

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR DISTRICT COUNSEL, NORTH CENTRAL DISTRICT

FROM: Alan C. Levine  
Chief, Branch 1 (General Litigation)

SUBJECT: RRA 98 Section 3401: Impact on Summonses  
GL-701696-99

This responds to your request for advice dated May 4, 1999, asking us to review your proposed answers to a request for advice sent to you from the North Central District RRA 98 Collection Coordinator. The request described the following hypothetical fact pattern. A taxpayer makes a request for a Collection Due Process ("CDP") hearing after receiving an I.R.C. § 6330 notice. The revenue officer wants to continue investigation of potential fraudulent transfers and potentially use nominee liens because the taxpayer had previously transferred property to his wife and a trust. The revenue officer wishes to continue this investigation while the taxpayer is going through the CDP hearing process. The revenue officer believes he will need to serve a summons for collection information. You asked us to review your responses to the following issues.

**Issues**

- 1) Whether I.R.C. § 6330(e)(1) refers only to levy and seizure actions.
- 2) Whether section 6330, and other Code sections, limit the use of summonses for collection information during the pendency of the CDP appeal.
- 3) Whether section 6330(e)(1), and other Code sections, limit the filing of liens and/or nominee liens during the pendency of the CDP appeal.

**Law and Analysis**

- 1) Whether I.R.C. § 6330(e)(1) refers only to levy and seizure actions.

Section 6330(e)(1) provides that "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 the period of limitations . . . 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 90<sup>th</sup> day after the day on which there is a final determination in such hearing.” This provision is incorporated into I.R.C. § 6320 by I.R.C. § 6320(c). It is important to differentiate whether a taxpayer is sent a section 6320 notice, “Notice of Federal Tax Lien Filing and Right to a Hearing”, or a section 6330 notice, “Notice of Intent to Levy and Right to a Hearing”, because the suspension of collection activity differs depending on the notice the taxpayer received. The effect the levy suspension has on collection activity also depends on whether the taxpayer’s appeal rights under section 6320 and/or 6330 have concluded and whether a NFTL was on file prior to the effective date of sections 6320 and 6330 -- January 19, 1999. Please see the attached chart for an explanation of the effect of the suspension on collection action under section 6320 and 6330.

Section 6330(e)(2) provides an exception to the bar on 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 Service has shown “good cause” not to suspend the levy. The determination of whether “good cause” is appropriate is decided on a case by case basis.

2) Whether section 6330, and other Code sections, limit the use of summonses for collection information during the pendency of the CDP appeal.

As mentioned above, under section 6330(e)(1), in some situations there is a suspension on levying and seizing the taxpayer’s property. However, there is no suspension on investigation. Accordingly, section 6330 does not limit the use of summonses during this period. I.R.C. § 7602 provides that a summons cannot be issued “with respect to any person if a Justice Department referral is in effect with respect to such person.” As long as the prohibition in section 7602 does not apply, a revenue officer can continue an investigation through the use of summonses during the pendency of a CDP appeal. However, the revenue officer may wish to forego the use of a summons until the CDP hearing is concluded because the information the revenue officer is interested in obtaining may be disclosed at the CDP hearing.

3) Whether section 6330(e)(1), and other Code sections, limit the filing of liens and/or nominee liens during the pendency of the CDP appeal.

Once a section 6330 CDP notice is issued only levy action is required to be suspended. If it is determined by the revenue officer that the filing of a lien is necessary, then he is legally able to do so even though the levy action has been suspended. There is also no legal prohibition against filing a nominee lien during this period. We are advised that consideration is being given that in the next

revision of the Internal Revenue Manual (IRM) it will provide that the filing of NFTLs, including nominee liens, will be suspended once a taxpayer has requested a CDP hearing except in certain circumstances. However, the IRM has not been finalized and should be checked upon release. If an NFTL is filed, the taxpayer must be given notice of the filing "not more than 5 business days after the day of the filing of the notice of lien."

If you have any questions regarding this memorandum please call (202)622-3610.

Attachment

**INTERPLAY BETWEEN 6320 AND 6330**

**\* The phrase “CDP rights under section 6320/6330 have concluded” means that either (1) 45 days passed from the date the Service sends the taxpayer the section 6320/6330 notice and the taxpayer has failed to request a CDP hearing, or (2) the Service receives written withdrawal by the taxpayer of the request for a CDP hearing after a taxpayer has requested a CDP hearing, or (3) the determination made at the hearing becomes final by expiration of the time for seeking its review or reconsideration. See Temp. Treas. Reg. § 301.6330-1T(A-G1)**

	<b>Legally</b>	<b>Explanation</b>	<b>Administrative</b>	<b>Explanation</b>	<b>Result</b>
<b>I. 6330 - Notice of Intent to Levy and Right to a Hearing</b>					
<b>A. 6330 Notice has not been sent to taxpayer</b>					

<p><b>1. Notice of Intent to levy given before 1/19/99</b></p>	<p><b>cannot levy</b></p>	<p><b>6330 requires that effective 1/19/99 the taxpayer must be given a right to a CDP hearing before the Service levies (Note: If a continuous wage levy was issued prior to 1/19/99 the taxpayer is not entitled to a CDP notice or hearing under section 6330 with respect to the levy because levy action was initiated prior to 1/19/99.)</b></p>	<p><b>same as legal</b></p>	<p><b>same as legal</b></p>	<p><b>- cannot levy until the taxpayer has been given a Notice of Intent to Levy and Right to a Hearing (6330 notice) and his rights under 6330 have concluded</b></p> <p><b>- NFTLs can be filed</b></p>
<p><b>2. No Notice of Intent to levy given before 1/19/99</b></p>	<p><b>cannot levy</b></p>	<p><b>6330 requires that effective 1/19/99 the taxpayer must be given a right to a CDP hearing before the Service levies</b></p>	<p><b>same as legal</b></p>	<p><b>same as legal</b></p>	<p><b>-cannot levy until the taxpayer has been given a Notice of Intent to Levy and Right to a Hearing (6330 notice) and his rights under 6330 have concluded</b></p> <p><b>- NFTLs can be filed</b></p>
<p><b>B. 6330 CDP rights are not concluded</b></p>					

<p><b>1. Once a 6330 notice is sent to the taxpayer</b></p>	<p><b>suspension on levy action</b></p>	<p><b>pursuant to section 6330(e)(1)</b></p>	<p><b>same</b></p>	<p><b>same</b></p>	<p><b>- suspension on levy action</b> <b>- NFTLs can be filed</b></p>
<p><b>2. Once a CDP hearing is requested pursuant to a 6330 notice</b></p>	<p><b>suspension on levy action</b></p>	<p><b>pursuant to section 6330(e)(1)</b></p>	<p><b>We are advised that consideration is being given that in the next revision of the IRM it will provide that the filing of NFTLs, including nominee liens, will be suspended once a taxpayer has requested a CDP hearing except in certain circumstances</b></p>	<p><b>don't want to complicate or interfere with the proper functioning of the CDP hearing</b></p>	<p><b>- suspension on levy action</b> <b>- the IRM has not been finalized and should be checked upon release to determine, as a matter of policy, when the filing of NFTLs is suspended</b></p>
<p><b>C. 6330 CDP rights are concluded</b></p>					

<p><b>1. NFTL on file before 1/19/99</b></p>	<p><b>can levy including seizures</b></p>	<p><b>NFTL is effective from before 1/19/99 we don't have to send a 6320 notice</b></p>	<p><b>same</b></p>	<p><b>same</b></p>	<p><b>can levy including seizures</b></p>
<p><b>2. NFTL on file on or after 1/19/99 and CDP rights under 6320 are concluded</b></p>	<p><b>can levy including seizures</b></p>	<p><b>section 6320 is satisfied</b></p>	<p><b>same</b></p>	<p><b>same</b></p>	<p><b>can levy including seizures</b></p>
<p><b>3. NFTL is not on file prior to 1/19/99 or NFTL on file on or after 1/19/99 and 6320 notice has been sent to taxpayer but CDP rights under 6320 are not concluded and taxpayer has not yet requested a hearing</b></p>	<p><b>can levy including seizures</b></p>	<p><b>section 6320 does not suspend levy action</b></p>	<p><b>can levy but cannot seize</b></p>	<p><b>internal procedures require a NFTL to be on file before the Service seizes property (I.R.M. 5.10.1.4:(6)); therefore, taxpayer should have opportunity to challenge lien before seizure</b></p>	<p><b>- can levy</b>  <b>-cannot seize until there is a NFTL and taxpayer has been given a 6320 notice and his CDP rights under 6320 have concluded</b></p>

<p><b>4. NFTL is not on file prior to 1/19/99 or NFTL on file on or after 1/19/99 and taxpayer has requested a hearing but CDP rights under 6320 are not concluded</b></p>	<p><b>can levy including seizures</b></p>	<p><b>section 6320 does not suspend levy action</b></p>	<p><b>cannot levy for liabilities for the tax period(s) listed on the NFTL</b></p>	<p><b>to give effect to the cross-reference between 6320(c) and 6330(e)</b></p>	<p><b>- cannot levy for liabilities for the tax period(s) listed on the NFTL once the taxpayer requests a hearing pursuant to a 6320 notice</b></p>
<p><b>II. 6320 - Notice of Federal Tax Lien Filing and the Right to a Hearing</b></p>					
<p><b>A. 6320 CDP rights are not concluded</b></p>					
<p><b>1. 6320 notice has been sent but no 6330 notice has been sent</b></p>	<p><b>cannot levy but a 6330 notice can be sent</b></p>	<p><b>section 6330 requires that effective 1/19/99 the taxpayer must be given a right to a CDP hearing before the Service levies</b></p>	<p><b>same</b></p>	<p><b>same</b></p>	<p><b>-cannot levy</b> <b>- can send 6330 notice</b> <b>- NFTL already filed</b></p>

<p><b>2. 6320 notice has been sent and 6330 notice has been sent and the taxpayer's CDP rights under 6330 are concluded</b></p>	<p><b>can levy</b></p>	<p><b>as long as the taxpayer's CDP rights under 6330 are concluded</b></p>	<p><b>cannot seize</b></p>	<p><b>internal procedures require a NFTL to be on file before the Service seizes property (I.R.M. 1.4(6)); therefore, taxpayer should have opportunity to challenge lien before seizure</b></p>	<p><b>- can levy as long as taxpayer's CDP rights under 6330 are concluded</b>   <b>- no seizures</b>   <b>- NFTL already filed</b></p>
<p><b>B. 6320 CDP rights are concluded</b></p>					
<p><b>1. 6320 notice has been sent but no 6330 notice has been sent</b></p>	<p><b>cannot levy but a 6330 notice can be sent</b></p>	<p><b>6330 requires that effective 1/19/99 the taxpayer must be given a right to a CDP hearing before the Service levies</b></p>	<p><b>same</b></p>	<p><b>same</b></p>	<p><b>-cannot levy</b>   <b>- can send 6330 notice</b>   <b>- NFTL already filed</b></p>

<b>2. 6320 notice has been sent and 6330 notice has been sent and the taxpayer's CDP rights under 6330 are concluded</b>	<b>can levy</b>	<b>as long as the taxpayer's CDP rights under 6330 are concluded</b>	<b>can seize</b>	<b>taxpayer has had opportunity to challenge lien</b>	<b>- can levy as long as taxpayer's CDP rights under 6330 are concluded</b>
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