

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR DISTRICT COUNSEL, CENTRAL CALIFORNIA DISTRICT,
SAN JOSE

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

SUBJECT: I.R.C. § 6330 - Appeal of Levy Notices - Spousal Issues

Pursuant to your request, we have reviewed the Collection Due Process aspect of your draft response to the request for advice from the RRA '98 Coordinator in your district. The RRA '98 Coordinator requested advice for the situation where both spouses receive an I.R.C. § 6330 notice but where only one spouse requests a Collection Due Process ("CDP") hearing. We have the following comments.

Section 6330 provides that a taxpayer must request a Collection Due Process ("CDP") hearing within 30 days of the CDP notice.^{1/} The statute of limitations on collection and collection activity is suspended when the taxpayer requests a CDP hearing. This suspension applies only to the taxpayer who requests the hearing and not to others who are or maybe affected by the proposed action.

I.R.M. 1.9.3.3:(4) provides "In joint liability situations, where only one spouse has requested a CDP hearing, collection action can continue with respect to the spouse who has not requested an appeal. This will most often occur in situations where the spouses are separated or divorced." The inference is that if the spouses have the same address or the Internal Revenue Service ("Service") knows that they are still married then the Service will not pursue collection action against the spouse that did not request the hearing. Furthermore, a CDP request can be modified.

^{1/} Please note that after waiting the 30 days, the Service cannot levy for an additional 15 days to assure that CDP hearing requests that were timely mailed are received by the Service. I.R.M. 5.11.1.2.1:(5).

I.R.M. 5.1.9.2.6:(1). Therefore, while the revenue officer is not required to contact the nonappealing spouse, if contact is made and it is the spouse's intent as to be included on the request for appeal, then the CDP hearing request can be modified to include both spouses.

If there are any questions or concerns regarding this memorandum please call (202)622-3610.

CC: Assistant Regional Counsel (GL) Western Region