time they received it to conclusion. What do they do? And how do they do it?

8. We have never asked anyone to sign a power of attorney form. We are of the opinion that the individuals, in order to be successful in their convention of standing up against the IRS, must take control of the situation themselves. But you need at least enough information to make intelligent decisions. That is why we have the Level I, II, and III courses, the 2002 Dispatch, The 2003 Dispatch, and all the other items on our web site for your educational purposes at a fraction of the price that others charge for their information. And from most of what I have seen, most of them have few, if any effective procedures.

E. Fill out the 12153 Form if you want to request a Due Process Hearing.

1. Do not try to use a different form.
2. Do not add or extract statements.
3. In the center of the form 12153 where it says "check the IRS action(s) you do not agree with" check the one that concerns you, or both if they sent you both a lien and levy notice.
4. Then write under it "Math Incorrect", and that is it. Finish filling it out then send it in with return receipt requested so you can prove that it was sent.
5. You do not need to pay someone 1000 to 2000 to do this for you when you can do it for yourself.



Department of the Treasury
Internal Revenue Service
P.O. BOX 145566
CINCINNATI, OHIO 45214

Date:
MAR. 15, 2003

Taxpayer Identification Number:
L 01

7183 6086 6450

Caller ID:

Contact Telephone Number:
1-800-829-3903 TOLL FREE
MONDAY - FRIDAY: 8:00 AM - 8:00 PM

CALL IMMEDIATELY TO PREVENT PROPERTY LOSS FINAL NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING

WHY WE ARE SENDING YOU THIS LETTER

We've written to you before asking you to contact us about your overdue taxes. You haven't responded or paid the amounts you owe. We encourage you to call us immediately at the telephone number listed above to discuss your options for paying these amounts. If you act promptly, we can resolve this matter without taking and selling your property to collect what you owe.

We are authorized to collect overdue taxes by taking, which is called levying, property or rights to property and selling them if necessary. Property includes bank accounts, wages, real estate commissions, business assets, cars and other income and assets.

WHAT YOU SHOULD DO

This is your notice, as required under Internal Revenue Code sections 6330 and 6331, that we intend to levy on your property or your rights to property 30 days after the date of this letter unless you take one of these actions:

- Pay the full amount you owe, shown on the back of this letter. When doing so,
 - Please make your check or money order payable to the United States Treasury;
 - Write your social security number and the tax year or employer identification number and the tax period on your payment; and enclose a copy of this letter with your payment.
- Make payment arrangements, such as an installment agreement that allows you to pay off your debt over time.
- Appeal the intended levy on your property by requesting a Collection Due Process hearing within 30 days from the date of this letter.

WHAT TO DO IF YOU DISAGREE

If you've paid already or think we haven't credited a payment to your account, please send us proof of that payment. You may also appeal our intended actions as described above.

Even if you request a hearing, please note that we can still file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice that tells your creditors that the government has a right to your current assets and any assets you acquire after we file the lien.

We've enclosed two publications that explain how we collect past due taxes and your collection appeal rights, as required under Internal Revenue Code sections 6330 and 6331. In addition, we've enclosed a form that you can use to request a Collection Due Process hearing.

We look forward to hearing from you immediately, and hope to assist you in fulfilling your responsibility as a taxpayer.

Enclosures: Copy of letter, Form 12153, Publication 594, Publication 1660, Envelope

990342225223

Automated Collection System

Letter 1058 (Rev. 05-2002)(LT-11)

**Department of the Treasury****Letter Date:** 03/11/2003**CERTIFIED MAIL** 7118 6872 1494**Internal Revenue Service****Taxpayer Identification Number:****Person to Contact:****Contact Identification Number:****Contact Telephone Number:****Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320**

We filed a Notice of Federal Tax Lien on 03/06/2003 because our records show the following:

<u>Type of Tax</u>	<u>Tax Period</u>	<u>Amount Owed</u>
1040	12/31/1997	
1040	12/31/1998	
1040	12/31/1999	

The lien attaches to all property you currently own and to all property you may acquire in the future. It may also damage your credit rating and hinder your ability to obtain additional credit.

You have a right to request a hearing with us to appeal this collection action and to discuss your payment method options. To explain the different collection appeal procedures available to you, we've enclosed Publication 1660, *Collection Appeal Rights*.

If you want to request a hearing, please complete the enclosed form 12153, *Request for a Collection Due Process Hearing*, and mail it to:

Internal Revenue Service

You must request your hearing by 04/14/2003.

We'll issue a Certificate of Release of the Federal Tax Lien within 30 days after you pay the full amount owed. To get your current balance, contact the person whose name and telephone appear at the top of this letter.

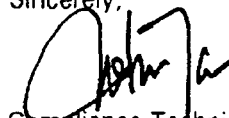
(over)

Letter 3172 (DO) rev. (11-2000)
Catalog No. 267671

We'll also release the lien within 30 days after we accept a bond guaranteeing payment of the amount owed or after we adjust your account based on the decision of your requested hearing. We enclosed Publication 1450, *Instructions on Requesting a Certificate of Release of Federal Tax Lien*.

If you have any questions, please contact the person whose name and telephone number appear at the top of this letter.

Sincerely,



Compliance Technical Support
Territory Manager

Enclosures:

Publication 1, *Your Rights as a Taxpayer*

Publication 1450, *Instructions on Requesting A Certificate of Release of Federal Tax Lien*

Publication 1660, *Collection Appeal Rights*

Form 668 (Y) (c), *Notice of Federal Tax Lien*

Form 12153, *Request for a Collection Due Process Hearing*

Letter 3172 (DO) rev. (11-2000)
Catalog No. 267671

Notice of Federal Tax Lien

Area:

SMALL BUSINESS/SELF EMPLOYED AREA #12

Lien Unit Phone: (20-5596

Serial Number

For Optional Use by Recording Office

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

- This Notice of Federal Tax Lien has been filed as a matter of public record.
- IRS will continue to charge penalty and interest until you satisfy the amount you owe.
- Contact the Area Office Collection Function for information on the amount you must pay before we can release this lien.
- See the back of this page for an explanation of your Administrative Appeal rights.

Name of Taxpayer (

Residence

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1040	12/31/1997		09/14/1998	10/14/2008	
1040	12/31/1997		12/02/2002	01/01/2013	
1040	12/31/1998		08/16/1999	09/15/2009	
1040	12/31/1998		12/02/2002	01/01/2013	
1040	12/31/1999		11/06/2000	12/06/2010	
1040	12/31/1999		12/16/2002	01/15/2013	

Place of Filing

BUREAU OF CONVEYANCES
REGISTRAR

Total \$

This notice was prepared and signed at Seattle, WA, on this,the 05th day of March.

Signature

for

Title

REVENUE OFFICER

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 3 - Taxpayer's Copy

Form 668(Y)(c) (Rev. 10-00)
CAT NO 60025Y

Lien

This Notice of Federal Tax Lien gives public notice that the government has a lien on all your property (such as your house or car), all your rights to property (such as money owed to you) and to property you acquire after this lien is filed.

Your Administrative Appeal Rights

If you believe the IRS filed this Notice of Federal Tax Lien in error, you may appeal if any of the following conditions apply:

- you had paid all tax, penalty and interest before the lien was filed;
- IRS assessed tax after the date you filed a petition for bankruptcy;
- IRS mailed your notice of deficiency to the wrong address;
- you have already filed a timely petition with the Tax Court;
- the statute of limitations for collection ended before IRS filed the notice of lien.

Your appeal request must be in writing and contain the following:

- your name, current address and SSN/EIN;
- a copy of this notice of lien, if available;
- the specific reason(s) why you think the IRS is in error;
- proof that you paid the amount due (such as a cancelled check);
- proof that you filed a bankruptcy petition before this lien was filed.

Send your written request to the Director, Area Compliance: Attention: Compliance Technical Support Manager, in the office where this notice of lien was filed.

When This Lien Can Be Released

The IRS will issue a Certificate of Release of Federal Tax Lien within 30 days after:

- you pay the tax due, including penalties, interest, and any other additions under law, or IRS adjusts the amount due, or;
- we accept a bond that you submit guaranteeing payment of your debt, or;
- the end of the time period during which we can collect the tax (usually 10 years).

Publication 1450, Request for Release of Federal Tax Lien, available at IRS offices, describes this process.

When a Lien against Property can be Removed

The IRS may remove the lien from a specific piece of property if any of the following conditions apply:

- you have other property subject to this lien that is worth at least two times the total of the tax you owe, including penalties and interest, plus the amount of any other debts you owe on the property (such as a mortgage);
- you give up ownership in the property and IRS receives the value of the government's interest in the property;
- IRS decides the government's interest in the property has no value when you give up ownership;
- the property in question is being sold; there is a dispute about who is entitled to the sale proceeds; and the proceeds are placed in escrow while the dispute is being resolved.

Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property from a Federal Tax Lien, available at IRS offices, describes this process.

Gravamen

Este Aviso de Gravamen del Impuesto Federal da aviso público que el gobierno tiene un gravamen en toda su propiedad (tal como su casa o carro), todos sus derechos a propiedad (tal como dinero que le deben) y propiedad que se adquiere después que se radicó este gravamen.

Sus Derechos de Apelación Administrativos

Si usted cree que el IRS radicó este Aviso de Gravamen del Impuesto Federal por error, usted debe apelar si cualquiera de las condiciones siguientes le aplican:

- usted pagó todos los impuestos (contribuciones), penalidades e intereses antes de que el gravamen fuera radicado.
- IRS tasó el impuesto después de la fecha que se radicó una petición de quiebra.
- IRS envió por correo el aviso de deficiencia a una dirección incorrecta;
- usted radicó a tiempo una petición ante el Tribunal Tributario;
- el IRS radicó el aviso de gravamen después que expiró el término de prescripción.

Su petición de apelación debe de estar por escrito e incluir lo siguiente:

- su nombre, dirección actual y SSN/EIN;
- una copia de este aviso de gravamen, si está disponible;
- la razón, (o razones) específica(s) porqué piensa que el IRS está erróneo;
- prueba que usted pagó la cantidad adeudada (tal como un cheque cancelado)
- prueba que radicó una petición de quiebra antes de que se radicara el gravamen.

Envíe su petición por escrito al Director, Área de Cobro, atención Gerente de Apoyo Técnico de Cumplimiento en la oficina donde esté gravamen fué radicado.

Cuándo Este Gravamen Se Puede Condonar

El IRS condonará un Aviso de Gravamen del Impuesto Federal dentro de los 30 días después de que:

- usted pague el impuesto (tributo) pagadero, incluyendo penalidades, intereses, y otras sumas adicionales según la ley, o el IRS ajusta la cantidad adeudada, o;
- aceptamos una fianza que nos garantice el pago de su deuda, o;
- la expiración del término en que podemos cobrar el impuesto (tributo) (usualmente 10 años).

Publicación 1450, Petición para Condonar el Gravamen del Impuesto Federal, disponible en las oficinas del IRS describe este proceso.

Cuándo el Gravamen contra la Propiedad se puede Eliminar

El IRS puede eliminar el gravamen de una propiedad específica si cualquiera de las condiciones siguientes aplican:

- usted tiene otra propiedad sujeta a este gravamen cuyo valor es por lo menos dos veces el total del impuesto (tributo) que usted debe, incluyendo penalidades e intereses, más la cantidad de cualquiera de las otras deudas que usted debe en la propiedad (tal como una hipoteca);
- usted deja de ser el propietario y el IRS recibe el valor del interés del gobierno en la propiedad;
- el IRS decide que el interés del gobierno en la propiedad no tiene valor alguno cuando usted dejó de ser el propietario;
- la propiedad gravada será vendida; existe una controversia acerca de quien tiene el derecho a los resultados de la venta; y se depositan los fondos recibidos en la venta en una cuenta especial en lo que se resuelve la controversia.

Publicación 783, Instrucciones en Cómo Solicitar un Certificado de Relevé de la Propiedad de un Gravamen del Impuesto Federal, disponible en las oficinas del IRS, describen este proceso.

Instructions on Requesting

A Certificate of Release of Federal Tax Lien

Section 6325(a) of the Internal Revenue Code directs us to release a Federal Tax Lien after a tax liability is paid in full or legally unenforceable. We also must release a lien when we accept a bond for payment of the tax.

If we haven't released the lien within thirty days, you can ask for a Certificate of Release of Federal Tax Lien. Send your written request with any required documents to:

Area Director of Internal Revenue Service
(Address to Area Office where the lien is filed)

If you've paid the tax, please enclose a copy of either of the following:

1. An Internal Revenue Service receipt;
2. A canceled check;
3. Any other acceptable proof of payment.

Please include a telephone number with the best time for us to call you if we need additional information.

Attention: Technical Support Manager

We may need to research your account to confirm you no longer have a liability. We will provide a release once we have verified the status of your account.

Your request must contain the following information:

- A. The date of your request;
- B. The name and address of the taxpayer;
- C. One copy of each Notice of Federal Tax Lien you want released.; and
- D. Why you want us to release the lien.

For an immediate or urgent Certificate of Release of Federal Tax Lien, visit or telephone the area office that filed the Notice of Federal Tax Lien. Be prepared to show proof of payment.

You can pay any unpaid tax with a certified check, cashier's check, or money order to receive a release.



Department of the Treasury
Internal Revenue Service

Publication 1450 (Rev. 4-2001)
Catalog Number 10665H

*U.S. Government Printing Office: 2001— 615-016/21072

Exhibit A 6 of 8

Request for a Collection Due Process Hearing

Use this form to request a hearing with the IRS Office of Appeals only when you receive a **Notice of Federal Tax Lien Filing & Your Right To A Hearing Under IRC 6320**, a **Final Notice - Notice Of Intent to Levy & Your Notice Of a Right To A Hearing**, or a **Notice of Jeopardy Levy and Right of Appeal**. Complete this form and send it to the address shown on your lien or levy notice for expeditious handling. Include a copy of your lien or levy notice(s) to ensure proper handling of your request.

(Print) Taxpayer Name(s): _____

(Print) Address: _____

Daytime Telephone Number: _____ Type of Tax/Tax Form Number(s): _____

Taxable Period(s): _____

Social Security Number/Employer Identification Number(s): _____

Check the IRS action(s) that you do not agree with. Provide specific reasons why you don't agree. If you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return, check here ☐ and attach Form 8857, Request for Innocent Spouse Relief, to this request.

____ **Filed Notice of Federal Tax Lien** (Explain why you don't agree. Use extra sheets if necessary.)

____ **Notice of Levy/Seizure** (Explain why you don't agree. Use extra sheets if necessary.)

I/we understand that the statutory period of limitations for collection is suspended during the Collection Due Process Hearing and any subsequent judicial review.

Taxpayer's or Authorized Representative's Signature and Date: _____

Taxpayer's or Authorized Representative's Signature and Date: _____

IRS Use Only:

IRS Employee (Print): _____ IRS Received Date: _____

Employee Telephone Number: _____

Where to File Your Request

It is important that you file your request using the address shown on your lien or levy notice. If you have been working with a specific IRS employee on your case, you should file the request with that employee.

How to Complete Form 12153

1. Enter your full name and address. If the tax liability is owed jointly by a husband and wife, and both wish to request a Collection Due Process Hearing, show both names.
2. Enter a daytime telephone number where we can contact you regarding your request for a hearing.
3. List the type(s) of tax or the number of the tax form(s) for which you are requesting a hearing (e.g. Form 1040, Form 941, Trust Fund Recovery Penalty, etc.).
4. List the taxable periods for the type(s) of tax or the tax form(s) that you listed for item 3 above (e.g., year ending 12-31-98, quarter ending 3-31-98).
5. Show the social security number of the individual(s) and/or the employer identification number of the business(s) that are requesting a hearing.
6. Check the IRS action(s) that you do not agree with (Filed Notice of Federal Tax Lien and/or Notice of Levy/Seizure). You may check both actions if applicable.
7. Provide the specific reason(s) why you do not agree with the filing of the Notice of Federal Tax Lien or the proposed Notice of Levy/Seizure action. One specific issue that you may raise at the hearing is whether income taxes should be abated because you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return. You must, however, elect such relief. You can do this by checking the indicated box and attaching Form 8857 to this request for a hearing. If you previously filed Form 8857, please indicate when and with whom you filed the Form.
8. You, or your authorized representative, must sign the Form 12153. If the tax liability is joint and both spouses are requesting a hearing, both spouses, or their authorized representative(s), must sign.
9. It is important that you understand that we are required by statute to suspend the statutory period for collection during a Collection Due Process Hearing.

U.S. GPO: 2002-491-322/61614

Letter 1058 (Rev. 1-1999)

- A. This is a early version of the current 1058 letter which they are still using today. As you see in the upper right hand corner it shows a date of 3/17/2003. Exhibit A, 1 of 2.
 - 1. You could receive either of these 1058 letters.
 - 2. We want you to be able to recognize both of these letters.

- B. Exhibit A, 1 of 2, shows the early version of form 12153 and it will be filled out the same way as the previous one.
 - 1. It doesn't matter which one you received.

Internal Revenue Service

Department of the Treasury

Letter Number: 1058

Letter Date: 03/17/2003

Social Security Number:

--CERTIFIED MAIL - RETURN RECEIPT

Person to Contact:

M.

Contact Telephone Number:

Employee Identification No.:

FINAL NOTICE
NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING
PLEASE RESPOND IMMEDIATELY

Your Federal tax is still not paid. We previously asked you to pay this, but we still haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code(IRC) Section 6331 and your right to receive Appeals consideration under IRC Section 6330.

We may file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, or request Appeals consideration within 30 days from the date of this letter, we may take your property, or rights to property, such as real estate, automobiles, business assets, bank accounts, wages, commissions, and other income. We've enclosed Publication 594 with more information, Publication 1660 explaining your right to appeal, and Form 12153 to request a Collection Due Process Hearing with Appeals.

To prevent collection action, please send your full payment today. Make your check or money order payable to U.S. Treasury. Write your social security number or employer identification number on your payment. Send your payment to us in the enclosed envelope with a copy of this letter.

The amount you owe is listed on the following page(s).

Page 1

Letter 1058 (Rev. 1-1999) Cat. No. 40488S

Request for a Collection Due Process Hearing

Use this form to request a hearing with the IRS Office of Appeals only when you receive a Notice of Federal Tax Lien Filing & Your Right to a Hearing Under IRC 6320, a Final Notice - Notice of Intent to Levy & Your Notice Of a Right To A Hearing, or a Notice of Jeopardy Levy and Right of Appeal. Complete this form and send it to the address shown on your lien or levy notice for expeditious handling. Include a copy of your lien or levy notice(s) to ensure proper handling of your request.

(Print) Taxpayer Name(s): _____

(Print) Address: _____

Daytime Telephone Number: _____ Type of Tax/Tax Form Number(s): _____

Taxable Period(s): _____

Social Security Number/Employer Identification Number(s): _____

Check the IRS action(s) that you do not agree with. Provide specific reasons why you don't agree. If you believe that your spouse or former spouse should be responsible for all or a portion of the tax liability from your tax return, check here [] and attach Form 8857, Request for Innocent Spouse Relief, to this request.

☐ Filed Notice of Federal Tax Lien (Explain why you don't agree. Use extra sheets if necessary.)

☐ Notice of Levy/Seizure (Explain why you don't agree. Use extra sheets if necessary.)

I/We understand that the statutory period of limitations for collection is suspended during the Collection Due Process Hearing and any subsequent judicial review.

Taxpayer's or Authorized Representative's Signature and Date: _____

Taxpayer's or Authorized Representative's Signature and Date: _____

IRS Use Only:

IRS Employee(Print): _____ IRS Received Date: _____

Employee Telephone Number: _____

Requested Hearing Letter From IRS Letter 965-e ***(Rev. 05/1994)***

- A. Here an IRS employee responded to a request for a Collection Due Process Hearing. (Exhibit A, 1 of 3).

- B. First paragraph of the Exhibit A, 1 of 3 (letter 965-c) David notifies the requester that this hearing will be conducted as an equivalent hearing rather than as a Collection Due Process Hearing.
 - 1. Take note: If you have passed the time period for requesting a CDP hearing you can request a equivalency hearing.
 - 2. David says in the second paragraph that the conference will be informal and you may present facts, arguments, and legal authority. Send me any new evidence or information at least 10 days before the conference. Statements should be presented as affidavits or signed under penalties of perjury.
 - 3. Just think of the possibilities that David has opened himself up to. Also, notice that he has changed the hearing from a Due Process Hearing to an Appeal Hearing, and an informal one at that.
 - 4. David tells the requester, “the IRM at 8.7.2.3.4 states the “Appeals will not allow audio, video or stenographic recordings of and Appeals conference or hearing.” David as you read goes on and on.
 - a. What is he afraid of?
 - b. What are they afraid of?
 - c. What is it that they do not want put in the record?
 - d. Why do the not want a court reporter recording the meeting?
 - e. Why do they not even want a tape recorder in the room?
 - f. Why do they want the name of your witness and their address in advance?
 - 5. Read 8.7.2.3.4 (11-13-2001) for yourself. Exhibit A, 3 of 3.
 - a. Read the whole section several times.
 - b. It looks like David did not read past item 1. Read 2 and 3.

- C. Exhibit B is IRM 8 “Appeals” Chapter 7 Technical and procedural Guidelines,” Section 2 “Special Collection Appeals Program.”
 - 1. This Exhibit B is 20 pages and is the entire section so you will have it for your study and use.

2. The page that David sent to the hearing requester is page 18 of this section.
- D. Exhibit C, 1 of 1, Section 7521 of 26 USCS “Procedures involving taxpayer interviews.”
1. Exhibit A, 3 of 3 cites 26 USC 7521 and this exhibit is that section.
 2. Read 26 7521 (a) Recording of interviews (1) Recording by taxpayer.
 - a. You are allowed to make a recording.

Internal Revenue Service

Appeals Office
300 Hamilton Blvd. - Suite 231
Peoria, IL 61602

Date: February 25, 2003

Department of The Treasury**Person to Contact:**

David P. (

Contact Person ID#:

36-09679

Telephone Numbers:

(309) (

FAX (309) (

Refer Reply to:

AP:FW:IL:PEO

In Re:

Collection Due Process

Tax Period(s) Ended:

1997 & 1998

Date and Time of Conference:

Wed. March 12, 2003 @ 10:00 AM

Place:

300 Hamilton

is

Dear

I have returned to work and have re-scheduled the hearing that you requested on this case for the date and time shown above. As I have mentioned previously, this hearing will be conducted as an equivalent hearing rather than as a Collection Due Process hearing. Please let me know within 10 days from the date of this letter whether this is convenient. If it is not, I will be glad to arrange another time.

This conference will be informal. You may present facts, arguments, and legal authority to support your position. If you plan to introduce new evidence or information, send it to me at least 10 days before the conference. Statements of fact should be presented as affidavits or signed under penalties of perjury.

During Collection Due Process or Equivalent Hearings, the law provides that a taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy/lien including: (a) spousal defenses, (b) appropriateness of collection actions, (c) other collection alternatives, and (d) the existence or amount of the tax, but only if the taxpayer did not receive a notice of deficiency for that liability or did not have an opportunity to dispute the tax liability.

You can authorize an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service to represent you at the conference. Your authorization should be made on a Form 2848 (Power of Attorney and Declaration of Representative), Form 8821 (Tax Information Authorization and Declaration of Representative), or a similar document.

In your letter to me dated 1-13-03, you stated that "I will be bringing a Court Reporter, tape recorders, and three witnesses." The Internal Revenue Manual at IRM 8.7.2.3.4 states that "Appeals will not allow audio, video or stenographic recordings of an Appeals conference or hearing." Therefore, you will not be bringing any Court Reporters or tape recorders to this hearing. In addition, please furnish the name, address, and relevance to your case of any witness that you intend on bringing to the hearing to me in advance of the scheduled hearing date.

I hope our conference will resolve your case. Call me if you have any questions or need

Letter 965-c (Rev. 05/1994)

- 2 -

~~CONFIDENTIAL~~

additional information.

Sincerely,



David P. [unclear]
Appeals Officer

Letter 965-c (Rev 05/1994)

8.7.2.3.4 (11-13-2001)

Recording Hearings

1. IRC § 7521, which was part of the Taxpayer Bill of Rights 1 (TBOR1), provided for audio recordings in conferences dealing with Examination and Collection issues. At the time the Service was implementing this audio recording provision, it was determined the provision was not mandatory for Appeals, because people chose to come to Appeals. Dealing with Appeals was not a mandate, like it was for dealing with Collection and Examination functions. Counsel has given Appeals advice that the CDP provisions do not change that discretionary status.
2. Appeals made a decision at the time when the IRC § 7521 procedures were implemented to follow the Service procedures. This continues to be our practice.
3. Both the Examination and Collection program IRM's allow stenographic recordings. Therefore, Appeals will also allow stenographic recordings to be made by court reporters provided these court reporters have the credentials noted below and the taxpayer has given the requisite 10-day advance notice as required in IRC § 7521. Appeals will audio record any stenographic recordings and request a copy of the stenographer's record.
4. In addition, Appeals will allow the taxpayer to have a court reporter in the Appeals' office and the taxpayer/representative participating via speakerphone. This is a logical variant since the nearest Appeals' office may be some distance from the taxpayer or representative. This will be allowed provided the 10-day advance notice is given and the court reporter has the credentials noted below. As noted above, Appeals will audio record any of these stenographic recordings.
5. The stenographer must have one of the following credentials to be allowed to make a stenographic recording in Appeals.
 - A. Be qualified as a court reporter of the United States District Court;
 - B. Be licensed or certified by any state to be a court reporter or to take depositions; or
 - C. Be an independent reporter qualified to take depositions for use in a United States District Court.
6. Video recordings will not be allowed.



Internal Revenue Manual

Part 8 Appeals

Chapter 7 Technical and Procedural Guidelines

Section 2 Special Collection Appeals Programs

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 - ↳ [8.7.2.4.1.1 Rejections of Installment Agreements](#)

Exhibit B

- › 8.7.2.4.1.2 Terminations of Installment Agreements
- › 8.7.2.4.2 Agreements Secured by Appeals
 - › 8.7.2.4.2.1 Multi-Functional Installment Agreement Authority
 - › 8.7.2.4.2.2 Collection Due Process Installment Agreements
 - › 8.7.2.4.2.3 Installment Agreement User Fees and Input of TC 971

8.7.2.1 (11-13-2001)

Special Collection Appeals Programs - Overview

1. Instructions are provided for Appeals employees on cases involving the following Collection programs:
 - A. Collection Appeals Program (CAP),
 - B. Collection Due Process (CDP), and
 - C. Installment Agreements.
2. Information involving Installment agreements is also found in IRM 5.14.1, *Installment Agreement Handbook* and IRM 5.15.1, *Financial Analysis Handbook*.

8.7.2.1.1 (11-13-2001)

Administrative and Legislative History

1. In 1996, the Service implemented a Collection Appeals Program (CAP). This program provides an administrative appeal for certain Collection actions. The appealable actions were initially limited to seizures, levies and liens.
2. On January 1, 1997 the appeal of terminated installment agreements was added to the program. This installment agreement appeal provision was added by the Taxpayer Bill of Rights 2, enacted July 30, 1996.
3. The Restructuring and Reform Act of 1998 (RRA 98) provides taxpayers the right to appeal the rejection of installment agreements. That appeal has been added to the CAP procedures. However, there are some differences between rejections or terminations of installment agreement CAP cases and regular CAP cases on liens, levies and seizures.
4. The RRA 98 expands taxpayer rights to allow a "hearing" under Collection Due Process (CDP) after a Notice of Federal Tax Lien has been filed and before a levy may be made. (Jeopardy levies and levies on state income tax refunds are appealable after levy.) The taxpayer has the right to go to court on Appeals determinations under CDP. See 8.7.2.3 below.

8.7.2.2 (11-13-2001)

Collection Appeals Program (CAP)

1. A taxpayer may appeal the action if told by an IRS employee:
 - A. That a lien, levy or seizure action has been or will be taken, or
 - B. That an installment agreement is rejected or is proposed for termination or is terminated.

NOTE:

Before Appeals consideration, the taxpayer must first discuss the problem with the IRS employee's manager.

2. Some specific issues that are appealable under CAP include:
 - › Rejected requests for discharge of liens
 - › Subordination of liens
 - › Certificates of nonattachment
 - › Third party claims to property
 - › Alter ego and nominee liens
 - › Rejected requests for withdrawal of a lien
3. RRA 98 established a judicial cause of action for third parties under IRC § 7426(a)(4) for a new discharge under 6325(b)(4), a "right of substitution of value" discharge. These discharges would be appealable under CAP. However, it is important to note that the taxpayer only has 120 days after the date of the discharge to bring suit in district court. Lien issues, such as those listed in (2) and the one discussed in this

paragraph may be quite complicated and will generally take longer than 5 business days to resolve.

4. Normally, collection action is suspended while the case is in Appeals for lien, levy and seizure CAP appeals. The enforcement action continues during the appeals process if, in the judgment of the Collection function, withholding the action would put collection of the tax liability at risk. For example, evidence that the taxpayer is dissipating assets is an example where collection is at risk. Also, pyramiding of additional tax liabilities, including unpaid FTDs and unfiled tax returns, while in Appeals, are indicators that collection can be at risk.
5. For installment agreement rejections and terminations, levy action is prohibited by statute, rather than administratively as in the other types of CAP cases.
 - A. For installment agreement rejection appeals, IRC § 6331(k)(2)(B) provides no levy may be made for 30 days after rejection of an installment agreement, and, if an appeal is filed in that 30 day period, during the period the appeal is pending.
 - B. For installment agreements proposed for termination, no levy may be made within 30 days of the proposed termination, and if an appeal is filed in that 30-day period, during the period the appeal is pending. See IRC § 6331(k)(2)(C).
 - C. For terminated installment agreements, IRC § 6331(k)(2)(D) provides that no levy may be made within the 30 day period after termination, and, if an appeal is filed during that 30 day period, no levy may be made while the appeal is pending. See IRM 8.7.2.4 for more information about installment agreement cases.

8.7.2.2.1 (11-13-2001)

Exclusions from CAP

1. Several collection issues already have separate appeal procedures. These should continue to be appealed under their separate procedures. Advise taxpayers who try to raise these issues under CAP to proceed with the appropriate appeal procedures. These include:
 - Trust fund recovery penalties,
 - Offers in compromise,
 - Penalty appeals
 - Jeopardy levies
2. CAP cannot be used to reopen examinations or claims for refund. Examination reconsiderations and claims are appealable under their own appeals procedures.
3. Taxpayers who request Appeals consideration may also be experiencing a significant hardship as a result of the enforcement actions taken. Refer issues of significant hardship to the local Taxpayer Advocate Service (TAS) in accordance with the following procedures.
 - A. If the taxpayer files a Form 911, *Application for Taxpayer Assistance Order (TAO)* before the case is transferred to Appeals, refer the case to the local TAS for appropriate action.
 - B. If the TAO is filed following receipt of the case in Appeals, notify the local TAS of the Form 911 for them to consider the hardship issues, and Appeals will complete action on the non-hardship issues in the case.
 - C. To the extent possible, complete the Appeals determination before the local TAS makes a relief determination, since the appeal process may resolve the hardship issue. See IRM 8.1.5.3 and IRM 13.7 for more information about TAO's.
4. Actions under the control of a court of competent jurisdiction are excluded from the program.
5. Cases on taxpayers under the control of the Criminal Investigation Division will be excluded from this appeal process.
6. Issues not within the scope of internal revenue laws, i.e., moral, religious or constitutional issues etc. cannot be considered by Appeals.

8.7.2.2.2 (11-13-2001)

Collection Field Procedures under CAP

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1. Publication 594, *The IRS Collection Process*, which is sent with the IRC § 6331(d) notice and the IRC § 6330 notice, and Publication 1660, *Collection Appeal Rights*, which is sent with the IRC § 6330 notice, inform taxpayers about the existence of an appeal right on these issues. Taxpayers can obtain these publications from the field Collection groups. Form 9423, *Collection Appeal Request*, which is used to make a field Collection CAP appeal, also provides information on the reverse of the form for the taxpayer on how to appeal. Form 9423 is also available from the revenue officer groups, and it is on the Service's web page at <http://www.irs.gov/>. The publications are also available on the web page and on the internal Multimedia web site.
 2. RRA 98 provides several provisions relating to levy activity during the pendency of an installment agreement that impact on the CAP program.

- A. Levy activity will be suspended for 30 days after rejection or termination of the installment agreement, and, if the taxpayer appeals the rejection or termination within that 30-day period, the levy suspension will continue during the period of appeal.

NOTE:

The prohibition of levy does not apply if the taxpayer waives the levy suspension. Levy prohibition also does not apply on a proposed installment agreement if the installment agreement is requested solely to delay collection.

- B. Levy suspension also continues during any period of time an installment agreement is in effect. The only exception to these levy suspensions is jeopardy (or waiver - see note above).
 - C. The collection statute of limitations could be extended only in conjunction with an installment agreement. The current Service practice is to extend the collection statute no more than 5 years.
 - D. Rejected installment agreements will have an independent administrative review before the rejection is communicated to the taxpayer. A designated official does this independent administrative review within field Collection and ACS. On CDP cases, Appeals may deny a proposed installment agreement. In these situations, the Appeals manager serves as the independent reviewer.
3. Before a taxpayer requests CAP appeal, he or she must first discuss the problem with the field Collection group manager.
 4. A CAP appeal request must be in writing on Form 9423, but it does not need to be completed for a group manager conference. However, the group manager must receive the taxpayer's request for an appeal on Form 9423 within 2 business days after the manager conference or collection action will resume on all actions except rejected or terminated installment agreements.
 5. For rejected or terminated installment agreements, levy action is suspended by law:
 - A. For 30 days after the taxpayer is notified of the IRS decision to reject, or
 - B. For 30 days after termination of an installment agreement, and
 - C. If timely appealed, during the appeal.
 6. Therefore, the group manager conference request must be received within 30 days from the rejection/termination notice. Any Form 9423 for installment agreement rejection or termination appeals sent to Appeals and dated after the 30th day should be documented by the Collection manager to establish timely request for the group manager conference for purposes of the statutory levy suspension.
 7. CAP cases on liens, levies or seizures are to be sent to Appeals within 2 business days of the manager's rejection or receipt of the taxpayer's request, whichever occurs later. Local Appeals and field Collection functions have worked out their own procedures for prompt transmittal of cases to the local Appeals Office. CAP cases on rejected or terminated installment agreements are to be expeditiously sent to Appeals due to the statutory restrictions on levy and to help taxpayers resolve their collection issues timely.
 8. In most cases information will need to be faxed to the Appeals Office. Generally, a copy of the entire case file should go to Appeals. However on large cases, if the information needs to be faxed, sending the entire file may become very burdensome and not be necessary. Therefore, local Collection and Appeals offices will determine together what portion of the file needs to be transmitted to Appeals to adequately consider the appeal.
 9. At a minimum, the appeals file should include:
 - A. Copies of the ICS case transcript for the balance due modules or IDRS transcripts.
 - B. A copy of the power of attorney or CFINQ (used to research the CAF).
 - C. Case history sheets - ICS history printouts, when available.
 - D. Copies of the relevant levy, lien, seizure documents.

E. Form 433A or B.

F. IADIS on terminated installment agreements.

G. The file should also contain any other documents that may be appropriate, such as copies of deeds, mortgages etc. in nominee lien situations, etc.

10. Appeals employees will contact the revenue officer or group manager to make every effort to obtain any additional information needed for adequate consideration of issues raised by the taxpayer to avoid whenever possible closing these cases as premature referrals (closing code 20).
11. Most Appeals offices have worked out procedures that allow access to Collection's Integrated Collection System (ICS). The appeals officer working the case can access the revenue officer's case file that includes case history, information on account transactions and the manager's comments regarding the conference.
12. Seizures are appealable either before the seizure action takes place or after it is completed. However, the taxpayer has 10 business days after the date the Notice of Seizure is provided to them or left at their home or business to appeal to the Collection manager.
13. Revenue officers will give a copy of Publication 1660 to every taxpayer who receives a Notice of Seizure.

NOTE:

If a seizure involves perishable goods, an appeal may not be possible until after the sale.

14. Enforced collection action, i.e., lien, levy, and seizure is normally suspended while the case is in Appeals.
15. However, enforcement action on a lien, levy or seizure CAP case will continue during the appeals process if the Collection group manager believes suspending the action would put Collection of the tax at risk. Appeals should be notified immediately if the Collection group determines the enforcement action should continue.
16. If the taxpayer claims a hardship would result if enforced collection action continues or resumes before the appeal is completed, an ATAO will suspend enforcement action until the local Taxpayer Advocate Service office determines if a hardship exists. Either the taxpayer or a Service employee may file ATAOs. If the Appeals employee believes a hardship would result if enforcement action is taken, the employee should file an ATAO on behalf of the taxpayer.
17. By law, levy action is suspended for rejected and terminated installment agreements during the statutory 30-day appeal periods and while the case is in Appeals if a timely appeal is requested. See IRC §§ 6331(k)(2)(B) and (D).
18. The appeal will be handled in the Appeals office serving the taxpayer's address.

8.7.2.2.3 (11-13-2001)

ACS Cases Under CAP

1. Taxpayers may make an oral request for a CAP appeal on ACS (Automated Collection System) cases as discussed below. This request for an appeal and statement about the issue is documented in the Comments section of the ACS Entity Screen.
2. A copy of the ACS screens ENTITY, COMMENTS and MODULE will be sent to Appeals by the ACS CAP coordinator.
3. Collection function will input the required codes (TC 971's) for levy suspension on rejected installment agreements. RRA 98 also provides that rejected installment agreements would have an independent administrative review before the rejection is communicated to the taxpayer.
4. Before being sent to Appeals, the taxpayer must discuss the case with an ACS manager. Unresolved cases will be forwarded to Appeals.
5. Appeals officers need to become familiar with the ACS Screens and History Codes to understand what happened on these cases. IRM 5.19.8 contains ACS appeal procedures. IRM 5.19.5 contains general ACS procedures. Exhibit 5.19.5-7 contains History Codes commonly used in ACS. The ACS CAP coordinator is available for any additional information.

8.7.2.2.4 (11-13-2001)

Customer Service Representative Cases Under CAP

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1. Most installment agreements that are terminated are in service centers for monitoring although Area offices also manually monitor some agreements. Customer service sites anywhere in the country may receive calls from taxpayers receiving letters proposing termination of installment agreements.
 2. The most common reasons for termination are:
 - A. Failing to meet agreed payments, or
 - B. Adding new unpaid liabilities subsequent to the installment agreement.
 3. When the IRS believes a taxpayer has defaulted, the IRS a notice is sent proposing termination of the installment agreement in 30 days. CP 523 is sent for service center cases, and Letter 2975 is sent for field Collection cases. Letter 2975 asks the taxpayer to contact the Service or appeal within 30 days. Otherwise, the agreement is terminated.
 4. There is another 30-day period after termination to appeal. RRA 98 provided the 30-day appeal period after installment agreement termination. If the taxpayer appeals during the first 30 days, no appeal is allowed during the second 30 days. See IRM 8.7.2.4.1.2(3).
 5. Taxpayers who request an appeal of a rejection or termination of an installment agreement must first discuss their case with the employee's manager.
 6. Cases unresolved after discussion with the manager are to be sent to the Appeals office serving the taxpayer's address.
 7. Form 4442, *Inquiry Referral*, will be used to transmit the information to the Appeals office.
 8. Faxes will generally be the transmission method as Customer Service Representative sites have the same 2-business day period to send cases on liens or levies to Appeals.
 9. Cases on rejections or terminations of installment agreement do not have the 2-business day requirement to send cases to Appeals; however, these cases should be expedited to Appeals, so faxes are still the preferred method of transmission.
 10. In addition to the Form 4442, which has space for a brief description of the problem, Customer Service personnel should also send a copy of the IADIS printout and any other relevant information.
 11. Terminated installment agreements now have an automatic reversion from status 64 (terminated installment agreement) to status 22 (ACS case) after 13 cycles. For any Appeals terminated installment agreement cases not closed by the twelfth cycle after an agreement is terminated, a STAUP 22-09 is input on these cases, for additional time. An additional STAUP may be necessary if the case is not resolved in the additional 9 cycles that were requested by the STAUP. See IRM 8.7.2.4.1.2(5) for more information about necessary STAUP action. Either the Collection function or Appeals may input the STAUP, per local arrangement, but Appeals is responsible for ensuring that it is done. Discuss any questions about these cases with the originating manager shown on the Form 4442.
 12. Appeals' organizational goal or objective is to complete these cases in 5 business days, unless there are case complexities that require more time for quality case consideration. Appeals will:
 - A. Return the Form 4442 via FAX or hand delivery, with a brief explanation of the decision to the manager of the initiating Customer Service Representative site.
 - B. FAX, or deliver, a copy of the taxpayer letter to the Customer Service Representative.

NOTE:

Due, in part, to the statutory levy restrictions, if the case is an installment agreement rejection or termination, the 5-business day criterion is not applicable. However, these cases warrant priority consideration and Appeals will work these installment agreement appeals in an expedited manner.

13. Complete reasons for Appeals' determination should be explained in the case memo.

8.7.2.2.5 (11-13-2001)

Case Receipt and Control under CAP

1. Since the Appeals organization has an objective or goal to complete CAP cases within 5 business days, special case receipt procedures are necessary, for example, transmitting files by FAX. At local option, the Area Director, Compliance and Area Director, General Appeals may work out procedures so that the managers in Collection groups can directly contact a particular Appeals/Settlement officer who will work these cases, provided ex parte communication restrictions are respected. See IRM 8.1.3.5 for more information about ex parte.
2. When the case is received, Records will date stamp the Form 9423, ACS case print, or Form 4442, and photocopy them for input to Appeals Consolidated Database System (ACDS). Records will need to input the case to ACDS on the date of receipt, at least to the extent of the minimum information needed to open a case.
3. Immediately upon receipt, deliver the case file to the Appeals/Settlement officer who will be working these cases or to the manager of the appeals/settlement officer, who will ensure that the Appeals/Settlement officer will immediately receive the case.
4. Generally, assign these cases a grade level of GS-13, unless management determines re-grading is warranted.
5. Four ACDS type codes have been created for these cases:
 1. CAPLV for levies,
 2. CAPLN for liens,
 3. CAPSZ for seizures, and
 4. CAPIA for rejections or terminations of installment agreements.
6. These cases will have no dollar amount shown, as that is not relevant to the appeal.

8.7.2.2.6 (11-13-2001)

Case Procedures under CAP

1. The Appeals organization has an objective or goal to complete CAP cases in 5 business days - unless there are case complexities that require more time for quality case consideration. Because of this 5-day goal, Appeals/Settlement officers should treat CAP cases as their first priority (unless a statute will expire on another case in less than 5 days).
2. When resource limitations rather than case complexities will not allow cases to be closed in 5 days, CAP cases should be worked in the following priority:
 1. First: in-business employment tax cases,
 2. Second: other lien and levy (includes seizure) cases, and
 3. Last: installment agreement rejections or terminations.

NOTE:

Cases with complex issues, such as some of the lien or seizure issues, cannot realistically be completed within 5 days. Employees should give the issue the necessary time for completion in a quality manner and not attempt to meet the 5-day goal when it is not realistic considering the complexity of the issue.

3. It is suggested that employees hold a conference with the taxpayer within 2 business days of receipt of the case to allow for maximum flexibility for decision-making and paperwork preparation.
4. The extremely stringent time frames were set for two main reasons: to give taxpayers an almost immediate decision and to ensure that taxpayers do not appeal these actions solely to delay collection. In addition, we wish to avoid inconveniencing third parties longer than is necessary when these parties are holding attached property.
5. Taxpayers who file a CAP request may be entitled to a Collection Due Process retained jurisdiction hearing or equivalent hearing if a CDP notice was sent out. If one of these options is determined more appropriate by Appeals, and agreed to by the taxpayer, the CAP case will be closed and the new hearing case opened.
 - A. If the case is determined to be a CDP case, advise the Collection group, or whatever function sent the CAP case to Appeals, of the change and request input of the appropriate TC 520 codes. See IRM 8.7.2.3.1.
6. Phone conferences are likely to be common on these cases.
 - A. If requested, allow taxpayers a reasonable time to schedule a conference. Normally this should be no more than 5 business days.
 - B. If the taxpayer does not elect a conference within the limits given, Appeals will make a decision based on available information.
 - C. Communicate and coordinate any delays with the revenue officer.
7. It is vital that the Collection case be fully and clearly documented, since missing and unclear information could cause a case to unnecessarily take more than 5 days to resolve.

the content of any illegible or unclear statements or documents or to secure a document referred to in the file that was not included with the file.

- B. Question the revenue officer about any unclear procedural matters, such as IRM requirements before a seizure is taken.
 8. If a taxpayer presents new information to Appeals that the revenue officer has not considered, Appeals may ask the revenue officer to review and comment on the information, taking into consideration the ex parte requirements.
 9. Appeals should review the case for appropriateness based on law, regulations, policy and procedures (National and Local), considering all the facts and circumstances.
 10. Local procedures will only be considered appropriate if they are written and in accordance with the IRM.
 11. Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse the Collection function's action, if evaluation of the taxpayer's history and current facts and circumstances reveal a more appropriate solution.
 12. Appeals should inform both the Collection function and the taxpayer of the decision as soon as possible once the decision is reached, and has been approved by the Appeals manager. Appeals manager approval may initially be oral to assist in speeding up the notification process.
 13. Appeals will cdecision. The decision may initially be given orally and followed up by a written closing letter.
 - A. If an oral decision is initially given, the written closing letter should be sent to the taxpayer no later than 3 business days after the oral decision. This may require faxing the closing letter.
 - B. After oral advice of the decision has been given to both Collection and the taxpayer, collection action may resume or the Appeals decision will be implemented, as applicable.
 14. The closing letter should clearly outline the following:
 - A. Any agreement reached with the taxpayer.
 - B. Any relief given, or
 - C. If the action of the Collection function was fully supported.
 15. Give a copy of this letter to the Collection function.
 16. Prepare an Appeals Case Memo (ACM), and provide a copy of it to the Collection function. The ACM should include complete instructions on what decisions were made and any action that will need to be completed e.g. establish an installment agreement for XXX amount per month, investigate discharge, input currently not collectible with XX closing code, whether there are no restrictions on enforcement, etc.
- NOTE:**
- Closing letters with sufficient information may serve as the ACM. Managers will verify the appropriateness of tone and completeness of such closing letters used as an ACM. Both the government's position and the taxpayer's proposal need to be discussed, and the rationale for and appropriateness of the Appeals Officer's decision must be clearly shown through the analysis of the taxpayers' history and current facts and circumstances.
17. If an ATAO has been filed by the taxpayer, give a copy of the closing letter and the ACM to the controlling local Taxpayer Advocate Service office.

8.7.2.2.7 (11-13-2001)

Effect of Decision under CAP

1. Decisions by Appeals are binding on the taxpayer and the Collection function. The Collection function will take the actions directed by Appeals. However, the default of the agreement by the taxpayer will release the Collection function from the terms of the settlement.
2. Material misrepresentation of fact or failure to fully disclose any material information by the taxpayer will make any agreement - such as a delay in lien or levy or an installment agreement etc. - reached on behalf of the Service voidable. Before the Collection function declares an agreement void under this provision, the Collection employee will confer with Appeals. If Appeals sustains the Collection function's action(s), the Collection function may resume any suspended actions.

3.7.2.2.8 (11-13-2001)

Reports

1. Appeals Centralized Database System (ACDS) type codes are used to track this program. The ACDS are used as follows:

ACDS Code Is used for

CAPLV	levies
CAPLN	liens
CAPSZ	seizures
CAPIA	rejected or terminated installment agreements

Closing codes are used under the following circumstances.

If the Collection Action is Use Closing Code When

Fully sustained	14	the collection action is supported with no change.
Not sustained	15	the collection action is completely overturned. For example, closing code 15 would be used when a levy is released and replaced by an installment agreement.
Partially sustained	16	only minor changes are made in the collection action. For example, if filing of a Notice of Federal Tax Lien is proposed, a minor change would be to give the taxpayer 10 more days to come up with the funds before the lien is filed. Closing code 16 is also to be used for situations where the taxpayer presents in Appeals a new acceptable proposal which was not offered to the Collection employee, and which the Collection employee would have accepted had he or she received it.

7.2.3 (11-13-2001)

Collection Due Process (CDP) Hearing under IRC § 6330 and/or IRC § 6320

1. The Restructuring and Reform Act of 1998 (RRA 98) gives taxpayers the right to a Collection Due Process hearing (CDP) with Appeals when they receive one of the following notices:
 - A. Notice of Federal Tax Lien Filing and Your Right to A Hearing Under IRC § 6320,
 - B. Final Notice - Notice of Intent To Levy and Notice of Your Right To A Hearing.
 - C. Notice of Jeopardy Levy and Right of Appeal
 - D. Notice of Levy on Your State Tax Refund - Notice of Your Right to a Hearing
 2. IRC § 6320 provides for giving a notice to the taxpayer after the filing of a Notice of Federal Tax Lien. This notice gives the taxpayer a right to a hearing with Appeals.
 3. IRC § 6330 provides for giving a notice to the taxpayer before taking levy action. The notice given for IRC § 6330 is also an IRC § 6331(d) notice of intent to levy notice.
 4. Taxpayers who timely request a hearing have the right to protest Appeals' determination in court.
 5. In the case of a levy on a state tax refund, or a jeopardy levy, the taxpayer has a right to a hearing after the levy.
 6. The taxpayer is entitled to one hearing for each taxable period under both IRC §§ 6320 and 6330.
- EXCEPTION:**
- An exception to this only one hearing per tax period rule for IRC § 6320 and/or IRC § 6330 would be if the IRS assesses an additional tax liability for the same tax period.
7. Appeals may hold hearings under IRC § 6320 and IRC § 6330 at the same time, if the timing of the two notices allows a second notice's hearing request to be combined with the hearing on the first notice.
 8. Taxpayers will be informed about their CDP appeal rights in the following items sent with the CDP notice:

- A. Publication 1660, *Collection Appeal Rights* .
- B. Publication 594, *The IRS Collection Process* .
- C. Form 12153, *Request for a Collection Due Process Hearing* .

9. Taxpayers request a CDP hearing in writing on Form 12153, or other written communication such as a letter. While by law, taxpayers are not required to discuss their problem with a Collection manager first; they should be encouraged to do so because their problem could be resolved without Appeals' consideration. Discussions may occur before or after the Form 12153 is submitted.

- A. If discussions with a revenue officer or ACS occur before the Form 12153 request is made, taxpayers should be advised that these discussions do not extend the 30-day period to make the request for a hearing with Appeals.
- B. If there are discussions with the revenue officer or manager after the Form 12153 request is made, and the case is fully resolved to the taxpayer's satisfaction by Collection, Form 12256, *Withdrawal of Request for Collection Due Process Hearing* , may be used to withdraw the Form 12153 request.

NOTE:

There is no need to send any information to Appeals on these cases that are resolved by revenue officer groups or ACS before the case file has been sent to Appeals.

- 10. If Appeals employees receive a Form 12153 from a taxpayer or representative who has not received any CDP notice, inform them they cannot have a Collection Due Process hearing without receiving a CDP notice. The right to the CDP hearing and the right to go to court begin with the notice. If Appeals receives such a case, where no CDP notice was ever sent, close it as a premature referral (closing code 20), with jurisdiction released.
- 11. If the taxpayer did not timely request a CDP hearing with Appeals, then the taxpayer has the right to request an "equivalent hearing" with Appeals. An equivalent hearing is one at which the taxpayer may raise, and Appeals will consider, all of the issues described at IRM 8.7.2.3(13). An equivalent hearing is equivalent to a CDP hearing in all ways except that there is no statute suspension, and the taxpayer does not have the right to seek judicial review of Appeals' decision at the conclusion of an equivalent hearing.
- 12. An Appeals employee who had no prior involvement with the unpaid tax, other than a prior CDP hearing, must conduct the hearing. However, the taxpayer may waive this requirement through use of Form 12218, *Waiver Form for Right to Request A New Settlement/Appeals Officer under Section 6320 and/or 6330* . It is important for the AO/SO to affirmatively state in the ACM/determination letter that he or she had no prior involvement with the taxpayer's relevant periods, or to state that a Form 12218 was secured. Any Form 12218 that is secured must be retained with the case file after closure.
- 13. The taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy including:
 - A. Spousal defenses,
 - B. The appropriateness of collection actions,
 - C. Other collection alternatives,
 - D. The existence or amount of the tax, but only if the taxpayer did not receive a notice of deficiency for that liability or did not have an opportunity to dispute the tax liability. See IRM 8.7.2.3.7.
- 14. An issue may not be raised at the IRC § 6320 or IRC § 6330 hearing if the taxpayer participated meaningfully in any previous administrative or judicial proceeding where the same issue was already raised and considered. It's important to remember that the taxpayer is precluded from reconsideration of an issue, but is not precluded from participating in a CDP hearing.
- 15. The Appeals employee must consider in the hearing and address in the determination letter/ACM the following "Big Three" areas:
 - 1. Verification from the Service that the requirements of any applicable law or administrative procedure have been met.
 - 2. Specific issues or challenges raised by the taxpayer.
 - 3. Whether the proposed collection action properly balances the need for efficient collection of taxes with any legitimate concern of the taxpayer that the proposed collection action is no more intrusive than necessary.
- 16. Thoroughly document these three areas in the case memo and the attachment to the determination letter, as the court will evaluate Appeals through our documented actions in determining whether to sustain Appeals. See IRM 8.7.2.3.10 for a more thorough discussion of the contents of the determination letter. Specific headings identifying the discussion of each of the "Big Three" areas are required in the ACM and determination

17. The taxpayer may seek judicial review of Appeals' determination in the Tax Court or U.S. District Court by filing a petition or complaint in the appropriate court within 30 days of the date of Appeals' determination. If taxpayers file an action in the wrong court, they have 30 days to petition the correct court. See IRM 8.7.2.3.9 for information on the appropriate court.
18. If the taxpayer wants Tax Court review of an Appeals' determination of a partial or complete denial of relief under IRC § 6015 (spousal defense) as well as other issues raised and determined in the CDP hearing, such as a collection alternative, the taxpayer should challenge such partial or complete denial of relief in the request for Tax Court review of the other issues, i.e. the collection alternative, filed within 30 calendar days after the issuance of Appeals' determination.
 - A. If the taxpayer only wants to obtain Tax Court review of the Appeals' determination of a partial or complete denial of relief under IRC § 6015, the taxpayer should challenge such partial or complete denial of relief in a petition to the Tax Court, as provided by IRC § 6015(e), within 90 days of Appeals' determination, rather than 30 days as in other CDP issues.
 - B. The taxpayer must be cautioned that, if a Tax Court petition is filed after the 30-calendar day period for seeking judicial review of Appeals' CDP hearing determination, then the Tax Court can only review the taxpayer's IRC § 6015 defenses.
 - C. Appeals will use all of the appropriate spousal defense letters and forms, in addition to the CDP Notice of Determination or CDP Waiver. Appeals must verify that TC 971 ac 065 (indicating receipt of a Form 8857 for an innocent spouse claim) is input on CDP cases with spousal defense issues. Follow other necessary procedures in IRM 104.5 concerning the requirements of spousal defense and the domestic abuse issue. Care should be taken to ensure that the CDP Notice of Determination/waiver and spousal defense Notice of Deficiency/other appropriate letter have the same issuance date.

1.7.2.3.1 (11-13-2001)

Revenue Officer/ACS Procedures under Collection Due Process Appeals

1. Revenue officers and ACS are to attempt to resolve the matter before sending the file to Appeals. Once a Form 12153 is filed to protect the 30-day period to request a hearing, the Collection function may work with the taxpayer as long as the taxpayer is willing to do so. After 45 days, if the case is not resolved or determined to be resolvable, the case will be sent to Appeals. The case may be retained as long as is necessary if it is believed to be resolvable. If it becomes necessary to send the file to Appeals, Collection will send a copy of the entire case file to Appeals. Form 12153-A, *CDP Referral Form*, is to be used in sending Collection cases to Appeals. This form will assist the Collection function in providing the necessary information Appeals needs for the CDP hearing.
2. The file is to include an attached summary statement that will include the following information:
 - A. Type of tax, periods, and the amount of the liability.
 - B. Dates of relevant contacts with taxpayer and/or Power of Attorney.
 - C. Key issues discussed, proposals made by either party, deadlines established.
 - D. Reason for the Lien or Levy action (taken or proposed).
 - E. Were alternative collection actions discussed? Why were these options not a viable solution?
 - F. Taxpayer's compliance with filing, federal tax deposits, estimated tax payments.
 - G. Relevant information regarding taxpayer's ability to pay.
 - H. Any prior collection activity that may have relevance to the revenue officer's action.
 - I. Identify any in-business trust fund liability cases.
3. In addition, the case file itself should contain the documentation required to verify the summary statement, including but not limited to:
 - A. TXMODs
 - B. Asset verification, (ACS locator Sources to verify S5/CIS when available)
 - C. Financial statements, and
 - D. Any other information that would help us in our determination.
4. The Collection function will enter the date the collection statute was suspended on the Form 12153-A and on the transmittal document such as Form 3210.
 - A. TC 520 cc76 should be used for lien CDP cases, and
 - B. TC 520 cc77 for levy cases.

- C. For cases where the lien and levy CDP notices were issued together, and the taxpayer files a hearing request on both notices, the TC 520 cc76 will be used. This is to ensure that IRS employees are aware a lien CDP hearing is involved. The general practice is to not file a lien in another jurisdiction when a lien CDP hearing is being held on the same tax periods. If there is a decision by Collection to file a lien when there is a lien CDP case on the same tax and tax periods in Appeals, Appeals is to be notified before the lien is filed.

NOTE:

CDP cases received before January 1, 2000 had a cc70. (Note that the cc70 would not stop an automatic assessment reversal (TC 608).) For cases closed before January 2001, a TC 550 needed to be input with the new statute date after the case was closed.

5. As of January 2001, the CDP CSED is systemically calculated and updated based on the TC 520 and TC 521. Both the TC 520 and the TC 521 need to be input after 1/1/2001 for the systemic CSED update to occur.
1. A TC 521 is input to close this pre 2001 TC 520.
 2. A new TC 520 may be input after 1/1/2001, using the original TC 520 date.
 3. Input the TC 521.
6. If the re-computed CSED is less than 90 days from the TC 521, the CSED is extended to equal 90 days. The exception, to the systemic update of the CSED, is IMF accounts involving joint income tax liabilities where only one spouse has requested the hearing. For MFT 30 accounts, input the appropriate IRM CSED TIN indicator with the TC 520. The indicators are as follows:
- A. "P" - CSED suspended only for the primary TIN spouse.
 - B. "S" - CSED suspended only for the secondary TIN spouse.
 - C. "B" - CSED suspended on both primary and secondary TINs. The CSED is systemically updated when the CSED indicator is "B."

NOTE:

If Appeals secures the signature/validation of a non-signing spouse after contact, the CSED TIN indicator needs to be corrected to "B" to ensure no levy action is taken on the originally non-signing spouse. See IRM 8.7.2.3.3(3) for more information.

7. The CSED is still suspended for the particular spouse when the CSED indicator is "P" or "S." However, the module will reflect the earliest CSED. When needed, the CSED reflected on the module can be updated by the input of a TC 550. For multiple assessment tax periods, update the latest CSED.

NOTE:

For entities like partnerships, the CSED will be suspended on the partnership. If one partner asks for a CDP hearing on that individual's own behalf, not that of the partnership, the system currently will not reflect this true CSED situation. Care must be taken to inform the Collection function of the actual entities that the statute is suspended for, i.e. only the partner asking for the hearing in this situation.

8. Because the statute will be computed by the system, it is vital that the correct TC 520 date is reflected.
- A. The TC 520 date needs to reflect the beginning date of the statute suspension period, which is the receipt date, unless this date is after the 30 days on a CDP request that is postmarked timely.
 - B. If the receipt date is after the 30 days but the postmark date is before the 30 days, the TC 520 date should be the postmark date. The postmark date will be used to show that the CDP hearing request was filed timely. This is to ensure that taxpayers receive a CDP hearing when they are entitled to one.
 - C. No TC 520 is entered if both postmark and received date are after 30 days. This is an equivalent hearing case.
9. If the taxpayer is a corporation (or a partnership or sole proprietorship where personal liability for taxes cannot be established without a TFRP) the case file should be noted whether or not a Trust Fund Recovery Penalty (TFRP) investigation is ongoing. There is no prohibition against asserting the TFRP against responsible officers while the corporation has a CDP hearing.
- A. If the file is not documented concerning a TFRP determination, Appeals will contact the revenue officer to clarify whether the determination to assert a TFRP has been made.
 - B. If the corporate taxpayer proposes an OIC on the corporate liability, Appeals must request the TFRP investigation be completed to determine total collectibility before the corporate offer can be evaluated for acceptability.
10. ACS will forward a copy of the taxpayer's written request for an appeal and any other

12153-A, *ACS Cover Sheet and Summary Statement*, noting the suspension of the Collection statute.

11. Appeals officers need to become familiar with the ACS Screens and History Codes to understand what happened on these cases. IRM 5.19.5 contains ACS procedures. Exhibit 5.19.5-7 contains History Codes commonly used in ACS. ACS Appeal procedures are in 5.19.8. The ACS CDP coordinator is available for any additional information.

8.7.2.3.2 (11-13-2001)

Case Receipt and Control under Collection Due Process Appeals

1. CDP or EH (equivalent hearing) taxpayers will be sent an acknowledgment letter no later than 30 days after receipt by Appeals. This letter will include a contact person's name and phone number and expected next action. Note that equivalent hearings are discussed in more detail in IRM 8.7.2.3.11.
2. While the five-business day expectation to close CAP cases does not apply to CDP hearings, these cases still warrant priority consideration. In addition, equivalent hearing/retained jurisdiction cases will require expeditious handling as there will be no Collection statute suspension and these will generally be active field Collection cases.
3. Three ACDS type codes have been created for CDP cases:
 - DPLV for levies
 - DPLN for liens
 - DPL2 for both liens and levies.

NOTE:

Use of DPL2 is delayed pending report capability to pick up the new code. For joint lien and levy notice situations that occur in the meantime, use DPLN.

4. If the Form 12153 is received with both the lien and levy boxes checked, the office should initially assume it is only a levy case, unless the information received from the Collection function indicates otherwise. Generally these cases should initially be carded in as only levy cases. (We expect this will be the most common occurrence.) However, the SO/AO assigned the case must make a determination as to which of the following situations apply:
 - A. The taxpayer checked the lien box in response to the verbiage in the Letter 1058 that says a lien could be filed at any time. However, there is no lien CDP notice (filing) contemplated by the Collection function, at this time. In this case, the original carding in as only a levy is appropriate.
 - B. The taxpayer has actually received both a 6320 and 6330 notice within the previous thirty days. In this case, use DPL2 (DPLN until DPL2 is available) as the type code.
 - C. The taxpayer has received both a 6320 and 6330 notice but one was issued more than thirty days before the hearing request. Again a second work unit should be established for the lien. Whichever work unit, lien or levy, was appealed late should be shown as an equivalent hearing.
 - D. There has been no 6320 notice but the Collection function is currently considering the filing of a Notice of Federal Tax Lien (NFTL). Refer the taxpayer to the Collection manager as a CAP case. They may be able to resolve the issue. If the taxpayer and Collection cannot resolve the issue, a Form 9423 should be completed and the taxpayer should be returned to Appeals. A second work unit should be established for a lien CAP case (CAPLN).
 - E. There has been no 6320 notice but there is an existing NFTL filed before 1/19/1999 that the taxpayer wishes to discuss. This can be handled as an issue within the consideration of collection alternatives but should not be carded in as a separate work unit, unless the taxpayer has filed a CAP request.
5. Appropriate CDP case segment codes will be entered in local field 7. Records employees and Appeals and Settlement Officers as well as their respective managers must ensure codes are accurately entered.

8.7.2.3.3 (11-13-2001)

Case Procedures under Collection Due Process

1. The Appeals Officer must first verify the timeliness of the CDP request and verify the input of the correctly dated TC 520 for each CDP tax period.
 - A. Details of this verification must be documented in the case activity record.
 - B. They must also be documented or at least summarized in the ACM. This is vital both for any potential court cases, future retained jurisdiction cases, and case review.
 - C. Appeals will ensure that any incorrect TC 520 dates are corrected as soon as they are noted.

NOTE:

In all cases this must be done before the TC 521 is input.

2. If in reviewing the file, the Appeals Officer determines the statute was not suspended, and it should have been, or the suspension was not for the correct date, the Appeals Officer will contact the originator to suspend the Collection statute appropriately.
3. In some cases, timely filed Forms 12153 are received that have only one spouse's signature on joint tax periods. Appeals should attempt to get written confirmation from the non-signing spouse that the spouse also wishes a hearing, unless the taxpayers are divorced or separated. Similarly, we may have a Form 12153 signed by an unenrolled practitioner, or an authorized practitioner may have a Form 2848, power of attorney that does not list all of the periods on the CDP notice.
 - A. Appeals will attempt to perfect these situations by securing the taxpayer's validation, or substitution of an authorized practitioner, or secure a corrected Form 2848.
 - B. Taxpayers are to be given a reasonable period of time to perfect the Form 12153 in all these cases.
 - C. If the initial unperfected CDP hearing request was timely, the perfected request will be treated as timely and the taxpayer will receive a CDP hearing.
 - D. A joint tax period that is not affirmed by the non-signing spouse will still be a CDP hearing for the signing spouse.
 - E. If the taxpayer does not secure an authorized practitioner or confirm the Form 12153 as the signing person, the CDP request will be closed as an unperfected case. The taxpayer may request an equivalent hearing later on these cases by sending in a perfected request.
 - F. In situations where a taxpayer with an authorized practitioner does not have all the CDP periods listed on Form 2848 and does not perfect the Form 2848, only those CDP periods listed on the existing Form 2848 may be discussed with the practitioner.
4. Appeals may use the Form 12256 if the case can be resolved before substantive Appeals discussions start. Once the substantive discussions start, a Notice of Determination letter must be issued, unless the taxpayer will sign a Form 12257, *Summary Notice of Determination. Waiver of Right to Judicial Review of a Collection Due Process Determination and Waiver of Suspension of Levy Action*.
 - A. In agreement situations where the taxpayer will not sign the Form 12256 or 12257, as applicable, the Abbreviated Notice of Determination and ACM may be used.
 - B. If the Service becomes aware that a CDP notice was issued prematurely, the Service will issue Letter 3212 to rescind the CDP notice. Taxpayers who have already requested a CDP hearing on these premature CDP notice cases may withdraw their request by signing Form 12227. See IRM 5.11.1.2.2.7 for details about when use of Letter 3212 and/or Form 12227 is appropriate.
 - C. When a Letter 3212 or Form 12227 is used, the taxpayer must be issued a new CDP notice if the Collection function later decides levy will be necessary.
 - D. In similar CDP lien notice situations, Letter 3333 or Form 12596 should be used.
5. Both the date and time of the proposed hearing must be clearly documented in the file. Arrangements for a hearing may be accomplished via telephone rather than a letter, but such agreements must be fully documented in the case history. Any requests for extensions of time or any failures to appear also need to be clearly documented in the case file--again a copy of an actual letter is the preferred documentation. All taxpayer correspondence should be retained in the administrative and closed file. The appeals officer needs to establish for the record that the taxpayer was given a fair and impartial hearing or the opportunity for one.
 - A. Good case management practices should dictate when we schedule a hearing and how long we allow a taxpayer to provide needed documentation. Setting up reasonable parameters for the taxpayer should occur early in the case consideration process--not after a significant period of time.
 - B. A case should be reviewed initially for indications of delay or procrastination

and, if round, then it's even more important that our "reasonable" timeframes need to be clearly stated and what will be the outcome if the information is not received. Again, we recommend that this be in writing and that 30 days is reasonable in a normal situation.

- C. A taxpayer that is delaying or not responding should be given a reasonable deadline to respond, generally no more than 30 days, in our final contact before sending the determination letter. Giving a taxpayer less than 30 days, or more than 30 days may be considered reasonable depending on the facts and circumstances. Recent litigation clearly indicates we need to establish we provided taxpayers with the opportunity for such a fair and impartial CDP hearing and that we gave them a reasonable chance to respond. See *Meyer v. Commissioner*, 115 T.C. 417(2000), regarding the requirement to offer a hearing.
 - D. We need to establish in the record that we gave everyone a CDP hearing that qualified for one and requested it timely. It is not appropriate to deny a CDP qualified taxpayer a hearing because the ONLY issues they raise are frivolous or otherwise do not qualify for consideration. This includes issues such as the underlying liability, when it does not qualify for consideration. We must still offer them a hearing.
 - E. Remember that we need to address the Big Three issues: legal and procedural compliance, taxpayer raised issues, and balancing of intrusiveness and need to collect. Even if "number 2" doesn't exist, there is still number 1 (legal and procedural compliance) and number 3 (the balancing of intrusiveness and need to collect.) If the taxpayer does not raise any issues we can consider, a statement to that effect must be included in the ACM/determination letter.
 - F. In instances where the record is clear that we offered a hearing, you do not need to send another letter giving them an additional 30 days. The record generally consists of copies of actual letters or a well documented activity record and indicates that we have clearly requested information or data and given the taxpayer a reasonable and it.
 - G. However in cases of no contact with the taxpayer, the record needs to show a minimum of 2 attempts to contact the taxpayer to offer the hearing or to obtain information that is clearly necessary based on the taxpayer's proposed resolution (as applicable).
 - H. It is important, in the absence of a copy of such a letter, that the case activity record clearly shows the request for information and the deadline. The record—either a copy of the letter or the activity record—should state that if we do not timely receive the requested data, the hearing will consist of the Collection administrative file and whatever information the taxpayer has already provided. Although a copy of such a letter is considered preferable to solely documentation in the activity record, such a letter is not required. Correspondence to taxpayers is to be retained in the closed file. In general, written correspondence may be more likely to be relied on by a court, with less likelihood of the AO being asked to testify.
 - I. A CDP hearing may be a face-to-face hearing or a telephone hearing or via correspondence. If taxpayers request a face-to-face hearing we must accommodate them so long as they are willing to come to our office or circuit office site.
 - J. The exception to this is: a face-to-face hearing should not generally be offered to those taxpayers who have been identified as potentially dangerous taxpayers (PDT). If a decision is made to allow such a hearing on a PDT, a hearing should not be held without CID/TIGTA protection at the hearing.
 - K. Taxpayers who use frivolous reasons for disagreement that Appeals rejects without consideration will be allowed a face-to-face hearing. If a face-to-face hearing is requested, inform the taxpayers - in advance - that Appeals will not consider those frivolous arguments. It is appropriate for the Appeals employee to terminate the CDP hearing after a few minutes if the taxpayer, after being warned, persists in raising issues that Appeals that are frivolous.
6. Jeopardy levies receive a CDP notice after the levy is served.
- A. An appeal right exists under IRC § 7429 as well as under CDP, and there may be interplay between the two statutes.
 - B. A taxpayer is entitled to a hearing under IRC § 7429 only when the IRS has made a traditional jeopardy levy. As it relates to CDP, a traditional jeopardy levy is one that is either before a CDP notice has been issued or sooner than 30 days after one has been issued. There are other limitations on jeopardy levy hearing rights that are not covered here, so consult with Counsel when in

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- C. In a traditional jeopardy levy, a taxpayer will be entitled to a Jeopardy Levy hearing under §7429 and a CDP hearing, too.
 - D. If Compliance finds that Collection is in jeopardy and commences levy action while an AO or SO is holding a CDP hearing (or after the CDP hearing was requested), then the Appeals employee will incorporate the appropriateness of the levy (reasonableness of the finding of jeopardy) in the CDP hearing. There is no separate right to an IRC § 7429 hearing at this point in time.
 - E. Counsel anticipates that an abuse of discretion standard will apply in these cases also. If the CDP request is late and an Equivalent hearing (EH) is underway, Appeals will incorporate the levy action into the EH.

8.7.2.3.4 (11-13-2001)

Recording Hearings

1. IRC § 7521, which was part of the Taxpayer Bill of Rights 1 (TBOR1), provided for audio recordings in conferences dealing with Examination and Collection issues. At the time the Service was implementing this audio recording provision, it was determined the provision was not mandatory for Appeals, because people chose to come to Appeals. Dealing with Appeals was not a mandate, like it was for dealing with Collection and Examination functions. Counsel has given Appeals advice that the CDP provisions do not change that discretionary status.
2. Appeals made a decision at the time when the IRC § 7521 procedures were implemented to follow the Service procedures. This continues to be our practice.
3. Both the Examination and Collection program IRM's allow stenographic recordings. Therefore, Appeals will also allow stenographic recordings to be made by court reporters provided these court reporters have the credentials noted below and the taxpayer has given the requisite 10-day advance notice as required in IRC § 7521. Appeals will audio record any stenographic recordings and request a copy of the stenographer's record.
4. In addition, Appeals will allow the taxpayer to have a court reporter in the Appeals' office and the taxpayer/representative participating via speakerphone. This is a logical variant since the nearest Appeals' office may be some distance from the taxpayer or representative. This will be allowed provided the 10-day advance notice is given and the court reporter has the credentials noted below. As noted above, Appeals will audio record any of these stenographic recordings.
5. The stenographer must have one of the following credentials to be allowed to make a stenographic recording in Appeals.
 - A. Be qualified as a court reporter of the United States District Court;
 - B. Be licensed or certified by any state to be a court reporter or to take depositions; or
 - C. Be an independent reporter qualified to take depositions for use in a United States District Court.
6. Video recordings will not be allowed.

8.7.2.3.5 (11-13-2001)

Appeals Referral Investigation (ARI) - General

1. Revenue officers are to obtain all relevant information and files pertaining to the taxpayer's appeal, such as the trust fund recovery penalty file, or any other information necessary for Appeals' determination that is not included in the Collection file, or obtainable by Appeals, requiring such a field investigation. (See 8.7.2.3.1 above.)
2. When additional information is needed, Appeals should make a written request outlining the specific information/action needed. Form 2209, Other Investigation, may be used for this purpose. Offices may also use Form 10467 or other forms that are locally acceptable for this purpose.
 - A. It may not always be necessary, however, to request an Appeals Referral Investigation (ARI). Carefully review the file, especially the history, as the revenue officer may have already taken those actions. Also, there are some items that Appeals can readily verify without incurring additional delay from an ARI. Appeals employees should use their judgment as to which items can be verified without the Collection function's assistance.
 - B. Before sending these investigations, Appeals will secure financial statements, Form 656, if applicable, and any other necessary documentation that must be

-
- C. If the taxpayer will not supply this necessary information to Appeals, the Form 2209 will not be sent to Collection, and the Notice of Determination/Decision letter will be issued. The Appeals employee should give the taxpayer a reasonable period of time to supply the necessary information.
 - D. The ACM/determination letter should note that the taxpayer did not provide the requested documentation so the alternative could not be considered.
3. To the extent possible, these referrals should be given high priority since they involve CDP/Equivalent hearings. Denote the top of the referral form used, in red ink, "CDP Case in Appeals." These referrals should be completed within 45 days, when feasible. However, Collection may request extensions depending upon the circumstances.
- A. However, when additional investigation is needed, or if the financial statements require further verification (i.e. the information is more than 6 months old), attach the financial statements to Form 2209 (or other locally accepted document) and send them to revenue officer as an ARI. Denote across the top center, in red ink, "CDP Case in Appeals."
 - B. On the form advise Collection that: "We are conducting a CDP/Equivalent hearing and the taxpayer has raised (specify the Collection alternative(s) raised that need verification) which require a detailed and verified financial analysis. Please see the attached Form(s) 433-A/433-B (and any other documentation attached, such as a copy of the Form 656, when applicable) and verify necessary items (or, if you need verification or information not generally required by IRM Part 5 for the named Collection alternative... "Verify/secure the following items because:"). Attach any and all supporting documents.
 - C. Note that, in general, OIC's and Currently Not Collectible (CNC) cases have the most financial verification requirements. These requirements vary based on the dollar amount of the liability. See IRM's Part 5.8 and 5.16 for the applicable requirements.
 - D. When sending an Appeals Referral Investigation to Compliance, the taxpayer should be notified in a brief letter that states in part: "You have requested consideration of issues [specify type] that require the expertise of the investigative functions of the Service. While Appeals will maintain jurisdiction of your case, we have requested further assistance to research and verify the information you have provided. It may be necessary for Service personnel to contact you for information necessary to expedite this review. The Service employee may need to contact third parties to verify some of this information. The information we have requested is needed to help us reach a resolution of your appeal."
 - E. Settlement officers/appeals officers will attach a copy of the taxpayer referral letter to the ARI. The purpose of the letter is two-fold: to more fully inform the taxpayer of the purpose and length of Appeals' consideration, and to assure Compliance employees that the taxpayer is aware that contact may be necessary and appropriate while their case is under Appeals' jurisdiction. Compliance will send out the third party notice, when required. The party making the contact is the one required to send the notice and to keep the information archived in case there is a request for disclosure. The statement above, in the letter to the taxpayer, does not constitute the required third party notice.
 - F. The independent administrative review required for rejected IA's or rejected OIC's will not be done by Compliance on a CDP case. The required independent review is done by the review of the Appeals Manager and signing of the Form 5402 (or local variant).
 - G. A copy of the ARI or other locally determined document should be routed to Records. Records will update the action to DDJRET, which will automatically update the status to E/DD. Records will also indicate the date the case was suspended while awaiting the information from or action by the other function. Similarly, upon return from Compliance, a copy of the ARI or some other locally determined document will be used to return the case to the appropriate status. The date of receipt of the information will be entered in the "From" field on ACDS.

1.7.2.3.6 (11-13-2001)

:DP Offer in Compromise ARI Procedures

1. During a Collection Due Process (CDP) or an Equivalent Hearing assigned to Appeals, an Offer in Compromise (OIC) may be submitted by the taxpayer as an alternative resolution. Appeals will retain jurisdiction over these cases; however, the determination of an acceptable offer amount may require input from Compliance.
2. Appeals will complete the initial processing and perfection requirements on offers submitted during a CDP or an Equivalent Hearing. Appeals will also request necessary documentation from the taxpayer to verify the Collection Information Statement(s) (CIS), prior to requesting input from Compliance.
3. Once Appeals has completed the initial processing, perfection of the offer submission and secured CIS verification, they will send an Appeals Referral Investigation (ARI) to Compliance. The ARI from Appeals may request either a CIS analysis or an OIC recommendation. An ARI requesting CIS analysis will be assigned to a revenue officer in the field office covering the taxpayer's location. An ARI from Appeals requesting an OIC recommendation will be assigned to the Offer in Compromise Group to investigate. The ARI requesting an OIC recommendation will be received from Appeals with the following information provided:
 - A. Perfected Form 656,
 - B. Required Collection Information Statements,
 - C. CIS verification that can reasonably be obtained from the taxpayer by Appeals, and
 - D. Appeal Referral Investigation request on Form 2209, Other Investigation, or Form 10467.
4. An ARI from Appeals requesting an offer recommendation will be assigned to an investigating employee to complete the investigation, using normal assignment procedures. These will be controlled in inventory as an Other Investigation (OI). Do not add the offer to Automated Offer In Compromise (AOIC) as an open offer investigation. Appeals will be responsible for the input of transaction code 480. The open transaction code 520 will suspend the Collection statute expiration date for all periods included on the Form 656.

NOTE:

Request for expeditious treatment of an ARI from Appeals will be based on local discussion and agreement.

5. The investigating employee will complete the offer investigation based on the procedures in IRM 5.8.
6. Once the OIC investigation has resulted in a determination:

f...

Then...

1. Secure an amended Form 656, if appropriate.
2. Add the offer to AOIC using the pending date of the original Form 656.
3. Complete the necessary closing reports to process an acceptance recommendation
4. Process through normal approval authorities
5. Once approved, mail the acceptance letter and close the offer on AOIC, as an acceptance.
6. Close the ARI back to Appeals with a copy of the Acceptance Letter, Form 7249, and closing reports.

Appeals will conclude their CDP file with the taxpayer regarding the disposition of the CDP or Equivalent Hearing.

The investigating employee will:

1. Not add these offers to AOIC for acceptance or prepare Form 1271.
2. Complete a recommendation report discussing the facts of the investigation and the reasonable Collection potential.
 - Include IET(Income Expense Table) and AET(Asset and Equity Table) with the Recommendation Report
3. Discuss the reasonable Collection potential computation with the taxpayer and advise the taxpayer that Appeals retains jurisdiction and will make the final determination.

The OIC can be recommended for acceptance

The Offer cannot be recommended

Report to Appeals with the original offer documents and verification. Independent Administrative Review is not required.

The taxpayer agrees with the results of the investigation, but cannot increase their offer.

Follow Steps 1 through 4 above. Do not solicit a withdrawal from the taxpayer.

The investigating employee will:

1. Not add these offers to AOIC or prepare Form 1271.

2. Close the ARI back to Appeals recommending that the offer be returned (to the taxpayer without action) for failure to provide requested CIS verification.

Include a closing narrative discussing the information requested, the deadline given, and the reason the requested information is necessary to make a determination. Independent Administrative Review is not required.

The taxpayer has failed to provide requested verification necessary to make a determination

- When the Appeals Referral Investigation is returned to Appeals recommending return of the offer or rejection of the offer, all original documents must be retained with the closed ARI file in Appeals.

- The Form 3210 will be used to transmit the closed ARI to Appeals.

8.7.2.3.7 (11-13-2001)

Exclusions From CDP Consideration

1. The taxpayer may raise any relevant issue at the conference such as:
 - A. Appropriate spousal defenses, (Feature code SD should be used when spousal defenses are raised.)
 - B. Appropriateness of Collection actions, and
 - C. Collection alternatives, such as an installment agreement, offer in compromise, substitution of other assets, etc.
2. However, some taxpayers have tried to raise issues concerning the failure or refusal to comply with the tax laws SOLELY because of "moral, religious, political, constitutional, conscientious, or similar grounds." Appeals is required to offer a hearing under IRC § 6320 and IRC § 6330 even if the above matters are the only issues raised. While a hearing must be offered, advise taxpayer that such issues, and any other frivolous arguments raised, are without merit and have been repeatedly rejected by the courts. Accordingly these arguments will not affect the determination of taxes or consideration of collection alternatives and will be rejected. Document the case history that the taxpayer was given an opportunity to raise non-frivolous issues.
3. If no non-frivolous issues are raised, issue the determination letter promptly, after considering numbers 1 (verification) and 3 (balancing) of the "Big Three." Ensure that your attached write-up indicates that the taxpayer was informed Appeals has rejected such issues and that the taxpayer was invited to raise any legitimate issues that could exist.
 - A. This is to establish that Appeals provided to all taxpayers, who qualified for one, a CDP hearing.
 - B. If taxpayers who receive CDP notices file timely CDP requests, Appeals will not advise the taxpayers they may not have a CDP hearing, even if the only issues they raise are frivolous or otherwise do not qualify for consideration. For example, if the only issue raised is liability, when it does not qualify for consideration, the taxpayer still gets a hearing.
 - C. In some cases where no non-frivolous issues are raised, the hearing may consist solely of a review and consideration of the Collection file and the taxpayer's CDP request contents.
 - D. Remember that appeals officers always need to address the Big Three. So, even if "number 2" (issues raised by the taxpayer) doesn't exist, there is still number 1 (legal and procedural compliance) and number 3 (the balancing of intrusiveness and need to collect.), and, as such, still matters to discuss in a hearing.
4. An issue may not be raised at the IRC § 6320 or IRC § 6330 hearing if the taxpayer participated meaningfully in any previous administrative or judicial proceeding where the same issue was already raised and considered. It's important to remember that what is precluded is NOT the CDP hearing but the reconsideration of an issue.
 - A. For example, CAP cases preceded many of these early CDP notices. In CAP, it

is not required to consider if all legal and procedural requirements were followed, only those raised by a taxpayer (or any noted by the settlement officer or AO in reviewing the Collection file). There is also no requirement to balance less intrusive methods with the need for efficient collection of the taxes.

However, the taxpayer could raise an issue in CDP that was identical to one raised and considered in CAP. That issue would therefore be precluded in CDP - and we would need to document why it was excludable. Any other collection-related issues the taxpayer chose to raise would be considered under CDP as well as the legal, procedural verification, and the "intrusive" balancing.

- B. A prior CAP hearing on any given tax period(s) does not preclude a later CDP hearing for the same tax period(s). What is precluded is the raising of issues at the CDP hearing that were raised and considered at a prior administrative or judicial proceeding where the taxpayer participated meaningfully - which could include a prior CAP hearing. The Appeals Officer who is assigned the CDP case will need to sort through the issues being raised at the CDP hearing to determine if they were "raised and considered" at the prior CAP hearing. Those issues that were previously "raised and considered" will not be readdressed at the CDP hearing.
- C. Any issues not previously considered may be fully considered at the CDP hearing. If there is a question whether a given issue was FULLY "raised and considered," give the taxpayer the benefit of the doubt on this test - at least as it relates to prior administrative hearings. At the end of the CDP hearing, the explanatory attachment to the determination letter will discuss all of the issues and state the disposition of each issue.

Continue -

34 Am Jur 2d, Federal Taxation (2000) ¶ 40204, 42039.

INTERPRETIVE NOTES AND DECISIONS

Value of lottery winnings unpaid at time of death are includable in estate; value of remaining payments is not, as matter of law, equal to value determined under § 7520 tables since valuation tables do not take account of nonmarketability of right to receive payments. *Estate of Shackelford v United States* (1998, ED Cal) 98-2 USTC ¶ 60320, 82 AFTR 2d 5538.

In determining value of future distributions of lottery winning, departure from private annuity tables

prescribed under 26 USCS § 7520 is appropriate where, as matter of law, payments could not be assigned, hypothecated, collateralized or levied, and accordingly discount for restrictions on marketability would be appropriate. *Estate of Shackelford v United States* (1999, ED Cal) 99-2 USTC ¶ 60356, 84 AFTR 2d 5902, judgment entered (1999, ED Cal) 1999 US Dist LEXIS 16628.

§ 7521. Procedures involving taxpayer interviews.

(a) **Recording of interviews.** (1) **Recording by taxpayer.** Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) **Recording by IRS officer or employee.** An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

(A) informs the taxpayer of such recording prior to the interview, and

(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

(b) **Safeguards.** (1) **Explanations of processes.** An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer's rights under such process, or

(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer's rights under such process.

(2) **Right of consultation.** If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

(c) **Representatives holding power of attorney.** Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

(d) **Section not to apply to certain investigations.** This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service.

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1989, P.L. 101-239, Sec. 7816(u)(1), redesignated Code Sec. 7520 (as added by P.L. 100-647, Sec. 6228(a)) as Code Sec. 7521, effective for interviews conducted on or after 90 days after 11/10/88.

In 1988, P.L. 100-647, Sec. 6228(a), added Code Sec. 7520, effective for interviews conducted on or after 90 days after 11/10/88.

—P.L. 100-647, Sec. 6228(b), of this Act provides:

“(b) *Regulations with respect to time and place of examination.*—The Secretary of the Treasury or the Secretary's delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act [11/10/88].”

Response letter from Larean of the IRS

- A. This requester put way to much information in the requester's request for a hearing. You just need to keep it simple.
- B. Notice that all the cases Larean quotes are tax court cases in which a IRS attorney is selected to be the judge in the case. So, what kind of a ruling do you expect?
 - 1. If the IRS would enter used toilet paper into evidence the tax court judge would allow it.
 - 2. If you want to enter in substantive evidence look to have it denied.
- C. The Request for a Due Process Hearing is not the time to assert your arguments.
- D. Keep it simple.

Internal Revenue Service
General Appeals Programs
Appeals Office
605 West Fourth Avenue
Suite 230A, MS A680

Department of the Treasury

Person to Contact:

Larean _ _
Employee ID Number: _
Tel: (_ _ _) _ _ _
Fax: (_ _ _) _ _ _

Refer Reply to:

AP:G:SE:ANC:LVB

In Re:

Due Process - Levy

Tax Period(s) Ended:

12/1995, 12/1996 12/1997 12/1998
12/1999

Date: November 13, 2002

Dear

You have requested a Collection Due Process Hearing under IRC §6330. Your request for the Hearing was filed within the required 30-day period and therefore you are entitled to a Collection Due Process Hearing. The Collection Statute is suspended. Please contact me within 30 days of the date of this letter to arrange a mutually convenient time for a hearing.

You need to be aware that under Treasury Regulations Section 601-106(b), Statement of Procedural Rules, Appeals cannot consider constitutional issues or challenges to the constitutionality of income taxes, religious, moral or frivolous legal arguments.

In your letter attached to Form 12153 Request for a Collection Due Process Hearing, you stated, in part:

- "I am not a 'taxpayer' as that term is defined within IRC §7701(a)(14)'
- "From this section (referencing §6201), it is clear that the Secretary's authority is limited to the assessment of those taxes which are either payable by stamp or those for which returns or lists have been made. However, in my case, there are no returns. I had no requirement to file any returns, because returns are only required to be filed by those persons made liable for (or subject to) a tax."
- "Please be aware that I am a citizen of the United States and have received no foreign-earned income for the years in question, therefore I have no taxable income."
- "In conclusion, the facts and laws presented herein provide evidence that the Internal Revenue Service is acting outside of it's lawful authority by erroneously assessing a tax against me for which I am not liable, and further by attempting to collect such erroneously assessed tax by methods not authorized to be taken against me."

I will continue to follow court precedents with respect to any arguments that have been held to be frivolous or invalid by the courts.

- In Pierson v. Commissioner, 115 T.C. --, No 39 (2000), the Tax Court determined that Mr. Pierson asserted “frivolous and groundless arguments” during Court review of his due process levy hearing when Mr. Pierson filed a written “statement in which he asserted that he is not liable for the underlying taxes based on frivolous and groundless arguments, including the following:
 - According to 6331(a) and the fact I am not an elected official, or an employee of the United States of America or one of its possessions, and not receiving an income from the government, (upon whom a levy or notice of levy could be served) the “Notice of intent to levy” should not be allowed to be used on the citizens and general public.”
 - The Tax Court then warned that such frivolous and groundless positions could be subject to IRC § 6673(a)(1) court awarded sanctions and costs. “However, we regard this case as fair warning to those taxpayers who, in the future, institute or maintain a lien or levy action primarily for delay or whose position in such a proceeding is frivolous or groundless.”

In the letter attached to your Request for A Collection Due Process hearing, you stated:

- “It is clear that is the duty of the Appeals Office to determine the lawful basis of any assessment which is disputed.” The following is in response to the statement in your letter:
 - I relied on and have included copies of Form 4340 Certificate of Official Record.
 - The Tax Court in Davis v. Commissioner, 115 T.C. --, No. 4 (2000), determined that the Appeals Officer could rely on Form 4340 to verify that applicable law or administrative procedures have been met per IRC § 6330(c)(1). In Wylie v. Commissioner, T.C. Memo 2001-65, the Tax Court again sustained the Appeals Officer’s reliance on the Form 4340.
 - I relied on the Tax Court’s reference in Davis to IRC §§ 6331(a) and 6331(d) as legal authority for the government’s right to levy.

In another part of the letter attached to your request for a Collection Due Process Hearing, you stated that you intended to address the liability issue and cited 26 USC § 6330:

(c)Matters considered at hearing

(2) Issues at hearing

(B) Underlying liability – The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

Statutory Notices of Deficiency were issued to you for each of the relevant tax years. The Notices were all addressed to you at:

This is the same address you wrote on the Form 12153 Request for a Collection Due Process Hearing. The dates the Notices were issued are as follows:

- 1995, 1996, 1997 and 1998 were all issued on October 20, 2000
- 1999 was issued on May 18, 2001

You added emphasis to the phrase: **or did not did not otherwise have an opportunity to dispute such tax liability**. The or is controlling. You get one or the other, not both. You received the Notices and did not petition the Tax Court for further consideration of the liability issue. Therefore you are now precluded from raising the liability issued during an Appeals Collection Due Process hearing. Several Court cases have upheld this portion of the law. I have provided a copy of the following case:

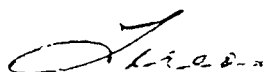
- **Curtis B. Keene v. Commissioner;** T.C. Memo. 2002-277; No. 6361-02L (1 Nov 2002)

The remaining issue that you may raise during a Collection Due Process Hearing is a discussion of collection alternative. In order to qualify for a collection alternative, such as an installment agreement or offer-in-compromise, you must have filed all tax returns that are due. I have enclosed Forms 433-A & B. If you are interested in a collection alternative, please bring the completed financial forms and completed tax returns to the Hearing.

You may be represented by an attorney, certified public accountant, or a person enrolled to practice before the Internal Revenue Service. However, your representative must submit a Form 2848, Power of Attorney, or similar written authorization. If you need more information about requirements for representing taxpayers, Treasury Department Circular 230 is available at any IRS office

If you do not contact me within the 30-day time period, I will need to issue a determination letter based on the information in the file and any information that you have provided.

Sincerely,



Larean
Appeals Officer

Enclosures:

Pierson v. Commissioner, 115 T.C. —, No 39 (2000)

Davis v. Commissioner, 115 T.C. —, No. 4 (2000)

Wylie v. Commissioner, T.C. Memo 2001-65

Curtis B. Keene v. Commissioner; T.C. Memo. 2002-277; No. 6361-02L (1 Nov 2002)

Forms 4340 for 1995, 1996, 1997, 1998 & 1999

Forms 433 A & B

Withdraw A collection Due Process Hearing

- A. Exhibit A is the IRS Memorandum for withdrawing from a request for a CDP hearing using form 12256.



Internal Revenue Service

DEPARTMENT OF THE TREASURY

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Tax Regulations - Collection Due Process Procedures - Section 3401 of the IRS Restructuring and Reform Act of 1998 (RRA 98)

July 9, 1999

MEMORANDUM FOR

REGIONAL CHIEF COMPLIANCE OFFICERS
ASSISTANT COMMISSIONER (INTERNATIONAL)

FROM: Charles W. Peterson, /s/ Charles W. Peterson, Assistant Commissioner
(Collection) OP:CO

SUBJECT: Collection Due Process Procedures - Section 3401 of the IRS Restructuring
and Reform Act of 1998 (RRA 98)

This is to provide procedures for taxpayers to withdraw their request for a Collection Due Process (CDP) hearing.

Attached is a copy of Form 12256, *Withdrawal of Request for Collection Due Process Hearing*. This form is approved for use by taxpayers to withdraw their request for a CDP hearing. The catalog number for this form is 27779K.

Form 12256 is available to taxpayers who have requested a CDP hearing as a result of an appropriately issued CDP notice. If the taxpayer requested a CDP hearing as a result of an erroneously issued L-1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, Form 12227, Withdrawal of Request for Collection Due Process Hearing Under Internal Revenue Code Section 6330 should be used along with Letter 3212 to rescind the L-1058.

Some taxpayers file requests for CDP hearings primarily to preserve their CDP rights in the event they are unable to reach a satisfactory resolution with Collection. A taxpayer that reaches a satisfactory resolution with Collection after filing the CDP hearing request can use Form 12256 to withdraw his or her request. When resolution of the account is reached, the revenue officer can explain to the taxpayer his or her option to withdraw the request for a CDP hearing and the effect of doing so. However, the decision to use Form 12256 belongs to the taxpayer. A taxpayer can also withdraw his or her request for a CDP hearing with Appeals, if the case is resolved prior to the commencement of the CDP hearing with Appeals.

Forms 12256 submitted by taxpayers need to be stamped with the date of receipt and forwarded to Appeals via Form 3210, Document Transmittal. If the CDP hearing request was not previously submitted to Appeals, forward both forms together. Keep copies for the case file.

Upon receipt of the withdrawal request, Form 12256, the suspension of the statute of limitations on the period of collection under the provisions of IRC Sections 6320 and 6330, is no longer in effect. Request SPf to input the TC 521 cc 70. The TC 521 will reverse the status 72. The case will return to status 58 unless a STAUP is requested. Request STAUP to status 26.

Exhibit # 1 of 2

The suspension of the Collection Statute Expiration Date (CSED) ends on the receipt date of the withdrawal request. It is not necessary to input the TC 550 to update the system with the new CSED, if the input of the TC 550 is not critical to the resolution of the account. When the TC 550 is needed, include a copy of the Form 12256 with the request for transaction input. Please share this information with your employees that issue CDP hearing notices and their managers. These procedures will be addressed in the next manual transmittal of the IRM 5.1, General Handbook, Chapter 9, Taxpayer Rights.

District personnel should direct any questions through their management staff to the appropriate regional contact.

Attachment (Requires Adobe Acrobat Reader)

Exhibit A 2 of 2

Office of Chief Counsel Notice

- A. This is the official guidelines on handling of Collection Due Process from the Chief Counsel Office.
- B. Exhibit A is a 41-page report. If you read it you will find that it is very one sided, especially the tax court section where they show how to slam-dunk you.

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2001-038

Upon Incorporation

Subject: Collection Due Process Cases

Cancel Date: into the CCDM

Purpose: The purpose of this Notice is to provide guidance on the handling of Collection Due Process (CDP) cases arising under the provisions of section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 685 (1998). The Act was signed into law on July 22, 1998, and is codified at sections 6320 and 6330. The CDP provisions became effective January 19, 1999. The text that follows will appear as an item on the Procedure and Administration Website and will be updated regularly.

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Filing Instructions: Binder Part (35) _____ Master Sets: NO _____ RO _____
NO: Circulate _____ Distribute X to: All Personnel _____ Attorneys _____ In: all offices _____
RO: Circulate _____ Distribute X to: All Personnel _____ Attorneys _____ In: all offices _____
Other National and Regional FOIA Reading Rooms _____
Electronic Filename: CDP3.pdf _____ Original signed copy in: CC:F&M:PM:P _____

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I. Background Material

Sections 6320 and 6330; Temp. Treas. Reg. § 301.6320-1T, and Temp. Treas. Reg. § 301.6330-1T; H.R. Rep. No. 105-599, 105 Cong., 2d Sess. 1-368 (1998); General Explanation of Tax Legislation Enacted in 1998 (Blue Book), Staff of the Joint Committee on Taxation (1998).

II. Coordination of CDP Cases with the National Office

Chief Counsel Notice CC-2001-008, dated February 1, 2001, sets forth the procedures for the review by Procedure and Administration (PA) of defense letters to the Department of Justice and filings with the Tax Court in CDP cases. Effective as of the date of this Notice, all defense letters to the Department of Justice on CDP matters must be referred to TSS4510 for assignment and pre-review. Additionally, all pleadings, except for answers, motions, trial memoranda, briefs, and any other documents to be submitted to the Tax Court in a CDP case must be referred to TSS4510 for assignment and review. All offers of settlement or other issues in defense in any CDP case must likewise be referred to TSS4510 for assignment and review. Additional procedural guidelines for submission of draft documents for review to TSS, including a list of the documents which should be faxed to TSS4510 when sending in the first matter for review in a particular case, are set forth in the Notice.

Primary responsibility for all judicial matters arising in CDP cases has been transferred from Branch 3 of Administrative Provisions and Judicial Practice to Branch 1 of Collection, Bankruptcy & Summonses (CBS). Field attorneys seeking informal advice regarding CDP may contact Branch 1 (CBS), at 202-622-3610.

III. Assisting Appeals in Reducing CDP Inventory

Notice N(30)000-337a, dated May 24, 2000, announced a Chief Counsel program to assist the Office of Appeals in its efforts to reduce its significant CDP inventories. The program entails providing a dedicated counsel resource to Appeals offices in resolving legal questions arising in CDP hearings. Associate Area Counsel designate experienced attorneys to be available to provide prompt oral or written legal advice in resolving CDP issues. Associate Area Counsel, in turn, coordinate complicated or novel issues with National Office CDP experts. In order to ensure the uniformity of advice being given, Associate Area Counsel and Appeals should identify recurring legal issues, and Associate Area Counsel should forward to Branch 1 (CBS), copies of any advice given on such issues. Local and National Office Counsel also will provide direct assistance to Appeals in the design and implementation of Appeals training programs.

IV. Collection Due Process Overview

A. Notice of Federal Tax Lien - Section 6320

Prior to January 19, 1999, there was no requirement that the Service notify the taxpayer when a Notice of Federal Tax Lien (NFTL) had been filed. RRA § 3401 added section 6320 to provide that the Service must notify in writing the taxpayer against whom a NFTL has been filed and provide the taxpayer an opportunity for a CDP hearing before an impartial appeals officer. The post-lien filing notification (CDP Notice) under section 6320 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail to the taxpayer's last known address not more than five business days after the day the NFTL is filed. Among other things, the notification must inform the taxpayer of the right to request a hearing before the 31st day after the end of the five-business-day period in which the Service has to send the taxpayer a CDP Notice. Temp. Treas. Reg. § 301.6320-1T(c)(2)Q&A-C30. This notification is given by Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing Under I.R.C. § 6320. The taxpayer is entitled to one such hearing per tax period before an appeals officer who has had no prior involvement with respect to that tax period. CDP hearings with respect to liens may be held in conjunction with hearings under section 6330, involving levies. The period of limitations on collection with respect to that tax period is suspended while the CDP hearing and any appeal of that hearing are pending.

A taxpayer who does not request a CDP hearing under section 6320 within the 30-day period is not entitled to a CDP hearing, but is entitled to an equivalent hearing with Appeals as described in Temp. Treas. Reg. § 301.6320-1T(i). A taxpayer may judicially appeal a determination resulting from a CDP hearing. A taxpayer, however, may not appeal to a court any decisions made by an appeals officer at an equivalent hearing. In Johnson v. Commissioner, 2000 U.S. Dist. LEXIS 8320, 2000-2 U.S.T.C. 50,591 (D. Or. May 24, 2000), the taxpayer did not timely request a CDP hearing and was given an "equivalent" hearing under Temp. Treas. Reg. § 301.6330-1T(i). The court held that there was no provision for judicial review of the Service's determination in an equivalent hearing.

B. Prior to Levy - Section 6330

RRA § 3401 added section 6330 to provide that (except in the case of jeopardy levies or levies on State tax refunds) no levy may be made on any property or right to property of any taxpayer unless the Service sends the taxpayer a CDP Notice at least 30 days before the levy is made which provides the taxpayer with an opportunity for a CDP hearing. In jeopardy situations and in cases where a levy is made on a State tax refund, a CDP Notice is not required to be given until the levy action has actually occurred. The CDP Notice under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the

taxpayer by certified or registered mail, return receipt requested, to the taxpayer's last known address. Among other things, the CDP Notice must include a statement of the taxpayer's right to request a hearing during the 30-day period that commences the day after the date of the CDP Notice. This notification is given by Letter 1058 - Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing or LT 11- Final Notice, Notice of Intent to Levy and Your Notice of Right to a Hearing.

A taxpayer who does not request a CDP hearing under section 6320 within the 30-day period is not entitled to a CDP hearing, but is entitled to an equivalent hearing with Appeals as described in Temp. Treas. Reg. §301.6320-1T(i). A taxpayer may judicially appeal a determination resulting from a CDP hearing. A taxpayer, however, may not appeal to a court any decisions made by an appeals officer at an equivalent hearing.

Johnson v. Commissioner, 2000 U.S. Dist. LEXIS 8320, 2000-2 U.S.T.C. 50,591 (D. Or. May 24, 2000).

Kennedy v. Commissioner, 116 T.C. No. 19 (April 23, 2001).

Moorhous v. Commissioner, 116 T.C. No. 20 (April 23, 2001).

C. Procedures for Requesting a CDP Hearing

A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the post-lien filing CDP Notice or the pre-levy or post-levy CDP Notice provided the taxpayer. The taxpayer must request such a hearing in writing within the periods discussed above. Temp. Treas. Reg. §§ 301.6320-1T(c)(2)Q&A-C1, 301.6330-1T(c)(2)Q&A-C1. Johnson v. Commissioner, 2000 U.S. Dist. LEXIS 8320, 2000-2 U.S.T.C. 50,591 (D. Or. May 24, 2000), held that the requirement that a request for a CDP hearing be in writing is consistent with section 6330 and legislative intent.

A Form 12153, Request for a Collection Due Process Hearing, is included with the CDP Notice sent to the taxpayer. The Form 12153 requests the following information:

1. The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).
2. The type of tax involved.
3. The tax period at issue.

4. A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.
5. The reason or reasons why the taxpayer disagrees with the proposed collection action.

A taxpayer is encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. A taxpayer may also obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by calling, toll-free, 1-800-829-3676, or at the IRS website, www.irs.ustreas.gov/forms_pubs/forms.html.

The regulations, however, do not require that a taxpayer use Form 12153 to request a CDP hearing. The regulations require that any request for a hearing include the taxpayer's name, address, and daytime telephone number, and be dated and signed by either the taxpayer or the taxpayer's authorized representative. Temp. Treas. Reg. § 301.6330-1T(c)(2)Q&A-C1. Any taxpayer who substantially complies with those requirements is entitled to a CDP hearing.

The regulations further provide that the written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known to the taxpayer, the request may be sent to the Compliance Area Director serving the Compliance Area of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Compliance Director, Philadelphia Service Center. Temp. Treas. Reg. § 301.6330-1T(c)(2)Q&A-C6. If any one of these addresses is used, the request will be considered "properly addressed to the agency, officer, or office," for purposes of section 7502(a)(2)(B). Accordingly, if one of these addresses is used and the written request is postmarked within the applicable 30-day response period, the request will be considered timely even if it is not received by the IRS office that issued the CDP Notice until after the 30-day response period. Section 7503 will also apply.

D. Effect of Bankruptcy Proceedings

The automatic stay in bankruptcy, 11 U.S.C. § 362, may affect the Service's ability to issue a notice for a CDP hearing, Appeal's ability to conduct a CDP hearing, and the court's ability to review a CDP determination. When a taxpayer files a bankruptcy petition, the automatic stay halts a range of collection activities, including proceedings to recover a prepetition claim against the debtor; acts to recover a prepetition claim against the debtor's property; acts to create, perfect or enforce a lien against property of the debtor or the estate; and the commencement or continuation of a proceeding in the Tax Court. See 11 U.S.C. § 362(a).

No NFTL should be filed and no levies proposed once the stay is in effect. If a NFTL is filed after the commencement of the stay, it should be withdrawn; if a levy is proposed after the commencement of the stay, it should be abandoned. Any CDP notices issued in connection with such activity should be rescinded.

If the taxpayer has already requested a CDP hearing before filing a bankruptcy petition, the impact of the automatic stay is less clear.

1. Prepetition CDP Levy Notice

Because the Service may not levy without providing the taxpayer an opportunity for a CDP hearing, the hearing itself is part of the collection process. As such, it is likely to be considered an “act to collect” stayed by the filing of a bankruptcy petition.

2. Prepetition CDP Lien Notice

A NFTL is effective when filed. Since the CDP hearing concerning the NFTL occurs in this instance after the collection action is complete, conducting the lien hearing is less likely to be regarded as a stay violation. Tax Court review of a CDP determination would be stayed, however. 11 U.S.C. § 362(a)(8).

In either case, however, proceeding with the CDP hearing is inconsistent with the bankruptcy regime, which is intended to provide a collective forum for dealing with the claims of all the debtor's creditors, including tax claims. Moreover, whether or not the CDP hearing itself is stayed, any further unilateral collection activity by the Service would be barred until the stay expires. At that time, the landscape will likely have changed. Assets that the Service sought to levy may have been distributed in the bankruptcy case, the Service's claims may be provided for in a reorganization or repayment plan, tax debts may have been discharged. Under the circumstances, it makes little sense to conduct a CDP hearing until the automatic stay expires and such issues have been resolved. Our general instruction to appeals officers is to suspend CDP hearings when they learn that a bankruptcy has been filed.

V. Sections 6320 and 6330 Procedures

A. Conduct of CDP Hearing

1. General Guidelines

A CDP hearing includes more than just what occurs at a face-to-face meeting. See TTK Management v. U.S., 87 A.F.T.R.2d ¶ 2001-313 (C.D. Cal. 2000) (two telephone conversations between the appeals officer and taxpayer's counsel prior to face-to-face meeting held to be part of "hearing"). Accord AJP Management v. U.S., 87 A.F.T.R. 2d, ¶ 2001-312 (C.D. Cal. 2000). The request for a hearing, correspondence from the taxpayer and telephonic communications with the taxpayer may raise relevant issues that are not raised at a face-to-face meeting. The Notice of Determination (referred to as a determination letter by Appeals) which is ultimately issued should address those issues as well. In Meyer v. Commissioner, 115 T.C. 417 (2000), the Tax Court found that the Appeals office did not provide petitioners with an opportunity for a hearing either in person or by telephone prior to issuing a disputed determination letter. The determination letter that was issued was held to be invalid and the petition was dismissed for lack of jurisdiction.

2. Location of CDP Hearing

The Tax Court has established a workable and reasonable rule on the location of a hearing. In Katz v. Commissioner, 115 T.C. 329 (2000), the petitioner argued that he had been denied a hearing because Appeals did not agree to a hearing in the city in which he lived. The Court looked to other tax contexts for guidance, including statutes and procedural regulations regarding the time and place for examinations and concluded that the appeals officer had complied with section 6320(b) by providing petitioner an opportunity for a hearing at the Appeals office closest to petitioner's residence, which was one hour's drive away.

3. CDP Hearing by Telephone or Correspondence may be Permissible

In Konkel v. Commissioner, 86 AFTR2d 5545 (M.D. Fla. 2000), the taxpayer contended that he was not given the opportunity for a hearing. The district court found that a hearing by correspondence was adequate (although, at magistrate judge's suggestion, an opportunity for a face-to-face meeting was also extended after the petitioner filed suit). In Meyer v. Commissioner, 115 T.C. 417 (2000), the Court found that the appeals officer did not provide petitioners with an opportunity for a hearing either in person or by telephone prior to issuing a disputed determination letter. The determination letter that

was issued was held to be invalid and the petition was dismissed for lack of jurisdiction.

4. No right of Petitioner to Call Witnesses or Obtain Discovery Before the Appeals Officer

Davis v. Commissioner, 115 T.C. 35 (2000), held that taxpayers do not have the right to subpoena and examine witnesses at a CDP hearing.

Katz v. Commissioner, 115 T.C. 329 (2000), noted that petitioner did not have right to examine witnesses during the CDP hearing.

Konkel v. Commissioner, 86 AFTR2d 5545 (M.D. Fla. 2000), held that there is no right to subpoena witnesses or documents at a CDP hearing.

5. Impartial Appeals Officer

In MRCA Information Services, Inc. v. Commissioner, 2000-2 U.S.T.C. 50,683 (D. Conn. 2000), the district court found that the appeals officer was not impartial if the appeals officer conducting plaintiff-corporation's CDP hearing had previously conducted a Collection Appeals Program (CAP) hearing for Trust Fund Recovery Penalty imposed on the corporation's sole shareholder. The court ordered a remand to Appeals. In Mesa Oil, Inc. v. United States of America, 86 A.F.T.R 2d 7312 (D. Colo., 2000), the district court remanded the case on several grounds, including the finding that the appeals officer was not "impartial" because statements she made in the letter she sent the taxpayer to set up the hearing showed that she had prejudged the matter.

B. Verification Requirements of 6330(c)(1)

The Secretary (Field Compliance or ACS) is responsible for providing the appeals officer with verification that all applicable laws and administrative procedures necessary for the collection of the tax have been followed. In many cases, this can be accomplished by reviewing the taxpayer's account on IDRS. In some circumstances the appeals officer may need to obtain further verification, for example, where the taxpayer questions whether the assessment was properly made or collection procedures have been followed.

1. Reliance on Transcript

Generally speaking, Appeals may rely on a MFRTX transcript to verify the validity of the assessment. Any transcript used to verify the validity of an assessment must include:

- a. The identity of taxpayer,
- b. The type of tax,
- c. The tax period,
- d. The assessment date, and
- e. The assessment amount.

2. Reliance on Form 4340

Appeals may also rely on Form 4340, Certificate of Assessments and Payments, to verify liability. Davis v. Commissioner, 115 T.C. 35 (2000), involved a taxpayer's claim that a specific requirement had not been met. The taxpayer asserted that the assessments against him were invalid because he claimed there was not a valid summary record of assessments. The appeals officer obtained a Certificate of Assessments and Payments on Form 4340 to verify that the assessments against the taxpayer were valid. The Tax Court held that it was not an abuse of discretion by the appeals officer to rely on a Form 4340 to verify the validity of the assessments where the taxpayer did not demonstrate any irregularity in the assessment procedure that would raise a question about its validity.

C. Spousal Defenses

A taxpayer may raise any appropriate spousal defense at a CDP hearing. Section 6330(c)(2)(a)(i). Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015. Temp. Treas. Reg. §§ 301.6320-1T(e)(2) and 301.6330-1T(e)(2). Thus, the limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed exclusively by that section and any limitations under section 6015 will apply. Temp. Treas. Reg. §§ 301.6320-1T(e)(3)Q&A-E-3 and 301.6330-1T(e)(3)Q&A-E-3.

D. Interest Abatement Claims

Under section 6404(i), the Tax Court has jurisdiction to review the Service's final determinations not to abate interest, which can also occur in CDP cases. In Katz v. Commissioner, 115 T.C. 329 (2000), the Court held that taxpayers could raise interest abatement claims in CDP hearings before Appeals and, upon appeal of the Notice of Determination to the Tax Court, the Court could review the appeals officer's determination with regard to interest that is the subject of the Service's collection activities. If a taxpayer seeks abatement of interest in a CDP hearing, the appeals officer conducting the hearing should analyze the interest abatement claim

in the same way that the officer would analyze an interest abatement claim brought directly under section 6404.

There are several unsettled issues on the scope of the Court's jurisdiction over interest abatement claims under section 6404. For example, section 6404(b) appears to preclude claims for interest abatement on income, estate, and gift tax when those claims are brought on grounds set forth in section 6404(a). See Melin v. Commissioner, 54 F.3d 432, 433 (7th Cir. 1995). Also, it is unclear whether the courts would have jurisdiction to consider an interest abatement claim when the challenge to interest is based in the claim that the taxpayer is not liable for the underlying tax and the law precludes the taxpayer from challenging the underlying tax directly. Accordingly, coordination with CC:PA:CBS:1 is advised when an interest abatement issue is identified.

E. Nonjusticiable Claims

1. Challenges to Liability Barred by Section 6330(c)(2)(B)

Section 6330(c)(2)(B) provides that the existence and amount of the underlying tax liability cannot be challenged at a CDP hearing if the taxpayer received a statutory notice of deficiency for the taxes in question or otherwise had an earlier opportunity to dispute the tax liability.

a. Receipt of a Statutory Notice of Deficiency

A review of the taxpayer's underlying tax liability is precluded only if the taxpayer actually received the statutory notice of deficiency relating to the tax liability in dispute. Receipt of a statutory notice of deficiency means receipt in time to petition the Tax Court for a redetermination of the deficiency. Temp. Treas. Reg. §§ 301.6320-1T(e)(3)Q&A-E2 and 301.6330-1T(e)(3)Q&A-E2.

If a taxpayer raises his underlying tax liability, and a statutory notice of deficiency was issued, review the administrative file and the appeals officer's CDP hearing file to see if there is any evidence that the taxpayer received the notice. Evidence could include correspondence from the taxpayer or an admission to the appeals officer. If there is no evidence, see if the taxpayer will acknowledge whether he received the notice.

If the taxpayer claims he did not receive the statutory notice of deficiency, evidence of receipt must be gathered. A copy of the Postal Service Form 3877, certified mailing list, should be obtained. The mailing list indicates the name and address of the recipient, the certified mail number, and the tax year of the notice. The certified mailing list demonstrates that the notice was sent by certified mail to a particular address. Evidence that the taxpayer

actually received mail at that address should also be obtained. If these two pieces of evidence are present, there is a presumption in the law of delivery and the burden is then on the taxpayer to prove non-receipt. See Sego v. Commissioner, 114 T.C. 604 (2000) (taxpayer could not defeat delivery by refusing to pick up certified mail from her local post office); Anderson v. United States, 966 F.2d 487, 491 (9th Cir. 1992). Moreover, the petitioner should not be able to defeat this presumption by mere denial of receipt. See Zenco Engineering Corp. v. Commissioner, 75 T.C. 318, 323 (1980).

If the notice was mailed two years earlier or less, a copy of the Postal Service Form 3849 should be obtained. Postal Service Form 3849 is available at the local post office which delivered the notice. A copy of Postal Service Form 3849 may provide proof that the notice was actually received by the taxpayer.

b. Opportunity to Dispute Liability

The existence or amount of the tax liability for the tax period shown in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. If the taxpayer previously received a CDP Notice under section 6320 or 6330 with respect to the same tax and tax period, the taxpayer has had an opportunity to dispute the existence or amount of his underlying tax liability, whether or not the taxpayer had a hearing and challenged the liability.

An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after assessment of the liability. Temp. Treas. Reg. §§ 301.6320-1T(e)(3)Q&A-E2 and 301.6330-1T(e)(3)Q&A-E2. Again, ask the taxpayer if he was provided an opportunity for an Appeals conference with regard to the tax liability in question. It may also be possible to determine if a prior opportunity for an Appeals conference was offered by checking the examination file or the trust fund recovery penalty file (see Letter 1153(DO) discussion below) for copies of letters sent to the taxpayer proposing the assessment and giving the taxpayer a chance to contest the assessment in Appeals. Also check the file for the case history notes that should state that a letter giving the taxpayer appeal rights was sent.

Examples of letters which provide an opportunity for an Appeals conference include:

Letter 1153(DO) - required after June 30, 1996, by section 6672(b) to be sent when a trust fund recovery penalty is proposed (sent by certified mail))

Letter 950 - sent when employment tax assessments are proposed,

Letter 955 - sent when excise tax assessments are proposed,

Letter 1125(DO) - sent when return preparer penalties are proposed.

Actual receipt of one of these letters by the taxpayer or his representative must be established in order to preclude the taxpayer from raising any substantive arguments. See the statutory notice of deficiency discussion above concerning evidence of mailing and receipt. If the file indicates that any of these letters were mailed to the taxpayer and were either delivered to or delivery was refused by the taxpayer or his representative, and the taxpayer declined to challenge the assessment in Appeals, he cannot now contest the tax liability in the CDP hearing.

In addition, if the examination file has a copy of a signed Form 4549, "Income Tax Examination Changes," by which the taxpayer has waived appeal rights and the issuance of the notice of deficiency, the taxpayer has had an opportunity to dispute the liability.

While a prior opportunity for an Appeals conference with regard to the liability precludes review in the CDP conference, there may be other situations, for example, bankruptcy proceedings, in which the taxpayer had a previous opportunity to dispute the liability. The definition of a prior "opportunity to dispute" the underlying tax liability remains unsettled.

2. Challenges Barred by Section 6330(c)(4)

In contrast to section 6330(c)(2)(B) which addresses the ability of a taxpayer to raise his underlying tax liability at the CDP hearing, section 6330(c)(4) addresses the ability of a taxpayer to raise other allowable issues at a CDP hearing.

Section 6330(c)(4) provides that an issue may not be raised at the CDP hearing if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding and the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

a. Interplay with Section 6330(c)(2)

Under section 6330(c)(4), the taxpayer must have participated meaningfully in the hearing or proceeding, not just received an opportunity to participate as under 6330(c)(2)(B). A taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives in a CDP hearing under section 6330 even if he previously received a CDP Notice under 6320 with respect to the same tax and tax period and did not request a CDP hearing.

b. Contrast with Res Judicata and Collateral Estoppel

The provisions of sections 6330(c)(2)(B) and 6330(c)(4) are similar to, and generally more expansive than, the doctrines of res judicata (claim preclusion) or collateral estoppel (issue preclusion). Those doctrines are independent of the statutory provisions and should be separately pleaded, where appropriate, in response to a petition for review of an Appeals determination. See MacElvain v. Commissioner, T.C. Memo. 2000-320, n. 7 (recognizing the applicability of the doctrine of res judicata in the CDP context).

3. Issues Not Raised to Appeals

In seeking Tax Court or district court review of the notice of determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing. Temp. Treas. Reg. §§ 301.6320-1T(f)(2)Q&A-F5 and 301.6330-1T(f)(2)Q&A-F5. In Sego v. Commissioner, 114 T.C. 604, 612 (2000), the Court recognized that matters raised after a hearing do not reflect on whether the determination made by Appeals was an abuse of discretion.

The term "hearing" should be interpreted broadly. The taxpayer or his representative may raise issues not only in the written request for a CDP hearing or in the face-to-face hearing, but also in correspondence and telephone calls that are exchanged between Appeals and the taxpayer.

Be aware, however, that, contrary to Service position, one court appears to have construed the term "hearing" very narrowly as just the face-to-face meeting between the appeals officer and the taxpayer. See Mesa Oil, Inc. v. United States, 86 A.F.T.R. 2d 7312 (D. Colo. 2000) (in court's view, letter from appeals officer to taxpayer stating appeals officer's views prior to face-to-face meeting were communications prior to the "hearing").

F. Notice of Determination Issued by Appeals

1. In General

The determination letter is addressed to the taxpayer, gives a summary of the determination made by Appeals, and advises the taxpayer of the court to which an appeal may be taken. If the Tax Court normally has jurisdiction over that type of tax, for example, income taxes and estate taxes, Appeals will use the Tax Court letter, Form 3193. If the tax is a type over which the Tax Court usually does not have jurisdiction, like employment taxes, Appeals will use the District Court letter, Form 3194. Included with the letter is an attachment that discusses the so-called "Big Three" issues (i.e., those issues described in section 6330(c)(3)). These are: 1) verification that the requirements of applicable law or administrative procedure have been met, 2) consideration of the challenges the taxpayer raises to the tax liability and collection alternatives the taxpayer has proposed, and 3) determination of whether the collection action or the lien filing balances the need for efficient collection of taxes with the taxpayer's legitimate concern that the levy or notice of lien filing is no more intrusive than necessary. The Treasury regulations (Temp. Treas Reg. § 301.6320-1T(e)(3)Q&A-E1 and Temp. Treas Reg. § 301.6330-1T(e)(3)Q&A-E1), break down the "Big Three" into ten possible items that may be necessary to discuss in the determination letter.

2. The "Big Three" Issues

a. Verification

As discussed in V. B, above, Field Compliance or ACS is responsible for providing the appeals officer with verification that all applicable laws and administrative procedures necessary for the collection of the tax have been complied with. In many cases, this can be accomplished by reviewing the taxpayer's account on IDRS. Any taxpayer who continues to question whether some aspect of the assessment or collection process has been correctly followed should be asked to identify which law or IRS procedure he believes was not followed. If the taxpayer identifies a particular law or IRS procedure, the appeals officer should determine whether the law or IRS procedure is applicable and whether it was met. The appeals officer should specifically discuss that issue in the determination letter. Appeals may rely on a MFRTX transcript to verify the validity of the assessment. Appeals may also rely on Form 4340, Certificate of Assessments and Payments, to verify liability. Davis v. Commissioner, 115 T.C. 35 (2000).

b. Issues Raised

See sections IV. C through E, above. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal

defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for the tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers are expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

c. Balancing Appropriateness of Collection Action with Intrusiveness to Taxpayer

The determination letter must make a specific finding as to whether the NFTL filing or the proposed levy represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. See, for example, Mesa Oil, Inc. v. United States of America, 86 A.F.T.R. 2d 7312 (D. Colo. 2000), where a district court remanded a case on several grounds, including, for a finding that the appeals officer's application of the balancing test was perfunctory and did not contain an adequate explanation.

G. Judicial Review/Jurisdiction

1. In General

Jurisdiction under section 6330 for either the Tax Court or a district court depends upon a timely petition for review and the issuance of a valid notice of determination.

Offiler v. Commissioner, 114 T.C. 492 (2000).

Goza v. Commissioner, 114 T.C. 176 (2000);

Kennedy v. Commissioner, 116 T.C. No. 19 (April 23, 2001).

Moorhous v. Commissioner, 116 T.C. No. 20 (April 23, 2001).

a. Time Period for Petitioning

1. General Rule

Under section 6330(d)(1), a taxpayer has 30 days from the date of the notice of determination in which to appeal that determination to the Tax Court, or, if the Tax Court does not have jurisdiction over the underlying tax liability, to a district court. Offiler v. Commissioner, 114 T.C. 492 (2000). If a timely petition is filed with an incorrect court, the taxpayer will have 30 days after the court's determination to that effect to file an appeal with the correct court. Temp. Treas. Reg. § 301.6330-1T(f)(2)Q&A-F4. An untimely filing in an incorrect court cannot extend the time to file in the correct court. McCune v. Commissioner, 115 T.C. 114 (2000).

2. Special Rule

If the taxpayer is seeking review of a denial of relief by Appeals under section 6015(b), (c), or (f), relating to relief from joint and several liability on a joint return, in addition to liability related issues, the taxpayer should request Tax Court review within the 30-day period stated. Temp. Treas. Reg. §§ 301.6320-1T(f)(2)Q&A-F2 and 301.6330-1T(f)(2)Q&A-F2. If the taxpayer is seeking review only of the denial of relief by Appeals with respect to section 6015(b), (c) or (f), the taxpayer may have 90 days following the date of the determination by Appeals per section 6015(e). Id.; Butler v. Commissioner, 114 T.C. 276 (2000). This also has the effect of limiting judicial review to only the section 6015 claims where the request for Tax Court review is filed after the 30-day period. Temp. Treas. Reg. §§ 301.6320-1T(f)(2)Q&A-F2 and 301.6330-1T(f)(2)Q&A-F2.

b. Validity of Notice of Determination

1. In General

For jurisdiction, the courts also require a valid notice of determination. See Goza v. Commissioner, 114 T.C. 176 (2000). A decision letter issued following an equivalent hearing is not equivalent to a Notice of Determination as no statutory provisions exist for judicial review of an equivalent hearing. Temp. Treas. Reg. § 301.6330-1T(i)(2)Q&A-I5; Johnson v. Commissioner, 2000-2 U.S.T.C. 50,591 (D. Or. 2000); Kennedy v. Commissioner, 116 T.C. No. 19 (April 23, 2001); and Moorhous v. Commissioner, 116 T.C. No. 20 (April 23, 2001).

2. Lack of a Hearing

In Meyer v. Commissioner, 115 T.C. 417 (2000), the Tax Court held that where the appeals officer did not provide petitioners with an

opportunity for a hearing either in person or by telephone prior to issuing a disputed determination letter, the letter was invalid and the petition was dismissed for lack of jurisdiction.

3. Unresolved Issues

Not all errors that occur in the CDP process result in invalidating the notice of determination. It is our position that a distinction exists between analytical errors in the determination based on the hearing and procedural errors that effectively deny the taxpayer an opportunity for hearing. We believe the former do not invalidate the Notice of Determination while the latter types of errors may invalidate the notice. Questions regarding this should be coordinated with CC:PA:CBS:1.

2. Tax Court Jurisdiction versus District Court Jurisdiction

a. General Rule

Section 6330(d)(1) states that appeal of the determination made by Appeals is to the Tax Court unless the Tax Court does not have jurisdiction over the type of tax specified in the CDP Notice. Temp. Treas. Reg. § 301.6330-1T(f)(2)Q&A-F3 provides that, if the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States. In Moore v. Commissioner, 114 T.C. 171, 175 (2000), the Tax Court interpreted section 6330(d)(1) to mean that Congress did not intend to expand the Court's jurisdiction beyond the types of taxes that the court may normally consider. The Court held that section 6330(d)(1) provides for Tax Court jurisdiction except where the Court does not normally have jurisdiction over the underlying liability.

b. Inapplicability of Full Prepayment Rule

In Flora v. United States, 362 U.S. 145 (1960), the Supreme Court held that jurisdiction of the district court over a suit for tax refund under 28 U.S.C. § 1346(a) does not exist unless the taxpayer has fully paid the tax. Section 1346(a) does not govern CDP proceedings. Jurisdiction to review CDP determinations is conferred on the district courts under section 6330(d). There is no full prepayment requirement under section 6330(d). Note that in two district court cases, the courts erroneously relied upon the full-payment rule of Flora to dismiss a judicial appeal of a notice of determination. See McCune v. Commissioner, 2000-1 U.S.T.C. 50,279 (N.D. Tex. 2000); Act Restoration v. Commissioner, 99-2 U.S.T.C. 50,911 (N.D. Fla. 1999). In our view, these cases were incorrectly decided as to this issue.

c. Tax Court

Generally, the Tax Court's jurisdiction is limited to redetermination of income, estate, gift and certain excise taxes. See Sections 6211, 6213(a). See, e.g., True v. Commissioner, 108 F. Supp. 2d 1361 (M.D. Fla. 2000), holding that since the liability at issue related to petitioner's self-employment tax, the Tax Court was the proper court for the action and the district court did not have jurisdiction. In CDP cases, the Tax Court has jurisdiction over income, estate, gift and certain excise taxes even where those taxes were not subject to deficiency procedures because they were reported due, but unpaid, with a filed return. Although the Service has a good indication which court is likely to have jurisdiction for certain issues, many issues remain untested. For example, direct challenges to liabilities for interest on income tax based on section 6404(e) are within the Tax Court's jurisdiction, but it remains unclear to what extent the Tax Court has jurisdiction for abatement claims under section 6404(a). See generally Katz v. Commissioner, 115 T.C. 329 (2000) (finding jurisdiction in the provisions of section 6330, to review interest abatement claims, but analyzing the claim only under section 6404(e), and not 6404(a); also determining that the Tax Court had jurisdiction to review all interest that was the subject of respondent's collection action, regardless of whether the interest was assessed).

Certain types of taxes have been determined to be within district court jurisdiction in the context of CDP cases, including trust fund recovery penalties under section 6672 (Moore v. Commissioner, 114 T.C. 171 (2000)), employment taxes (Anderson v. Commissioner, T.C. Memo. 2000-311), and frivolous return penalties under § 6702 (Van Es v. Commissioner, 115 T.C. 324 (2000)). District court jurisdiction also includes the appeal of a notice of determination concerning assessments under section 6201(a)(3) of alleged erroneous refunds resulting from alleged overstatements of

income taxes withheld. Stephen C. Loadholt Trust v. Commissioner, T.C. Memo. 2000-349; Samuel and Bernice Boone Trust v. Commissioner, T.C. Memo. 2000-350.

Generally, it is anticipated that all assessable penalties would be properly before the district courts, but the question of jurisdiction over many assessable penalties remains unlitigated.

Prior to the amendment to section 7436 relating to determinations of employment status by the Tax Court, we argued that the Tax Court had no jurisdiction over CDP cases involving employment taxes. Anderson v. Commissioner, T.C. Memo. 2000-311.

Section 314(f) of the Community Renewal Tax Relief Act of 2000 retroactively amended section 7436 to expand the Tax Court's jurisdiction to determine "the proper amount of employment tax under...[the] determination" whether one or more individuals performing services for the taxpayer are employees for purposes of subtitle C or whether the taxpayer is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978.

This amendment is effective as of the date of enactment of section 7436, August 5, 1997. This effectively overrules Henry Randolph Consulting v. Commissioner, 112 T.C.1 (1999), in which the Tax Court held that it lacked jurisdiction to determine the amount of employment taxes for the periods at issue in a proceeding for determination of employment status under section 7436. As to its effect on the jurisdiction of the Tax Court in CDP cases, contact CC:PA:CBS:1. Other issues with respect to section 7436 should be coordinated with CC:TEGE:Employment Tax.

H. Retained Jurisdiction from Notice of Determination

1. In General

Section 6330(d)(2) provides that Appeals has retained jurisdiction with respect to any determination letter it has issued. This retained jurisdiction is limited to the consideration of collection actions taken or proposed with respect to the original determination made by Appeals, and, after the taxpayer has exhausted all administrative remedies, where the taxpayer can establish that a change in circumstances affects that original determination. The taxpayer may return to Appeals on retained jurisdiction. A taxpayer may not seek judicial review of a decision by Appeals resulting from a retained jurisdiction hearing. Temp. Treas. Reg. §§ 301.6320-1T(h)(2), Q&A-H2 and 301.6330-1T(h)(2), Q&A-H2.

2. Collection Actions Taken or Proposed

Retained jurisdiction over “collection actions taken or proposed” is limited to situations where a dispute arises as to how the determination made by Appeals is implemented by Compliance. For example, the determination by Appeals may limit the authority of Compliance to levy on certain items of the taxpayer’s property. If a levy is made or proposed to be made on other property of the taxpayer, Appeals may review that action under its retained jurisdiction.

3. Change in Circumstances

Retained jurisdiction to consider a “change in circumstances” should be limited to situations where some economic disruption has occurred in the taxpayer’s life that prevents him from complying with the terms of any agreement the taxpayer has made as part of the determination made by Appeals. For example, where a taxpayer who has agreed to a payment plan with Appeals subsequently loses his job and cannot obtain a revised payment schedule even after a conference with a Collection manager. The taxpayer must exhaust all administrative remedies before involving Appeals’ retained jurisdiction to consider a change in circumstances. The district court does not have authority to require Appeals to reconsider a notice of determination under retained jurisdiction based on “changed circumstances.” See TTK Management, supra and AJP Management, supra.

4. Effect of Section 6320(c)

Section 6320(c) limits retained jurisdiction with respect to determinations made by Appeals in cases involving Federal tax lien filings to the consideration of collection actions taken or proposed with respect to the original determination made by Appeals. The Service, however, has administratively determined that Appeals should also exercise retained jurisdiction with respect to any determination it made under section 6320 if the taxpayer has exhausted all administrative remedies and can establish that a change in circumstances affects that original determination. See Temp. Treas. Reg. § 301.6320-1T(h)(1).

I. Suspension of Statute of Limitations

The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended by a request for a CDP hearing. The suspension period commences on the date the Service receives the taxpayer’s written request for a CDP hearing. The suspension period continues until the date the Service

receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which the Service receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 or section 6330 are those that apply to the taxes and the tax period or periods to which the CDP Notice relates. Temp. Treas. Reg. §§ 301.6320-1T(g) and 301.6330-1T(g).

VI. CDP Litigation Practice

A. Tax Court Rules

Title XXXII of the Tax Court Rules of Practice and Procedure, which encompasses T.C. Rules 330 through 334, apply to petitions brought under sections 6320 and 6330. In general, these rules describe the jurisdiction of the Court, specify the contents of a petition under these sections and make other rules of the Court applicable to CDP cases.

B. Applicability of Small Case Procedures

Prior to December 21, 2000, section 7463 provided streamlined procedures, and authorized the Tax Court to prescribe rules, governing cases for redetermination of deficiencies in which \$50,000 or less was in dispute. CDP cases were not covered by this provision. Effective December 21, 2000, section 7463 was amended to permit small case (or "S") designation in CDP cases "in which the unpaid tax does not exceed \$50,000." Section 313(b)(1) of the Community Renewal Tax Relief Act of 2000 (H.R. 5662, incorporated in H. R. 4577, the Consolidated Appropriations Act, 2001) (Pub. L. No. 106-554, 114 Stat. 2763) (hereinafter Relief Act of 2000). It is unclear at this time what liabilities are included in the amount of "unpaid tax" for this purpose. Questions as to whether "S" designation is proper in a CDP case should be referred to CC:PA:CBS:1.

C. Motion to Change Caption

It has been the Tax Court's practice to identify lien or levy actions under section 6320(c) or 6330(d) by including the letter "L" in the docket number (*i.e.*, Docket Number 12345-00L). If a petition does not have that docket number, it is likely that there was no notice of determination attached to the petition and the Court is uncertain that the taxpayer intended to bring an action under section 6320 or 6330. Although a notice of determination should be attached to the answer in such cases, the filing of the answer may not cause the Court to add the letter "L" to the case docket number. In the event that it is determined that the case is a lien or levy action, the field should consider filing a Motion to Change Caption so it is clear that

the Court agrees the case is an action under 6320(c) or 6330(d). See Exhibit 1 for an example of such a motion.

D. Answers

The title of the answer to a petition may merely be "Answer." Where the answer is to an amended petition for lien or levy action under code section 6320(c) or 6330(d), the title of the answer should mirror the language of the amended petition and be titled "Amended Answer to Petition for Lien or Levy Action under section 6320(c) or 6330(d)." Mirrored titling may reduce the odds that the clerk's office will bounce the answer. The following is recommended language for the prayer:

WHEREFORE, it is prayed that the relief sought in the Petition for Lien or Levy Action Under Section 6320(c) or 6330(d) be denied and that Respondent's determination, as set forth in the Notice of Determination, be in all respects sustained.

The above language effectively encompasses the separate standards of review (as discussed below in section VI.F.) for cases involving either an alleged abuse of discretion or a review of the underlying tax liability. In a number of lien/levy actions, taxpayers have previously been involved in judicial proceedings involving the same issue which they are raising in a CDP petition. In such circumstances, the answer should raise a defense of res judicata and/or collateral estoppel where appropriate.

E. Additional Pleadings in Innocent Spouse Cases

In any proceeding before the Tax Court, including a CDP proceeding, in which the taxpayer raises a claim for innocent spouse relief and the other spouse is not a party to the case, respondent must serve notice of the claim on the other individual who filed the joint return for the years at issue. For a more detailed discussion, see Chief Counsel Notice N(35)000-173 (October 17, 2000).

F. Standard of Review

1. Abuse of Discretion: Nonliability Issues

Sections 6320(c) and 6330(d) are silent as to the appropriate standard for review in lien/levy actions. The conference report enacting these sections states that where the validity of the tax liability is not properly part of the appeal, the appeals officer's determination should be reviewed for an abuse of discretion. H.R. Conf. Rep. No. 105-599, 105th Cong. 2d Sess. Part 2, at p. 266 (1998); see also Goza v. Commissioner, 114 T.C. 176 (2000) ("where the validity of the underlying tax liability is not properly at issue, the Court will review the Commissioner's administrative determination for abuse of discretion"); Davis v. Commissioner, 114 T.C. 35 (2000). A non-exclusive

list of nonliability issues is set forth in section 6330(c)(2)(A): (a) spousal defenses, (b) challenges to appropriateness of collection action, and (c) offers of collection alternatives (including posting of bond, substitution of other assets, installment agreement or offer-in-compromise).

2. De Novo Review: Liability Issues

If the validity of the tax liability is properly at issue in the hearing and the determination of the tax liability is part of the appeal, the amount of the tax liability will be reviewed by the appropriate court on a de novo basis. H.R. Conf. Rep. No. 105-599, 105th Cong. 2d Sess. Part 2, at p. 266 (1998); see also Goza v. Commissioner, 114 T.C. 176 (2000) (“where the validity of the underlying tax liability is properly at issue, the court will review the matter on a de novo basis”).

3. Interest Abatement Requests: Abuse of Discretion

The Tax Court has stated that the term “underlying tax liability” includes any amounts owed that are the subject of the Commissioner’s collection activities. Katz v. Commissioner, 115 T.C. 329 (2000). In Katz, the court found that the underlying liability in that case included the tax deficiency, additions to tax, and statutory interest. Although interest was included within the term “underlying tax liability,” the court considered the taxpayer’s claim that he was not liable for statutory interest as a claim for interest abatement under an abuse of discretion standard, the same standard that the Court applies to interest abatement claims brought to it under section 6404(i).

G. Trial Preparation

1. Liability Challenges

A common issue is whether the petitioner is entitled to challenge the existence or amount of liability underlying the notice of determination. Early resolution of this issue will either significantly simplify the case, if the issue is not properly before the Court, or make clear the necessity for preparing to defend liability questions. The early use of motions to clarify the scope of the issues in the case is recommended. Where it is unclear whether the petitioner actually received a statutory notice of deficiency or otherwise had an opportunity to dispute liability, it may be appropriate to use discovery or requests for admissions, or both, to establish the facts needed to file a motion relying on section 6330(c)(2)(B) to preclude petitioner from challenging liability. Section V.E.1. above enumerates some of the evidence that should be gathered during pretrial preparation.

2. Approach

When liability is properly at issue, trial preparation of the case should be in the same manner as one would approach a deficiency or refund action.

3. Stipulation of Facts

Because the Court will be reviewing the appeals officer's determination for abuse of discretion with respect to all nonliability issues, it is important that all documents that the appeals officer considered or prepared in making a determination, including the Appeals Case Memorandum, are included in the stipulation of facts. See Mesa Oil, Inc. v. United States of America, 86 A.F.T.R. 2d 7312 (D. Colo. Nov. 2000) (record inadequate to afford effective judicial review).

4. Summary Judgment for Nonliability Issues

The Tax Court has recognized that matters raised after a hearing do not reflect on whether the determinations that are the basis of the petition were an abuse of discretion. See Sego v. Commissioner, 114 T.C. 604, 612 (2000). The period under consideration in an abuse of discretion hearing is from the time of the petitioner's request for a CDP hearing until the appeals officer issues a notice of determination.

Generally, these facts should not be in dispute and should be susceptible to proof by means of a stipulation of facts or an affidavit or declaration from the appeals officer who conducted the hearing and/or the attorney in possession of the file created by the appeals officer who conducted the CDP hearing. In such situations, a motion for summary judgment is particularly appropriate. See MacElvain v. Commissioner, T.C. Memo. 2000-320, slip op. at 10.

H. Settlement

1. Stipulated Decisions

Although it is our position that petitioners should not be able to raise new nonliability matters subsequent to the issuance of a notice of determination and have those matters decided by the Court, situations may arise where respondent and petitioner agree to enter into a collection alternative (such as an installment agreement or offer in compromise) after issuance of a notice of determination. To accomplish this, the parties have been successful in submitting stipulated decisions to the Court. [See exhibits for examples.]

2. Motions to Dismiss for Mootness

Sometimes a taxpayer will voluntarily pay his or her tax liability after

petitioning a notice of determination to the Tax Court. Alternatively, the petitioner may file for bankruptcy and receive a discharge of the tax liabilities at issue, and no prebankruptcy or exempt property may exist against which to pursue further collection. See Isom v. United States, 901 F.2d 744 (9th Cir. 1990). In such cases there may no longer be any need for enforced collection through lien or levy action and the petition may be effectively rendered moot. We, therefore, believe that filing a motion to dismiss as moot may be appropriate in such cases. If petitioner does not consent to the granting of a motion to dismiss, contact CC:PA:CBS:1 for assistance. [See exhibits for examples.]

I. Sanctions

When taxpayers bring CDP actions for delay or based on frivolous or groundless arguments, the Service has the ability to combat these abuses through the use of section 6673. In Pierson v. Commissioner, 115 T.C. 576 (2000), the Tax Court noted the applicability of penalties under section 6673 to CDP actions instituted primarily for delay or that are frivolous or groundless. Although the Court declined to impose a penalty in that case, the Court stated, “[W]e regard this case as fair warning to those taxpayers who, in the future, institute or maintain a lien or levy action primarily for delay or whose position in such a proceeding is frivolous or groundless.” The Tax Court, on its own, has imposed sanctions for delaying the proceedings and for the making of frivolous arguments in Davis v. Commissioner, T.C. Memo. 2001-87 (April 10, 2001). This issue must be coordinated with CC:PA:CBS:1 and the sanctions officer before sanctions are requested.

J. Remedies

1. Liability Issues

When liabilities are properly in dispute, a decision that states what the tax liability is as of a date certain should be entered. Note that the Court’s decision will not be limited to a determination of a deficiency, but will be more in the nature of a judgment in a suit to reduce an assessment to judgment. The decision should actually state the tax liabilities due.

2. Anti-injunction Act

The Anti-injunction Act generally prohibits suits to restrain the assessment or collection of any tax. Effective December 21, 2000, section 314(b)(2) of the Relief Act of 2000 amended section 6330(e)(1) to authorize the proper court, including the Tax Court, to enjoin a levy during the time the suspension under section 6330(e)(1) is in force. The Tax Court does not have jurisdiction under section 6330(e)(1) to enjoin any action or proceeding

unless a timely appeal has been filed with the Tax Court and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates. Contact CC:PA:CBS:1.

3. Refunds

In certain cases, section 6330(c)(2)(B) allows a taxpayer to challenge the existence or amount of the "underlying tax liability." In Katz v. Commissioner, 115 T.C. 376 (2000), the Court construed the term "underlying tax liability" to be the amounts owed that are the subject of the Commissioner's collection activities. Refund jurisdiction does not exist because amounts paid and subject to refund claims are not subject to collection activities. Furthermore, while there are statutory provisions that expressly grant the Tax Court the authority to determine overpayments in deficiency cases (see section 6512(b)) and actions for determination of relief from joint and several liability on a joint return (see section 6015(e)(3)(A)), there is no statutory provision expressly granting the Tax Court the authority to determine an overpayment and/or order a refund in an action arising under section 6320 or 6330.

4. Remand

The federal district courts have the authority to order remands to the Office of Appeals and have done so in at least two cases. See MRCA Information Services, Inc. v. Commissioner, 2000-2 U.S.T.C. 50,683 (D. Conn. 2000); Mesa Oil, Inc. v. United States of America, 86 A.F.T.R. 2d 7312 (D. Colo. 2000). To date, the Tax Court has never ordered a remand to the Service. Any case involving a question of whether remand is available as a remedy in a Tax Court case under section 6320 or 6330 should be closely coordinated with CC:PA:CBS:1.

/s/
DEBORAH A. BUTLER
Associate Chief Counsel
(Procedure and Administration)

EXHIBITS

1. Motion to change caption

MOTION TO CHANGE CAPTION

RESPONDENT MOVES that the Court enter an order correcting the caption in the above-entitled case by changing the docket number to read [insert docket number]"L" and designating this case as a Lien or Levy Action provided for in I.R.C. § 6320(c) or 6330(d) and T.C. Rules 330 through 334.

IN SUPPORT THEREOF, respondent respectfully states:

1. [Describe something in the petition from which it appears that the petitioner is challenging a Notice of Determination, such as a reference to lien or levy or collection or sections 6320 or 6330 of the Code.]
2. The petition appears to be an appeal of a Notice of Determination issued by respondent on [insert date], a copy of which is attached as Exhibit A.
3. The copy of the petition served on respondent does not include an "L" in the docket number.
4. Petitioner does not oppose the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

2. Motions to dismiss for lack of jurisdiction

- a. No notice of determination

MOTION TO DISMISS FOR LACK OF JURISDICTION

THE RESPONDENT MOVES that this case be dismissed for lack of jurisdiction upon the grounds that no Notice of Determination under I.R.C. § 6320 or § 6330 was sent to the Petitioner for the taxable year(s) [insert years], nor has the respondent made any other determination with respect to the taxable years ___ that would confer jurisdiction on this Court.

IN SUPPORT THEREOF, the respondent respectfully shows the Court as follows:

1. The fact that the Petitioner attached to the petition a Notice of Levy [or state the type of notice regarding liens, levies, or collection actions] may indicate that the Petitioner is requesting that the Court invoke jurisdiction in accord with Tax Court Rule 330, which concerns Petitions for Lien or Levy Actions under I.R.C. §§ 6320(c) or 6330(d).
2. The Tax Court cannot acquire jurisdiction with respect to a lien or levy action unless, and until, there is a determination by the Internal Revenue Service Office of Appeals and the taxpayer appeals that determination within

thirty days thereof. Offiler v. Commissioner, 114 T.C. 492, 498 (2000).

3. The respondent has diligently searched respondent's records and has found no indication that any Notice of Determination Concerning Collection Action(s) under §§ 6320 and/or 6330 was sent to the Petitioner with respect to taxable years [insert years].

4. Petitioner has not demonstrated that a Notice of Determination sufficient to confer jurisdiction on this Court with respect to tax year(s) [insert year(s)] was issued by Appeals as required by I.R.C. § 6320(c) and/or § 6330(d)(1).

5. Under the circumstances described above, the Tax Court lacks jurisdiction of this matter under I.R.C. § 6320 or § 6330 and Tax Court Rule 330.

6. The respondent has diligently searched his records and has determined that no other determination has been made by the respondent that would confer jurisdiction on this Court.

7. Petitioner objects/does not object to the granting of this motion.

WHEREFORE, respondent requests that this motion be granted.

b. Late-filed petition

MOTION TO DISMISS FOR LACK OF JURISDICTION

THE RESPONDENT MOVES that this case be dismissed for lack of jurisdiction upon the ground that the petition was not filed within the time prescribed by I.R.C. § 6330(d) or § 7502.

IN SUPPORT THEREOF, the respondent respectfully states:

1. The Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 dated [insert date], upon which the above-entitled case is based, was sent to the petitioner at his last known address by certified mail on [insert date], as shown by the postmark date stamped on the executed Application for Registration or Certification, United States Postal Service Form 3877, a copy of which is attached hereto as Exhibit A.

2. The 30-day period for timely filing a petition with this Court from the Notice of Determination expired on [insert day of the week], [insert date], which date was not a legal holiday in the District of Columbia.

3. The petition was filed with the Tax Court on [insert date], which date is [insert number of days] days after the mailing of the Notice of Determination.

4. The copy of the petition served upon the respondent bears a notation that the petition was mailed to the Tax Court on [insert date], which date is [insert number of days] days after the mailing of the notice of deficiency.

5. The petition was not filed with the Court within the time prescribed by I.R.C. § 6330(d) or § 7502.

6. Petitioner objects/does not object to the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

c. Action in incorrect court

MOTION TO DISMISS FOR LACK OF JURISDICTION

THE RESPONDENT MOVES that this case be dismissed for lack of jurisdiction upon the ground that the United States Tax Court does not have jurisdiction of the underlying tax liability in this matter.

IN SUPPORT THEREOF, the respondent respectfully states:

1. The Petitioner herein appeals the Notice of Determination Concerning Collection Action(s) under section 6320 and/or 6330 (Determination) that the Internal Revenue Service Appeals Office ("Appeals Office") in [insert appropriate city and state] issued on [insert date].

2. The Determination instructs the petitioner to file a complaint in the appropriate United States District Court if the petitioner disputes the Determination.

3. According to paragraphs 4 through 7 of the Petition for Lien or Levy Action Under Code Section 6320(c) or 6330(d), the Notice of Intent to Levy and Right to a Hearing, which led to the Appeals' Determination at issue in this case, relates to collection of [insert type of liability, e.g., a Trust Fund Recovery Penalty].

4. I.R.C. section 6330(d)(1) provides that the Tax Court shall have jurisdiction to hear an appeal of a determination made under section 6330 [and/or section 6320] if it has jurisdiction of the underlying tax liability. If the Tax Court does not have jurisdiction of the underlying tax liability, a district court of the United States shall have jurisdiction to hear the matter. See also Temp. Treas. Reg. § 301.6330-1T(f)(2)Q&A-F3 [and/or § 301.6320-1T(f)(2)Q&A-F3].

5. The Tax Court has interpreted section 6330(d)(1) to provide for Tax Court jurisdiction except where the Court does not normally have jurisdiction over the underlying liability. Moore v. Commissioner, 114 T.C. 171 (2000).

6. The Tax Court does not have jurisdiction to determine liability for the [insert type of liability,] Id.

7. Because the Tax Court does not have jurisdiction over liability for the [insert type of liability], the Tax Court does not have jurisdiction over the appeal of the Determination in this case.

8. Should the Court grant this motion, petitioner will have thirty days after this Court's determination to file an appeal with the correct court under I.R.C. § 6330(d)(1).

9. Petitioner objects/does not object to the granting of this motion.

WHEREFORE, respondent requests that this motion be granted.

3. Motion to dismiss for failure to state a claim

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED**

RESPONDENT MOVES that this case be dismissed for failure to state a claim upon which relief may be granted in that I.R.C. § 6330(c)(2)(B) precludes petitioners from challenging the underlying tax liability for the taxable year 1994 in the above-entitled case, the only error assigned in the petition, because the petitioners received a statutory notice of deficiency for such tax liability.

IN SUPPORT THEREOF, the respondent respectfully states:

1. Petitioner received a statutory notice of deficiency for tax year(s) [insert tax year(s)] that respondent mailed to petitioner's last known address on [insert date]. A copy of United States Postal Service Form 3849, proof of receipt, for the notice of deficiency is attached as Exhibit A. This receipt bears the signature of the addressee-petitioner and reflects a delivery date of [insert date].
2. On [insert date], respondent sent to petitioner by certified mail a [insert appropriate title for the CDP Notice that informed petitioner of the right to request a hearing], with respect to petitioner's liability for income taxes for tax year(s) [insert tax year(s)], a copy of which is attached as Exhibit B. Petitioner filed a timely "Request for Collection Due Process Hearing" on [insert date], a copy of which is attached as Exhibit C.
3. Respondent sent to petitioner a Notice of Determination dated [insert date] with respect to petitioner's income tax liability for tax year(s) [insert tax year(s)]. The Notice of Determination is attached as Exhibit D.
4. Pursuant to I.R.C. § 6330(c)(2)(B), the petitioner cannot raise at the CDP hearing the existence or amount of the underlying tax liability if the petitioner received a statutory notice of deficiency for that tax liability.
5. Temp. Treas. Reg. § 301.6330-1T(e)(3)Q&A-E2 [and/or Temp. Treas. Reg. § 301.6320-1T(e)(3)Q&A-E2, as appropriate] provides that receipt of a statutory notice of deficiency for purposes of I.R.C. § 6330(c)(2)(B) means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency.
6. Because respondent mailed the statutory notice of deficiency on [insert date] and petitioner received it on [insert date], petitioner received it in sufficient time to petition the Tax Court. Thus, during the subsequent CDP hearing with Appeals, it was improper for petitioner to challenge the tax liability to which the statutory notice of deficiency related.

7. Because it was improper for the taxpayer to challenge in the Collection Due Process hearing the existence or amount of petitioner's liability with respect to the [insert tax years] tax years, the validity of petitioner's underlying tax liability is not properly at issue before this Court. Goza v. Commissioner, 114 T.C. 176 (2000).

8. The petition raises no issues other than challenges to petitioner's tax liability.

WHEREFORE, it is prayed that this motion be granted.

Note: The Service will not be able to obtain a Postal Service Form 3849 in every case in which the taxpayer received a statutory notice of deficiency or otherwise had an opportunity to dispute his liability. In those cases, other evidence of receipt should be included in the motion in the absence of a Postal Service Form 3849. The type of evidence that could be included is discussed in section V.E.1. above.

4. Motion for summary judgment

MOTION FOR SUMMARY JUDGMENT

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 121, for summary adjudication in respondent's favor upon all issues presented in this case.

IN SUPPORT THEREOF, respondent respectfully states:

1. The pleadings in this case were closed on [insert date].
2. This motion is made at least 30 days after the date that the pleadings in this case were closed and within such time as not to delay the trial. Tax Court Rule 121(a).
3. On [insert date] respondent issued to petitioner a letter entitled "Final Notice of Intent to Levy and Notice of Your Right to a Hearing" (CDP Notice) with enclosures in conformity with the notice requirements of I.R.C. § 6330(a).
4. Petitioner requested a Collection Due Process hearing on or about [insert date].
5. On [insert date], respondent's appeals officer sent a letter to petitioner's designated representative inviting him to a conference in respondent's office on [insert date].
6. Respondent's appeals officer sent a letter to petitioner's representative, dated [insert date], offering to reschedule the conference to [insert date] as requested by the representative.
7. Respondent's appeals officer and petitioner's representative held a conference on [insert date].
8. At the conference, the appeals officer provided petitioner's representative with a copy of the Form 4340 (Certificate of Assessments

and Payments) with respect to petitioner's income tax assessments and payments for each of the years [insert years].

9. Respondent issued to petitioner a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (the "Notice of Determination") dated [insert date].

10. The petition filed in this case asserts that the appeals officer failed to properly verify that the Internal Revenue Service met the requirements of any applicable law or administrative procedure as required by I.R.C. § 6330(c)(1) by relying on Form 4340, Certificate of Assessments and Payments, and the Form 23C date (assessment date) listed therein. The petition asserts that the appeals officer should have verified that a Form 23C was actually prepared and signed pursuant to I.R.C. § 6203 and Treas. Reg. § 301.6203-1.

11. The petition filed in this case asserts that collection action is improper because the petitioner was not provided with Forms 23C, but was instead provided with a Form 4340. In his Answer, respondent admitted that Form 4340 was provided to petitioner and was relied upon by the appeals officer. There is therefore no factual dispute regarding this issue.

12. It is not an abuse of discretion for Appeals to rely on Form 4340 for the purpose of complying with I.R.C. section 6330(c)(1). Davis v. Commissioner, 115 T.C. 35 (2000); Anderson v. Commissioner, T.C. Memo 2000-211. Courts have consistently and unequivocally held that respondent's obligation under I.R.C. § 6203 and Treas. Reg. § 301.6203-1 to provide taxpayers with summary records of assessments is satisfied by providing a Form 4340, which was done in this case, rather than a Form 23C. Contrary to petitioner's assertions, neither I.R.C. § 6330(c)(1) nor any other provision of I.R.C. § 6330 requires such verification. See, e.g., Hefti v. IRS, 8 F.3d 1169 (7th Cir. 1993); Guthrie v. Sawyer, 970 F.2d 733 (10th Cir. 1992); United States v. McCallum, 970 F.2d 66 (5th Cir. 1992); Gentry v. United States, 962 F.2d 555 (6th Cir. 1992); Geiselman v. United States, 961 F.2d 1 (1st Cir. 1992), cert. denied, 506 U.S. 891 (1992); United States v. Chila, 871 F.2d 1015 (11th Cir. 1989), cert. denied, 493 U.S. 975 (1989).

13. The petition filed in this case also asserts that petitioner was not afforded the type of due process hearing that section 6330 envisions. The petition asserts that respondent erred in failing to furnish requested documentation prior to the hearing and failing to properly schedule or notify petitioner of the time and date of the hearing. Petitioner asserts that this prevented him and his representative from presenting his case, examining documents and cross examining witnesses. The petition avers no facts upon which petitioner relies to support these alleged errors. The undisputed facts in this case are that petitioner and his representative were notified of the hearing. Respondent sent two letters to petitioner's representative, setting forth the date and time of the hearing. Petitioner's representative (the same representative who signed and filed the petition on behalf of petitioner) attended the hearing. Petitioner was properly notified of the hearing.

14. Hearings at the Appeals level are usually conducted in an informal setting. Treas. Reg. section 601.106(c), Statement of Procedural Rules, provides that proceedings before Appeals are informal. There is no requirement that Appeals furnish requested documentation prior to a hearing. When Congress enacted section 6330 and required that taxpayers be given an opportunity to seek a pre-levy hearing with Appeals, Congress was fully aware of the existing nature and function of Appeals. Davis v. Commissioner, 115 T.C. 35 (2000). Nothing in section 6330 or the legislative history suggests that Congress intended to alter the nature of an Appeals hearing so as to compel the attendance or examination of witnesses. When it enacted section 6330, Congress did not impose upon either Appeals or taxpayers a requirement that documentation be furnished before a hearing. The references in section 6330 to a hearing by Appeals indicate that Congress contemplated the type of informal administrative Appeals hearing that has been historically conducted by Appeals and prescribed by section 601.106(c), Statement of Procedural Rules. Davis v. Commissioner, *supra*.

15. Pursuant to I.R.C. § 6330(c)(3), the determination of an appeals officer must take into consideration (A) the verification that the requirements of applicable law and administrative procedures have been met, (B) issues raised by the taxpayer, and (C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection be no more intrusive than necessary. As stated in the attachment to the Notice of Determination, the appeals officer considered all three of these matters. The appeals officer fully responded to the petitioner's sole challenge to the proposed collection action at the collection due process hearing: that there was no valid assessment of his liabilities. Because the appeals officer fully complied with the requirements of I.R.C. § 6330(c)(3), particularly in responding to the issue raised by the petitioner, there was no abuse of discretion.

16. Respondent respectfully states that counsel of record has reviewed the administrative file and on the basis of the review of the file and the pleadings, concludes that there remains no genuine issue of material fact for trial.

17. Petitioner objects/does not object to the granting of this motion. WHEREFORE, respondent requests that this motion be granted.

5. Motion to dismiss for mootness

a. Mootness with respect to proposed levy

MOTION TO DISMISS ON GROUND OF MOOTNESS

THE RESPONDENT MOVES that this case be dismissed as moot given that, subsequent to the filing of their Petition, petitioners paid their tax

liability for the [insert years] taxable years and the proposed levy is no longer necessary.

IN SUPPORT THEREOF, the respondent respectfully

states:

1. On [insert date] respondent issued a Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing ("CDP Notice") to petitioners with respect to their income tax liabilities, including penalties and interest, for the taxable years [insert years].

2. In response to the Final Notice, petitioners requested a Collection Due Process ("CDP") hearing with the Internal Revenue Service Office of Appeals ("Appeals") pursuant to I.R.C. § 6330(b)(1).

3. On [insert date] Appeals issued a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 approving the proposed levy to collect the liabilities arising with respect to taxable years [insert years].

4. On [insert date] petitioners filed a Petition for Lien or Levy Action Under Code Section 6320(c) or 6330(d) ("the Petition") in the present case.

5. Subsequently, petitioners paid all outstanding income taxes, penalties, and interest with respect to the taxable years [insert years].

6. As a result of petitioners' full payment of their liability, respondent no longer needs or intends to levy with respect to petitioners' income tax liabilities for taxable years [insert years], which gave rise to the Petition in the instant case.

7. The petitioners have been contacted and have confirmed that they have no objection to the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

b. Mootness with respect to notice of federal tax lien

MOTION TO DISMISS ON GROUND OF MOOTNESS

THE RESPONDENT MOVES that this case be dismissed as moot given that, subsequent to the filing of his petition, petitioner was granted a discharge in bankruptcy and respondent released all the notices of federal tax liens filed against the petitioner at issue in this case.

IN SUPPORT THEREOF, the respondent respectfully states:

1. On or about [insert date] respondent sent petitioner and his wife a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under I.R.C. § 6320 with respect to income tax for tax years [insert years].

2. On [insert date], respondent received a timely request for a Collection Due Process hearing with respect to the notice of federal tax lien filed.

3. On [insert date] respondent's Office of Appeals issued petitioner a Notice of Determination Concerning Collection Action(s) Under Section

6320 and/or 6330 (Notice of Determination) determining that a notice of federal tax lien with respect to income tax for tax years [insert years] should not be withdrawn.

4. On [insert date] petitioner filed his petition in this case.

5. On [insert date] petitioner filed a petition in bankruptcy under 11 U.S.C. Chapter 7.

6. On [insert date] petitioner was granted a discharge under 11 U.S.C. section 727, which included a discharge of petitioner's income tax liability for taxable years [insert years].

7. On [insert date] respondent released all notices of federal tax lien filed against petitioner with respect to petitioner's income tax liability for taxable years [insert years], including the notice of federal tax lien subject to the Notice of Determination.

8. As a result of respondent's release of the notices of federal tax lien, there is no longer a controversy in the present case.

10. The petitioner has been contacted and has no objection to the granting of this motion.

WHEREFORE, it is prayed that this motion be granted.

6. Stipulated decision

a. Installment Agreement Stipulated Decision

i. **DECISION**

Pursuant to the stipulation of the parties in this case and incorporating herein the terms of said stipulation, it is

ORDERED AND DECIDED: That the collection of petitioner's income tax liabilities for the taxable years [insert tax years], inclusive, shall be made in accordance with the terms of the [insert date] Installment Agreement entered into between the parties pursuant to the provisions of I.R.C. § 6159.

Judge.

Entered:

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

ii. **STIPULATION**

The parties hereby stipulate to the terms of the installment agreement attached as Exhibit A.

b. Offer in Compromise Stipulated Decision

i. **DECISION**

Pursuant to the stipulation of the parties in this case and incorporating herein the terms of said stipulation, it is

ORDERED AND DECIDED: That the collection of petitioner's income tax liabilities for the taxable years [insert taxable years], inclusive, shall be made in accordance with the terms of the [insert date] Offer in Compromise entered into between the parties pursuant to the provisions of I.R.C. § 7122.

Judge.

Entered:

* * * * *

It is hereby stipulated that the Court may enter the foregoing decision in this case.

ii. **STIPULATION**

The parties hereby stipulate and agree to the terms of the Offer in Compromise attached as Exhibit A.

c. Concession by the petitioner

DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED and DECIDED: That the determinations set forth in the Notice of Determination Concerning Collection Action for the taxable years [insert years] upon which this case is based are sustained in full.

Judge.

Entered:

* * * * *

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It is hereby stipulated that the Court may enter the foregoing decision.

Taxpayer Advocate and Responsibilities

- A. Exhibit A of 16-page document is easy to read compared to some of the other documents we have to read and understand.
- B. Read at least pages 13-16. Pay close attention to the procedures.

Taxpayer Advocate Powers & Responsibilities

I. Three Essential Accountability Forums

Via legislation up to and including the Internal Revenue Service restructuring and reform act of 1998 (RRA98), Congress established several tax administration accountability forums to prevent undue injury to those who contest liability allegations and otherwise challenge Internal Revenue Service procedure. Three are particularly important: The administrative appeals function, the Treasury Inspector General for Tax Administration (TIGTA), and the Taxpayer Advocate Service (TAS). Each is supposed to operate more or less independent of Internal Revenue Service examination and collection departments and each has specific responsibilities.

The administrative appeal function and TAS are departments within the Internal Revenue Service where the TIGTA is a separate office in the Department of the Treasury. The administrative appeal function and the TAS work with actual case situations where there is controversy or special circumstance while TIGTA is primarily an investigative office that has authority to recommend administrative correction and discipline of wayward IRS personnel under § 1203 of RRA98.

The administrative appeal is technically a taxpayer's first line of defense as any controversy concerning facts or law that arises during the examination process should be referred to appeals for resolution by the examination officer. The examination process is governed by the administrative regulation at 26 CFR § 601.105. Once a matter has been referred for appeals resolution, procedure for IRS appeals is governed by 5 U.S.C. § 553 through 557; impartiality of the appeals officer is mandated by § 556; and essentials of the appeals officer decision are governed by §§ 556(d) & 557. IRS appeals procedural rules are published at 26 CFR § 601.106(f). The general appeals function regulation is 26 CFR § 601.106.

The administrative appeal is supposed to be an adversarial proceeding just like any other judicial or quasi-judicial case. The IRS administrative appeals officer, the decision-maker, is supposed to be impartial. IRS is supposed to be represented by counsel, evidence must be disclosed via discovery, and the taxpayer is supposed to be able to call witnesses, cross-examine adverse witnesses, and submit his or her own evidence. The appeals officer decision, which must include findings of fact and law, must be based on what is in the official record – that which is in the administrative case file and whatever is presented at the formal hearing. In the event the appeals officer relies on information that isn't part of the case file, the taxpayer must be informed of the source and has the opportunity to rebut or correct. The burden of proof lies with the advocate, which is to say, if IRS personnel have advanced a claim, the burden of proof lies with the government. Additionally, administrative appeals hearings must be open to the public, they cannot be sequestered behind closed doors. See *Bothke v. Flour Engineers and Constructors, Inc.* 713 F.2d 1405 (9th Cir., 1982).

Even before a case advances to appeals, IRS personnel are required to cooperate with discovery by (1) providing records the agency has in its possession, and (2) on request, providing "decisions." These requirements are dictated by Administrative Procedures Act, 5 U.S.C. § 552(a)(1)(A):

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; [Underscore added for emphasis]

The Administrative Procedures Act (§ 552) is commonly used to secure documents, records and other items government agencies have on file via Freedom of Information Act requests, but access to items any given agency has on file is only one of the duties imposed by the Act. Government agency decisions are just as important as a comprehensive decision may resolve existing or potential controversy. The decision should clearly state the government's position with respect to (1) facts of any given case, along with disclosing witnesses capable of verifying facts, (2) the law of a case, and (3) demonstrate how the designated law applies to whatever facts are mutually stipulated or the government can prove.¹ These are indispensable elements of any case or controversy "arising under" the Constitution and laws of the United States.

The three primary IRS "decision" documents are the Status Determination Letter, the National Office Ruling Letter and the National Office Technical Advice Memorandum. See 26 U.S.C. § 6110. Directions and particulars relating to the three are variously published in 26 CFR §§ 601.105, 601.106 & 601.201; the Status Determination Letter is an essential part of the appeal process where the National Office Technical Advice Memorandum is an important element in the examination process and/or appeals. See 26 CFR §§ 601.105 & 601.106.

The Privacy Act (5 U.S.C. § 552a) and various Internal Revenue Code sections, along with attending regulations, also entitle people to secure documents and records and request decisions. For example, 26 CFR § 301.6203-1 entitles taxpayers to secure copies of assessment certificates, and 26 U.S.C. § 6001 entitles people who are concerned about whether or not they are liable for a tax imposed by the Internal Revenue Code to secure notice from whatever officer succeeds former district directors with notice authority.² In the event someone is dealing with IRS personnel in examination, collection or other capacities, he is supposed to secure records directly from whatever IRS official he is

¹ See also, the Reasonable Cause and Good Faith Standard at 26 CFR § 1.6664-4, and the Substantial Authority Standard at 26 CFR § 1.6662-4(d). The notion that IRS personnel can make uncontested demands and otherwise run roughshod through people's lives without affirmatively establishing essentials of liability in the record is absurd.

² In October 2000, the Internal Revenue Service went through dramatic physical restructuring. Former district offices are now designated as territorial offices, what were regional service centers are now merely service centers, etc. The restructuring abolished district offices and the office of district director (legitimate tax administration is still based on geographical bounds of internal revenue districts established in compliance with 26 U.S.C. § 7621 and Executive Order #10289), but the Secretary of the Treasury and the Commissioner of Internal Revenue have not published organizational information that specifically assigns duties to successors of district directors since the October 2000 reorganization. They are therefore not in compliance with § 552(a) of the Administrative Procedures Act and § 1505(a) of the Federal Register Act.

dealing with, per § 2 of 31 CFR Part 1, Appendix B of Subpart C.³

These are for the most part what are described as “procedural” due process rights. Laws of the United States, administrative regulations and published policy, including the Internal Revenue Manual, impose mandates and prohibitions on Internal Revenue Service personnel engaged in tax administration process. The discovery and decision mandates outlined above are based on “substantive” due process rights secured by the Sixth Amendment to the Constitution – rights to know the nature and cause of action, to confront adverse witnesses, which includes examination of evidence, etc.

Substantive due process rights are antecedent to procedural due process rights. Essential substantive due process rights are secured by the First, Fourth, Fifth, Sixth and Seventh Amendments.

For example, the Fifth Amendment due process clause is a simple, unambiguous statement comprised of fifteen words: No person shall be deprived of life, liberty or property without due process of law.

When properly and completely restated, the Fifth Amendment due process clause should be understood as follows: No person shall be deprived of life, liberty or property without [judicial] due process of law [in the course of the common law]. Jurisdiction is determined by the “arising under” clause in Article III § 2 of the Constitution. See *Wayman v. Southard*, 23 U.S. 1, 6 L.Ed. 253, 10 Wheat 1, and the judiciary act of 1792.

It would appear from common practice that there is an exception to Fifth Amendment constraint since Internal Revenue Service personnel routinely issues administrative notices of lien, levy and seizure without judicial due process. The notion is that 26 U.S.C. § 6321 creates a “statutory lien” when someone fails to pay a tax obligation, then thereafter the Internal Revenue Service, per §§ 6331, et seq., has authority to administratively seize property, garnish wages and bank accounts, etc., without a judgment.

However, this simply isn’t the case. Where a statute creates an interest for the United States when someone fails to perform a duty imposed by law or does something prohibited by law, the interest is not perfected until there is a judgment from a court of competent jurisdiction. At the point of the judgment, the government’s interest dates retroactively to the act or omission that gave rise to the interest. This is called “relation-back doctrine.” See *United States v. A Parcel of Land, Buildings, Appurtenances and Improvements, known as 92 Buena Vista Avenue, Rumson, New Jersey* (1993), 507 U.S. 111; 113 S.Ct. 1126; 122 L.Ed. 2d 469, *United States of America v. Real Property at*

³ The Privacy Act (5 U.S.C. § 552a) is supplemental to the Administrative Procedures Act (5 U.S.C. § 552) as it provides additional access to agency records. It also provides the means for correcting erroneous records. Where IRS is concerned, the implementing regulation is a Department of the Treasury regulation, Appendix B of Subpart C of 31 CFR Part 1. At § 2, the regulation gives direct access to documents, records and the like through IRS personnel working a case: “Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act.”

2659 Roundhill Drive, Alamo, California, No. 00-16772 (9th Cir., March 18, 2002), and *United States v. Grundy*, 7 U.S. 337, 3 Cranch 337, 350-351, 2 L. Ed. 459 (1806). Judicial procedure for collecting tax debts is prescribed in the Federal Debt Collection Procedures Act in Chapter 176 of Title 28 (28 U.S.C. §§ 3001, et seq.).

To the point the statutory lien prescribed by 26 U.S.C. § 6321 is adjudicated, it is inchoate, i.e., unperfected; when there is a judgment per requirements of 28 U.S.C. § 3201, the lien is perfected and becomes choate. An inchoate lien is unenforceable; a choate lien is enforceable. Unless there is a judgment from a court of competent jurisdiction, a notice of federal tax lien has no lawful effect, the consequence being that subsequent levies, seizures and garnishment predicated on a lien liability are bogus and unlawful. See *The Sarah*, 21 U.S. 391, 5 L.Ed. 644, 8 Wheat 391 (1823) for distinction between admiralty and common law jurisdictions.

The Fifth Amendment due process clause is obvious enough that the first IRS administrative due process rule preserves it (26 CFR § 601.106(f)(1)):

(1) Rule I. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers. [Underscore added for emphasis]

The Taxpayer Advocate has a critical role as he or she, or the down-line delegate, has authority to issue Taxpayer Assistance Orders that stop IRS collection activity until controversy is resolved. One of the primary purposes of the Taxpayer Assistance Service is to intervene when other IRS personnel fail to carry out duties imposed by law or exceed lawful authority.

The office of the Taxpayer Advocate was established via legislation behind 26 U.S.C. § 7803(c), and powers of the office were established by legislation behind 26 U.S.C. § 7811. Both were amended by the Internal Revenue Service reform and restructuring act of 1998. A summary analysis follows reproduction of the key Code sections and the controlling regulation. The primary regulation governing Taxpayer Advocate Service personnel is 26 CFR § 301.7811-1. These three authorities are reproduced in the next section in their entirety. Additionally, TAS personnel are governed by the Taxpayer Advocate Handbook, published as Part 13 of the Internal Revenue Manual. The Handbook is available on the Internal Revenue Service web page.

II. TAS Code Sections & Regulation

26 U.S.C. § 7803

(c) Office of the Taxpayer Advocate.

(1) Establishment.

(A) In general. There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate".

(B) National Taxpayer Advocate.

(i) In general. The Office of the Taxpayer Advocate shall be under the supervision and direction of an official to be known as the "National Taxpayer Advocate". The National Taxpayer Advocate shall report directly to the Commissioner of Internal Revenue and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of the Treasury so determines, at a rate fixed under section 9503 of such title.

(ii) Appointment. The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

(iii) Qualifications. An individual appointed under clause (ii) shall have--

- (I) a background in customer service as well as tax law; and
- (II) experience in representing individual taxpayers.

(iv) Restriction on employment. An individual may be appointed as the National Taxpayer Advocate only if such individual was not an officer or employee of the Internal Revenue Service during the 2-year period ending with such appointment and such individual agrees not to accept any employment with the Internal Revenue Service for at least 5 years after ceasing to be the National Taxpayer Advocate. Service as an officer or employee of the Office of the Taxpayer Advocate shall not be taken into account in applying this clause.

(2) Functions of Office.

(A) In general. It shall be the function of the Office of the Taxpayer Advocate to--

- (i) assist taxpayers in resolving problems with the Internal Revenue Service;
- (ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service;
- (iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii); and
- (iv) identify potential legislative changes which may be appropriate to mitigate such problems.

(B) Annual reports.

(i) Objectives. Not later than June 30 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(ii) Activities. Not later than December 31 of each calendar year, the National Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Office of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall--

(I) identify the initiatives the Office of the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness;

(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811;

(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems;

(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action;

(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory;

(VI) contain an inventory of the items described in subclauses (I), (II), and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction;

(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b);

(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers;

(IX) identify areas of the tax law that impose significant compliance burdens on taxpayers or the Internal Revenue Service, including specific recommendations for remedying these problems;

(X) identify the 10 most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes; and

(XI) include such other information as the National Taxpayer Advocate may deem advisable.

(iii) Report to be submitted directly. Each report required under this subparagraph shall be provided directly to the committees described in clause (i) without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

(iv) Coordination with report of treasury inspector general for tax administration. To the extent that information required to be reported under clause (ii) is also required to be reported under paragraph (1) or (2) of subsection (d) by the Treasury Inspector General for Tax Administration, the National Taxpayer Advocate shall not contain such information in the report submitted under such clause.

(C) Other responsibilities. The National Taxpayer Advocate shall--

(i) monitor the coverage and geographic allocation of local offices of taxpayer advocates;

(ii) develop guidance to be distributed to all Internal Revenue Service officers and employees outlining the criteria for referral of taxpayer inquiries to local offices of taxpayer advocates;

(iii) ensure that the local telephone number for each local office of the taxpayer advocate is published and available to taxpayers served by the office; and

(iv) in conjunction with the Commissioner, develop career paths for local taxpayer advocates choosing to make a career in the Office of the Taxpayer Advocate.

(D) Personnel actions.

(i) In general. The National Taxpayer Advocate shall have the responsibility and authority to--

(I) appoint local taxpayer advocates and make available at least 1 such advocate for each State; and

(II) evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of a taxpayer advocate described in subclause (I).

(ii) Consultation. The National Taxpayer Advocate may consult with the appropriate supervisory personnel of the Internal Revenue Service in carrying out the National Taxpayer Advocate's responsibilities under this subparagraph.

(3) Responsibilities of Commissioner. The Commissioner shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within 3 months after submission to the Commissioner.

(4) Operation of local offices.

(A) In general. Each local taxpayer advocate--

(i) shall report to the National Taxpayer Advocate or delegate thereof;

(ii) may consult with the appropriate supervisory personnel of the Internal Revenue Service regarding the daily operation of the local office of the taxpayer advocate;

(iii) shall, at the initial meeting with any taxpayer seeking the assistance of a local office of the taxpayer advocate, notify such taxpayer that the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate; and

(iv) may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer.

(B) Maintenance of independent communications. Each local office of the taxpayer advocate shall maintain a separate phone, facsimile, and other electronic communication access, and a separate post office address.

26 U.S.C. § 7811

§ 7811. Taxpayer assistance orders.

(a) Authority to issue.

(1) In general. Upon application filed by a taxpayer with the Office of the Taxpayer Advocate (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the National Taxpayer Advocate may issue a Taxpayer Assistance Order if--

(A) the National Taxpayer Advocate determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary; or

(B) the taxpayer meets such other requirements as are set forth in regulations prescribed by the Secretary.

(2) Determination of hardship. For purposes of paragraph (1), a significant hardship shall include--

(A) an immediate threat of adverse action;

(B) a delay of more than 30 days in resolving taxpayer account problems;

(C) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or

(D) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.

(3) Standard where administrative guidance not followed. In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer.

(b) Terms of a Taxpayer Assistance Order. The terms of a Taxpayer Assistance Order may require the Secretary within a specified time period--

(1) to release property of the taxpayer levied upon, or

(2) to cease any action, take any action as permitted by law, or refrain from taking any action, with respect to the taxpayer under--

(A) chapter 64 (relating to collection),

(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

(C) chapter 78 (relating to discovery of liability and enforcement of title), or

(D) any other provision of law which is specifically described by the National Taxpayer Advocate in such order.

(c) Authority to modify or rescind. Any Taxpayer Assistance Order issued by the National Taxpayer Advocate under this section may be modified or rescinded--

(1) only by the National Taxpayer Advocate, the Commissioner of Internal Revenue, or

the Deputy Commissioner of Internal Revenue, and

(2) only if a written explanation of the reasons for the modification or rescission is provided to the National Taxpayer Advocate.

(d) Suspension of running of period of limitation. The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for--

(1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the National Taxpayer Advocate's decision with respect to such application, and

(2) any period specified by the National Taxpayer Advocate in a Taxpayer Assistance Order issued pursuant to such application.

(e) Independent action of National Taxpayer Advocate. Nothing in this section shall prevent the National Taxpayer Advocate from taking any action in the absence of an application under subsection (a).

(f) National Taxpayer Advocate. For purposes of this section, the term "National Taxpayer Advocate" includes any designee of the National Taxpayer Advocate.

26 CFR § 301.7811-1⁴

§ 301.7811-1 Taxpayer Assistance Orders

(a) Authority to issue--(1) In general. When an application is filed by the taxpayer or the taxpayer's duly authorized representative, in the form, manner and time specified in paragraph (b) of this section, the Ombudsman may issue a taxpayer assistance order if, in the determination of the Ombudsman, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service, including action or inaction on the part of the Internal Revenue Service.

(2) Issuance without an application. The Ombudsman may issue a taxpayer assistance order in the absence of an application under section 7811(a).

(3) Duly authorized taxpayer's representative. A "duly authorized taxpayer's representative" is any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

(4) Significant hardship--(i) Determination required. A determination of significant hardship is required to be made by the Ombudsman prior to the issuance of a taxpayer assistance order.

(ii) Term Defined. The term significant hardship means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the Internal Revenue Service. Mere economic or personal inconvenience to the taxpayer does not constitute significant hardship.

(5) Finding different from relief. A finding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service will not automatically result in relief being granted to a taxpayer under this section. A finding of "significant hardship" is separate and distinct from a determination that the taxpayer will be granted relief. The granting of relief requires an examination of the behavior of the taxpayer and of the action or inaction of the Internal Revenue Service that causes or is about to cause the significant hardship to the taxpayer.

(b) Application for taxpayer assistance order--(1) Form. The application for a taxpayer assistance order shall be made on a Form 911 (Application for Taxpayer Assistance Order to

⁴ As of March 2002, this regulation had not been revised since enactment of the IRS reform and restructuring act of 1998. The title "Ombudsman" was eliminated by RRA98.

Relieve Hardship) available from any local office of the Internal Revenue Service or in a written statement which shall contain the following information:

(i) Name, social security number (or the employer identification number), and current mailing address of the taxpayer submitting the application.

(ii) Kind of tax (individual, corporate, etc.) and tax period or periods involved.

(iii) Description of the Internal Revenue Service action or proposed action which is causing or is about to cause a significant hardship to the taxpayer and, if known, the Internal Revenue Service office and personnel involved.

(iv) Description of the specific hardship caused or about to be caused and the kind of relief requested.

(v) Signature of the taxpayer/applicant or duly authorized representative.

(2) Manner. An application for a taxpayer assistance order shall be filed with the Internal Revenue Service Problem Resolution Office in the district where the taxpayer resides. Overseas applicants having a APO or FPO address shall file applications with the Internal Revenue Service, Problem Resolution Office where the return was filed. All other overseas applicants shall file applications with the Internal Revenue Service, Problem Resolution Office, Assistant Commissioner (International), Washington, DC. Where appropriate, these Problem Resolution offices may refer an application for a taxpayer assistance order to another office of the Internal Revenue Service.

(3) Time. An application for a taxpayer assistance order shall be submitted within a reasonable time after the taxpayer becomes aware of the significant hardship or the potential significant hardship.

(c) Contents of Taxpayer Assistance Orders--(1) Terms of order. Upon deciding that a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered, the Ombudsman may issue a taxpayer assistance order requiring the Internal Revenue Service to--

(i) Release levied property (to the extent that the Internal Revenue Service may by law release such property), or

(ii) Stop any action or refrain from taking further action against a taxpayer pursuant to:

(A) Chapter 64 (relating to collection),

(B) Chapter 70, subchapter B (relating to bankruptcy and receiverships),

(C) Chapter 78 (relating to discovery of liability and enforcement of title), or

(D) Any other section of the Internal Revenue Code under which the Internal Revenue Service is taking or is about to take administrative action against the taxpayer that causes or will cause a significant hardship.

(2) Binding effect. A taxpayer assistance order is binding on the Internal Revenue Service unless reversed by an official authorized to modify or rescind such an order as provided in paragraph (d) of this section.

(3) Scope. The terms of a taxpayer assistance order may require the release from levy of property of the taxpayer to the extent that the Internal Revenue Service will by law release such property. In the absence of an overpayment there is, for example, no authority under which the Internal Revenue Service may release sums which have been credited against the taxpayer's liability and deposited into the Treasury of the United States. A taxpayer assistance order may generally not be issued with respect to the investigation of any criminal tax violation and generally may not be issued to enjoin an act of the Office of Chief Counsel (with the exception of Appeals). A taxpayer assistance order will not be issued to contest the merits of any tax liability nor is a taxpayer assistance order intended to be a substitute for or an addition to any established administrative or judicial review procedure.

(d) Authority to modify or rescind. A taxpayer assistance order may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or the superiors of such officials. A modification or

rescission by one of these designated officials may be elevated by the Ombudsman to the superior of such official.

(e) Suspension of statutes of limitations--(1) In general. The running of the applicable period of limitations for any action which is the subject of a taxpayer assistance order shall be suspended for the period beginning on the date the Ombudsman receives an application for a taxpayer assistance order in the form, manner, and time specified in paragraph (b) of this section and ending on the date on which the Ombudsman makes a determination with respect to the application, and for any additional period specified by the Ombudsman in an order issued pursuant to a taxpayer's application. For the purpose of computing the period suspended, all calendar days except the date of receipt of the application shall be included.

(2) Date of decision. The "date on which the Ombudsman makes a decision with respect to the application" is the date on which the taxpayer's request for a taxpayer assistance order is denied, or agreement is reached with the involved function of the Service, or a taxpayer assistance order is issued (except that when the taxpayer assistance order is reviewed by an official who may modify or rescind the taxpayer assistance order as provided in paragraph (d) of this section, the decision date is the date on which such review is completed).

(3) Periods suspended. The periods of limitations which are suspended under section 7811(d) are those which apply to the taxable periods to which the application for a taxpayer assistance order relate or the taxable periods specifically indicated in the terms of a taxpayer assistance order.

Example 1. On August 31, 1989, the Internal Revenue Service levies on funds in the taxpayer's checking account. On September 1, 1989 (at which time 7 months remain before the period of limitations on collection after assessment will expire on April 1, 1990) the Ombudsman receives the taxpayer's written application for a taxpayer assistance order. Subsequently, on September 6, 1989, the Ombudsman determines that the levy has caused a significant hardship and the Internal Revenue Service function which served the levy agrees to release the levy. The levy is released. As a result of the application and the decision by the Ombudsman and the involved function of the Service resolving the hardship, the statute of limitations on collection after assessment is suspended from the date the Ombudsman received the application, September 1, 1989, until the date on which the decision was made to release the levy, September 6, 1989. Therefore, the statute of limitations on collection after assessment will not expire until after April 6, 1990, which is 7 months plus 5 days after the date on which the application for a taxpayer assistance order was received by the Ombudsman.

Example 2. The facts are the same as in example 1 except that the Internal Revenue Service function which served the levy does not agree to release the levy, and the Ombudsman, having made a determination that the levy is causing a significant hardship, issues a taxpayer assistance order on September 6, 1989, in which the levy is ordered to be released and specifies that the statute of limitations on collection after assessment is suspended for an additional 15 days. The period of limitations on collection after assessment will therefore not expire until after April 21, 1990, which is 7 months and 20 days (5 days plus 15 days) after the application for the taxpayer assistance order was received by the Ombudsman.

Example 3. The facts are the same as in example 2 except that the Ombudsman does not specifically suspend the statute of limitations on collection after assessment for an additional number of days in the taxpayer assistance order, but rather the function seeks modification or rescission of the taxpayer assistance order and the appropriate official charged with that responsibility completes his consideration of the assistance order on September 8, 1989. The period of limitations on collection after assessment will therefore not expire until after April 8, 1990, which is 7 months and 7 days after the application for the taxpayer assistance order was received by the Ombudsman.

(4) Absence of a written application. The statute of limitations is not suspended in cases where the Ombudsman issues an order in the absence of a written application for relief by the taxpayer or the taxpayer's duly authorized representative.

(f) Independent action of Ombudsman. The Ombudsman may take any of the actions

described in section 7811(b) in the absence of an application by the taxpayer.

(g) Ombudsman. The term "Ombudsman" includes any designee of the Ombudsman, such as Problem Resolution Officers in Internal Revenue Service regional and district offices and at Internal Revenue Service compliance and service centers.

(h) Effective Date. These regulations are effective as of March 20, 1992. Miscellaneous Provisions

III. Requirement for Taxpayer Assistance Orders

To invoke assistance of the Taxpayer Advocate, it is necessary to submit a completed Form 911 request for a taxpayer assistance order along with support material. If the application states a reasonable grievance, a/k/a "significant hardship", the Taxpayer Advocate must suspend IRS collection initiatives while conducting his preliminary investigation. During the investigation, time limitations are suspended so IRS doesn't lose the right to assess a tax and execute proper collection process if there are legitimate liabilities and causes of action. (§ 7811(d)) Effect is somewhat on the order of calling time out in the course of a football game. The Taxpayer Advocate is responsible for determining whether or not IRS personnel have complied with statutes, regulations and published policy that govern tax administration. The definition of "significant hardship" at 26 CFR § 301.7811-1(a)(4)(ii) clearly speaks to the subject:

(ii) Term Defined. The term significant hardship means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the Internal Revenue Service. Mere economic or personal inconvenience to the taxpayer does not constitute significant hardship. [Underscore added for emphasis]

The definition is a redundancy as § 301.7811-1(a)(1) is clear enough without it:

(a) Authority to issue--(1) In general. When an application is filed by the taxpayer or the taxpayer's duly authorized representative, in the form, manner and time specified in paragraph (b) of this section, the Ombudsman may issue a taxpayer assistance order if, in the determination of the Ombudsman, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service, including action or inaction on the part of the Internal Revenue Service. [Underscore added for emphasis]

Per § 13.1.7.2 of the Internal Revenue Manual, the Taxpayer Advocate Service must "work" any application for a Taxpayer Assistance Order (TAO) that falls into the following categories:

13.1.7.2 (10-01-2001)

Taxpayer Advocate Case Criteria

1. ANY TAXPAYER CONTACT that meets any of the criteria listed below should be worked by the Taxpayer Advocate Service:

TAS Criteria # Description

1. Taxpayer is suffering or about to suffer a significant hardship.
2. The taxpayer is facing an immediate threat of adverse action.
3. The taxpayer will incur significant professional representation [costs if relief is not granted].
4. The taxpayer will suffer irreparable injury to, or long term adverse impact if relief is

not granted.

5. The taxpayer has experienced a delay of more than 30 calendar days to resolve a tax account problem.

6. The taxpayer has not received a response or resolution to their problem or inquiry by the date promised.

7. A system(s) or procedure(s) has either failed to operate as intended or failed to resolve the taxpayer's problem or dispute within the IRS.

8. Duplicate congressional correspondence case.

9. Any case not meeting TAS criteria 1-8, but kept in the TAS office to be worked.

NOTE:

If the taxpayer specifically requests TAS assistance, the case should be automatically referred to the Local Taxpayer Advocate (LTA) office for review. The LTA or his/her designee will determine if the issue should be included in the TAS program or if routine assistance from the Operating Division or Functional Unit will resolve the taxpayer's concern.

* Criteria 1 -- The term "significant hardship" is defined in IRC 7811. For example: A taxpayer calls and states he is having financial problems. He states he will be evicted from his apartment and needs his refund to pay the rent.

* Criteria 2-4 -- Section 1102(c) of RRA98 added subsection (2) to IRC section 7811(a). IRC 7811(a)(2) defines circumstances that automatically meet hardship criteria.

A. Criteria 2 -- An immediate threat of an adverse action to the taxpayer by the IRS. Actions by the IRS that create negative financial consequences or economic burdens for the taxpayer because of the unusual nature of the taxpayer's situation or because of an abuse or misuse of process by IRS personnel is considered an Adverse Action. A warning of impending action that will negatively impact the taxpayer is considered a threat. An action that will take place within the next 30 days or some shorter period is considered Immediate. For example, the termination of an installment agreement based on taxpayer default without any consideration of the nature of the circumstance which caused the default could qualify the taxpayer under this criterion.

B. Criteria 3 -- Significant costs will be incurred by the taxpayer if relief is not granted. Situations where the IRS is unable to make adjustments, process returns, release a lien, etc., immediately and the taxpayer will incur significant costs or expenses are considered significant hardships. Significant costs could include professional fees for assistance, excessive fees for representation, or incurred bank service charges.

C. Criteria 4 -- Irreparable injury to or long-term adverse impact to a taxpayer if relief is not granted. This includes situations whereby a taxpayer may lose assets, income or potential income if relief is not provided. Examples include, loss of the ability to be licensed or bonded as part of his/her occupation, loss of borrowing power/clients due to filing of federal tax lien, and/or damage to credit rating resulting in denial of a loan.

* Criteria 5 -- Generally, a taxpayer problem or inquiry will be considered "delayed" when more than 30 days has elapsed from the date the taxpayer makes a request for IRS assistance.

A. Where there is an established time frame for a specific action based on an IRM, IRS form or other official document, criteria 5 is met when the problem or inquiry is considered delayed 31 days after the prescribed period. For example, 60 days is the normal processing time for a Form 4506 request for photocopy of a filed tax return; on the 91st day after filing Form 4506, and with no response, the taxpayer's circumstance would meet criteria 5.

B. Where there is no established time frame for a specific action based on an IRM, IRS Form or other official document, Criteria 5 is met when the problem or inquiry is delayed 31 days after the initial date the taxpayer made a request for IRS assistance. For example, a taxpayer received an Examination determination from an auditor. The taxpayer is waiting for the interest calculation from the auditor to make full payment. If it is 31 days or more from the time the taxpayer requested the interest calculation, and s(he) has not received it, Criteria 5 would be met.

C. Criteria 5 is not met when the taxpayer has received an interim response and the taxpayer is promised a reply that is within a reasonable time frame, even though it exceeds the prescribed period. However, Criteria 5 is considered met when no action has been taken since the first interim response. For example, when a second interim response is issued and the IRS has taken no action since the first interim response, Criteria 5 would be met.

D. Delays due to taxpayer unresponsiveness will not result in meeting criteria 5.

*Criteria 6 -- Interim letters can extend prescribed time frames unless the delay is extensive or unreasonable. Judgment should be used to determine if the delay is justified or may be considered an unwarranted delay by the Operating Division or Functional Unit.

*Criteria 7 -- A system or procedure has either failed to operate as intended or failed to resolve the taxpayer's problem or dispute within the IRS.

*Criteria 8 -- A congressional inquiry on the same issue as a case already in TAS or on TAMIS.

* Criteria 9 -- Any issue/problem not meeting criteria 1-8 but kept in TAS for handling and resolution.

NOTE:

TAS Delegation of Authorities apply to Criteria 1 -- 7 only.

Categories 1 through 4 require action within two days after receipt of a TAS assistance request; categories 5 through 7 require action within three days. When read in proper context, all seven categories relate to IRS personnel malfeasance and misfeasance.

In sum, when IRS personnel fail to carry out a duty imposed by law, or exceed authority conferred by law, the applicant is entitled to protection of a Taxpayer Assistance Order. In the event the Taxpayer Advocate assigned to the case fails to properly carry out duties of the office, a Taxpayer Assistance Order application may be submitted through a special oversight unit in the Senate Finance Committee.⁵ Where the TAO application is based on misbehavior and unlawful actions of IRS personnel, in addition to issuing a TAO, which may include rescission of notices of lien and levy, release of property, and/or return of money garnished or otherwise illegally seized, the complaint must be forwarded to the TIGTA for investigation.

Authority of the Taxpayer Advocate is reasonably inclusive. Any time IRS personnel fail to comply with mandates and prohibitions of the Internal Revenue Code, or other law governing tax administration, Treasury regulations, and published policy, including the Internal Revenue Manual, the Taxpayer Advocate has authority and is required to intervene on behalf of whoever is being subjected to the unlawful collection process. Further, "In cases where Internal Revenue Service personnel are not following applicable published administrative guidance (including the Internal Revenue Manual), the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer." (26 U.S.C. § 7811(a)(3))

Just as the appeals office must compile a hard-copy case file (the complaining

⁵ Particulars concerning the Government Affairs Program oversight are in IRM § 13.1.8; Senate Finance Committee oversight is detailed in IRM § 13.1.9. Additionally, anyone who has difficulty with TAS compliance may ask a member of the Congressional delegation from his or her state for assistance. It is necessary to sign authorization for an individual Senator or Representative to access confidential tax records. Access to private tax records is controlled by 26 U.S.C. § 6103.

party may submit documents, records and other evidence for inclusion), the Taxpayer Advocate assigned to the case must compile a hard copy file and base decisions on what is actually in record.⁶ In the event that the case is complicated enough that first and second-line TAS personnel don't have sufficient expertise to rule on the case, it may be referred to specialists assigned to the office and further referral can be made up to and including the office of the IRS Chief Counsel. At the time the case is closed, there must be a comprehensive determination letter (finding of facts and law) on the order of appeals officer decisions (See 5 U.S.C. §§ 556(d) & 557).

The mandate for Internal Revenue Service personnel to comply with requirements of the Internal Revenue Code, Treasury regulations and published policy was implemented via § 1203 of the Internal Revenue Service restructuring and reform act of 1998. In addition to the Taxpayer Advocate, the Treasury Inspector General for Tax Administration has investigative authority, but does not have intervention powers. Intervention is left to the Taxpayer Advocate. Where Internal Revenue Service personnel knowingly and willfully engage in criminal acts, the Assistant Attorney General over the Criminal Division of the Department of Justice has investigation and prosecution responsibility. (28 CFR § 0.55) Acts of omission and commission by IRS personnel are classified as criminal by 26 U.S.C. §§ 7214(a)(1), (2) & (3).

The burden of proof mandate of § 7811(a)(3) embodies the same principles as the writ of habeas corpus. Once jurisdiction is challenged, the proponent of a position is responsible for proving authority. Where the habeas corpus is concerned, whoever is responsible for making an arrest is presumed guilty. He must affirmatively prove authority for his acts, i.e., jurisdiction, in record. If he does not prove lawful authority in open court, the prisoner must be discharged. Likewise, if IRS personnel cannot withstand a collateral attack and cannot prove preservation of substantive due process rights and compliance with procedural mandates, whatever claim they've made must be vacated, rescinded, withdrawn or otherwise discharged. The fact that they have acted or are acting as agents of or under color of authority of Government of the United States creates the presumption of guilt.

Generally speaking, the tax system is structured so administrative remedies must be exhausted before judicial remedies are available. This is nearly always the case for administrative agencies. Unfortunately, administrative procedure is more challenging than a Rubic's cube. However, essential elements of a case or controversy "arising under" the Constitution and laws of the United States are constant, whether in administrative or judicial forums. (Article III § 2, U.S. Constitution)

1. Taxing and liability statutes, with implementing regulations, must be disclosed in order to establish authority and/or liability.
2. Facts must be established through testimony, which requires a competent witness. In the alternative, adversarial parties may stipulate to facts.
3. Application of law to facts must be proven.

⁶ At closing, the TAS file must be complete – see particularly, IRM § 13.1.9.3.4 – and it must be independently reviewed. See IRM § 13.1.9.4.

4. The advocate of a position always bears the burden of proof.

Where the first item is concerned, IRS personnel have a legal hill to climb as to establish standing, venue and subject matter jurisdiction, (1) taxing and liability statutes along with implementing regulations must be disclosed, (2) delegated authority for administering the statutes must be entered into evidence, and (3) geographical application of delegated authority must be established.

These are described as collateral issues. Figuratively, “I am attacking the ground you are standing on.” Venue, standing and subject matter jurisdiction are all threshold issues, and as odd as it may seem, they are also fact issues. They should be raised at each stage of administrative and judicial procedure. However, from the point IRS personnel threaten or take steps that are adverse to private interests, substantive and procedural due process rights take stage center. Then the question is, “Have IRS personnel acted in compliance with statutes and regulations that preserve constitutionally secured rights and procedural mandates established by law?” This is the first consideration of the Taxpayer Advocate Service. The TAS must intervene even if the adverse action hasn’t taken place: “A warning of impending action that will negatively impact the taxpayer is considered a threat. An action that will take place within the next 30 days or some shorter period is considered Immediate.” (Cited *supra*)

Substantive due process rights are rights secured by the First, Fourth, Fifth, Sixth and Seventh Amendments. For example, the Sixth Amendment assures that whoever is charged with a crime is entitled to know the nature and cause of the action, to confront adverse witnesses, and to compel testimony. The status determination letter, prescribed by 26 CFR § 601.201, requires district directors, or their successors, to make comprehensive statements of law and fact and demonstrate application of law to whatever facts IRS bases liability claims on. The status determination letter preserves the right to know the nature and cause of action. Disclosure required by 5 U.S.C. § 552, 5 U.S.C. § 552a, 26 U.S.C. § 6103 and § 2 of 31 CFR Part 1, Appendix B of Subpart C is a substantive due process right. The Fifth Amendment establishes that no person shall be deprived of life, liberty or property without judicial due process of law. The Federal Debt Collection Act, classified as Chapter 176 of Title 28, preserves the necessity of judicial process before IRS personnel can encumber or convert private property. There are no exceptions to declaratory and restrictive clauses in the first ten amendments. Unless or until the Constitution is amended, rights secured by the first ten amendments are the same as carved in stone.

Assessment officers are required to execute lawful, procedurally proper assessment certificates in compliance with requirements of 26 CFR § 301.6203-1 before there is a tax liability. IRS personnel must then provide lawful, procedurally proper notice and demand for payment in compliance with requirements of 26 CFR § 301.6303-1. These are among procedural due process rights imposed by statutes and regulations governing tax administration. If the law prescribes A > B > C procedure, IRS personnel cannot jump from A to C or bypass A and B prior to enforcement of C.

A defect that abridges substantive or procedural due process rights deprives the Internal Revenue Service of subject matter jurisdiction. Without subject matter

jurisdiction, all administrative acts, judicial orders, or any other act or determination by a government entity is a nullity that is void from inception.

For case law concerning government personnel liability, see *Owen v. Independence*, 445 U.S. 621, *Maine v. Thiboutot*, 448 U.S. 1, and *Hafer v. Milo*, 502 U.S. 21. In the event actions exceed the reach of federal authority, the actor may be prosecuted under state law. See *State of Idaho v. Lon T. Horiuchi*, No. 98-30149, Ninth Circuit, June 5, 2001. In *Basso v. Utah Power & Light Co.*, 495 F.2d 906 at 910, the court stated an absolute that has been true throughout English and American judicial history: “Jurisdiction can be challenged at any time.” In *Main v. Thiboutot*, 100 S.Ct. 2502 (1980), the Supreme Court of the United States proclaimed that, “The law provides that once state and federal jurisdiction has been challenged, it must be proven.”

When jurisdiction is challenged during the examination process (26 CFR § 601.105) or at any later stage of the assessment and collection process, the officer or agent engaged in the activity has responsibility for referring the “protest” to the appeals office for resolution. In the alternative, he may personally resolve disputes by providing appropriate records and decisions (5 U.S.C. § 552(a)(1)(A)) that resolve contested issues. Whenever these procedural requirements are ignored, the aggrieved party is entitled to protection of a Taxpayer Assistance Order.

A complaint filed with the Taxpayer Advocate cannot be ignored, particularly if it incorporates a collateral challenge or alleges that IRS personnel have deprived the complaining party of substantive and/or procedural due process rights. Implicitly, the Taxpayer Assistance Order is executed on the date an application is submitted. When revenue agents and other IRS personnel are made aware of an application for a Taxpayer Assistance Order, all collection procedure must stop until the Taxpayer Advocate issues an assistance order or denies the application. In any event, the Taxpayer Advocate must make a written statement of reasons for whatever action is or isn’t taken. (§ 7811(c)(2)) The statement must recite essential elements of fact and law. In the meantime, only the Taxpayer Advocate, the Commissioner of Internal Revenue or an Assistant Commissioner of Internal Revenue may rescind or amend a Taxpayer Assistance Order.

If IRS personnel proceed with collection activity once notified of an application for a Taxpayer Assistance Order, they should be reported to the Taxpayer Advocate with appropriate supporting affidavits, documents and other evidence. The Taxpayer Advocate is required to report IRS personnel who do not comply with the Taxpayer Advocate program. (§ 7811(c)(2)(B)(ii)(VII)) They should also be reported to the Treasury Inspector General for Tax Administration for violation of § 1203 of the IRS restructuring and reform act of 1998 and whatever other offenses the abusive acts embody.

As is the case with the Treasury Inspector General for Tax Administration, the problem is convincing the Taxpayer Advocate to carry out statutory responsibilities. Consequently, nonperformance complaints, where there is conspicuous malfeasance and/or misfeasance, should be sent to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. These congressional committees, along with the Joint Committee on Taxation, have tax administration oversight responsibilities.

Hearing Procedures

A. A CDP hearing is conducted by an impartial employee of the IRS Office of Appeals. The Appeals Officer should have no prior involvement in the issue that resulted in the collection of the unpaid liability. CDP hearings are conducted informally at the Appeals office. No transcript is taken of the conference and no oath or affirmation is taken. At the conference, the Appeals Officer will consider:

1. The validity, sufficiency, and timeliness of the CDP Notice and the request of the CDP hearing
2. Any relevant issue relating to the unpaid tax raised by the taxpayer at the hearing
3. Any appropriate spousal defenses raised by the taxpayer at the hearing
4. Any challenges by the taxpayer to the appropriateness of the collection action
5. Any offers for collection alternatives made by the taxpayer and
6. Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary.

B. At the hearing, the taxpayer may also challenge the existence of the liability or the amount of the liability only if he (1) did not receive a Statutory Notice of Deficiency, (2) did not receive it in time to file a tax court petition or (3) if he did not have any opportunity to dispute the liability. The taxpayer may not raise an issue that was raised and considered at a prior administrative or judicial hearing. Prior to issuing a determination, the Appeals Officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met.

C. The Appeals Office will issue its findings in a dated Notice of Determination sent by certified mail or registered mail to the taxpayer. While there is no time limit on when the IRS must issue its findings, the regulations require the Appeals Officer to conduct the hearing “as expeditiously as possible.” Once the finding is issued, the taxpayer has 30 days to request judicial review.

D. The Notice of Determination is required to:

1. State whether the IRS met the requirements of any applicable law or administrative procedure;
2. Decide any allowable issue raised by the taxpayer at the hearing (for example, challenges to the liability, spousal defenses, the appropriateness of the collection action);

3. Decide whether the levy is required for the efficient collection of taxes in light of a taxpayer's concern that the collection action be no more intrusive than necessary;
4. Set forth any agreements reached with the taxpayer, any relief given to the taxpayer, and any actions that the taxpayer or IRS are required to take; and
5. Advise the taxpayer that the judicial review to the Tax Court or a U.S. District Court must be sought within 30 days of the date of the Notice of Determination (Temporary Reg. §301.6330-1T(e)(3), Q&A –E7)

Due Process Hearing Transcript #1

- A. The following Exhibit A is 11 pages of a Collection Due process Hearing.
- B. We are putting this in for training purposes and so you will know what to expect if you, or someone you know, have to attend such a meeting.

SWORN STATEMENTS
OF

AND

COPY

TAKEN AT:

TAKEN ON: December 6, 2002
10:30 a.m.

APPEARANCES:

ALSO PRESENT:

REPORTED BY: Teresa D.
CSR No.

*COURT REPORTER'S NOTE: This sworn statement is a combination of sworn testimony and excerpts of several documents read verbally into the record by the following in order to compile the above-mentioned into one document transcribed by me for file.

* * *

1
2 having been first duly sworn by the reporter, testified on
3 their oaths as follows:

4
5 (Witnesses sworn)

6
7 We received a letter dated November
8 14th, 2002 from Curtis M. , and in that he advised us --
9 his words were: You should also be advised that appeals will
10 not allow an audio or stenographic recording of your hearing.
11 I will, however, allow you to bring one witness to your hearing
12 provided they are not disruptive. If so, we will ask them to
13 leave or will terminate the hearing.

14 We started off the day, Monday, December 2nd, 2002 at 9:15
15 a.m. and wanted to get some IRS identification from him. He
16 gave us his name as Curtis . His title was Settlement
17 Officer. I asked him if this was a pseudonym. He joked and
18 said, Would anybody come up with that for a pseudonym? He
19 offered his GS level as 13.

20 I asked him if he had delegation of authority, and he
21 questioned what that was. Asked him what his delegation
22 number, and he didn't have any idea what that was. Asked him
23 if he had a badge. He said, Yes. Asked him for its background

1 color, and he indicated he didn't understand what we were
2 talking about. He did give us -- he said that his badge had
3 his name on it and that his ID number was . . . Asked to
4 see his badge. He never offered it for us to see.

5 Asked him what his pocket commission was. He just
6 shrugged his shoulders, asked what that was. Asked him what
7 his pocket commission color was, if it was black or red. He
8 shrugged his shoulders and said, I don't know what you're
9 talking about, just pick a color.

10 And he gave several colors but never would indicate a
11 specific one and was thumbing through the pages, and he saw a
12 copy that we had of a back of a badge. And he indicated the
13 bottom one which is off of the document, Computer Systems
14 Security. And it says, Back of ID, and the bottom picture
15 shows the Department of Treasury, Internal Revenue Service
16 (IRS).

17 (There was a short recess for technical adjustments.)

18 (CONT.): Now, I'll read from the papers
19 that -- just as I presented it that day from the IRS Handbook,
20 1.16.4, Chapter 3, Pocket Commissions [1.16.4] 3.1, dated
21 February 19th, 1999, Authorized Use. Pocket commissions will
22 be issued only to those employees who are required to present
23 proof of their authority in the performance of their official

1 duties . . .

2 [1.16.4] 3.2, dated February 19th, 1999. Number 1, The
3 enforcement pocket commission consists of a black leather
4 combination shield/pocket commission case with cut-out on the
5 outside for the enforcement shield . . .

6 Number 2, The non-enforcement pocket commission consists
7 of a red leather folder, embossed in gold on the outside with
8 the Internal Revenue seal, the words, in quotations, United
9 States Treasury . . .

10 And from [1.16.4] 3.7, dated February 19th, 1999, Use of
11 synonym -- excuse me -- Use of Pseudonyms on Pocket
12 commissions.

13 And from the Handbook 1.16.4, Chapter 2, [1.16.4] 2.1,
14 February 19th, 1999, Number 1, ID cards will be issued to all
15 Service employees and will be worn while in Service facilities.

16 And from [1.16.4] 2.3, dated February 19th, 1999, All
17 persons will wear ID cards when in Service facilities. ID
18 cards will be worn with an approved clip fastened to either an
19 item of clothing or to an approved chain worn around the neck
20 or in an approved transparent plastic card holder.

21 Part 8, Chapter 6, Conference and Settlement Practices,
22 which will be 8.6.1.3.4, Judicial Attitude Towards Settlement.
23 That is 8.6.1.3.4, dated February 18th, 1999, Judicial Attitude

1 Towards Settlement. Number 1, the judicial attitude is one
2 which reasonably appraises the facts, law, and litigating
3 prospects; uses sound judgment and ability to see both sides of
4 a question; and it is objective and impartial. Any approach
5 which contemplates a maximum possible result in favor of the
6 Government or a deficiency in every case is incompatible with a
7 judicial attitude and the Appeals mission. Do not take
8 advantage of a taxpayer's lack of technical knowledge. The
9 Appeals Officer will assist the pro se taxpayer in every way
10 possible. In absence of an agreement, explain the taxpayer's
11 further appeal rights.

12 A Treasury Order, 120-01, the subject, Establishment of
13 the Bureau of Alcohol, Tobacco and Firearms. Number 2b,
14 Chapters 61 to 80, inclusive, of the Internal Revenue of 1954,
15 insofar as they relate to activities administered and enforced
16 with respects to Chapters 51, 52 and 53.

17 : From their own Handbook, the
18 Department of the Treasury, we have a diagram that shows the
19 Deputy Secretary. You follow that over to the Under Secretary
20 for Enforcement. Follow that down, and they are in charge of
21 the Bureau of Alcohol, Tobacco and Firearms. The Deputy
22 Secretary is also in charge of the Internal Revenue Service,
23 but the Bureau of Alcohol, Tobacco and Firearms is the only one

1 under Enforcement.

2 And also from the Internal Revenue Service Manual -- shows
3 that the Commissioner is in charge, and the only person that
4 has any kind of enforcement properties at all is the Assistant
5 Commissioner under the Criminal Investigation Division.

6 And, again, the Office of Enforcement, this shows the
7 Under Secretary of Enforcement is over the Bureau Head of the
8 ATF. Nowhere on this sheet does it show any enforcement
9 properties for the Internal Revenue Service.

10 Under Title 26, 7201 through 7217, Title 26 is -- it deals
11 with income tax evasion in this section, and it is for fuels.
12 There are no implementing regulations to enforce this. Without
13 an implementing regulation, the statute has no force of law.

14 : Then we presented a court case, the
15 United States v. Mersky. And from that transcript was, An
16 administrative regulation, of course, is not a statute. While,
17 in practical effect, regulations may be called little laws,
18 they are, at most, but offspring of statutes . . .

19 The result is that neither the statute nor the regulations
20 are complete without the other, and only together do they have
21 any force of law. In effect, therefore, the construction of
22 one necessarily involves the construction of the other.

23 (An off-the-record discussion was held.)

1 (CONT.): Okay. From the Title 26 of the
2 Code of Federal Regulations, Chapter 1, dated April 1st, 1999
3 Edition, 1.1-1, Income tax on individuals, (a) General Rule.

4 (1) Section 1 of the Code imposes an income tax on the income
5 of every individual who is a citizen or residence of the United
6 States . . .

7 (An off-the-record discussion was held.)

8 (CONT.): . . . (b) Citizens or residents
9 of the United States liable to tax . . . (c) Who is a citizen.
10 Every person born or naturalized in the United States and
11 subject to its jurisdiction is a citizen . . .

12 And from Title 26 of the Code of Federal Regulations,
13 Chapter 1, April 1st, 2000 Edition, . . . (e) The terms United
14 States Maritime Commission and Commission shall mean the
15 Secretary of Commerce, the Maritime Administrator or the
16 [Maritime Subsidy Board] as the context may require.

17 2.1-1, Definitions, Number 4, Citizen means a person who,
18 if an individual, was born or naturalized as a citizen of the
19 United States or, if other than an individual, meets the
20 requirement of Sections -- Section 905(c) of the Act and
21 section 2 of the Shipping Act, 1916, as amended (46 U.S.C.
22 802).

23 Number 5, Taxpayer means a citizen who has established or

1 seeks to establish a construction reserve fund under the
2 provisions of the section 511 of the Act and the regulations in
3 this part, and may include a partnership.

4 From Title -- from Title 27 of the Code of Federal
5 Regulations, Chapter 1, April 1st, '99 Edition, ATF officer, An
6 officer or employee of the Bureau of Alcohol, Tobacco and
7 Firearms (ATF) authorized to perform any function relating to
8 the administration or enforcement of this part.

9 Also from Title 27, Code of Federal Regulations, Chapter
10 1, April 1st, '99 Edition, 250.11, A Revenue Agent, any duly
11 authorized Commonwealth Internal Revenue Agent of the
12 Department of the Treasury of Puerto Rico.

13 From Title 7 --

14 : -- 27.

15 : Huh?

16 : Title 27.

17 : What did I -- oh, I'm sorry.

18 Title 27 of the Code of Federal Regulations, Chapter 1,
19 April 1st, 2001 Edition 250.30, Revenue Agent, Any duly
20 authorized Commonwealth Internal Revenue Agent of the
21 Department of the Treasury of Puerto Rico.

22 And from twenty -- Title -- Title 27, Code of Federal
23 Regulations, Chapter 1, April 1st, '99 Edition, Special agent

1 in charge, the principal official responsible for the ATF
2 criminal enforcement program within the ATF district.

3 And from the Occupational Outlook Handbook, 2002/2003
4 Edition, under the U.S. Department of Labor, Bureau of Labor
5 Statistics states, Tax Examiners, Collectors, and Revenue
6 Agents, . . . Because many States assess individual income
7 taxes based on the taxpayer's reported Federal adjusted gross
8 income, tax examiners working for the Federal Government report
9 to the States any adjustments or corrections they make . . .

10 Many experienced revenue agents specialize; for example,
11 they may focus exclusively on multinational businesses. But
12 all revenue agents working for the Federal Government must keep
13 abreast of the lengthy, complex and frequently changing tax
14 code. Computer technology has simplified the research process,
15 allowing revenue agents Internet -- Internet access to relevant
16 legal bulletins, IRS notices and tax-related court
17 decisions . . .

18 Stress may result from the need to work under a deadline
19 in checking returns and evaluating taxpayer claims. Collectors
20 also must face -- excuse me -- the unpleasant task of
21 confronting delinquent taxpayers . . .

22 Training and Other Qualifications, and Advancements, Tax
23 examiners, collectors, and revenue agents work with

1 confidential financial and personal information; therefore,
2 trustworthiness is crucial for maintaining confidentiality for
3 individuals and businesses. Applicants for Federal Government
4 jobs must submit to a background investigation . . .

5 Collectors need good interpersonal and communication
6 skills because they deal directly with the public and because
7 their reports are scrutinized when the IRS must legally justify
8 attempts to seize assets . . .

9 And under Police and Detectives, State law enforcement
10 agencies operate in every State except Hawaii . . .

11 The Federal Government maintains a high profile in many
12 areas of law enforcement. The United States -- the U -- excuse
13 me -- the U.S. Department of Justice is the largest employer of
14 Federal -- of sworn Federal officers. Federal Bureau of
15 Investigation (FBI) agents are the Government's principle
16 investigators, responsible for investigating violations of more
17 than 260 statutes and conducting sensitive national security
18 investigations . . .

19 Then there is the U.S. Drug Enforcement Administration
20 (DEA) agents . . . ;U.S. marshals and deputy marshals . . .
21 ;U.S. Immigration and Naturalization Service (INS) agents and
22 inspectors . . . ;the U.S. Border Patrol agents . . .

23 Special agents and inspectors employed by the United --

1 excuse me -- by the U.S. Department of the Treasury work for
2 the Bureau of Alcohol, Tobacco and Firearms; the Customs
3 Service; and the Secret Service. Bureau of Alcohol, Tobacco
4 and Firearms (ATF) agents regulate and investigate violations
5 -- violations of Federal firearms and explosive laws, as well
6 as Federal Alcohol and Tobacco tax regulations. Custom Agents
7 investigate violations of narcotics smuggling, money
8 laundering, child pornography, customs fraud, and enforcement
9 of the Arms Export Control Act. Domestic and foreign
10 investigations involve the development and use of informants,
11 physical and electronic surveillance, and examination of
12 records from import/export -- exporters, banks, couriers, and
13 manufacturers. They conduct interviews, serve on joint task
14 forces with other agencies, and get and execute search
15 warrants.

16 There are, Customs inspectors inspect cargo . . . ;Secret
17 Service special agents protect the President and Vice President
18 . . . ;the U.S. Department of State Bureau of Diplomatic
19 Security special agents are engaged in the battle against
20 terrorism . . .

21 Other Federal agencies employ police and special agents
22 with sworn arrest powers and the authority to carry firearms.
23 These agencies include the U.S. Postal Service, the Bureau of

IRS Due Process Hearing Transcript #2

- A. This Exhibit A is 29 pages of a transcript worth reading for both the educational and entertainment value.
- B. Enjoy yourself as our hero has a go around with Mr. Skidmore from the IRS.

COLLECTION DUE PROCESS HEARING

ORIGINAL

This Hearing taken before Kathy J. Anderson,
CSR-2573, Certified Shorthand Reporter and Notary
Public within and for the County of Kent, State of
Michigan, at _____,
Michigan on Tuesday, March 5, 2002, commencing at
about 12:30 p.m.

PRESENT:

Mr. _____
IRS Appeals Officer
678 Front, N.W.

(_____)

Mr. _____

Mr. _____

Mr. _____

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PROCEEDINGS

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Great Lakes Shorthand, P.O. Box 2002, Grand Rapids, Michigan 49501
(800) 234-2044 (888) FAX-6776 glsusa@aol.com www.glsusa.net

1 hearing which will not have further appeal rights.

2 MR. : One moment, sir. This is a due
3 process hearing, and not an appeal hearing. The due
4 process hearing must precede filing of any lien or
5 levy and there may be other appeals that it is your
6 job to acquaint us with. Your job description --

7 MR. SKIDMORE: My job description is not at
8 issue today.

9 MR. : Excuse me. You are required to
10 wear an ID and I don't see you wearing one. Why is
11 that?

12 MR. SKIDMORE: This is not at issue today.

13 MR. : May I see your ID?

14 MR. SKIDMORE: Sure. And then I'm going to
15 continue with the materials that I have prepared to
16 introduce us in this matter.

17 MR. : Well, provided that I get to
18 exercise my due process procedural and substantive
19 rights, that's just fine. Okay. We have a name,
20 Bruce Skidmore. Signature. ID card number 388-00780,
21 and issued 10-17-01. Very good. And have you also a
22 pocket commission?

23 MR. SKIDMORE: No.

24 MR. : No pocket commission?

25 MR. SKIDMORE: No. Never needed one. Now I

1 would like to continue. You'll have an opportunity to
2 raise any issues that you want to.

3 MR. : When?

4 MR. SKIDMORE: Very shortly.

5 MR. : Shortly. How long is this what
6 you are going to be reading because --

7 MR. SKIDMORE: Very brief.

8 MR. Before, well, I don't know if
9 that's in accordance with due process because I may
10 not be allowed the occasion to make this record
11 correctly.

12 MR. SKIDMORE: Maybe you better give me a
13 chance. All right. So I'm going to read this first
14 and then you'll --

15 MR. : Is that acceptable?

16 MR. : What will this make --

17 MR. : Assure me that you are
18 affording me my procedural and substantive due process
19 rights.

20 MR. SKIDMORE: That is what this hearing is
21 for.

22 MR. : But you didn't show me your
23 pocket commission.

24 MR. SKIDMORE: I told you already I don't
25 have a pocket commission.

1 MR. : Never have had?

2 MR. SKIDMORE: Never had. How can I show
3 you something I don't have.

4 MR. : And you never have had. Why is
5 that?

6 MR. SKIDMORE: I have never needed one.

7 MR. : Are you carrying a firearm?

8 MR. SKIDMORE: I'm going to read this and we
9 will see what questions you have to ask to what we are
10 germane to. It is not germane whether I have a
11 firearm or not.

12 MR. I would like to ask one
13 question, sir. This hearing will be held under
14 internal revenue law or income tax law?

15 MR. SKIDMORE: I don't know what distinction
16 you are seeking to make. Now I'm going to read this.

17 MR. : Well, sir, there is a
18 distinction and before I can be heard in my due
19 process hearing I have to know what I will be heard
20 under. Is it income tax law or is it internal revenue
21 law?

22 MR. SKIDMORE: I have already answered that
23 question.

24 MR. Yes, you answered but you
25 didn't answer the question I asked.

1 MR. SKIDMORE: I answered it to the best of
2 my ability. Now, are you going to let me proceed or
3 not?

4 MR. : Not at the expense of my rights
5 and before we can proceed I have to know if I'll be
6 heard under income tax law or internal revenue law.
7 Would you please answer that?

8 MR. SKIDMORE: You are going to be heard
9 under the laws of the United States of America.

10 MR. Which is not an answer to the
11 question. Are we talking income tax law or internal
12 revenue law?

13 MR. SKIDMORE: I'm going to proceed because
14 I have no further answer to that question than what
15 I've already given you. Now the periods --

16 MR. May I say something?

17 MR. SKIDMORE: You already said something.

18 MR. You didn't answer my question
19 which is at issue here because it's of essence. Due
20 process cannot be heard unless we know what form of
21 law we are being heard under. That wasn't a good
22 enough answer what you gave me; I'm sorry, you'll have
23 to do better.

24 MR. SKIDMORE: I'm sorry, I'm not.

25 MR. You refuse to answer the

1 question?

2 MR. SKIDMORE: I have answered the
3 question. You refuse to let me proceed with this
4 hearing.

5 MR. : I refuse to accept your answer
6 because it was a nonanswer. Now, I will ask you once
7 more. Is this hearing under income tax law or
8 internal revenue law, one or the other?

9 MR. SKIDMORE: I don't know what you are
10 talking about.

11 MR. : Officers of the government are
12 presumed to know the law.

13 Apparently you've refused to answer my
14 question. That's unfortunate.

15 MR. SKIDMORE: The periods that will be
16 subject to this hearing are the periods indicated on
17 the letter, 1058, which are the forms 1040 for 1989
18 through 1991. I need to verify your address so that
19 if I need to send future correspondence I'll have your
20 correct mailing address. Is your address still the
21 same as that shown on form 12153 for which the hearing
22 was requested?

23 MR. : My address is friend or William
24 Martin.

25 MR. SKIDMORE: That's not a mailing

1 address. I'm inquiring about your mailing address.

2 MR. You could send it here. I'm
3 here.

4 MR. SKIDMORE: Now who is failing to answer
5 the question. I think that's an understandable
6 question. Do you receive mail currently at 23701 23
7 1/2 Mile Road in Olivet, 49076? There is a yes or no
8 question. How about you answer that one.

9 MR. ... Reside is not a term I'm
10 familiar with.

11 MR. SKIDMORE: I don't think I used the word
12 reside. I asked whether you received mail at that
13 address.

14 MR. . As I told you before, you can
15 send it here. I'm here right now.

16 MR. SKIDMORE: But that's not the question.
17 The question is, if I address mail to this address,
18 will you receive it, so far as you would know? Do you
19 normally receive mail which is directed to that
20 address?

21 MR. How could I answer a
22 hypothetical question?

23 MR. SKIDMORE: It's not hypothetical.

24 MR. : Yes, it is. It's an if. It
25 hasn't happened.

1 MR. SKIDMORE: Do you get mail?

2 MR. I've gotten mail that you've
3 sent me.

4 MR. SKIDMORE: Is it directed to this
5 address?

6 MR. I: Well, what address did you
7 use?

8 MR. SKIDMORE: I think I'm going to go on.

9 Before I proceed I advise you that this is
10 an administrative appeal. Administrative appeal
11 procedures do not extend to issues involving the
12 failure or refusal to comply with the tax laws because
13 of moral, religious, political, constitutional,
14 conscientious or similar grounds. The appeals office
15 is independent of the compliance division. As an
16 appeals officer I analyze and consider information
17 received from both you as a taxpayer and compliance
18 and make my decision based on the facts and applicable
19 law.

20 The appeals office has settlement authority
21 with respect to resolving disputed issues; as an
22 appeals officer I can recommend settlement or
23 resolution of the case based on an analysis of the
24 facts.

25 Appeals is restricted from having certain

1 types of communications with compliance. This
2 restriction ensures that the appeals maintains its
3 independence so the taxpayer is afforded a fair and
4 impartial hearing. Appeals strives to resolve cases
5 in a prompt manner but the length of the appeals
6 process will vary from case to case.

7 Do you have any question about the appeals
8 or about the appeals process?

9 MR. Yes, I do. I have an exhibit
10 here that indicates that it is the job of the appeals
11 officer to show other steps in the appeals process.

12 MR. SKIDMORE: What do you mean other
13 steps?

14 MR. : Well, it's from your own law
15 and I'm sure you are familiar with it. I will be
16 getting my hands on it here. 31, yeah. I'm having a
17 little difficulty finding it.

18 "Part 8 Appeals, Chapter 6 Appeals, Section
19 1, Conference and Settlement Practice 8.6.1.3.4
20 (02-18-199) Judicial Attitude Towards Settlement. The
21 judicial attitude is one which reasonably appraises
22 the facts, law, and litigating prospects; uses sound
23 judgment and ability to see both sides of a question;
24 and is objective and impartial. Any approach which
25 contemplates a maximum possible result in favor of the

1 Government or a deficiency in every case is
2 incompatible with a judicial attitude and the Appeals
3 mission.

4 Do not take advantage of a taxpayer's lack
5 of technical knowledge. The Appeals Officer will
6 assist the pro se taxpayer in every way possible. In
7 the absence of an agreement, explain the taxpayer's
8 further appeals rights".

9 MR. SKIDMORE: I have already done that. I
10 already indicated to you that because this is an
11 equivalent hearing, you have no further appeal rights.

12 MR. : Based upon what? Who says?
13 Where is your authority?

14 MR. SKIDMORE: I'm the authority for that
15 statement. I make that statement; I stand behind it.

16 MR. : Well, there has to be law
17 behind it. I mean you are a big, strong man and I'm
18 sure you are capable of enforcing it, but what's the
19 law?

20 MR. SKIDMORE: Section 6330 and 6320. Due
21 process law states that a request must be made timely
22 in order for you to be afforded further appeal
23 rights. Your request did not come in within that
24 30-day period that you were given and it was untimely,
25 therefore, we are giving you a hearing which is what's

1 called an equivalent hearing rather than a Collection
2 Due Process Hearing.

3 MR. : Excuse me, sir. Are you
4 familiar with Treasury Department order 120-1?

5 MR. SKIDMORE: Maybe. I mean that name,
6 number doesn't ring a big bell.

7 MR. Well, I want to read something
8 in the record if I may. June 6, and this goes to the
9 question I've asked so many times, 6330 and 6320 is it
10 under IRS internal revenue law or is it under income
11 tax law.

12 June the 6th, 1972 number 120-1.
13 Establishment of the Bureau of Alcohol, Tobacco and
14 Firearms. That is the subject. By virtue of the
15 authority vested in me as Secretary of the Treasury,
16 including the authority in Reorganization Plan Number
17 26 of 1950, it is ordered that: The purpose of this
18 Order is to transfer, as specified herein, the
19 functions, powers and duties of the Internal Revenue
20 Service arising under laws relating to alcohol,
21 tobacco, firearms, and explosives (including the
22 Alcohol, Tobacco and Firearms Division of the Internal
23 Revenue Service) to the Bureau of Alcohol, Tobacco and
24 Firearms (hereinafter referred to as the Bureau) which
25 is hereby established. The Bureau shall be headed by

1 the Director, Alcohol, Tobacco and Firearms
2 (hereinafter referred to as the Director). The
3 Director shall perform his duties under the general
4 direction of the Secretary of Treasury, (hereinafter
5 referred to as the Secretary) and under the
6 supervision of the Assistant Secretary (Enforcement,
7 Tariff and Trade Affairs, and operations) (hereinafter
8 referred to) --

9 MR. SKIDMORE: You are reading a rather
10 lengthy passage.

11 MR. : It's almost over. I've got
12 about another 30 seconds. That's number one. Number
13 2, The Director shall perform the functions, exercise
14 the powers, carry out the duties of the Secretary in
15 the administration and enforcement of the following
16 provisions of law: A, Chapters 51, 52, 53 of the
17 Internal Revenue Code of 1954 and sections 7652 and
18 7653 of such Code insofar as they relate to the
19 commodities subject to tax under such chapters.

20 B, Chapters 61 to 80, inclusive, of the
21 Internal Revenue Code of 1954, insofar as they relate
22 to activities administered and enforced with respect
23 to Chapters 51, 52, 53. Chapter 51 is alcohol,
24 chapter 52 is tobacco, chapter 53 is firearms.

25 And those are administered on a hundred

1 percent by Alcohol, Tobacco and Firearms people
2 through chapters 61 to 80 which is part of the
3 Internal Revenue Code. And never was transferred when
4 the IRS was transferred to the Alcohol, Tobacco and
5 Firearms division. But it is absolutely totally
6 administered by the ATF and the internal revenue laws
7 are Alcohol, Tobacco and Firearms. And I'm wondering
8 what I'm doing here.

9 MR. SKIDMORE: You requested this hearing,
10 that's what you are doing here. We are giving you the
11 hearing you asked for. We are not here today to
12 discuss tax law.

13 MR. N: We are not discussing tax law.
14 What we are discussing is the law which governs your
15 conduct and I want to protect you from--

16 MR. SKIDMORE: I appreciate that.

17 MR. : -- causing misprison of felony.

18 MR. SKIDMORE: I really appreciate that.
19 But I have a little further to read. I really don't
20 see the point.

21 MR. : Tax amendment act and the 1203.

22 MR. SKIDMORE: You are not going to just
23 keep reading things that aren't germane.

24 MR. When do I get to talk?

25 MR. SKIDMORE: You already talked a bunch.

1 MR. : No, I don't think I have talked
2 enough. Because my due process and substantive and
3 procedural rights are at risk here.

4 MR. SKIDMORE: Let me say this. I did not
5 identify in your hearing request any issue for which
6 the appeals division has jurisdiction in, and with
7 respect to your levy, your proposed levy which is the
8 purpose of this hearing, do you have an issue? I
9 enumerated the types of issues which the law calls for
10 in your appointment letter; there are four types, do
11 you have an issue you would like to raise in this
12 hearing which I can consider?

13 MR. : I would hope so.

14 MR. SKIDMORE: Would you please name it
15 now?

16 MR. : Okay. Do you have my request
17 for this hearing?

18 MR. SKIDMORE: Yes.

19 MR. : Do you have it in front of
20 you?

21 MR. SKIDMORE: It's right here.

22 MR. : Then I will read it.

23 Request for Collection Due Process Hearing
24 Type of tax, form number 1040 A.

25 MR. SKIDMORE: Don't just read that,

1 please. The question was do you have an issue? What
2 is the issue?

3 MR. : I disagree. The assessment
4 authority rests in IRC-Section 6201, see Exhibit E of
5 the document which you indicated you had. Legal
6 presumption of lawful authority of IRS Section 62.

7 MR. SKIDMORE: Are you intending just to
8 read that document? I already have that document if
9 you are just intending to read that.

10 MR. ... Apparently you are not taking
11 cognizance of it and I want it known for the record
12 that it is made unequivocal that I am requesting that
13 things for discovery which I requested at the time in
14 June when I made this request. Now, have you done
15 anything to abide by my requests other than meeting
16 here? Because you get paid to be here.

17 MR. SKIDMORE: I read that. Those weren't
18 requests, those were demands.

19 MR. ... Okay. Did you do anything
20 about my demands?

21 MR. SKIDMORE: No, I did not.

22 MR. : Why not?

23 MR. SKIDMORE: Because you don't have
24 discovery rights in an appeal.

25 MR. : Pursuant to what authority?

1 Where is the authority?

2 MR. SKIDMORE: Where is your authority to
3 make demands?

4 MR. : I'm an American citizen and you
5 who don't even have a pocket commission, are
6 masquerading as I don't know what. I'm appalled.
7 Now, how have you - -

8 MR. SKIDMORE: I will tell you why you don't
9 have discovery. Because an appeals hearing is an
10 informal hearing.

11 MR. : This is not an appeals
12 hearing. This is a Collection Due Process Hearing
13 which must precede lien and levy.

14 MR. SKIDMORE: That is -- then if you wish
15 to make that distinction that is also an informal
16 hearing. There are no discovery rights.

17 MR. What do you understand by the
18 word informal?

19 MR. SKIDMORE: Probably the same thing you
20 do.

21 MR. : No. Don't tell me that.

22 MR. SKIDMORE: This is not an English class
23 in which I'm going to define lessons.

24 MR. : I understand English, sir.

25 MR. SKIDMORE: You have not raised an issue

1 for which we have jurisdiction.

2 MR. : I have raised so many issues
3 and you choose not to answer.

4 MR. SKIDMORE: The issues were enumerated on
5 your appointment letter, the types of issues you can
6 raise. You have not raised an issue under any of
7 those four categories. If you don't do so shortly I'm
8 going to have to say our hearing is over. Because we
9 are not doing anything here.

10 MR. : Sir, I have information I need
11 to get on the record and I will get it on the record
12 whether you choose to disrupt the hearing, be
13 uncourteous or uncooperative. I have called this
14 hearing and it is my due process hearing and it
15 behooves you as -- what's your grade number? I didn't
16 even get your --

17 MR. SKIDMORE: It does not behoove me to
18 waste time.

19 MR. : Sir, you are getting paid to do
20 this. I am not. I'm exercising my rights on my time
21 and you are a public servant denying me rights
22 procedural and substantive. And I'm not pleased. I
23 have several things.

24 MR. SKIDMORE: Do you have an issue?

25 MR. : Yes, I am demanding due process

1 documents named below. Form 23C, produce it. I'm
2 demanding you produce it. I request most respectfully
3 that you produce it. I will ask you any way you
4 choose. But please produce form 23C to the
5 above-captioned years relevant.

6 MR. SKIDMORE: Are you familiar with the
7 Davis case in which arguments --

8 MR. This precedes the Davis case as
9 you well know.

10 MR. SKIDMORE: Well then you understand that
11 the Davis case would have considered that. Since that
12 preceded the Davis case and the court in the Davis
13 case was quite clear, I don't need to provide you with
14 the 23C form.

15 MR. Were you there?

16 MR. SKIDMORE: I have read the transcript of
17 that case.

18 MR. Let me see it.

19 MR. SKIDMORE: I don't have it here to
20 provide you.

21 MR. You don't have a 123 C either
22 nor do you have assessment form 2162, how come?

23 MR. SKIDMORE: I don't feel that's
24 necessary.

25 MR. Okay.

1 MR. SKIDMORE: Do you have an issue to
2 raise? This is maybe the last time I'm going to --

3 MR. : Substantive and due process
4 issues I'm going to raise them. If you choose to
5 disrupt my meeting --

6 MR. SKIDMORE: This is not your meeting.

7 MR. I'm going to reconvene this
8 meeting at Little Mexico Restaurant at Bridge and
9 Stocking in one half hour and we will be waiting for
10 you there. But to make sure the record is properly
11 set, why don't you just tough it out. I'll be here
12 probably another half hour. And then I'll be on your
13 way.

14 MR. SKIDMORE: I'm not going to be here
15 another half hour because you haven't given me a
16 reason to continue this hearing.

17 MR. : Let me -- the alleged debt is
18 all based on -- the alleged debt is all based on
19 substitutes for return. We have had our IMF
20 professionally decoded per the ADP 62089 manual and
21 some interesting points, some important items from the
22 decoded IMF, which is Individual Master File. The
23 alleged debt is all based on substitutes for returns.
24 Our research has shown that the substitute for return
25 is not allowed for a 1040 tax form. Furthermore, the

1 substitute for return is not done according to
2 regulations regarding substitute for return.

3 MR. SKIDMORE: Have you seen the substitute
4 for return?

5 MR. Yes, I have. I have them.

6 MR. SKIDMORE: Okay.

7 MR. For return which state that the
8 substitute for return must be completely filled out
9 and signed by the agent preparing the substitute for
10 return. These substitute for returns are known as
11 dummies. For IMF shows a VAL-1 which
12 indicates that the social security number is not valid
13 for the one using it. IMF shows a
14 transaction code 150 which only applies to Virgin
15 Islands, a Virgin Islands tax return.
16 has never been there.

17 IMF has codes which apply
18 only to a BMF such as the EPMF. 1989
19 IMF indicates total income of zero. No return
20 required per MFR 01. Key issues from relevant
21 documents Exhibit 1, and I will be furnishing you this
22 entire document package in due time, but not today.

23 Exhibit 1, Appointment Affidavit. Serves as
24 a revenue officer who has the responsibility to
25 protect taxpayer rights while providing responsive

1 service and assistance to taxpayers.

2 Customer relations and assistance, service
3 personnel observes taxpayer's rights. As you go
4 through these, as I'm reading them off --

5 MR. SKIDMORE: Now I'm going to stop you
6 because you are not raising an issue.

7 MR. I think I'm raising a lot of
8 issues and it has to do with due process.

9 MR. SKIDMORE: You are talking about a lot
10 of things you want to talk about.

11 MR. : Procedural and substantive.

12 MR. SKIDMORE: That's not the same thing as
13 --

14 MR. ID cards will be issued to all
15 service employees and will be worn.

16 MR. SKIDMORE: You were previously told that
17 there were four types of issues you could raise. You
18 were previously told --

19 MR. : Says who?

20 MR. SKIDMORE: -- because of the issues of
21 statutory notice of deficiency you were unable to
22 raise an issue with respect to the underlying tax
23 liability. And therefore you cannot raise the issue
24 which you are trying to raise out of the transcript.

25 MR. Pursuant to what law?

1 MR. SKIDMORE: Section 6330 and section 6320
2 of the law.

3 MR. And is that being heard under
4 income tax law or internal revenue law?

5 Pocket commission will be issued only to
6 those employees who are required to present proof of
7 their authority in the performance of their official
8 duties. The exception of their use by commission
9 primarily intended to identify service personnel to
10 public.

11 MR. SKIDMORE: As far as I can tell this
12 hearing needs to be over. And so if you have any
13 issues.

14 MR. . . It's my hearing. I will be
15 reconvening it in half an hour as a humble taxpayer.

16 MR. SKIDMORE: But it will not be an appeals
17 hearing.

18 MR. We will be awaiting you there.

19 MR. SKIDMORE: It will not be a Collection
20 Due Process Hearing because I will not be there. The
21 government will not be represented. You requested a
22 hearing. A hearing has been granted. And you can
23 have any meetings you want but they are not going to
24 be hearings because the hearing is here. And the
25 hearing is now -- and the hearing is over because you

1 have failed to raise an issue.

2 MR. : Very good.

3 MR. SKIDMORE: So I will get your coats and
4 ask you to leave.

5 MR. : I'm disappointed in you.

6 MR. SKIDMORE: I'm sure you had high
7 expectations for me. So I'm terribly --

8 MR. For the record we are
9 reconvening in one half hour. Our due process
10 substantive and procedural rights have been denied and
11 afforded. And we are on our way to Little Mexico Cafe
12 and we will await you there and we will be there and
13 we will conduct the due process hearing and we will
14 send you a package relevant to that. And furthermore,
15 it's been a pleasure.

16 MR. SKIDMORE: I will be issuing a letter of
17 determination. Excuse me, a letter of decision which
18 you will receive which will indicate to you the
19 conclusion and decision which has been made in this
20 hearing in your case.

21 MR. !: Well, is there any reason why
22 we can't stay here and finish our hearing so we don't
23 have to make Miss Anderson regroup?

24 MR. SKIDMORE: The hearing is over.

25 MR. : Well, yes, but who is using

1 this office right now?

2 MR. SKIDMORE: This office is not available
3 for your use.

4 MR. N: I understand. You've been most
5 cordial and thank you for preserving my due process
6 rights, procedural and substantive.

7 (Hearing adjourned, moved to another
8 location with Mr. William Martin, Chris Martin, Jack
9 Elliott in attendance).

10 MR. --- Shall we commence? This is
11 We are back on the record. We are in
12 the atrium of the building here. It's post office cum
13 IRS facility. Mr. Bruce Skidmore unceremoniously
14 asked us to leave his facility in which we were
15 attempting to carry on a collections due process
16 hearing to protect substantive and procedural rights,
17 and apparently due process is not something that Mr.
18 Skidmore is comfortable with or recognizes as an
19 inalienable right from our creator provided by our
20 constitution. Once due process is denied,
21 jurisdiction ceases pursuant to U.S. Code 5556 D, 557,
22 and 706, so I don't know why Mr. Skidmore chose to
23 upbridge my due process, but it became obvious that we
24 weren't going to be able to continue our due process
25 hearing in the facility where we started it. Mr.

1 Skidmore did not call security, however, discretion
2 prompted me to leave.

3 Back on the record. We were talking about
4 our Exhibit 2, IRS identification badge.

5 Exhibit 3, samples of
6 authorized ID cards.

7 Exhibit 4, back of ID card. We didn't look
8 at the back of his ID card nor did he answer whether
9 he had a firearm or not.

10 Exhibit 5, 1.16.4, ID cards will be issued
11 to all Service employees and will be worn in Service
12 facilities. Now why didn't Mr. Skidmore choose to
13 wear it? He could probably get a \$56 ticket and \$20
14 court costs for that little breach of protocol.

15 Exhibit 6, pocket commission will be issued
16 only to employees who are required to present proof of
17 their authority in performance of their official
18 duties with the exception of their use by inspection.
19 And I think that's about the farthest we got before I
20 remember reading that.

21 Pocket commissions are primarily intended to
22 identify service personnel to the public when dealing
23 with tax matters. We didn't ask Mr. Skidmore if he
24 used an alias. Of course, he was rather uncooperative
25 about that badge.

1 what law we were under when I asked him six times was
2 it under internal revenue law or income tax law,
3 whatever it was contacted third parties without
4 - consent.

5 If there are no further additions -- oh,
6 perhaps there is one more thing. Mr. Skidmore has
7 said he will send us a letter of decision which is
8 beyond his scope of his job description and authority;
9 and according to administrative procedures, he may
10 make a determination not a decision.

11 So, therefore, we are objecting to Mr.
12 Skidmore saying he would send us a letter of decision
13 which exceeds his authority. And once again I might
14 point out that when challenged Mr. Skidmore furnished
15 no authority besides the law of I say and that is not
16 enough law for my procedural and substantive due
17 process hearing to be heard under.

18 The letter that we were reading from of
19 August 4th, 1998 denies everything. Denies any
20 liability in actual and legally not subject to or
21 liable for any income tax, excise tax or duty or
22 obligation whatsoever to complete and file form 1040.

23 I am convinced and satisfied that I am not
24 now nor was I ever subject to, liable for, or required
25 to pay any income tax, excise tax, that I am now not

1 now, never been or never was a taxpayer as that term
2 is defined and used in the Internal Revenue Code,
3 which we cited.

4 And that I have never had any legal duty or
5 obligation whatsoever to file any form 1040 or make
6 any income tax return.

7 Decisions to revoke, rescind, cancel and
8 render null and void both currently and retroactively
9 to the time of signing based upon the constructive
10 fraud perpetrated upon me by the U.S. Congress and the
11 Internal Revenue Service. All forms 1040, income tax
12 returns, all forms W-4 employees withholding,
13 allowance certificate and all other IRS forms,
14 schedules and documents ever signed and/or submitted
15 by me and all my signatures on any of the
16 aforementioned items to include the Social Security
17 number, account number, bearing the account number

18 . Power of attorney in the 14th amendment
19 citizenship revoked that too. I am not now and never
20 was a taxpayer or personally liable. Amen.

21 MR. And that concludes the
22 meeting.

23 (Hearing concluded, 2:30 p.m.)

24

25

1 CERTIFICATE

2 STATE OF MICHIGAN)
3) ss
4 COUNTY OF)

5 I, _____ Certified

6 Shorthand Reporter and Notary Public duly and
7 qualified in and for the State of Michigan certify
8 that the foregoing transcript is a true and correct
9 transcript of my original stenographic notes.

10 IN WITNESS WHEREOF, I have hereunto set my hand
11 and Seal this 20th day of March, 2001.

12 _____ Notary Public in and for
13 _____
14 County, Michigan

15 My Commission expires January
16
17
18
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20
21
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23
24
25

Notice of Determination
Concerning Collection Action(s) under Section
6320/6330

- A. After a Collection Due Process Hearing the IRS must send you a Determination Letter informing you that you lost the hearing before they can begin collection activities.
- B. We have not found anything in IRS publications that says you cannot send them a determination letter that you won the hearing. You presented certain documents along with your decoded IMF and therefore you established best evidence in the record.
- C. One of the major reasons you want to employ a court reporter is that, once you have the court reporter place you under oath, this transcript can be used over and over again if you need it.

Internal Revenue Service

Appeals Office
P. O. Box 2026
Cincinnati, OH 45202

Date: **MAR 11 2009**

Department of the Treasury**General Appeals Programs:**

Area 3 - Chicago

Person to Contact:

Mr. Pickering

Employee ID Number: 31-09552

Tel:

Fax: ()

Refer Reply to:

AP:GEN:OH:CO:REP

Taxpayer Identification:**Tax Type/Form Number:**

individual/1040

Tax Periods:

1997,1998, 1999, 2000

In Regard To:

Due Process Appeal (Tax Court)

Certified Mail

**NOTICE OF DETERMINATION
CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330**

Dear Mrs.

We have reviewed the proposed collection action for the periods shown above. This letter is your legal Notice of Determination, as required by law. A summary of our determination is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a redetermination within 30 days from the date of this letter.

To get a petition form and the rules for filing a petition, write to:
Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217.

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file late. If the court determines that you made your petition to the wrong court, you will have 30 days after such determination to file with the correct court.

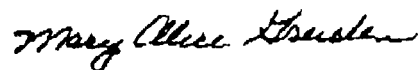
If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached pages.

If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

We were unable to reach an alternative method of paying the tax other than enforcement of the levy.

Sincerely,

A handwritten signature in cursive script that reads "Mary Alice Gruden".

Mary Alice Gruden
Appeals Team Manager

Issues Raised by the Taxpayer

1. You contend that the amount shown for the 1997-2000 period is in error. You do not agree with the findings of the IRS and, therefore, believe that collection actions are inappropriate. You want to correct the information you believe is in error.
2. You contend that collection actions are inappropriate because requiring you to provide a child's social security number should be voluntary. Specifically, you contend your U.S. citizenship is a duality (& erroneous), and that you elect to be merely a citizen of that State which became part of the Union in 1803.

The Appeals Office believes that your position is without merit. In any case it is beyond the scope of this administrative procedure and will not be debated further.

IRC Section 6502 does not place any limitations on the term "assessment". Section 6502 requires that the assessment be made, "*within the period of limitation properly applicable thereto*". The period of limitation applicable is provided by IRC Section 6501(a). That section provides that the assessment must be made within three years after the return was filed.

← Exhibit A

In your case Form 1040 was filed on time but the necessary information was not provided. The 1040 was incomplete and the tax computed differently than you would wish. This computation by IRS has created a balance due. These taxes have been timely assessed as shown at Transaction Code 150 on the official transcripts provided to you

You raised no barriers relating to the unpaid taxes and made no other proposals regarding collection alternatives (such as an installment plan). We believe you can fully pay the amounts due. You are at liberty to file form 1040X.

Balancing the Need for Efficient Collection with the Taxpayer's Concern that the Collection Action be no More Intrusive than Necessary

← IRC Section 6330 requires that the Appeals Officer consider whether any collection action balances the need for efficient collection of taxes with your legitimate concern that any collection action be no more intrusive than necessary. You made no representation at the hearing that the proposed levy would be more intrusive than necessary, only that you didn't want it enforced until you resolved other theoretical problems to your satisfaction. The Treasury has no reason to suspend collection activities. Therefore, the proposed levy is deemed necessary for the efficient collection of the taxes.

Exhibit B

Attachment – to Letter 3193

Summary of taxes dues including interest and late pay penalty

Tax period	Type
	1040
	1040
	1040
	1040

MATTERS CONSIDERED AT THE APPEALS HEARING

Verification of Legal and Procedural Requirements

The information made available to the Appeals Office provides verification that all statutory, regulatory and administrative requirements were met before the levy was proposed.

It has been verified that the taxpayer's tax liabilities for the periods listed on the *Notice of Intent to Levy and Your Right to a Hearing* have been assessed and are unpaid as of March 21, 2002.

Internal Revenue Code (IRC) Section 6303 provides that the IRS shall, as soon as practicable, and within 60 days, after the making of an assessment, give notice to the taxpayer, stating the amount and demanding payment. The notice required under Section 6303 was issued to the taxpayer on all of the tax periods at issue in this case.

IRC Section 6321 provides a statutory lien when a taxpayer neglects or refuses to pay a tax liability after notice and demand. Transcripts show that notice and demand as required by Section 6321 was issued to the taxpayer on all of the tax periods at issue.

IRC Section 6330(a) states that no levy may be made until 30 days after the IRS provides written notice to a taxpayer of the opportunity for a hearing with the IRS Office of Appeals. IRC Section 6330(a)(3)(B) requires that the taxpayer request a hearing within the 30-day period. A notice required by Section 6330(a) was sent to the you by certified mail on August 28, 2001. You submitted a letter, requesting "a due process hearing as referenced in your letter", dated timely September 28, 2001.

You were given the opportunity to raise any relevant issue relating to the unpaid tax or the proposed levy at the April 10, 2002 hearing in accordance with IRC Section 6330(c). The issues you raised in your letters are outlined below. A determination was made in this case with the information available to the Appeals Officer.

Mr. Pickering, the Appeals employee has had no prior involvement with respect to the liabilities covered by this hearing.

153. Waivers

Since petition to tax court for redetermination of deficiencies taxpayers alleged that deficiencies were barred by three-year limitation and in his answer Commissioner alleged that period had been extended by taxpayers' fraud or execution of waivers, and on trial waivers were not put into evidence, or any evidence as to them. Tax Court abused its discretion in refusing to vacate judgment for taxpayers and reopen for submission of evidence as to waivers. *Commissioner v Estate of Williams* (1954, CA4) 216 F2d 598, 54-2 USTC ¶ 9677, 46 AFTR 1049.

Used circumstantial evidence is appropriate to prove contents of document containing written waiver of statute of limitations through circumstantial evidence is appropriate in suits under 26 USCS § 6501. *United States v Conry* (1980, CA9 Cal) 631 F2d 599, 81-2 USTC ¶ 9618, 47 AFTR 2d 81-320.

Waivers regular in form, indorsed on return, and coming from proper government custody, were conclusive, returns having been placed in evidence without objection. *Waggaman v Helvering* (1935) 64 App DC 371, 78 F2d 721, 35-2 USTC ¶ 9377, 16 AFTR 458, cert den 296 US 618, 80 L Ed 439, 56 S Ct 139.

Commissioner claiming that there has been waiver must produce same. *West Virginia Rail Co. v Jewett Bigelow & Brooks Coal Co.* (1928, ED Ky) 26 F2d 503, 6 AFTR 7720.

Government must establish validity of waivers. *Hamilton Web Co. v Page* (1934, DC RI) 8 F Supp 626, 14 AFTR 957.

In action by United States to recover income taxes, burden is on government to establish that statute of limitations had been waived. *United States v Wigmore* (1943, SD Cal) 48 F Supp 250, 43-1 USTC ¶ 9242, 30 AFTR 827, aff'd in part and rev'd in part on other grounds (CA9 Cal) 140 F2d 110, 44-1 USTC ¶ 9161, 32 AFTR 15.

Waiver cannot validly extend statute of limitations where, as result of Internal Revenue Service error, none of taxable periods in dispute are listed in waiver signed by taxpayer. *United States v Grabscheid* (1982, ND Ill) 82-1 USTC ¶ 9382.

IRS carries burden of proving statute of limitations has not run where it maintains duly executed waiver extending statute which had been signed by taxpayer; where forms are missing and therefore cannot be produced, IRS can still carry its burden by secondary evidence that forms were properly executed; due to IRS irregularities in handling waiver, evidence submitted by taxpayers and IRS were in relative balance, therefore IRS failed to carry its burden of proving waiver was signed, and no assessment of tax could be made against taxpayers for taxable year in issue. *Peters v Commissioner* (1978) TC Memo 1978-219, 37 TCM 941.

§ 6502. Collection after assessment.

(a) **Length of period.** Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 10 years after the assessment of the tax, or

(2) if—

(A) there is an installment agreement between the taxpayer and the Secretary, prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into; or

(B) there is a release of levy under section 6343 after such 10-year period, prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.

If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) **Date when levy is considered made.** The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

HISTORY: ANCILLARY LAWS AND DIRECTIVES**Amendments:**

In 1998, P.L. 105-206, Sec. 3461(a) (applicable to requests to extend the period of limitations made after 12/31/99, as provided by Sec. 3461(c) of P.L. 105-206, which appears as a note to Code Sec. 6501), amended subsec. (a) by substituting para. (2) for one which read: "(2) prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before the expiration of such 10-year period (or, if there is a release of levy under section 6343 after such 10-year period, then before such release)."; and deleting "The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon." preceding "If a timely" in the concluding matter.

In 1990, P.L. 101-508, Sec. 11317(a)(1), substituted "10 years" for "6 years" in para. (a)(1). Sec. 11317(a)(2), substituted "10-year period" for "6-year period" each place it appeared in para. (a)(2), effective as provided in Sec. 11317(c) of this Act which reads as follows:

"(1) taxes assessed after the date of the enactment [11/5/90] of this Act, and

"(2) taxes assessed on or before such date if the period specified in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by subsection (a)) for collection of such taxes has not expired as of such date."

In 1989, P.L. 101-239, Sec. 7811(k)(2), substituted "unenforceable" for "enforceable" in the last sentence of subsec. (a), effective for levies issued after 11/10/88.

26 USCS § 6502

INTERNAL REVENUE CODE

In 1988, P.L. 100-647, Sec. 1015(a)(1), amended the last sentence of subsec. (a), effective for levies issued after 11/10/88.

Prior to amendment, the last sentence of subsec. (a) read as follows:

"The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer."

In 1976, P.L. 94-455, Sec. 1906(b)(3)(A), substituted "Secretary" for "Secretary or his delegate" in Code Sec. 6502, effective 2/1/77.

In 1966, P.L. 89-719, Sec. 113, added the last sentence in subsec. (a), effective after 11/2/66, regardless of when a lien or a title of the U.S. arose or when the lien or interest of any other person was acquired. For a special exception included in Sec. 114 of P.L. 89-719 see the note to Code Sec. 6523.

CODE OF FEDERAL REGULATIONS

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Procedure and administration, 27 CFR Part 70.

CROSS REFERENCES

Limitations period on action for recovery of erroneous refund, 26 USCS § 6532.

Interest as assessable and collectible at any time during period within which tax to which it relates may be collected, 26 USCS § 6601.

RESEARCH GUIDE

Federal Procedure:

20 Fed Proc L Ed, Internal Revenue §§ 48:551, 582, 979.

20A Fed Proc L Ed, Internal Revenue § 48:1516.

Am Jur:

34 Am Jur 2d, Federal Taxation (2000) ¶¶ 71917, 71918.

Texts:

Rasch, Handling Federal Estate and Gift Taxes 4th § 13:24.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

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3. "Proceeding in court"
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7. Generally
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I. IN GENERAL

1. Generally

Purpose predecessor to 26 USCS § 6502 was to fix time beyond which steps to enforce collection might not be initiated. *Re Bowen* (1944, ED Pa) 58 F Supp 286, 45-1 USTC ¶ 9231, 33 AFTR 530, affd (CA3 Pa) 151 F2d 690, 45-2 USTC ¶ 9420, 34 AFTR 373.

2. "Assessment"

Assessment certificate signed and transmitted by Commissioner to collector was assessment within meaning of statute limiting time for enforcement of assessment. *Welch Ins. Agency v Brast* (1932, CA4 W Va) 55 F2d 60, 10 AFTR 1041, cert den 285 US 555, 76 L Ed 944, 52 S Ct 457.

Proposed waiver of restrictions on assessment and collection of deficiency and acceptance of overassessment submitted by administrator of estate and written acceptance thereof by government did not constitute binding contract and assessment which commenced running of statute of limitations. *United States v Miller* (1963, CA7 Ind) 318 F2d 637, 63-2 USTC ¶ 12155, 12 AFTR 2d 6182.

Assessment does not take place until Commissioner acts, and taxpayer's return is not assessment itself. *Davidovitz v United States* (1932) 75 Ct Cl 211, 58 F2d 1063, 11 AFTR 347.

"Assessment" mentioned in predecessor to 26 USCS § 6501 refers to assessment by Commissioner and not to self-assessment which takes place when taxpayer files his return. *United States v Amori* (1955, ND Cal) 136 F Supp 601, 56-1 USTC ¶ 9160, 48 AFTR 1047.

Prior to deletion, paras. (2), (3), (4) and (5) read as follows:

"(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (11 U.S.C. 35).

"(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (11 U.S.C. 93).

"(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67(b) and (c) of that act, as amended (11 U.S.C. 107).

"(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (11 U.S.C. 1080)."

In 1976, P.L. 94-455, Sec. 1906(a)(20)(A), deleted "52 Stat. 851;" before "11 U.S.C. 35" in para. (2); Sec. 1906(a)(20)(B), deleted "52 Stat. 867;" before "11 U.S.C. 93" in para. (3); Sec. 1906(a)(20)(C), deleted "52 Stat. 867-877;" before "11 U.S.C. 107" in para. (4); Sec. 1906(a)(20)(D), deleted "52 Stat. 938;" before "11 U.S.C. 1080" in para. (5), effective 2/1/77.

SUBCHAPTER D. Seizure of Property for Collection of Taxes

Part

I. Due process for collections.

II. Levy.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(b), added the table of parts.

PART I. DUE PROCESS FOR COLLECTIONS

Sec.

6330. Due process for collections.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(b), added the part heading and part analysis.

§ 6330. Notice and opportunity for hearing before levy.

(a) **Requirement of notice before levy.** (1) **In general.** No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) **Time and method for notice.** The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) **Information included with notice.** The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) **Right to fair hearing.** (1) **In general.** If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

(2) **One hearing per period.** A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) **Impartial officer.** The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.

(c) **Matters considered at hearing.** In the case of any hearing conducted under this section—

(1) **Requirement of investigation.** The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) **Issues at hearing.** (A) In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—

- (i) appropriate spousal defenses;
- (ii) challenges to the appropriateness of collection actions; and
- (iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) **Underlying liability.** The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) **Basis for the determination.** The determination by an appeals officer under this subsection shall take into consideration—

- (A) the verification presented under paragraph (1);
- (B) the issues raised under paragraph (2); and
- (C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) **Certain issues precluded.** An issue may not be raised at the hearing if—

- (A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and
- (B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding.

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

(d) **Proceeding after hearing.** (1) **Judicial review of determination.** The person may, within 30 days of a determination under this section, appeal such determination—

- (A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or
- (B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

(2) **Jurisdiction retained at IRS Office of Appeals.** The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—

- (A) collection actions taken or proposed with respect to such determination; and
- (B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) **Suspension of collections and statute of limitations.** (1) **In general.** Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

Exhibit B 2 of 4

(2) **Levy upon appeal.** Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) **Jeopardy and State refund collection.** If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy; or

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund.

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 2000. P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 313(b)(2)(A) of Subtitle B of Title III of H.R. 5662, as introduced on Dec. 14, 2000 (effective on enactment, as provided by Sec. 313(f) of such H.R. 5662, which appears as a note to Code Sec. 6015)), amended subsec. (e)(1) by adding the sentences beginning "Notwithstanding . . ." and "The Tax Court . . .".

—P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 313(d) of Subtitle B of Title III of H.R. 5662, as introduced on Dec. 14, 2000 (effective as if included in the provisions of P.L. 105-206 to which it relates, as provided by Sec. 313(f) of such H.R. 5662, which appears as a note to Code Sec. 6015)), amended subsec. (d)(1)(A) by substituting "with respect to" for "to hear".

In 1998. P.L. 105-206, Sec. 3401(b) (applicable to collection actions initiated after 1/22/99, pursuant to Sec. 3401(d) of P.L. 105-206, which appears as a note to Code Sec. 6320), added Code Sec. 6330.

RESEARCH GUIDE

Am Jur:

34 Am Jur 2d. Federal Taxation (2000) ¶¶ 71920, 71944, 71945, 71947.

INTERPRETIVE NOTES AND DECISIONS

De novo judicial review in review of appeals of officer determination at collection due process hearing is not appropriate, and proper standard is review for abuse of discretion; it is not abuse of discretion for IRS to decline third installment payment plan where taxpayer had defaulted on two prior installment payment plans. *MRCA Info. Servs. v United States* (2000, DC Conn) 2000-2 USTC ¶ 50683.

Appeals officer who previously presided over appeal of taxpayer's president in responsible person penalty case is not impartial officer before which collection due process hearing to consider rejection of corporate taxpayer's installment payment plan may be brought, and mater is therefore remanded for new due process hearing. *MRCA Info. Servs. v United States* (2000, DC Conn) 2000-2 USTC ¶ 50683.

Federal district court lacks jurisdiction to hear matter arising from collection due process rights of taxpayer where underlying tax was taxpayer's self-employment taxes over which Tax Court has jurisdiction. *True v Commissioner* (2000, MD Fla) 108 F Supp 2d 1361, 2000-2 USTC ¶ 50634, 14 FLW Fed D 26.

District court does not have jurisdiction to prohibit IRS from taking collections action despite alleged failure of IRS to provide required due process appeal since appeals under § 6330 are required to be made to Tax Court; if claim under § 6330 is improperly made

to District Court, then taxpayer has 30 days to refile claim in Tax Court. *Dimartino v United States* (2001, DC Nev) 2001-1 USTC ¶ 50298, 87 AFTR 2d 1002.

Where taxpayer fails to request collection due process hearing before Office of Appeals within 30 days of notice of intent to levy, Tax Court lacks jurisdiction since there is nothing to review on appeal. *Offiler v Commissioner* (2000) 114 TC No. 30.

Where taxpayer files appeal of adverse determination and denial for request for reconsideration in district court more than 30 days after IRS denial of request for reconsideration, appeal is untimely; statutory periods are jurisdictional and cannot be extended. *McCune v Commissioner* (2000) 115 TC No. 7.

Failure of IRS to offer or schedule collection due process hearing under § 6330 requires dismissal of case in favor of taxpayers even though taxpayers raised constitutional issues at hearing. *Meyer v Commissioner* (2000) 115 TC No. 31.

Tax Court lacks jurisdiction to review collection efforts where there was no lien hearing because notice was sent to wrong address and there was no levy hearing because taxpayer failed to request one; Tax Court lacks jurisdiction to review decisions of IRS in hearings granted to taxpayers in lieu of collection hearings which are not timely requested by taxpayers. *Kennedy v Comm'r* (2001) 116 TC No. 19; *Moorhouse v Comm'r* (2001) 116 TC No. 20.

PART II. LEVY

- Sec.
- 6331. Levy and distraint.
- 6332. Surrender of property subject to levy.
- 6333. Production of books.
- 6334. Property exempt from levy.
- 6335. Sale of seized property.
- 6336. Sale of perishable goods.

Exhibit B3 of 4

- 6337. Redemption of property.
- 6338. Certificate of sale: deed of real property.
- 6339. Legal effect of certificate of sale of personal property and deed of real property.
- 6340. Records of sale.
- 6341. Expense of levy and sale.
- 6342. Application of proceeds of levy.
- 6343. Authority to release levy and return property.
- 6344. Cross references.

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(b), added the part heading.

In 1966, P.L. 89-719, added "and return property" in item 6343.

§ 6331. Levy and distraint.

(a) **Authority of Secretary.** If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) **Seizure and sale of property.** The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) **Successive seizures.** Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) **Requirement of notice before levy.** (1) **In general.** Levy may be made under subsection (a) upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy.

(2) **30-day requirement.** The notice required under paragraph (1) shall be—

- (A) given in person,
- (B) left at the dwelling or usual place of business of such person, or
- (C) sent by certified or registered mail to such person's last known address,

no less than 30 days before the day of the levy.

(3) **Jeopardy.** Paragraph (1) shall not apply to a levy if the Secretary has made a finding under the last sentence of subsection (a) that the collection of tax is in jeopardy.

(4) **Information included with notice.** The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

- (A) the provisions of this title relating to levy and sale of property,
- (B) the procedures applicable to the levy and sale of property under this title,
- (C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,
- (D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),
- (E) the provisions of this title relating to redemption of property and release of liens on property, and
- (F) the procedures applicable to the redemption of property and the release of a lien on property under this title.

(e) **Continuing levy on salary and wages.** The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.

Request for Judicial Review

A. A request for judicial review of a finding in a Notice of Determination must be made within 30 days of the date appearing on the Notice of Determination.

However, if the taxpayer is appealing a denial of innocent spouse relief, the appeal may be filed with the Tax Court within 90 days of the determination as provided by IRC §6015(e). The appeal should be filed with the court having jurisdiction over the type of tax specified in the CDP Notice.

B. The court will apply a de novo review standard if the amount of the liability is at issue. All other issues are reviewed under an abuse of discretion standard.

C. While a judicial appeal is pending, the IRS may levy if (1) the underlying tax liability is not at issue and (2) the IRS shows good cause for not suspending the levy.

D. Internal Revenue Code

IRC §6015(e)

Petition for review by Tax Court, *Exhibit A*

IRC §6330

Notice and opportunity for hearing before levy,
Exhibit B

IRC §6320

Notice and opportunity for hearing upon filing of
notice of lien, *Exhibit C*

TD 2002FED ¶ 47,017

Treasury Decision 8979, (Jan. 17, 2002), *Exhibit D*

Commissioner (1942, CA2) 125 F2d 514, 42-1 USTC ¶ 9262, 28 AFTR 1076.

Prior decision of Tax Court lacks preclusive effect where IRS voluntarily redetermines amount of deficiency based upon tax returns belatedly offered since, by voluntarily redetermining deficiency, IRS waives *res judicata*. *Smaczniak v Commissioner* (1993, CA5) 998 F2d 238, 93-2 USTC ¶ 50414, 72 AFTR 2d 93-5342, 93 TNT 149-13.

In view of § 319(a) of Revenue Act of 1926 as amended, if executor elects Board of Tax Appeals [now Tax Court] as forum for redetermination of estate tax deficiency, he cannot then sue in any court for recovery of any part of such tax; hence, where question of deduction from taxable estate of amounts paid by executor to attorneys was not raised before Board of Tax Appeals it could not be made basis of action for recovery of alleged overpayment of tax, even though plaintiff contended that question could not have been raised before Board because attorney's fees were then uncertain. *Moir v United States* (1944, DC Mass) 57 F Supp 529, 44-2 USTC ¶ 10150, 32 AFTR 1573, *affd* (CA1 Mass) 149 F2d 455, 45-1 USTC ¶ 10204, 33 AFTR 1390.

Personal representative of estate who filed estate tax returns on behalf of estate is barred by judicial estoppel from asserting that he was not fiduciary of estate and that court consequently lacked jurisdiction in prior proceeding to enter stipulated decision as to amount of deficiency and penalty. *Huddleston v Commissioner* (1993) 100 TC No. 3.

46. —Other years or taxes

Each year being origin of new income tax liability and separate cause of action, determination on merits of liability or nonliability operates in later proceeding concerned with similar or unlike claim relating to different tax year, not as *res judicata* as to matters which might have been litigated, but only as collateral estoppel in respect of those matters in second proceeding which were actually presented and determined in first. *Commissioner v Sunnen* (1948) 333 US 591, 92 L Ed 898, 68 S Ct 715, 77 USPQ 29, 48-1 USTC ¶ 9230, 36 AFTR 611, *conformed to* (CA8) 168 F2d 839, 36 AFTR 1136.

Formal decisions entered by Tax Court pursuant to stipulations by taxpayer and Commissioner, filed pending review by Tax Court of determination by Commissioner of tax deficiencies resulting from tax-

payer's claim of excessive value as basis for depreciating certain property, stating that there was no deficiency in federal income tax due for years in question, are *res judicata* of tax claims for those years only, and are not *res judicata* of question whether depreciation basis employed by taxpayer was proper, in absence of showing that question of propriety of that basis was determined, or was submitted for determination, by Tax Court. *United States v International Bldg. Co.* (1953) 345 US 502, 97 L Ed 1182, 73 S Ct 807, 53-1 USTC ¶ 9366, 43 AFTR 396, *reh den* 345 US 978, 97 L Ed 1392, 73 S Ct 1120, 44 AFTR 465.

Issue whether taxpayer was carrying on trade or business in given tax year is new in each taxable year raised and remains open until pertinent facts appear with sufficient certainty to provide basis for decision under applicable statute for year in question. *Stoddard v Commissioner* (1944, CA2) 141 F2d 76, 44-1 USTC ¶ 9223, 32 AFTR 241, *later app* (CA2) 152 F2d 445, 45-2 USTC ¶ 9458, 34 AFTR 603.

47. —Effect of actions against other taxpayers

Former § 272 of 1939 Code and present 26 USCS § 6212 do not specify that each determination of deficiency be fully consistent with every other determination made contemporaneously against related taxpayer so long as there is acceptable legal theory for each approach, determination falls short of frivolous or unfair, where inconsistent determinations are not made in bad faith and do not equate with absence of requirement that Commissioner determine that correct tax exceeds returned amount before issuing notice of deficiency, in that each taxpayer knows position Commissioner is taking with respect to his tax situation, and so long as ultimate resolution of issues is consistent for all, and there is no vowed attempt to collect more than one tax on same income. *Estate of Goodall v Commissioner* (1968, CA8) 391 F2d 775, 68-1 USTC ¶ 9245, 68-1 USTC ¶ 12515, 28 OGR 476, 21 AFTR 2d 813, *cert den* 393 US 829, 21 L Ed 2d 100, 89 S Ct 96.

Issuance of multiple notices of deficiency to different taxpayers, each based on same item of income, does not create defense to assessment and collection where taxpayer does not contend deficiencies charged to him were paid by him or any other taxpayer. *Estate of Cassini v Commissioner* (1972) TC Memo 1972-88, 31 TCM 346, *affd* (CA2 NY) 469 F2d 1404, 73-1 USTC ¶ 9337, 31 AFTR 2d 73-1185.

§ 6215. Assessment of deficiency found by Tax Court.

(a) **General rule.** If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary. No part of the amount determined as a deficiency by the Secretary but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) **Cross references.**

- (1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.
- (2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary, see section 7459(d).
- (3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459(e).
- (4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.
- (5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9(b)(8) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App 1742).
- (6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

Exhibit A / 102

(7) For extension of time for paying amount determined as deficiency, see section 6161(b).

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1986, P.L. 99-514, Sec. 1404(c)(2), deleted para. (b)(7) and redesignated para. (b)(8) as para. (b)(7), effective for tax yrs. begin. after 12/31/86.

Prior to amendment, para. (b)(7) read as follows:

“(7) For proration of deficiency to installments, see section 6152(c).”

In 1976, P.L. 94-455, Sec. 1906(a)(16), deleted “60 Stat. 48;”, before “50 U.S.C. App 1742”, in para. (b)(5), effective 2/1/77.

—P.L. 94-455, Sec. 1906(b)(13)(A), substituted “Secretary” for “Secretary or his delegate” each place it appeared in Code Sec. 6215, effective 2/1/77.

CROSS REFERENCES

USCS Administrative Rules, IRS, 26 CFR §§ 601.103, 601.104, 601.105.

Date when Tax Court decisions become final, 26 USCS § 7481.

RESEARCH GUIDE

Federal Procedure:

20 Fed Proc L Ed, Internal Revenue §§ 48:540, 685, 800.

20A Fed Proc L Ed, Internal Revenue § 48:1522.

Am Jur Trials:

20 Am Jur Trials, Preparing a Federal Income Tax Case for Trial, p. 255, § 71.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Assessment of deficiencies found by Tax Court
3. —Penalties and interest
4. —Effect of appeal or other suit
5. Assessment where Tax Court has not found deficiency

1. Generally

It was evident purpose of Congress in prescribing so minutely dates on which decisions of Board of Tax Appeals [now Tax Court] become final in various situations, to enable Commissioner of Internal Revenue to know exactly when he is at liberty to make deficiency assessment on basis of which collector of internal revenue proceeds to collect tax, in cases where board has found deficiency. *Denholm & McKay Co. v Commissioner* (1942, CA1) 132 F2d 243, 42-2 USTC ¶ 9825, 30 AFTR 572.

Ordinarily, Treasury may obtain summary judgment in Federal District Court reducing to judgment Tax Court's deficiency determination. *United States v Teitelbaum* (1965, CA7 Ill) 342 F2d 672, 65-1 USTC ¶ 9235, 15 AFTR 2d 352, cert den 382 US 831, 15 L Ed 2d 75, 86 S Ct 71.

2. Assessment of deficiencies found by Tax Court

No assessment of tax or distraint may be made where there is review by Board of Tax Appeals [now Tax Court] until its decision becomes final, where-upon amount determined by Board plus interest at statutory rate must be assessed. *Commissioner v Kilpatrick's Estate* (1944, CA6) 140 F2d 887, 44-1 USTC ¶ 9208, 32 AFTR 192.

3. —Penalties and interest

Interest is assessable only after Board of Tax Appeals [now Tax Court] has acted where there is review of determination of Commissioner by Board.

Commissioner v Kilpatrick's Estate (1944, CA6) 140 F2d 887, 44-1 USTC ¶ 9208, 32 AFTR 192.

4. —Effect of appeal or other suit

Fact that refund suit for same year is pending does not relieve taxpayer from paying balance of assessed deficiency. *Sirian Lamp Co. v Manning* (1941, CA3 NJ) 123 F2d 776, 41-2 USTC ¶ 9753, 28 AFTR 413, 138 ALR 1423 (disapproved *Flora v United States*, 357 US 63, 2 L Ed 2d 1165, 78 S Ct 1079, 58-2 USTC ¶ 9606, 1 AFTR 2d 1925, adhered to 362 US 145, 4 L Ed 2d 623, 80 S Ct 630, 60-1 USTC ¶ 9347, 5 AFTR 2d 1046, reh den 362 US 972, 4 L Ed 2d 902, 80 S Ct 953).

Assessment was timely and proper where Commissioner assessed income tax deficiency against deceased taxpayer's executor 3½ months after decision of Board of Tax Appeals on merits redetermining such deficiency, appeal from which was subsequently dismissed, where no bond was filed with Board for stay of assessment and collection. *United States v Fisher* (1944, ED Mich) 57 F Supp 410, 44-2 USTC ¶ 9479, 32 AFTR 1534.

Appeal by Commissioner from decision of Tax Court does not operate to stay assessment and collection of any part of deficiency determined by Tax Court where taxpayer does not file petition for review of deficiency or appeal bond. *Long v Wood* (1961, DC Ariz) 62-2 USTC ¶ 9566, 9 AFTR 2d 1807.

5. Assessment where Tax Court has not found deficiency

Commissioner has authority to proceed to collect tax by distress where Board of Tax Appeals erroneously dismisses petition for review upon motion of taxpayer. *Pittsburgh Terminal Coal Corp. v Heiner* (1932, WD Pa) 56 F2d 1072, 10 AFTR 1480.

§ 6216. Cross references.

- (1) For procedures relating to receivership proceedings, see subchapter B of chapter 70.
- (2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.
- (3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.
- (4) For procedures relating to partnership items, see subchapter C.

Exhibit A2 of 2

Prior to deletion, paras. (2), (3), (4) and (5) read as follows:

"(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (11 U.S.C. 35).

"(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (11 U.S.C. 93).

"(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67(b) and (c) of that act, as amended (11 U.S.C. 107).

"(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (11 U.S.C. 1080)."

In 1976, P.L. 94-455, Sec. 1906(a)(20)(A), deleted "52 Stat. 851;" before "11 U.S.C. 35" in para. (2) . . . Sec. 1906(a)(20)(B), deleted "52 Stat. 867;" before "11 U.S.C. 93" in para. (3) . . . Sec. 1906(a)(2)(C), deleted "52 Stat. 867-877;" before "11 U.S.C. 107" in para. (4) . . . Sec. 1906(a)(20)(D), deleted "52 Stat. 938;" before "11 U.S.C. 1080" in para. (5), effective 2/1/77.

SUBCHAPTER D. Seizure of Property for Collection of Taxes

Part

I. Due process for collections.

II. Levy.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(b), added the table of parts.

PART I. DUE PROCESS FOR COLLECTIONS

Sec.

6330. Due process for collections.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(b), added the part heading and part analysis.

§ 6330. Notice and opportunity for hearing before levy.

(a) **Requirement of notice before levy.** (1) In general. No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) **Time and method for notice.** The notice required under paragraph (1) shall be—

(A) given in person;

(B) left at the dwelling or usual place of business of such person; or

(C) sent by certified or registered mail, return receipt requested, to such person's last known address;

not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) **Information included with notice.** The notice required under paragraph (1) shall include in simple and nontechnical terms—

(A) the amount of unpaid tax;

(B) the right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) the proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth—

(i) the provisions of this title relating to levy and sale of property;

(ii) the procedures applicable to the levy and sale of property under this title;

(iii) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) the alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 6159); and

(v) the provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) **Right to fair hearing.** (1) In general. If the person requests a hearing under subsection

(a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.

- (2) **One hearing per period.** A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.
- (3) **Impartial officer.** The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6320. A taxpayer may waive the requirement of this paragraph.
- (c) **Matters considered at hearing.** In the case of any hearing conducted under this section—
- (1) **Requirement of investigation.** The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.
- (2) **Issues at hearing.** (A) In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including—
- (i) appropriate spousal defenses;
 - (ii) challenges to the appropriateness of collection actions; and
 - (iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.
- (B) **Underlying liability.** The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.
- (3) **Basis for the determination.** The determination by an appeals officer under this subsection shall take into consideration—
- (A) the verification presented under paragraph (1);
 - (B) the issues raised under paragraph (2); and
 - (C) whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.
- (4) **Certain issues precluded.** An issue may not be raised at the hearing if—
- (A) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and
 - (B) the person seeking to raise the issue participated meaningfully in such hearing or proceeding.
- This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.
- (d) **Proceeding after hearing.** (1) **Judicial review of determination.** The person may, within 30 days of a determination under this section, appeal such determination—
- (A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or
 - (B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.
- If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.
- (2) **Jurisdiction retained at IRS Office of Appeals.** The Internal Revenue Service Office of Appeals shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding—
- (A) collection actions taken or proposed with respect to such determination; and
 - (B) after the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.
- (e) **Suspension of collections and statute of limitations.** (1) **In general.** Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), or section 6532 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) **Levy upon appeal.** Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) **Jeopardy and State refund collection.** If—

(1) the Secretary has made a finding under the last sentence of section 6331(a) that the collection of tax is in jeopardy; or

(2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund,

this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 2000, P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 313(b)(2)(A) of Subtitle B of Title III of H.R. 5662, as introduced on Dec. 14, 2000 (effective on enactment, as provided by Sec. 313(f) of such H.R. 5662, which appears as a note to Code Sec. 6015)), amended subsec. (e)(1) by adding the sentences beginning "Notwithstanding . . ." and "The Tax Court . . .".

—P.L. 106-554, Sec. 1(a)(7) (enacting into law Sec. 313(d) of Subtitle B of Title III of H.R. 5662, as introduced on Dec. 14, 2000 (effective as if included in the provisions of P.L. 105-206 to which it relates, as provided by Sec. 313(f) of such H.R. 5662, which appears as a note to Code Sec. 6015)), amended subsec. (d)(1)(A) by substituting "with respect to" for "to hear".

In 1998, P.L. 105-206, Sec. 3401(b) (applicable to collection actions initiated after 1/22/99, pursuant to Sec. 3401(d) of P.L. 105-206, which appears as a note to Code Sec. 6320), added Code Sec. 6330.

RESEARCH GUIDE

Am Jur:

34 Am Jur 2d, Federal Taxation (2000) ¶ 71920, 71944, 71945, 71947.

INTERPRETIVE NOTES AND DECISIONS

De novo judicial review in review of appeals of officer determination at collection due process hearing is not appropriate, and proper standard is review for abuse of discretion; it is not abuse of discretion for IRS to decline third installment payment plan where taxpayer had defaulted on two prior installment payment plans. *MRCA Info. Servs. v United States* (2000, DC Conn) 2000-2 USTC ¶ 50683.

Appeals officer who previously presided over appeal of taxpayer's president in responsible person penalty case is not impartial officer before which collection due process hearing to consider rejection of corporate taxpayer's installment payment plan may be brought, and matter is therefore remanded for new due process hearing. *MRCA Info. Servs. v United States* (2000, DC Conn) 2000-2 USTC ¶ 50683.

Federal district court lacks jurisdiction to hear matter arising from collection due process rights of taxpayer where underlying tax was taxpayer's self-employment taxes over which Tax Court has jurisdiction. *True v Commissioner* (2000, MD Fla) 108 F Supp 2d 1361, 2000-2 USTC ¶ 50634, 14 FLW Fed D 26.

District court does not have jurisdiction to prohibit IRS from taking collections action despite alleged failure of IRS to provide required due process appeal since appeals under § 6330 are required to be made to Tax Court; if claim under § 6330 is improperly made

to District Court, then taxpayer has 30 days to refile claim in Tax Court. *Dimartino v United States* (2001, DC Nev) 2001-1 USTC ¶ 50298, 87 AFTR 2d 1002.

Where taxpayer fails to request collection due process hearing before Office of Appeals within 30 days of notice of intent to levy, Tax Court lacks jurisdiction since there is nothing to review on appeal. *Offler v Commissioner* (2000) 114 TC No. 30.

Where taxpayer files appeal of adverse determination and denial for request for reconsideration in district court more than 30 days after IRS denial of request for reconsideration, appeal is untimely; statutory periods are jurisdictional and cannot be extended. *McCune v Commissioner* (2000) 115 TC No. 7.

Failure of IRS to offer or schedule collection due process hearing under § 6330 requires dismissal of case in favor of taxpayers even though taxpayers raised constitutional issues at hearing. *Meyer v Commissioner* (2000) 115 TC No. 31.

Tax Court lacks jurisdiction to review collection efforts where there was no lien hearing because notice was sent to wrong address and there was no levy hearing because taxpayer failed to request one; Tax Court lacks jurisdiction to review decisions of IRS in hearings granted to taxpayers in lieu of collection hearings which are not timely requested by taxpayers. *Kennedy v Comm'r* (2001) 116 TC No. 19; *Moorhous v Comm'r* (2001) 116 TC No. 20.

PART II. LEVY

Sec.

- 6331. Levy and distraint.
- 6332. Surrender of property subject to levy.
- 6333. Production of books.
- 6334. Property exempt from levy.
- 6335. Sale of seized property.
- 6336. Sale of perishable goods.

Exhibit B3cA3

"unemployment tax" . . . Sec. 7106(c)(3)(B), deleted "and 23A, as the case may be." after "chapter 23" effective for remuneration paid after 12/31/88.

In 1983, P.L. 98-76, Sec. 231(b)(2)(B), substituted "Federal unemployment tax or tax imposed by section 3321" for "Federal unemployment tax" and substituted "chapter 23 and 23A, as the case may be." for "chapter 23" in Code Sec. 6317, effective for remuneration paid after 6/30/86.

In 1969, P.L. 91-53, Sec. 2(c), added Code Sec. 6317, effective for calendar years begin 12/31/69.

CROSS REFERENCES

USCS Administrative Rules, IRS, 26 CFR § 601.104.

§§ 6318, 6319. [Reserved for future use.]

SUBCHAPTER C. Lien for Taxes

Part

- I. Due process for liens.
- II. Liens.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(a), added the table of parts.

PART I. DUE PROCESS FOR LIENS

Sec.

6320. Notice and opportunity for hearing upon filing of notice of lien.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(a), added the part heading and part analysis.

§ 6320. Notice and opportunity for hearing upon filing of notice of lien.

- (a) **Requirement of notice.** (1) **In general.** The Secretary shall notify in writing the person described in section 6321 of the filing of a notice of lien under section 6323.
- (2) **Time and method for notice.** The notice required under paragraph (1) shall be—
 - (A) given in person;
 - (B) left at the dwelling or usual place of business of such person; or
 - (C) sent by certified or registered mail to such person's last known address,
 not more than 5 business days after the day of the filing of the notice of lien.
- (3) **Information included with notice.** The notice required under paragraph (1) shall include in simple and nontechnical terms—
 - (A) the amount of unpaid tax;
 - (B) the right of the person to request a hearing during the 30-day period beginning on the day after the 5-day period described in paragraph (2);
 - (C) the administrative appeals available to the taxpayer with respect to such lien and the procedures relating to such appeals; and
 - (D) the provisions of this title and procedures relating to the release of liens on property.
- (b) **Right to fair hearing.** (1) **In general.** If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Internal Revenue Service Office of Appeals.
 - (2) **One hearing per period.** A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.
 - (3) **Impartial officer.** The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 6330. A taxpayer may waive the requirement of this paragraph.
 - (4) **Coordination with section 6330.** To the extent practicable, a hearing under this section shall be held in conjunction with a hearing under section 6330.
- (c) **Conduct of hearing; review; suspensions.** For purposes of this section, subsections (c), (d) (other than paragraph (2)(B) thereof), and (e) of section 6330 shall apply.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(a) (applicable as provided by Sec. 3401(d) of P.L. 105-206, which appears as a note to this section), added Code Sec. 6320.

Other provisions:

Application of July 22, 1998 amendments. Act July 22, 1998, P. L. 105-206, Title III, Subtitle E, Part I, § 3401(d), 112 Stat. 750, provides: "The amendments made by this section [adding 26 USCS §§ 6320 and 6330 and amending 26 USCS § 7443A] shall apply to collection actions initiated after the date which is 180 days after the date of the enactment of this Act."

RESEARCH GUIDE

Federal Procedure:

20 Fed Proc L Ed, Internal Revenue § 48:805.

Am Jur:

34 Am Jur 2d, Federal Taxation (2000) ¶ 71970, 71971.

PART II. LIENS

Sec.

- 6321. Lien for taxes.
- 6322. Period of lien.
- 6323. Validity and priority against certain persons.
- 6324. Special liens for estate and gift taxes.
- 6324A. Special lien for estate tax deferred under section 6166.
- 6324B. Special lien for additional estate tax attributable to farm, etc., valuation.
- 6325. Release of lien or discharge of property.
- 6326. Administrative appeal of liens.
- 6327. Cross references.

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1998, P.L. 105-206, Sec. 3401(a), added the part heading.

In 1988, P.L. 100-647, Sec. 6238(c), redesignated item 6326 as item 6327 and added new item 6326.

In 1981, P.L. 97-34, Sec. 442(e)(6)(D), deleted "or 6166A" following "section 6166" in item 6324A.

In 1976, P.L. 94-455, Sec. 2003(d)(2), added item 6324B.

—P.L. 94-455, Sec. 2004(f)(1), added item 6324A.

In 1966, P.L. 89-719, substituted item 6323 for one which read: "6323. Validity against mortgagees, pledgees, purchasers, and judgment creditors", and deleted "partial" before "discharge" in item 6325.

§ 6321. Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

CODE OF FEDERAL REGULATIONS

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Procedure and administration, 27 CFR Part 70.

CROSS REFERENCES

- Period of lien, 26 USCS § 6322.
- Validity and priority of lien against certain persons, 26 USCS § 6323.
- Release of lien or discharge of property, 26 USCS § 6325.
- Seizure of property for collection of taxes, 26 USCS §§ 6331 et seq.

RESEARCH GUIDE

Federal Procedure:

20 Fed Proc L Ed, Internal Revenue §§ 48:579, 581, 760.

Am Jur:

9A Am Jur 2d, Bankruptcy § 1444.

34 Am Jur 2d, Federal Taxation (2000) ¶ 71901, 71966, 71973, 71974.

Exhibit C 2 of 2

Section 6320.- Notice and Opportunity for Hearing Upon Filing of Notice of Lien

26 CFR 301.6320-1: Notice and opportunity for hearing upon filing of notice of federal tax lien.

T.D. 8979

**DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Part 301**

Notice and Opportunity for Hearing upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

DATES: *Effective Date:* These regulations are effective on January 18, 2002.

APPLICABILITY DATE: These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206, 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (T.D. 8810, 1999-1 C.B. 470) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG-116824-98, 1999-1 C.B. 508) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (T.D. 8809, 1999-1 C.B. 478) implementing the changes made by section 3401 of RRA 1998 with respect to

section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG-117620-98, 1999-1 C.B. 510) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.*, persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—*i.e.*, the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, *i.e.*, the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of

Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NFTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS' administrative practice has been to treat these requests as complying with

the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final

determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify that there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability —i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C.

chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320-1 is added under the undesignated centerheading "Lien for Taxes" to read as follows:

§ 301.6320-1 Notice and opportunity for hearing upon filing of notice of federal tax lien.

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person entitled to notice under section 6320?

A-A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q-A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A-A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q-A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A-A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q-A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A-A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A-A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A-A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refile of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refile the NFTL, an administrative hearing before the IRS Office of Appeals

(Appeals), or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A-A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A-A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q-A9. How will notification under section 6320 be accomplished?

A-A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, *Request for a Due Process Hearing*. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q-A10. What must a CDP Notice given under section 6320 include?

A-A10. These notices must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q-A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A-A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A-A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(3) *Examples*. The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against

ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing*—(1) *In general*. A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A-B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q-B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A-B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q-B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q-B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A-B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However,

any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing—(1) In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form

12153 (*Request for a Collection Due Process Hearing*) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1-800-829-3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS

office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A-C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q-C6. Where should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing their taxpayer identification number (SSN or TIN).

Q-C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the

NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute

CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined

with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A-D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative

does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the

taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of section 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory

notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of *res judicata* and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination

will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency

for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination—(1) In general.* Unless the taxpayer provides the IRS a written

withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If

the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general*. The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under sections 6502,

6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-

levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples*. The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general*. The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general*. A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an “equivalent hearing.” The equivalent hearing will be held by Appeals and generally will follow Appeals’ procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers*. The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day

period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q-I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals’ denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals’ determination on those issues, as provided by section 6015(e).

(j) *Effective date*. This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§ 301.6320-1T [Removed]

Par. 3. Section 301.6320-1T is removed.

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

Approved January 14, 2002.

Mark A. Weinberger,
*Assistant Secretary of the
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on January 17, 2002, 8:45 a.m., and published in the issue of the Federal Register for January 18, 2002, 67 F.R. 2558)

Offer in Compromise

- A. Some people who contact us talk about doing an Offer in Compromise and of course like most people they don't have a clue about the procedures to make that happen.
- B. Exhibit A, 1 of 8, goes through the basic paperwork that you will have to fill out if you want to do an Offer in Compromise.
- C. Most people do not realize how involved an offer in compromise can get.
- D. The IRS will encourage you to do an offer in compromise and set up a payment plan with them.
 - 1. This is where people get themselves in a deep hole with the IRS.
- E. If you notice there is no OMB number or expiration date on any of these forms because it is voluntary to fill them out. You are asking for a privilege from the IRS.
- F. They will promise you the Moon on a silver platter if you will just fill out the 433A or 433B form.
 - 1. 433A is for a individual
 - 2. 433b is for a business
- G. Look at all the information they want on these forms.
 - 1. If they find you have not filled out the form correctly or left something off then they can come back at anytime and cancel the deal they made with you demanding payment in full.
- H. The IRS will set you up on a easy payment plan of only a few hundred dollars a month. They will try and get at least 500.00 a month out of you.
 - 1. So you send the 500.00 a month and after a year you will find that you now owe them more then when you started paying them. Welcome to the real world of dealing with the IRS.

- a. The penalties and interest eat you alive, as they don't stop if you did not know to get them abated first.
- I. Many people will do anything and enter into any agreement with the IRS if they think that will provide them relief.
 1. In other words they do little if any studying on the issue.
- J. if you want to explore doing a Offer in compromise you may want to:
 1. Find out exactly how much you owe minus any penalties and interest.
 2. Get the penalties and interest abated.
 3. Do not take the first offer from the IRS.
 4. You make them an offer based on a complete pay off plan.
 5. Usually they will do three offers before putting their foot down and digging their heels.
 6. If that amount is reachable pay it off with one payment.
 - a. Get a signed agreement from the IRS and write on the instrument you use to pay them "paid in full for tax years 19__, 19__, 20__". Be sure to write in the years!
 7. If you have to go on a payment plan make sure you set it up exactly like you would if you were buying a house or car.
 1. You want to know the exact payoff amount and have it signed.
 2. You want to know how many payments you have to make before it is paid off in full.
 3. In other words at some point in time you want closure so you will have it behind you.
- K. After you go through all this they will want you to sign a statement that you agree to file your tax return for the next five years.
 1. You can also expect to be audited for the next five years.
 2. Usually you will be red flagged and your return will be audited inside the IRS.
 3. You will be contacted if they find anything out of line.
- L. Having talked to a number of people who have been through this they inform us that they cure is worse than the bite.
- M. If you do an Offer in Compromise beware of tricks.

N. We have also found people who worked out a very good deal with the IRS. But, for the most part, those are the ones who could pay them off in a lump sum.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 656 (Rev. 5-2001)
Catalog Number 16728N

Form 656

Offer in Compromise

This Offer in Compromise package includes:

- Information you need to know before submitting an offer in compromise
- Instructions on the type of offers you can submit
- Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and Form 433-B, Collection Information Statement for Businesses
- A worksheet that wage earners and self-employed individuals can use to calculate their offer amount
- Instructions on completing an offer in compromise form
- Two copies of Form 656

Note: You can get forms and publications by calling 1-800-829-1040 or 1-800-829-FORM, or by visiting your local Internal Revenue Service (IRS) office or our website at www.irs.gov.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 656 (Rev. 5-2001)
Catalog Number 16728N

Form 656

Offer in Compromise

IRS RECEIVED DATE

Item 1 — Taxpayer's Name and Home or Business Address

Name

Name

Street Address

City

State

ZIP Code

Mailing Address (if different from above)

Street Address

City

State

ZIP Code

DATE RETURNED

Item 2 — Social Security Numbers

(a) Primary

(b) Secondary

Item 3 — Employer Identification Number (included in offer)

Item 4 — Other Employer Identification Numbers (not included in offer)

Item 5 — To: Commissioner of Internal Revenue Service

I/We (includes all types of taxpayers) submit this offer to compromise the tax liabilities plus any interest, penalties, additions to tax, and additional amounts required by law (tax liability) for the tax type and period marked below: (Please mark an "X" in the box for the correct description and fill-in the correct tax period(s), adding additional periods if needed).

☐ 1040/1120 Income Tax — Year(s)

☐ 941 Employer's Quarterly Federal Tax Return — Quarterly period(s)

☐ 940 Employer's Annual Federal Unemployment (FUTA) Tax Return — Year(s)

☐ Trust Fund Recovery Penalty as a responsible person of (enter corporation name)

for failure to pay withholding and Federal Insurance Contributions Act Taxes (Social Security taxes), for period(s) ending

☐ Other Federal Tax(es) [specify type(s) and period(s)]

Note: If you need more space, use another sheet titled "Attachment to Form 656 Dated _____." Sign and date the attachment following the listing of the tax periods.

Item 6 — I/We submit this offer for the reason(s) checked below:

- ☐ **Doubt as to Liability** — "I do not believe I owe this amount." You must include a detailed explanation of the reason(s) why you believe you do not owe the tax in Item 9.
- ☐ **Doubt as to Collectibility** — "I have insufficient assets and income to pay the full amount." You must include a complete Collection Information Statement, Form 433-A and/or Form 433-B.
- ☐ **Effective Tax Administration** — "I owe this amount and have sufficient assets to pay the full amount, but due to my exceptional circumstances, requiring full payment would cause an economic hardship or would be unfair and inequitable." You must include a complete Collection Information Statement, Form 433-A and/or Form 433B and complete Item 9.

Item 7

I/We offer to pay \$ (must be more than zero). Complete item 10 to explain where you will obtain the funds to make this offer.

Check one of the following:

☐ **Cash Offer (Offered amount will be paid in 90 days or less.)**

Balance to be paid in: ☐ 10; ☐ 30; ☐ 60; or ☐ 90 days from written notice of acceptance of the offer.

☐ **Short-Term Deferred Payment Offer (Offered amount will be paid in MORE than 90 days but within 24 months from written notice of acceptance of the offer.)**

\$ within days (not more than 90 — See Instructions Section, **Determine Your Payment Terms**) from written notice of acceptance of the offer; and

beginning in the month after written notice of acceptance of the offer, \$ on the day of each month for a total of months. (Cannot extend more than 24 months from written notice of acceptance of the offer.)

☐ **Deferred Payment Offer (Offered amount will be paid over the life of the collection statute.)**

\$ within days (not more than 90 — See Instructions Section, **Determine Your Payment Terms**) from written notice of acceptance of the offer; and

beginning in the first month after written notice of acceptance of the offer, \$ on the day of each month for a total of months.

NOTE: Signature(s) of taxpayer required on last page of Form 656

Item 8 — By submitting this offer, I/we understand and agree to the following conditions:

- (a) I/We voluntarily submit all payments made on this offer.
- (b) The IRS will apply payments made under the terms of this offer in the best interest of the government.
- (c) If the IRS rejects or returns the offer or I/we withdraw the offer, the IRS will return any amount paid with the offer. If I/we agree in writing, IRS will apply the amount paid with the offer to the amount owed. If I/we agree to apply the payment, the date the IRS received the offer remittance will be considered the date of payment. I/We understand that the IRS will not pay interest on any amount I/we submit with the offer.
- (d) **I/We will comply with all provisions of the Internal Revenue Code relating to filing my/our returns and paying my/our required taxes for 5 years or until the offered amount is paid in full, whichever is longer. In the case of a jointly submitted offer to compromise joint tax liabilities, I/we understand that default with respect to the compliance provisions described in this paragraph by one party to this agreement will not result in the default of the entire agreement. The default provisions described in Item 8(n) of this agreement will be applied only to the party failing to comply with the requirements of this paragraph. This provision does not apply to offers based on Doubt as to Liability.**
- (e) I/We waive and agree to the suspension of any statutory periods of limitation (time limits provided for by law) for the IRS assessment of the tax liability for the periods identified in Item 5. I/We understand that I/we have the right not to waive these statutory periods or to limit the waiver to a certain length or to certain issues. I/We understand, however, that the IRS may not consider this offer if I/we refuse to waive the statutory periods for assessment or if we provide only a limited waiver. The amount of any Federal tax due for the periods described in Item 5 may be assessed at any time prior to the acceptance of this offer or within one year of the rejection of this offer.
- (f) The IRS will keep all payments and credits made, received or applied to the total original tax liability before submission of this offer. The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted. If I/we have an installment agreement prior to submitting the offer, I/we must continue to make the payments as agreed while this offer is pending. Installment agreement payments will not be applied against the amount offered.
- (g) **As additional consideration beyond the amount of my/our offer, the IRS will keep any refund, including interest, due to me/ us because of overpayment of any tax or other liability, for tax periods extending through the calendar year that the IRS accepts the offer. I/We may not designate an overpayment ordinarily subject to refund, to which the IRS is entitled, to be applied to estimated tax payments for the following year. This condition does not apply if the offer is based on Doubt as to Liability.**
- (h) I/We will return to the IRS any refund identified in (g) received after submission of this offer. This condition does not apply to offers based on Doubt as to Liability.
- (i) The IRS cannot collect more than the full amount of the tax liability under this offer.
- (j) I/We understand that I/we remain responsible for the full amount of the tax liability, unless and until the IRS accepts the offer in writing and I/we have met all the terms and conditions of the offer. The IRS will not remove the original amount of the tax liability from its records until I/we have met all the terms of the offer.

NOTE: Signature(s) of taxpayer required on last page of Form 656

- (k) I/We understand that the tax I/we offer to compromise is and will remain a tax liability until I/we meet all the terms and conditions of this offer. If I/we file bankruptcy before the terms and conditions of this offer are completed, any claim the IRS files in the bankruptcy proceedings will be a tax claim.
- (l) Once the IRS accepts the offer in writing, I/we have no right to contest, in court or otherwise, the amount of the tax liability.
 - immediately file suit to collect an amount equal to the original amount of the tax liability as liquidating damages, minus any payment already received under the terms of this offer
 - disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability
 - file suit or levy to collect the original amount of the tax liability, without further notice of any kind.
- (m) The offer is pending starting with the date an authorized IRS official signs this form. The offer remains pending until an authorized IRS official accepts, rejects, returns or acknowledges withdrawal of the offer in writing. If I/we appeal an IRS rejection decision on the offer, the IRS will continue to treat the offer as pending until the Appeals Office accepts or rejects the offer in writing. If I/we don't file a protest within 30 days of the date the IRS notifies me/us of the right to protest the decision, I/we waive the right to a hearing before the Appeals Office about the offer in compromise.
- (n) If I/We fail to meet any of the terms and conditions of the offer and the offer defaults, then the IRS may:
 - immediately file suit to collect the entire unpaid balance of the offer

The IRS will continue to add interest, as Section 6601 of the Internal Revenue Code requires, on the amount the IRS determines is due after default. The IRS will add interest from the date the offer is defaulted until I/we completely satisfy the amount owed.

- (o) The IRS generally files a Notice of Federal Tax Lien to protect the Government's interest on deferred payment offers. This tax lien will be released when the payment terms of the offer agreement have been satisfied.
- (p) **I/We understand that the IRS employees may contact third parties in order to respond to this request and I authorize the IRS to make such contacts. Further, by authorizing the Internal Revenue Service to contact third parties, I understand that I will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.**

I am requesting an offer in compromise for the reason(s) listed below:

[illegible]

I/we shall obtain the funds to make this offer from the following source(s):

If I/we submit this offer on a substitute form, I/we affirm that this form is a verbatim duplicate of the official Form 656, and I/we agree to be bound by all the terms and conditions set forth in the official Form 656.

Under penalties of perjury, I declare that I have examined this offer, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

11(a) Signature of Taxpayer

Date _____

11(b) Signature of Taxpayer

Date _____

I accept the waiver of the statutory period of limitations for the Internal Revenue Service.

Signature of Authorized Internal Revenue Service Official

Title

Date _____

NOTE: Signature(s) of taxpayer required on last page of Form 656

Exhibit A 5 of 18



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 433-A (Rev. 5-2001)
Catalog Number 20312N

Collection Information Statement for Wage Earners and Self-Employed Individuals

Complete all entry spaces with the most current data available.

Important! Write "N/A" (not applicable) in spaces that do not apply. We may require additional information to support "N/A" entries.

Failure to complete all entry spaces may result in rejection or significant delay in the resolution of your account.

Section 1

Personal Information

1. Full Name(s) _____ 1a. Home Telephone (____) _____ Best Time To Call: _____ am _____ pm (Enter Hour)

Street Address _____ 2. Marital Status: _____

City _____ State _____ Zip _____ ☐ Married ☐ Separated

County of Residence _____ ☐ Unmarried (single, divorced, widowed)

How long at this address? _____

3. Your Social Security No.(SSN) _____ 3a. Your Date of Birth (mm/dd/yyyy) _____

4. Spouse's Social Security No. _____ 4a. Spouse's Date of Birth (mm/dd/yyyy) _____

5. ☐ Own Home ☐ Rent ☐ Other (specify, i.e. share rent, live with relative) _____

☐ Check this box when all spaces in Sect. 1 are filled in.

6. List the dependents you can claim on your tax return: (Attach sheet if more space is needed.)

First Name	Relationship	Age	Does this person live with you?	First Name	Relationship	Age	Does this person live with you?
_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes

Section 2

Your Business Information

7. Are you or your spouse self-employed or operate a business? (Check "Yes" if either applies)

☐ No ☐ Yes If yes, provide the following information:

7a. Name of Business _____ 7c. Employer Identification No., if available : _____

7b. Street Address _____ 7d. Do you have employees? ☐ No ☐ Yes

City _____ State _____ Zip _____ 7e. Do you have accounts/notes receivable? ☐ No ☐ Yes

If yes, please complete Section 8 on page 5.

☐ Check this box when all spaces in Sect. 2 are filled in and attachments provided.



ATTACHMENTS REQUIRED: Please include proof of self-employment income for the prior 3 months (e.g., invoices, commissions, sales records, income statement).

Section 3

Employment Information

8. Your Employer _____ 9. Spouse's Employer _____

Street Address _____ Street Address _____

City _____ State _____ Zip _____ City _____ State _____ Zip _____

Work telephone no. (____) _____ Work telephone no. (____) _____

May we contact you at work? ☐ No ☐ Yes May we contact you at work? ☐ No ☐ Yes

8a. How long with this employer? _____ 9a. How long with this employer? _____

8b. Occupation _____ 9b. Occupation _____

☐ Check this box when all spaces in Sect. 3 are filled in and attachments provided.



ATTACHMENTS REQUIRED: Please provide proof of gross earnings and deductions for the past 3 months from each employer (e.g., pay stubs, earnings statements). If year-to-date information is available, send only 1 such statement as long as a minimum of 3 months is represented.

Section 4

Other Income Information

10. Do you receive income from sources other than your own business or your employer? (Check all that apply.)

☐ Pension ☐ Social Security ☐ Other (specify, i.e. child support, alimony, rental) _____

☐ Check this box when all spaces in Sect. 4 are filled in and attachments provided.



ATTACHMENTS REQUIRED: Please provide proof of pension/social security/other income for the past 3 months from each payor, including any statements showing deductions. If year-to-date information is available, send only 1 such statement as long as a minimum of 3 months is represented.

Name _____ SSN _____

Section 5**Banking,
Investment,
Cash, Credit,
and Life
Insurance
Information**Complete all
entry spaces
with the most
current data
available.**11. CHECKING ACCOUNTS.** List all checking accounts. (If you need additional space, attach a separate sheet.)

Type of Account	Full Name of Bank, Savings & Loan, Credit Union or Financial Institution	Bank Routing No.	Bank Account No.	Current Account Balance
11a. <u>Checking</u>	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
11b. <u>Checking</u>	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
11c. Total Checking Account Balances				\$ _____

12. OTHER ACCOUNTS. List all accounts, including brokerage, savings, and money market, not listed on line 11.

Type of Account	Full Name of Bank, Savings & Loan, Credit Union or Financial Institution	Bank Routing No.	Bank Account No.	Current Account Balance
12a. _____	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
12b. _____	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
12c. Total Other Account Balances				\$ _____

**ATTACHMENTS REQUIRED:** Please include your current bank statements (checking, savings, money market, and brokerage accounts) for the past three months for all accounts.**13. INVESTMENTS.** List all investment assets below. Include stocks, bonds, mutual funds, stock options, certificates of deposits, and retirement assets such as IRAs, Keogh, and 401(k) plans. (If you need additional space, attach a separate sheet.)

☒ **Current Value:**
Indicate the amount you could sell the asset for today.

Name of Company	Number of Shares / Units	<input checked="" type="checkbox"/> Current Value	Loan Amount	Used as collateral on loan?
13a. _____	_____	\$ _____	\$ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
13b. _____	_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
13c. _____	_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
13d. Total Investments		\$ _____		

14. CASH ON HAND. Include any money that you have that is not in the bank.**14a. Total Cash on Hand** \$ _____**15. AVAILABLE CREDIT.** List all lines of credit, including credit cards.

Full Name of Credit Institution	Credit Limit	Amount Owed	Available Credit
15a. Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
15b. Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
15c. Total Credit Available		\$ _____	

Exhibit A7 of 15

Name _____ SSN _____

Section 5
continued**16. LIFE INSURANCE.** Do you have life insurance with a cash value? ☐ No ☐ Yes

(Term Life insurance does not have a cash value.)

If yes:

16a. Name of Insurance Company _____**16b.** Policy Number(s) _____**16c.** Owner of Policy _____**16d.** Current Cash Value \$ _____ **16e.** Outstanding Loan Balance \$ _____☐ Check this box when all spaces in Sect. 5 are filled in and attachments provided.

Subtract "Outstanding Loan Balance" line 16e from "Current Cash Value" line 16d = 16f \$ _____

ATTACHMENTS REQUIRED: Please include a statement from the life insurance companies that includes type and cash/loan value amounts. If currently borrowed against, include loan amount and date of loan.**Section 6**
Other
Information**17. OTHER INFORMATION.** Respond to the following questions related to your financial condition: (Attach sheet if you need more space.)**17a.** Are there any garnishments against your wages? ☐ No ☐ Yes

If yes, who is the creditor? _____ Date creditor obtained judgement _____ Amount of debt \$ _____

17b. Are there any judgments against you? ☐ No ☐ Yes

If yes, who is the creditor? _____ Date creditor obtained judgement _____ Amount of debt \$ _____

17c. Are you a party in a lawsuit? ☐ No ☐ Yes

If yes, amount of suit \$ _____ Possible completion date _____ Subject matter of suit _____

17d. Did you ever file bankruptcy? ☐ No ☐ Yes

If yes, date filed _____ Date discharged _____

17e. In the past 10 years did you transfer any assets out of your name for less than their actual value? ☐ No ☐ Yes

If yes, what asset? _____ Value of asset at time of transfer \$ _____

When was it transferred? _____ To whom was it transferred? _____

17f. Do you anticipate any increase in household income in the next two years? ☐ No ☐ Yes

If yes, why will the income increase? _____ (Attach sheet if you need more space.)

How much will it increase? \$ _____

17g. Are you a beneficiary of a trust or an estate? ☐ No ☐ Yes

If yes, name of the trust or estate _____ Anticipated amount to be received \$ _____

When will the amount be received? _____

17h. Are you a participant in a profit sharing plan? ☐ No ☐ Yes

If yes, name of plan _____ Value in plan \$ _____

☐ Check this box when all spaces in Sect. 6 are filled in.**Section 7**
Assets and
Liabilities**18. PURCHASED AUTOMOBILES, TRUCKS AND OTHER LICENSED ASSETS.** Include boats, RV's, motorcycles, trailers, etc. (If you need additional space, attach a separate sheet.)☒ **Current Value:** Indicate the amount you could sell the asset for today.

Description (Year, Make, Model, Mileage)	<input checked="" type="checkbox"/> Current Value	Current Loan Balance	Name of Lender	Purchase Date	Amount of Monthly Payment
18a. Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____
18b. Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____
18c. Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____

Exhibit A8 of 18

Name _____

SSN _____

Section 7
continued

- 19. LEASED AUTOMOBILES, TRUCKS AND OTHER LICENSED ASSETS.**
- Include boats, RV's, motorcycles, trailers, etc.
-
- (If you need additional space, attach a separate sheet.)

Description (Year, Make, Model)	Lease Balance	Name and Address of Lessor	Lease Date	Amount of Monthly Payment
------------------------------------	------------------	----------------------------------	---------------	---------------------------------

19a. Year _____
 Make/Model _____ \$ _____ \$ _____

19b. Year _____
 Make/Model _____ \$ _____ \$ _____

**ATTACHMENTS REQUIRED:** Please include your current statement from lender with monthly car payment amount and current balance of the loan for each vehicle purchased or leased.

- 20. REAL ESTATE.**
- List all real estate you own. (If you need additional space, attach a separate sheet.)

Street Address, City, State, Zip, and County	Date Purchased	Purchase Price	<input type="checkbox"/> Current Value	Loan Balance	Name of Lender or Lien Holder	Amount of Monthly Payment	*Date of Final Payment
---	-------------------	-------------------	---	-----------------	----------------------------------	---------------------------------	------------------------------

☐ **Current Value:**

Indicate the amount you could sell the asset for today.

20a. _____

 _____ \$ _____ \$ _____ \$ _____ \$ _____

20b. _____

 _____ \$ _____ \$ _____ \$ _____ \$ _____

* **Date of Final Payment:**

Enter the date the loan or lease will be fully paid.

**ATTACHMENTS REQUIRED:** Please include your current statement from lender with monthly payment amount and current balance for each piece of real estate owned.

- 21. PERSONAL ASSETS.**
- List all Personal assets below. (If you need additional space, attach separate sheet.)

Furniture/Personal Effects includes the total current market value of your household such as furniture and appliances.*Other Personal Assets* includes all artwork, jewelry, collections (coin/gun, etc.), antiques or other assets.

Description	<input type="checkbox"/> Current Value	Loan Balance	Name of Lender	Amount of Monthly Payment	*Date of Final Payment
-------------	--	--------------	----------------	---------------------------	------------------------

21a. Furniture/Personal Effects \$ _____ \$ _____ \$ _____

Other: (List below)

21b. Artwork \$ _____ \$ _____ \$ _____
 21c. Jewelry _____
 21d. _____
 21e. _____

- 22. BUSINESS ASSETS.**
- List all business assets and encumbrances below, include Uniform Commercial Code (UCC) filings. (If you need additional space, attach a separate sheet.)
- Tools used in Trade or Business*
- includes the basic tools or books used to conduct your business, excluding automobiles.
- Other Business Assets*
- includes any other machinery, equipment, inventory or other assets.

Description	<input type="checkbox"/> Current Value	Loan Balance	Name of Lender	Amount of Monthly Payment	*Date of Final Payment
-------------	--	--------------	----------------	---------------------------	------------------------

22a. Tools used in Trade/Business \$ _____ \$ _____ \$ _____

Other: (List below)

22b. Machinery \$ _____ \$ _____ \$ _____
 22c. Equipment _____
 22d. _____
 22e. _____

☐ Check this box when all spaces in Sect. 7 are filled in and attachments provided.

Exhibit A9 of 18

Name _____ SSN _____

Section 8**Accounts/
Notes
Receivable****23. ACCOUNTS/NOTES RECEIVABLE.** List all accounts separately, including contracts awarded, but not started. (If you need additional space, attach a separate sheet.)Use only if
needed.☐ Check this
box if Section
8 not needed.

Description	Amount Due	Date Due	Age of Account
23a. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23b. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23c. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23d. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23e. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23f. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23g. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23h. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23i. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23j. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23k. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
23l. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days

☐ Check this box
when all spaces in
Sect. 8 are filled in.

Add "Amount Due" from lines 23a through 23l = 23m \$ _____

Exhibit A 10 of 18



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 433-B (Rev. 5-2001)
Catalog Number 16649P

Collection Information Statement for Businesses

Complete all entry spaces with the most current data available.

Important! Write "N/A" (not applicable) in spaces that do not apply. We may require additional information to support "N/A" entries.

Failure to complete all entry spaces may result in rejection or significant delay in the resolution of your account.

Section 1

Business Information

1a. Business Name _____
Business Street Address _____
City _____ State _____ Zip _____
County _____

1b. Business Telephone (____) _____

2a. Employer Identification No. (EIN) _____

2b. Type of Entity (Check appropriate box below)
☐ Partnership ☐ Corporation ☐ Other _____

2c. Type of Business _____

3a. Contact Name _____

3b. Contact's Business Telephone (____) _____
Extension _____
Best Time To Call _____ am _____ pm (Enter Hour)

3c. Contact's Home Telephone (____) _____
Best Time To Call _____ am _____ pm (Enter Hour)

3d. Contact's Other Telephone (____) _____
Telephone Type (i.e. fax, cellular, pager) _____

3e. Contact's E-mail Address _____

☐ Check this box when all spaces in Sect. 1 are filled in.

Section 2

Business Personnel and Contacts

4. PERSON RESPONSIBLE FOR DEPOSITING PAYROLL TAXES

4a. Full Name _____ Title _____ Social Security Number _____
Home Street Address _____ Home Telephone (____) _____
City _____ State _____ Zip _____ Ownership Percentage & Shares or Interest _____

5. PARTNERS, OFFICERS, MAJOR SHAREHOLDERS, ETC.

5a. Full Name _____ Title _____ Social Security Number _____
Home Street Address _____ Home Telephone (____) _____
City _____ State _____ Zip _____ Ownership Percentage & Shares or Interest _____

5b. Full Name _____ Title _____ Social Security Number _____
Home Street Address _____ Home Telephone (____) _____
City _____ State _____ Zip _____ Ownership Percentage & Shares or Interest _____

5c. Full Name _____ Title _____ Social Security Number _____
Home Street Address _____ Home Telephone (____) _____
City _____ State _____ Zip _____ Ownership Percentage & Shares or Interest _____

5d. Full Name _____ Title _____ Social Security Number _____
Home Street Address _____ Home Telephone (____) _____
City _____ State _____ Zip _____ Ownership Percentage & Shares or Interest _____

☐ Check this box when all spaces in Sect. 2 are filled in.

Section 3

Accounts/Notes Receivable

See page 6 for additional space, if needed.

6. ACCOUNTS/NOTES RECEIVABLE. List all contracts separately, including contracts awarded, but not started.

Description	Amount Due	Date Due	Age of Account
6a. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6b. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6a + 6b = 6c	\$ _____		
Amount from Page 6 +	6p _____		
6q. Total Accounts/Notes Receivable =	6c + 6p = 6q \$ _____		

☐ Check this box when all spaces in Sect. 3 are filled in.

Exhibit A 11 of 18

Business Name _____ EIN _____

Section 4 7. **OTHER FINANCIAL INFORMATION.** Respond to the following business financial questions.**Other
Financial
Information**

- 7a. Does this business have other business relationships (e.g. subsidiary or parent, corporation, partnership, etc.)? ☐ No ☐ Yes
If yes, list related EIN _____ Additional EIN _____
- 7b. Does anyone (e.g. officer, stockholder, partner or employees) have an outstanding loan borrowed from the business? ☐ No ☐ Yes
If yes, amount of loan \$ _____ Date of loan _____ Current balance \$ _____
- 7c. Are there any judgments or liens against your business? ☐ No ☐ Yes
If yes, who is the creditor? _____ Date creditor obtained judgment/lien _____ Amount of debt \$ _____
- 7d. Is your business a party in a lawsuit? ☐ No ☐ Yes
If yes, amount of suit \$ _____ Possible completion date _____ Subject matter of suit _____
- 7e. Has your business ever filed bankruptcy? ☐ No ☐ Yes
If yes, date filed _____ Date discharged _____ Petition No. _____
- 7f. In the past 10 years have you transferred any assets from your business name for less than their actual value? ☐ No ☐ Yes
If yes, what asset? _____ Value of asset at time of transfer \$ _____
When was it transferred? _____ To whom or where was it transferred? _____
- 7g. Do you anticipate any increase in business income (e.g. contracts bid but not yet awarded)? ☐ No ☐ Yes
If yes, why will the income increase? _____ (Attach sheet if you need additional space.)
How much will it increase? _____ When will the business income increase? _____
- 7h. Is your business a beneficiary of a trust, an estate or a life insurance policy? ☐ No ☐ Yes
If yes, name of the trust, estate or policy? _____ Anticipated amount to be received? _____
When will the amount be received? _____

☐ Check this box
when all spaces in
Sect. 4 are filled in.

Section 5 8. **PURCHASED AUTOMOBILES, TRUCKS AND OTHER LICENSED ASSETS.** Include boats, RV's, motorcycles, trailers, etc.
(If you need additional space, attach a separate sheet.)**Business
Assets**

☐ **Current
Value:**
Indicate the
amount you
could sell the
asset for today.

	Description (Year, Make, Model, Mileage)	<input type="checkbox"/> Current Value	Loan Balance	Name of Lender	Purchase Date	Amount of Monthly Payment
8a.	Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____
8b.	Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____
8c.	Year _____ Make/Model _____ Mileage _____	\$ _____	\$ _____	_____	_____	\$ _____

9. **LEASED AUTOMOBILES, TRUCKS AND OTHER LICENSED ASSETS.** Include boats, RV's, motorcycles, trailers, etc.
(If you need additional space, attach a separate sheet.)

	Description (Year, Make, Model)	Lease Balance	Name of Lessor	Lease Date	Amount of Monthly Payment
9a.	Year _____ Make/Model _____	\$ _____	_____	_____	\$ _____
9b.	Year _____ Make/Model _____	\$ _____	_____	_____	\$ _____



ATTACHMENTS REQUIRED: Please include your current statement from lender with monthly car payment amount and current balance of the loan for each vehicle purchased or leased.

Exhibit A12 of 18

Business Name _____ EIN _____

Section 5

continued

10. REAL ESTATE. List all real estate owned by the business. (If you need additional space, attach a separate sheet.)

	Street Address, City, State, Zip, and County	Date Purchased	Purchase Price	<input checked="" type="checkbox"/> Current Value	Loan Balance	Name of Lender or Lien Holder	Amount of Monthly Payment	*Date of Final Payment
<input checked="" type="checkbox"/> Current Value: Indicate the amount you could sell the asset for today.	10a. _____	_____	_____	_____	_____	_____	_____	_____
	_____	_____	\$ _____	\$ _____	\$ _____	_____	\$ _____	_____
*Date of Final Payment: Enter the date the loan or lease will be fully paid.	10b. _____	_____	_____	_____	_____	_____	_____	_____
	_____	_____	\$ _____	\$ _____	\$ _____	_____	\$ _____	_____

**ATTACHMENTS REQUIRED:** Please include your current statement from lender with monthly payment amount and current balance for each piece of real estate owned.

☐ Check this box if you are attaching a depreciation schedule for machinery/equipment in lieu of completing line 11.

11. BUSINESS ASSETS. List all business assets and encumbrances below, include Uniform Commercial Code (UCC) filings. (If you need additional space, attach a separate sheet.) Note: If attaching a depreciation schedule, the attachment must include all of the information requested below.

	Description	<input checked="" type="checkbox"/> Current Value	Loan Balance	Name of Lender	Amount of Monthly Payment	*Date of Final Payment
11a.	Machinery	\$ _____	\$ _____	_____	\$ _____	_____
	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
	Equipment	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____
	Merchandise	_____	_____	_____	_____	_____
	Other Assets: (List below)	_____	_____	_____	_____	_____
11b.	_____	\$ _____	\$ _____	_____	\$ _____	_____
11c.	_____	_____	_____	_____	_____	_____

☐ Check this box when all spaces in Sect. 5 are filled in and attachments provided.

**ATTACHMENTS REQUIRED:** Please include your current statement from lender with monthly payment amount and current loan balance for assets listed which have an encumbrance.**Section 6**

Investment, Banking and Cash Information

12. INVESTMENTS. List all investment assets below. Include stocks, bonds, mutual funds, stock options and certificates of deposits.

	Name of Company	Number of Shares / Units	<input checked="" type="checkbox"/> Current Value	Loan Amount	Used as collateral on loan?
12a.	_____	_____	\$ _____	\$ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
12b.	_____	_____	_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes
12c. Total Investments			\$ _____		

Exhibit A 13 of 18

Business Name _____

EIN _____

Section 6**continued**

Complete all
entry spaces
with the most
current data
available.

13. BANK ACCOUNTS. List all checking and savings accounts. (If you need additional space, attach a separate sheet.)

Type of Account	Full Name of Bank, Savings & Loan, Credit Union or Financial Institution	Bank Routing No.	Bank Account No.	Current Account Balance
13a. <u>Checking</u>	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
13b. <u>Checking</u>	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
13c. <u>Savings</u>	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
13d. Total Bank Account Balances				\$ _____



ATTACHMENTS REQUIRED: Please include your current bank statements (checking and savings) for the past three months for all accounts.

14. OTHER ACCOUNTS. List all accounts including brokerage accounts, money market, additional checking and savings accounts not listed on line #13 and any other accounts not listed in this section.

Type of Account	Full Name of Bank, Savings & Loan, Credit Union or Financial Institution	Bank Routing No.	Bank Account No.	Current Account Balance
14a. _____	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
14b. _____	Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
14c. Total Other Account Balances				\$ _____



ATTACHMENTS REQUIRED: Please include your current bank statements (checking, savings, money market, and brokerage accounts) for the past three months for all accounts.

15. CASH ON HAND. Include any money that you have that is not in the bank.**15a. Total Cash on Hand** \$ _____**16. AVAILABLE CREDIT.** List all lines of credit, including credit cards.

Full Name of Credit Institution	Credit Limit	Amount Owed	Available Credit
16a. Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
16b. Name _____ Street Address _____ City/State/Zip _____	_____	_____	\$ _____
16c. Total Credit Available			\$ _____

☐ Check this box when all spaces in Sect. 6 are filled in and attachments provided.

Exhibit 5 14 of 18

Business Name _____

EIN _____

Section 7
Monthly
Income and
Expenses17. The following information applies to income and expenses from your most recently filed Form 1120 or Form 1065.
Fiscal Year Period _____ to _____18. Accounting Method Used: ☐ Cash ☐ AccrualComplete all
entry spaces
with the most
current data
available.

The information included on lines 19 through 39 should reconcile to your business federal tax return.

Total Income

Source	Gross Monthly
19. Gross Receipts	\$ _____
20. Gross Rental Income	_____
21. Interest	_____
22. Dividends	_____
Other Income (specify in lines 23-25)	_____
23. _____	_____
24. _____	_____
25. _____	_____
(Add lines 19 through 25)	_____
26. TOTAL INCOME	\$ _____

Total Expenses

Expense Items	Actual Monthly
27. Materials Purchased ¹	\$ _____
28. Inventory Purchased ²	_____
29. Gross Wages & Salaries	_____
30. Rent	_____
31. Supplies ³	_____
32. Utilities / Telephone ⁴	_____
33. Vehicle Gasoline / Oil	_____
34. Repairs & Maintenance	_____
35. Insurance	_____
36. Current Taxes ⁵	_____
Other Expenses (include installment payments, specify in lines 37-38)	_____
37. _____	_____
38. _____	_____
(Add lines 27 through 38)	_____
39. TOTAL EXPENSES	\$ _____

¹ **Materials Purchased:** Materials are items directly related to the production of a product or service.² **Inventory Purchased:** Goods bought for resale.³ **Supplies:** Supplies are items used in your business that are consumed or used up within one year, this could be the cost of books, office supplies, professional instruments, etc.⁴ **Utilities:** Utilities include gas, electricity, water, fuel, oil, other fuels, trash collection and telephone.⁵ **Current Taxes:** Real estate, state and local income tax, excise, franchise, occupational, personal property, sales and the employer's portion of employment taxes.☐ Check this box
when all spaces in
Sect. 7 are filled in.☐ Check this box
when all spaces in
all sections are
filled in and all
attachments
provided.**Failure to complete all entry spaces may result in rejection or significant delay in the resolution of your account.****Certification:** Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct and complete._____
Print Name_____
Title_____
Your Signature_____
Date**Exhibit** H 15 of 18

Business Name _____ EIN _____

Section 3**Accounts/
Notes
Receivable
continued****ACCOUNTS/NOTES RECEIVABLE CONTINUATION PAGE.** List all contracts separately, including contracts awarded, but not started. (If you need additional space, copy this page and attach to the 433-B package.)*Use only if
needed.*☐ *Check this
box if this
page is not
needed.*

Description	Amount Due	Date Due	Age of Account
6d. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6e. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6f. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6g. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6h. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6i. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6j. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6k. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6l. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6m. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6n. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days
6o. Name _____ Street Address _____ City/State/Zip _____	\$ _____	_____	<input type="checkbox"/> 0 - 30 days <input type="checkbox"/> 30 - 60 days <input type="checkbox"/> 60 - 90 days <input type="checkbox"/> 90+ days

☐ Check this box
when all spaces in
Sect. 3 are filled in.

Add lines 6d through 6o = 6p \$ _____

(Add this amount to amount
on line 6c, Section 3, page 1)

Except for offers based on **doubt as to liability**, the offer agreement requires you to forego certain refunds, and to return those refunds to us if they are issued to you by mistake. These conditions are also listed on Form 656, Items 8(g) and 8(h).

Note: *The law requires us to make certain information from accepted Offers in Compromise available for public inspection and review in your local IRS Territory Office. Therefore, information regarding your Offer in Compromise may become publicly known.*

**If We Reject
Your Offer**

We'll notify you by mail if we reject your offer. In our letter, we will explain our reason for the rejection. If your offer is rejected, you have the right to:

- Appeal our decision to the Office of Appeals within thirty days from the date of our letter. The letter will include detailed instructions on how to appeal the rejection.

- Submit another offer. You must increase an offer we've rejected as being too low, when your financial situation remains unchanged. However, you must provide updated financial information when your financial situation has changed or when the original offer is more than six months old.

Terms and Definitions

An understanding of the following terms and conditions will help you to prepare your offer.

Fair Market Value (FMV) – The amount you could reasonably expect from the sale of an asset. Provide an accurate valuation of each asset. Determine value from realtors, used car dealers, publications, furniture dealers, or other experts on specific types of assets. Please include a copy of any written estimate with your Collection Information Statement.

Quick Sale Value (QSV) – The amount you could reasonably expect from the sale of an asset if you sold it quickly, typically in ninety days or less. This amount generally is less than fair market value, but may be equal to or higher, based on local circumstances.

Realizable Value – The quick sale value amount minus what you owe to a secured creditor. The creditor must have priority over a filed Notice of Federal Tax Lien before we allow a subtraction from the asset's value.

Future Income – We generally determine the amount we could collect from your future income by subtracting necessary living expenses from your monthly income over a set number of months. For a cash offer, you must offer what you could pay in monthly payments over forty-eight months (or the remainder of the ten-year statutory period for collection, whichever is less). For a short-term deferred offer, you must offer what you could pay in monthly payments over sixty months (or the remainder of the statutory period for collection, whichever is less). For a deferred payment offer, you must offer what you could pay in monthly payments during the remaining time we could legally receive payments.

Reasonable Collection Potential (RCP) –

The total realizable value of your assets plus your future income. The total is generally your minimum offer amount.

Necessary Expenses – The allowable payments you make to support you and your family's health and welfare and/or the production of income. This expense allowance does not apply to business entities. Our Publication 1854 explains the National Standard Expenses and gives the allowable amounts. We derive these amounts from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey. We also use information from the Bureau of the Census to determine local expenses for housing, utilities, and transportation.

Note: *If the IRS determines that the facts and circumstances of your situation indicate that using the scheduled allowance of necessary expenses is inadequate, we will allow you an adequate means for providing basic living expenses. However, you must provide documentation that supports a determination that using national and local expense standards leaves you an inadequate means of providing for basic living expenses.*

Expenses Not Generally Allowed – We typically do not allow you to claim tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions, payments on unsecured debts such as credit card bills, cable television charges and other similar expenses as necessary living expenses. However, we can allow these expenses when you can prove that they are necessary for the health and welfare of you or your family or for the production of income.

Transcript for a Motion to Quash

- A. About this time of the year everyone needs a little good news concerning someone's battle with the IRS.
 - 1. Here is a winning transcript, which was the result of a lot of work to get it to this point.
- B. Take a little time and read it a couple times.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

)	CASE NO. 02-	-CIV-WPD
)		
Petitioner,)		
)		
-v-)		
)		
UNITED STATES OF AMERICA,)		
through the Internal Revenue)		
Service and Agent Cynthia)		
Evans,)		
)	Fort Lauderdale, Florida	
Respondent.)	February 28, 2003	
)	11:00 a.m.	

copy

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE WILLIAM P. DIMITROULEAS

U.S. DISTRICT JUDGE

APPEARANCES:

Appearing pro se

MARCELLA COHEN AUERBACH, ESQ.
Assistant United States Attorney
Appearing on behalf of the Respondent

Reporter

ROBERT A. RYCKOFF
Official Court Reporter
299 East Broward Boulevard
Fort Lauderdale, Florida 33301
954-769-5657

1 (Call to order of the Court.)

2 THE COURT: versus United States. If
3 the Government would announce their appearance for the record,
4 please.

5 MS. AUERBACH: Good morning, Your Honor.

6 Marcella Cohen Auerbach for the United States.

7 THE COURT: And, Ms. are you here representing
8 yourself?

9 MS. Yes, Your Honor, I am.

10 THE COURT: All right. We are here on Ms.
11 motion to quash a summons that she filed. I dismissed that
12 particular motion on February 11th and Ms. filed a motion
13 to reconsider. I stayed the order dismissing the motion to
14 quash and ordered a hearing for today.

15 What's the Government's position on Ms. motion
16 for reconsideration of my dismissal of her motion to quash?

17 MS. AUERBACH: Your Honor, as I understood your
18 ruling and your order, it turned on the issue of jurisdiction,
19 and the fact that it appeared there was a factual dispute -- at
20 least at the time of your order -- as to the circumstances
21 surrounding the service and certified mail to
22 who is the petitioner.

23 When I received the order setting the hearing on this
24 case, I immediately began to investigate the facts surrounding
25 the petitioner's allegations, and, quite frankly, thought I was

1 preparing for a routine hearing. However, I must tell you
2 under my legal and ethical obligations to the Court that there
3 are now -- based on my investigation -- statements contained in
4 the agent's affidavit and based on that affidavit
5 representations made by me depending upon those representations
6 that are simply not true.

7 Based on the investigation, I do believe that
8 Ms. was not served personally as represented in the
9 notice.

10 In addition, I do not believe that the certified mail
11 was sent on November 26th, which is -- 2002 -- which was the
12 pivotal date in terms of the jurisdiction argument.

13 For that reason the United States would ask that its
14 response to the motion -- the original motion filed by the
15 petitioner -- be withdrawn. I feel that this is the ethical
16 and legal obligation that we have to do this.

17 I intend to file a written motion to withdraw. Based
18 on consultations I had this morning with Dexter Lee, our
19 ethical advisor, I intend to file a written motion with a
20 proposed order to advise outlining what I have just represented
21 to the Court.

22 I would also ask -- based on the circumstances now --
23 that the United States be given ten days to address the
24 substantive issues that were brought up on petitioner's
25 original motion to quash in that these circumstances were quite

1 unexpected to me and the first in my 23 years of practice as an
2 Assistant U.S. Attorney.

3 THE COURT: Why don't I just grant the petition to
4 quash the summons and you guys can just start all over again?

5 MS. AUERBACH: Okay.

6 Just so you know and so Ms. knows, I have also
7 recommended to the Internal Revenue Service that they assign a
8 new agent to this matter.

9 THE COURT: It sounds like a good recommendation to
10 me.

11 Anything further?

12 MS. AUERBACH: No, Your Honor.

13 THE COURT: All right. What I am going to do is I am
14 going to grant the motion for reconsideration.

15 MS. Your Honor, may I make a comment or two?

16 THE COURT: You are about to win the case, but if you
17 want to talk, go ahead.

18 I mean after I rule, if you want to make a comment,
19 then you can.

20 MS. Okay.

21 THE COURT: I will grant the motion for
22 reconsideration. I will vacate the order dismissing the case
23 for lack of jurisdiction. Therefore, I will vacate docket
24 entry number six. And I will grant your petition to quash
25 third-party summons, and close the case, which means the IRS

1 has to start all over again if they want to get you to give
2 them information.

3 Now, is there anything you wanted to say?

4 MS. : That's fine.

5 THE COURT: Okay.

6 MS. : Is it clear, then, that my understanding
7 is you are granting the petition to quash?

8 THE COURT: Right.

9 MS. : Thank you.

10 THE COURT: I appreciate everybody coming in today.

11 MS. AUERBACH: Thank you, Your Honor.

12 (Proceedings concluded at 11:06 a.m.)
13
14

15 REPORTER'S CERTIFICATION
16

17 I hereby certify that the foregoing is a true and accurate
18 transcript of the proceedings recorded by me and reduced to
19 typewriting at my direction.
20

21 Court Reporter

22 Robert Ryckoff

23 *Robert Ryckoff*

24 Date: 3-18-63
25

2002, 1040 Booklet

- A. We want to show the time it takes to prepare your return.
 - 1. On page 76 of the 2002, 1040 booklet you will find a chart with the heading, "Estimated Preparation Time." If you go all the way over to the right side and add up the totals you will find a total of 66.35 hours. Exhibit A, 1 of 4.
 - 2. Exhibit A, 2 of 2 is the same information only when you add the totals it adds up to 57 hours and 33 minutes.
 - 3. If you notice this is about a 9 hour difference from 1999 to 2002 and the size of the booklet also increased.
- B. If you extend this out to the year of 2020 the time would be 170 hours and 1040 booklet would be the size of the yellow pages.
- C. Who is paying you to do all this?
- D. How do insane people get sane people to do all this work for them for free?
- E. Exhibit A, 3 of 4 and 4 of 4 are showing the time increase for the 1040a form. 10.09 hours in 1997 and 14.17 hours in 2002 with a 15 page increase.

2002

Disclosure, Privacy Act, and Paperwork Reduction Act Notice

The IRS Restructuring and Reform Act of 1998, the Privacy Act of 1974, and Paperwork Reduction Act of 1980 require that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 requires that you provide your social security number or individual taxpayer identification number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund or for the third-party designee. You also do not have to provide your daytime phone number.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become

material in the administration of any Internal Revenue law.

We ask for tax return information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax.

If you do not file a return, do not provide the information we ask for, or provide fraudulent information, you may be charged penalties and be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on the tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Generally, tax returns and return information are confidential, as stated in Code section 6103. However, Code section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice, to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws. We may disclose your tax information to the Department of Treasury and contractors for tax administration purposes; and to other persons as necessary to obtain information which we cannot get in any other way in order to determine the amount of or to collect the tax you owe. We may disclose your tax information to the Comptroller General of the United States to permit the Comptroller General to review the Internal Revenue Service. We may disclose your tax information to Committees of Congress; Federal, state, and local child support agencies; and to

other Federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The Time It Takes To Prepare Your Return

We try to create forms and instructions that can be easily understood. Often this is difficult to do because our tax laws are very complex. For some people with income mostly from wages, filling in the forms is easy. For others who have businesses, pensions, stocks, rental income, or other investments, it is more difficult.

We Welcome Comments on Forms

If you have comments concerning the accuracy of the time estimates shown below or suggestions for making these forms simpler, we would be happy to hear from you. You can e-mail us your suggestions and comments through the IRS Web Site (www.irs.gov/help and click on **Help Comments, and Feedback**) or write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send your return to this address. Instead, see the back cover.

Estimated Preparation Time

The time needed to complete and file Form 1040, its schedules, and accompanying worksheets will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	2 hr., 46 min.	3 hr., 45 min.	6 hr., 5 min.	34 min.	13 hr., 10 min.
Sch. A	3 hr., 4 min.	39 min.	1 hr., 34 min.	20 min.	5 hr., 37 min.
Sch. B	33 min.	8 min.	25 min.	20 min.	1 hr., 26 min.
Sch. C	6 hr., 4 min.	1 hr., 41 min.	2 hr., 19 min.	31 min.	10 hr., 35 min.
Sch. C-EZ	45 min.	3 min.	35 min.	20 min.	1 hr., 43 min.
Sch. D	1 hr., 29 min.	2 hr., 54 min.	2 hr., 38 min.	34 min.	7 hr., 35 min.
Sch. D-1	13 min.	1 min.	11 min.	34 min.	59 min.
Sch. E	3 hr.	1 hr., 6 min.	1 hr., 24 min.	34 min.	6 hr., 4 min.
Sch. EIC	-----	1 min.	13 min.	20 min.	34 min.
Sch. F:					
Cash Method	3 hr., 29 min.	36 min.	1 hr., 27 min.	20 min.	5 hr., 52 min.
Accrual Method	3 hr., 36 min.	26 min.	1 hr., 25 min.	20 min.	5 hr., 47 min.
Sch. H	1 hr., 38 min.	30 min.	53 min.	34 min.	3 hr., 35 min.
Sch. J	19 min.	12 min.	1 hr., 56 min.	20 min.	2 hr., 47 min.
Sch. R	19 min.	15 min.	29 min.	34 min.	1 hr., 37 min.
Sch. SE:					
Short	13 min.	14 min.	13 min.	13 min.	53 min.
Long	26 min.	20 min.	35 min.	20 min.	1 hr., 41 min.

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This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 requires that you provide your social security number or individual taxpayer identification number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you. But you do not have to check the boxes for the Presidential Election Campaign Fund or provide your daytime telephone number.

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Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	3 hr., 15 min.	2 hr., 39 min.	6 hr., 22 min.	35 min.	12 hr., 51 min.
Sch. A	3 hr., 5 min.	40 min.	1 hr., 34 min.	20 min.	5 hr., 39 min.
Sch. B	33 min.	8 min.	24 min.	20 min.	1 hr., 25 min.
Sch. C	6 hr., 26 min.	1 hr., 11 min.	2 hr., 7 min.	35 min.	10 hr., 19 min.
Sch. C-EZ	46 min.	4 min.	34 min.	20 min.	1 hr., 44 min.
Sch. D	1 hr., 4 min.	2 hr., 16 min.	1 hr., 39 min.	35 min.	5 hr., 34 min.
Sch. D-1	13 min.	1 min.	11 min.	35 min.	1 hr.
Sch. E	2 hr., 52 min.	1 hr., 7 min.	1 hr., 16 min.	35 min.	5 hr., 50 min.
Sch. EIC	-----	2 min.	14 min.	20 min.	36 min.
Sch. F:					
Cash Method	4 hr., 2 min.	36 min.	1 hr., 14 min.	20 min.	6 hr., 12 min.
Accrual Method	4 hr., 22 min.	25 min.	1 hr., 19 min.	20 min.	6 hr., 26 min.
Sch. H	46 min.	30 min.	52 min.	35 min.	2 hr., 43 min.
Sch. J	20 min.	7 min.	50 min.	20 min.	1 hr., 37 min.
Sch. R	20 min.	15 min.	29 min.	35 min.	1 hr., 39 min.
Sch. SE:					
Short	20 min.	14 min.	13 min.	14 min.	1 hr., 1 min.
Long	13 min.	20 min.	34 min.	20 min.	1 hr., 27 min.

Disclosure, Privacy Act, and Paperwork Reduction Act Notice

The IRS Restructuring and Reform Act of 1998, the Privacy Act of 1974, and the Paperwork Reduction Act of 1980 require that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a), which require you to file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections. Code section 6109 requires that you provide your social security number or individual taxpayer identification number on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the tax form that apply to you. However, you do not have to check the boxes for the Presidential Election Campaign Fund or for the third-party designee. You also do not have to provide your daytime phone number.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

We ask for tax return information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax.

If you do not file a return, do not give the information asked for, or give false information, you may be charged penalties and be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Generally, tax returns and return information are confidential, as stated in Code section 6103. However, Code section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return

to others as described in the Code. For example, we may disclose your tax information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws. We may disclose your tax information to the Department of Treasury and contractors for tax administration purposes; and to other persons as necessary to obtain information which we cannot get in any other way in order to determine the amount of or to collect the tax you owe. We may disclose your tax information to the Comptroller General of the United States to permit the Comptroller General to review the Internal Revenue Service. We may disclose your tax information to Committees of Congress; Federal, state, and local child support agencies; and to other Federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans. We may also disclose this information to other countries under a tax treaty or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

Please keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The Time It Takes To Prepare Your Return. We try to create forms and instructions that can be easily understood. The time needed to complete and file the forms in the chart below will vary depending on individual circumstances.

The estimated average time for certain people with IRA distributions, pension income, social security benefits, etc., is: **Recordkeeping**, 2 hr., 16 min.; **Learning about the law or the form**, 2 hr., 31 min.; **Preparing the form**, 3 hr., 24 min.; **Copying, assembling, and sending the form to the IRS**, 34 min.; **Total**, 8 hr., 45 min.

We Welcome Comments on Forms. If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can e-mail us your suggestions and comments through the IRS Web Site (www.irs.gov/help) and click on **Help, Comments and Feedback** or write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send your return to this address. Instead, see the back cover.

Estimated Preparation Time

The time needed to complete and file Form 1040A, its schedules, and accompanying worksheets will vary depending on individual circumstances. The estimated average times are:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040A	1 hr., 10 min.	3 hr., 20 min.	4 hr., 50 min.	34 min.	9 hr., 54 min.
Sch. 1	19 min.	4 min.	13 min.	20 min.	56 min.
Sch. 2	33 min.	10 min.	52 min.	31 min.	2 hr., 6 min.
Sch. 3	13 min.	14 min.	26 min.	34 min.	1 hr., 27 min.
Sch. EIC	0 min.	1 min.	13 min.	20 min.	34 min.

Exhibit A 3 of 4

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What Should You Know About the Privacy Act and Paperwork Reduction Act Notice?

The law says that when we ask you for information we must tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive the information and whether your response is voluntary, needed for a benefit, or mandatory under the law.

This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect the tax, interest, or penalties. Internal Revenue Code sections 6001, 6011, and 6012(a) say that you must file a return or statement with us for any tax for which you are liable. Your response is mandatory under these sections. Code section 6109 says that you must show your social security number on what you file, so we know who you are and can process your return and other papers. You must fill in all parts of the tax form that apply to you.

However, you do not have to check the boxes for the Presidential Election Campaign Fund.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

We ask for tax return information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws.

If you do not file a return, do not give the information asked for, or give false information, you may be charged penalties and be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The Time It Takes To Prepare Your Return. We try to create forms and instructions that can be easily understood. The time needed to complete and file the forms in the chart below will vary depending on individual circumstances.

The estimated average time for people with IRA distributions, pension income, social security benefits, etc., is: Recordkeeping, 2 hr., 17 min.; Learning about the law or the form, 2 hr., 20 min.; Preparing the form, 3 hr., 13 min.; Copying, assembling, and sending the form to the IRS, 35 min.; Total, 8 hr., 25 min.

We Welcome Comments on Forms. If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can e-mail us your suggestions and comments through the IRS Internet Home Page (www.irs.ustreas.gov) or write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

DO NOT send your return to this address. Instead, see **Where Do You File?** on the back cover.

Estimated Preparation Time

The time needed to complete and file Form 1040A and its schedules will vary depending on individual circumstances.			The estimated average times are:		
Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040A	1 hr., 4 min.	2 hr., 8 min.	3 hr., 4 min.	35 min.	6 hr., 51 min.
Sch. 1	20 min.	4 min.	10 min.	20 min.	54 min.
Sch. 2	33 min.	10 min.	40 min.	28 min.	1 hr., 51 min.
Sch. 3	13 min.	14 min.	25 min.	35 min.	1 hr., 27 min.
Sch. EIC	0 min.	2 min.	4 min.	20 min.	26 min.

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