



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.1.9

OCTOBER 19, 2023

EFFECTIVE DATE

(10-19-2023)

PURPOSE

- (1) This transmits revised IRM 5.1.9, Field Collecting Procedures, Collection Appeal Rights.

MATERIAL CHANGES

- (1) See the table below for significant changes to this IRM:

IRM Reference	Description of Change
IRM 5.1.9.1.1(5)	Clarified the correct name of The IRS Independent Office of Appeals which is referred to simply as Appeals throughout this IRM.
IRM 5.1.9.1.6	Added acronyms AO, EEFAX, FTD, MFT and TIN. Removed SO.
IRM 5.1.9.3.1(6)	Added to clarify that if a case has been referred to, or is under, Department of Justice jurisdiction the RO will remind the taxpayer that any CDP hearing with Appeals will be held in abeyance until the litigation is resolved and jurisdiction returned to the IRS.
IRM 5.1.9.3.2(8)	Updated to allow for current and future electronic methods of submitting CDP hearing requests.
IRM 5.1.9.3.2.1(6),(7) & (8)	Updated language to allow for electronic submission or transfer of documents.
IRM 5.1.9.3.2.5	Updated the Separate Timeliness Determination to use the Appeals Electronic Case Receipts (ECR) page to transmit hearing requests.
IRM 5.1.9.3.3.2	Incorporates Interim Guidance Memorandum SBSE-05-0223-0006, Interim Guidance for Electronic Collection Due Process (CDP) Processing, dated 02/03/2023, into IRM 5.1.9.3.3.2.

IRM Reference	Description of Change
IRM 5.1.9.3.3.2(3)	Added to clarify that if a case has been referred to, or is under, Department of Justice jurisdiction the RO will remind the taxpayer that any CDP hearing with Appeals will be held in abeyance until the litigation is resolved and jurisdiction returned to the IRS.
IRM 5.1.9.3.3.2.1	Incorporates Interim Guidance Memorandum SBSE-05-0922-0061, Interim Guidance for Collection Due Process (CDP) Requests in the Rapid Response Appeals Process (RRAP), dated 09/30/2022, into IRM 5.1.9.3.3.2.1.
IRM 5.1.9.3.4(6)	Updated language to allow for electronic submission or transfer of documents.
IRM 5.1.9.3.12(2)	Updated language to allow for electronic submission or transfer of documents.
IRM 5.1.9.4.3	Incorporated SERP IRM Procedural Update 22U0713, Submittal Process to Appeals for Collection Appeals Program (CAP) Cases, dated 06/10/2022, into IRM 5.1.9.4.3.

- (2) Minor editorial changes have been made throughout this IRM. Website addresses were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 5.1.9 dated August 27, 2021. It incorporates Interim Guidance Memorandum (IGM) SBSE-05-0922-0061 (effective date 09/30/2022), IGM SBSE 05-1222-0085 (effective 12/02/2022), IGM SBSE 05-0223-0006 (effective date 02/06/2023) and SERP IRM Procedural Update (IPU) 22U0713 (effective 06/10/2022).

AUDIENCE

Revenue officers and advisor reviewers

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5.1.9

Collection Appeal Rights

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5.1.9.1
(08-27-2021)
Program Scope and Objectives

- (1) **Purpose:** This chapter discusses the rights taxpayers have to appeal collection actions, proposed or taken, and the related appeal procedures.
- (2) **Audience:** This IRM is designed for use by revenue officers and their managers.
- (3) **Policy Owner:** The Director, Collection Policy.
- (4) **Program Owner:** SB/SE Collection Policy, Campus Policy.
- (5) **Primary Stakeholders:** SB/SE revenue officers (ROs).
- (6) **Program Goals:** To ensure fairness to each taxpayer, we do our jobs with a focus on taxpayer rights, including due process and appeal rights. The goal of this IRM is to provide employees with fundamental knowledge and procedural guidance that will ensure collection appeal rights are protected and properly administered. Refer to IRM 1.2.1.2.36, Policy Statement 1-236 (Rev.1), Fairness and Integrity in Enforcement Selection.

5.1.9.1.1
(10-19-2023)
Background

- (1) The collection appeal rights and procedures discussed in this IRM section include Collection Due Process (CDP) and Collection Appeals Program (CAP) rights.
- (2) **Collection Due Process (CDP)** appeal rights:
 - IRC 6320 gives the taxpayer the right to appeal the filing of a Notice of Federal Tax Lien (NFTL).
 - IRC 6330 gives the taxpayer the right to appeal before the proposed levy action and after a jeopardy levy, a disqualified employment tax levy, a levy on state tax refunds, and a federal contractor levy.
- (3) **Collection Appeals Program (CAP)** rights:
 - IRC 7122 (e) gives the taxpayer the right to appeal the IRS's rejection of installment agreement (IA) requests. Under CAP, IRC 6159(e), and 26 CFR 301.6159-1, the taxpayer has the right to appeal proposed and actual terminations of IAs and proposed and actual modifications of IAs.
 - Under CAP, the taxpayer also has the right to appeal proposed or actual filing of an NFTL, denials of lien related certificates and NFTL withdrawals, proposed or actual levy, or seizure actions and rejected, modified, or terminated IAs, and 6343(d) and 6343(b) claims. A third party subject to a special condition NFTL (e.g., nominee, alter ego) has the right to appeal the filing under CAP.
- (4) Taxpayers have additional appeal rights, including those related to assessment of the trust fund recovery penalty, rejection of offers in compromise, abatement of penalty assessments due to reasonable cause, and jeopardy levies.
- (5) The IRS Independent Office of Appeals will be hereafter referred to as Appeals throughout the remainder of this IRM.

5.1.9.1.2
(08-30-2018)
Authority

- (1) Authorities relating to this section include:
 - IRC 6159 – Agreements for payment of tax liability in installments

- IRC 6320 – Notice and opportunity for hearing upon filing of notice of lien
- IRC 6330 – Notice and opportunity for hearing before levy
- IRC 7122 – Compromises
- 26 CFR 301.6159-1 – Agreements for payment of tax liabilities in installments
- 26 CFR 301.6320-1 – Notice and opportunity for hearing upon filing of notice of Federal tax lien
- 26 CFR 301.6330-1 – Notice and opportunity for hearing prior to levy
- Rev. Proc. 2012-18 – Ex Parte Communications between Appeals and Other Internal Revenue Service Employees

5.1.9.1.3
(10-19-2023)
Responsibilities

- (1) The Director, Collection Policy, is responsible for the policies and procedures to be employed by collection personnel.
- (2) The Collection Policy Program Manager, Campus Policy, is responsible for developing the policies and procedures described in this IRM.
- (3) Revenue officer managers are responsible for ensuring the guidance and procedures described in this IRM are followed.
- (4) Revenue officers are responsible for following the procedures in this IRM.

5.1.9.1.4
(08-30-2018)
Program Management and Review

- (1) Integrated Collection System (ICS) is used by Collection field employees for inventory control and history documentation. ICS provides controls and reports to ensure hearing requests are timely processed to Appeals.
- (2) ICS provides weekly group level reports and monthly Area reports to ensure hearing requests are timely processed.

5.1.9.1.5
(08-30-2018)
Program Controls

- (1) Case reviews are conducted by managers to ensure compliance with this IRM. Managers approve transfer of appeal requests.
- (2) Operational reviews are conducted by territory managers and area directors to evaluate program delivery and conformance to administrative and compliance requirements.
- (3) Targeted program reviews are performed by Collection Policy to assess IRM guidance and procedures.
- (4) Systemic controls are built into the ICS system to prevent a levy from being generated on a module when the required notices have not been issued or while a case is in CDP status. The Automated Lien System (ALS) ensures the required CDP notices are issued. ICS CDP application and forms used to transmit the request to Appeals provide managers with CDP controls.

5.1.9.1.6
(10-19-2023)
Acronyms

- (1) The table lists commonly used acronyms and their definitions.

Acronym	Definition
AC	Action Code
ACDS	Appeals Centralized Database System

Acronym	Definition
AO	Appeals Officer
ARI	Appeals Referral Investigation
CAP	Collection Appeal Program
CDP	Collection Due Process
CIS	Collection Information Statement
CNC	Currently Not Collectible
CSED	Collection Statute Expiration Date
DETL	Disqualified Employment Tax Levy
EEFAX	Enterprise Electronic Facsimile
EH	Equivalent Hearing
FPLP	Federal Payment Levy Program
FTD	Federal Tax Deposit
IA	Installment Agreement
IBTF	In-business Trust Fund
ICS	Integrated Collection System
MFT	Master File Transaction
NFTL	Notice of Federal Tax Lien
OI	Other Investigation
OIC	Offer in Compromise
POA	Power of Attorney
RO	Revenue Officer
SITLP	State Income Tax Levy Program
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TFRP	Trust Fund Recovery Penalty

5.1.9.1.7 (10-19-2023)

Related Resources

- (1) The ICS User Guide, Chapter 33 – Collection Due Process, provides procedures for tracking CDP requests using ICS.
- (2) The Collection Procedures Knowledge Base web page provides information related to Collection Appeals. See *Collection Procedures Knowledge Base*.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord

with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see *Taxpayer Bill of Rights*.

- (4) Additional information regarding appeal rights can be found, as applicable, in:
- IRM 5.7.6.4, Appealing the Proposed Assessment
 - IRM 5.8.7.7.5, Rejection Appealed
 - IRM 5.11.3.7, Appealing the Jeopardy Levy
 - IRM 20.1, Penalty Handbook

5.1.9.2 (08-27-2021)

Informing Taxpayers of Their Appeal Rights

- (1) Taxpayers need to be informed of their right to appeal collection actions. The following publications and forms explaining appeal rights and provisions should be readily available in Collection offices to provide to taxpayers:
- a. Pub 594, The IRS Collection Process, explains the steps the IRS may take to collect overdue taxes and addresses general appeal provisions.
 - b. Pub 1660, Collection Appeal Rights, provides detailed information regarding the collection appeal rights and procedures under Collection Due Process and the Collection Appeals Program.
 - c. Form 9423, Collection Appeal Request.
 - d. Form 12153, Request for a Collection Due Process or Equivalent Hearing.
- (2) Revenue officers need to clearly explain the appeal provisions to taxpayers throughout the collection process and thoroughly answer questions taxpayers may have regarding their right to appeal.
- (3) Statutory provisions under IRC 6320 and IRC 6330 require the IRS to provide taxpayers with written notification of their appeal rights. Refer to IRM 5.1.9.3, Collection Due Process.
- (4) Collection personnel are required to advise taxpayers of their right to appeal under CAP when an installment agreement (IA) is rejected, modified or proposed to be modified, or about to be terminated. As part of the initial contact, Collection personnel should also advise taxpayers of their right to appeal under CAP prior to and after levy or seizure or the filing of an NFTL. Collection personnel should also remind taxpayers of their CAP rights when the taxpayer disagrees with NFTL filing or levy or seizure action. If collection action was deferred or suspended while a collection alternative was considered, and a significant time has passed, collection personnel should also attempt to contact the taxpayer either verbally or in writing to remind them of their CAP rights before resuming collection action, unless collection is at risk. Refer to IRM 5.1.9.4, Collection Appeals Program (CAP).
- (5) Collection personnel need to provide taxpayers with Publication 1660 with the Notice of Seizure (Form 2433). Refer to IRM 5.10.3.9, Notice of Seizure (Form 2433 - Delivery).

5.1.9.3 (02-07-2014)

Collection Due Process

- (1) The IRS Restructuring and Reform Act (RRA) of 1998 established the Collection Due Process hearing rights under IRC 6320 and IRC 6330. These provisions apply to levy and NFTL filing actions taken after January 18, 1999.

5.1.9.3.1

(10-19-2023)

Notice of Collection Due Process (CDP) Hearing Rights

- (1) The Collection Due Process hearing provisions give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the NFTL that has been filed is warranted and appropriate. In Field Collection, attempted contact with the taxpayer and alternative methods for resolving the case, such as installment agreements (IAs) and offer in compromise (OIC), should be considered before proposing levy or filing an NFTL. Refer to IRM 5.11.1.3.3.3, Issuing Notice of Intent to Levy/Notice of a Right to a Hearing in Field Collection, and IRM 5.12.2.3, Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations).
- (2) IRC 6320 gives taxpayers the right to request a hearing during the 30-day period that begins on the day after the five-business-day period after the filing of a NFTL. Refer to IRM 5.12.6, Appeals Processes Involving Liens, and IRM 5.1.9.3.2.1, Timeliness of the CDP Hearing Request.
 - a. Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320, will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail to the last known address not more than five business days after the day of the filing of the NFTL.
 - b. This notice is required only once for the taxable period and unpaid tax which is the subject of the NFTL filing. A second notice is not required if a NFTL for the same tax liability is filed in other jurisdictions. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice. Refer to IRM 5.12.6.3.6.2, CDP Notice for NFTL on Additional Assessments.
 - c. For a joint income tax liability, each spouse will individually be sent to their last known address a Letter 3172 explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.
 - d. If Automated Lien System (ALS) is not used to generate the Letter 3172, it is the responsibility of the employee making the NFTL filing determination to ensure that the CDP notice is issued timely. Information regarding how the notice was issued should be documented in the case history. Refer to IRM 5.12.6.3.7, Preparation and Delivery of Manual CDP Notices.
- (3) IRC 6330 gives taxpayers the right to request a hearing during the 30-day period that begins the day after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing. Refer to IRM 5.11, Notice of Levy.
 - a. This Notice of Intent to Levy and Notice of Your Right to a Hearing will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address not less than 30 days before the day of the first levy. USPS certified or registered mail service is available in all U.S. territories, including American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. USPS certified or registered mail is also available in certain U.S. protectorates: including the Federated States of Micronesia, Republic of the Marshall Islands, Republic of Palau, Johnson Atoll, Midway Islands, Marshall Islands, and Wake Island. USPS certified or registered mail service may not be available in other U.S. protectorates. In those jurisdictions, a private delivery service (UPS, FedEx, DHL, etc.) may be used to provide delivery in person or to the taxpayer's residence or usual place of business, in

accordance with IRC 6330(a)(2)(A) and (B). You must retain a copy of the signed receipt or the signature of the private delivery service employee affirming that they left the notice at the taxpayer's residence or usual place of business. Where use of a private delivery service may be prohibitively expensive in relation to the amount of tax expected to be collected, contact Counsel for guidance.

- b. Information regarding how the notice was sent, delivered, or left at the dwelling or business must be documented in the case history. In addition, request input of appropriate TC 971 action codes (AC).
 - c. This notice is required only once for the taxable period and unpaid tax which is the subject of the pre-levy notice. A second notice is required if levy action is planned to collect additional taxes that were assessed for the taxable period after the original notice was issued. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice. Refer to IRM 5.11.1.3.2, Required Notices.
 - d. For a joint income tax liability, when a Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, is issued in the field, each spouse will individually be given or sent, to their last known address, the letter explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.
 - e. For a partnership employment or excise tax liability, the Letter 1058 is issued to the partnership when partnership assets are to be levied. If the IRS intends to levy on the property of the individual general partners to collect the employment or excise taxes, then the Letter 1058 needs to be issued to the individual general partners.
- (4) There are exceptions to the pre-levy notice requirements of IRC 6330. They are:
- a. When the collection of tax is in jeopardy under IRC 6331(a)
 - b. A levy is served on a State to collect a Federal tax liability from a State tax refund
 - c. A disqualified employment tax levy is served
 - d. A Federal contractor levy is served

Note: There is no right to a hearing when child support obligations are being collected. Refer to IRM 5.11.1.3.3.11, Issuing Notice of Intent to Levy for Child Support Obligations Balances Due.

- (5) A post-levy CDP notice is issued when the taxpayer did not have a prior opportunity for a CDP hearing under IRC 6330. Refer to IRM 5.1.9.3.13, Jeopardy Levy, State Income Tax Levy Program (SITLP) and Federal Payment Levy Program (FPLP), and IRM 5.1.9.3.14, Disqualified Employment Tax Levy, IRM 5.11.3.5, Forms and Letters for a Jeopardy Levy without a Jeopardy Assessment, IRM 5.19.9.3.4, SITLP Notices, IRM 5.11.1.5.4, Issuing Notice of Levy/Notice of a Right to a Hearing in Field Collection, and IRM 5.11.1.6.3, Issuing Notice of Intent to Levy and Notice of Your Right to a Hearing in Field Collection FEDCON Case. Post levy CDP notices include:
- Letter 2439, Notice of Jeopardy Levy and Right of Appeal
 - CP 92 or CP 242, Notice of Levy on Your State Tax Refund, Notice of Your Right to a Hearing
 - Letter 1058-D, Post Levy Collection Due Process (CDP) Notice

- Letter 1058-F, Post Levy Federal Contractor Collection Due Process

(6) If a case has been referred to the Department of Justice (DOJ) or is otherwise under DOJ jurisdiction, remind the taxpayer that any CDP hearing with Appeals may be held in abeyance until the litigation is resolved.

5.1.9.3.2
(10-19-2023)
**Request for CDP
Hearing Rights**

- (1) If contact is made with the taxpayer after the issuance of the CDP notice, attempt to resolve the account or issue with the taxpayer. In some situations it may be useful to have the group manager intercede in discussions with the taxpayer in an effort to resolve the case. Advise taxpayers entitled to request an appeal under the CDP provisions of the requirements and time frames for filing an appeal. Be sure to let taxpayers know that discussions with Collection do not suspend the running of (or otherwise extend) the 30-day period during which taxpayers may request a CDP hearing.
- (2) If the taxpayer wants to file a request for a hearing,
- a. It must be in writing;
 - b. It must be filed on or before the date that is 30 days after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing or on or before 30 days after the five-business-day period following the filing of the NFTL; and
 - c. If the hearing request is filed late, the taxpayer may be entitled to an Equivalent Hearing (EH) but only if specifically requested. Refer to IRM 5.1.9.3.2.1, Timeliness of the CDP Hearing Request, and IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Requests.
- (3) Taxpayers generally use Form 12153, Request for Collection Due Process or Equivalent Hearing, to request the hearing. This form is included with the CDP notice. If this form is not used, the taxpayer may submit a written request for a CDP hearing signed by the taxpayer or authorized taxpayer representative.
- (4) The written request for a hearing must be dated and must include the following information:
- a. The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN, ITIN, or EIN).
 - b. The type of tax involved.
 - c. The tax period(s) at issue.
 - d. A statement that the taxpayer requests a hearing concerning the proposed levy or in the case of post levy CDP requests, the actual levy action, or the filing of the NFTL.
 - e. The reason(s) why the taxpayer disagrees with the action.

Note: The IRS can disregard any portion of a hearing request that is based on a position identified as frivolous by the IRS in a published list or reflects a desire to delay or impede the administration of federal tax laws. If the entire hearing request meets one or both of these criteria, the taxpayer may be denied a hearing entirely. Refer to IRM 5.1.9.3.15, Hearing Request with Frivolous, Delaying, or Impeding Issues, for procedures for disregarding portions of hearing requests or denying hearing requests altogether. For a list of positions identified by the IRS as frivolous, see Notice 2010-33 or any successor guidance.

- f. The signature of the taxpayer or the taxpayer's authorized representative.

- (5) For a tax liability involving a partnership:
- If the CDP notice is issued to a partnership, then a partner with authority to represent the partnership could request a hearing for the partnership.
 - If a CDP NFTL notice is issued to an individual partner listed on the NFTL, then that partner could request a hearing as an individual partner.
 - If a CDP levy notice is issued to a general partner because the IRS intends to levy the individual property of the general partner, then that partner could request a hearing as an individual partner.
- (6) The CDP hearing request includes all applicable periods listed on the CDP notice even if not listed on the hearing request. The taxpayer can exclude a specific tax period on the CDP notice if they are not disputing the collection action for a specified tax period.
- If the taxpayer includes periods that are not subject to the CDP hearing, the taxpayer may be requesting an EH for the other periods. Refer to IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Request. If the taxpayer is not entitled to a CDP hearing or an EH, i.e., has not been issued a CDP hearing notice, previously received a CDP hearing or the time frame has expired for requesting an EH, notify the taxpayer and advise the taxpayer of their available rights such as those available through CAP or retained jurisdiction. If the time frame for requesting an EH has expired, send the hearing request to Appeals for a separate timeliness determination. If Appeals agrees the request is late, notify the taxpayer of their available rights such as CAP or requesting assistance from TAS. Refer to IRM 5.1.9.3.2.5, Separate Timeliness Determinations.
- (7) If the taxpayer received a CDP notice for both NFTL filing and proposed levy action, the taxpayer may appeal both notices. Appeals should consolidate the requests for the CDP hearing.
- Note:** If the taxpayer requests a copy of the CDP NFTL notice (Letter 3172), obtain a duplicate copy from the Automated Lien System (ALS). Print or type "duplicate" across the top and provide the copy to the taxpayer. If the taxpayer requests a copy of the CDP levy notice, (Letter 1058) provide a copy from the case file or ICS. Print or type "Duplicate" across the top and provide the copy to the taxpayer.
- (8) The taxpayer must send or hand-deliver the CDP hearing request to an IRS office and address on the CDP notice. The taxpayer may contact the Revenue Officer for electronic methods of submitting the CDP hearing request, such as using the Document Upload Tool (DUT) or through Secure Messaging, if available. The taxpayer can also fax the CDP hearing request to the fax number listed on the notice, if the notice provides a fax number. If a fax number is not provided on the notice, the taxpayer may call the toll-free number on the notice or call toll-free 1-800-829-1040 to obtain the fax number of the appropriate office. The taxpayer may also hand-deliver the request to the local taxpayer assistance center within the 30-day period.
- a. If the hearing request is delivered by mail to any of the addresses shown on the CDP notice and is postmarked timely for delivery to an IRS

- address listed in the CDP notice and is received timely, then the received date is the date of request for hearing.
- b. If the hearing request is delivered by mail to any of the addresses shown on the CDP notice and is postmarked timely for delivery to an IRS address listed in the CDP notice but is not received timely, then the postmark date is the date of request for hearing.
- (9) If a Form 12153 or equivalent is received at an incorrect office for processing, forward the CDP hearing request, including all supporting documents and the envelope, within one business day (by EEFAX or priority mail) to the office where the hearing request is to be sent as directed in the CDP Notice.
- a. If the hearing request was mailed to an incorrect address not listed on the CDP notice, timeliness will be determined based on when the request is received at the IRS address on the CDP notice.
 - b. If the hearing request was mailed to an address listed on the CDP notice (for example, the address for submitting payment rather than the address for mailing the request), the request should be considered timely if postmarked timely.
- (10) If the CDP notice does not include the address of the office that sent the notice, and the taxpayer sends the hearing request to the wrong office, timeliness should be determined by the postmark, meter, time stamp or fax date not the date actually received by the office listed on the CDP hearing notice.
- (11) If the taxpayer states they submitted a hearing request to another office, check IRS systems such as Account Management System (AMS) history, ICS or Integrated Data Retrieval System (IDRS). If no record, ask the taxpayer to provide a copy of the request for processing.

5.1.9.3.2.1
(10-19-2023)
**Timeliness of the CDP
Hearing Request**

- (1) Collection makes the initial determination about the timeliness of a request for hearing from a CDP levy notice or CDP NFTL notice, but Appeals must make the final timeliness determination. See (9) below.
- (2) For a CDP levy hearing request to be timely, the taxpayer must submit a written request for a CDP levy hearing within the 30-day period commencing the day after the date of the CDP levy notice. If the CDP levy notice is not available for purposes of identifying the date of the CDP levy notice, a TC 971 AC 069 on the tax module identifies the date the CDP levy notice was issued. If the request for the hearing is made after this 30-day period, the taxpayer may be entitled to an EH. Refer to IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Requests.
- (3) The time frame for filing a timely CDP NFTL hearing request is different than for a CDP levy request. For a CDP NFTL hearing request to be timely, 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 Letter 3172, provides the date for the taxpayer to file a timely CDP NFTL hearing request. If the taxpayer did not include a copy of the Letter 3172, obtain a copy of the Letter from the Automated Lien System to determine the "file-by" date. If a request is filed within that time period it is considered timely. If the request for the hearing is late (determined under the rules in (6) below), the taxpayer may be entitled to

request an EH. Refer to IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of Equivalent Hearing Request.

Note: Because the NFTL is filed by the local jurisdiction's recording office and not the IRS, the IRS uses an estimated filing date on the Letter 3172 to provide the taxpayer with a "must file" by date, the date by which the IRC 6320 hearing request must be submitted. The estimated filing date is calculated by adding three business days to the date the NFTL is mailed to the recording office. The "must file" by date on the letter is then determined by adding five business days plus 30 calendar days to the estimated filing date.

- (4) A timely filed request for a hearing suspends the statutory period of limitations on collection, criminal prosecutions, and certain suits for the period that is being appealed. The suspension begins on the receipt date of the CDP hearing request.
- (5) The request for a CDP hearing should be stamped with the received date.
- (6) Except as provided by IRM 5.1.9.3.2 (8), Note, use the date received in the office listed on the CDP hearing notice to determine the timeliness of the CDP hearing request. If the received date is after the time frame for filing a timely CDP hearing request but the request was postmarked, metered, faxed, or sent electronically timely to the office listed on the CDP notice, use the postmark, meter date, time stamp or fax transmission date as the receipt date. Keep the envelope in which the hearing request was mailed and associate it with the hearing request.
- (7) When a taxpayer has a collection case assigned to a RO and the taxpayer submits a CDP or equivalent hearing request to the RO rather than the address on the CDP notice, timeliness is measured from the postmark of the request mailed to the RO, or the date received by the RO if the request is faxed, sent electronically or hand-delivered.

Example: The taxpayer receives a systemic CDP notice, such as a FPLP notice, while the case is assigned to an RO and the taxpayer submits the hearing request to the RO. The RO determines timeliness by either the postmark date or date received at the RO's address even if it is not the address in the notice.

- (8) The rules and regulations under IRC 7502 and IRC 7503 apply, so timely mailing is treated as timely filing/submitting and if the CDP hearing request due date falls on a Saturday, Sunday or legal holiday, the CDP hearing request will be considered timely if mailed, faxed, sent electronically or hand-delivered to the correct IRS office on the next business day. When the postmark is illegible or the envelope is missing, ascertain a reasonable period for mail delivery from the origin of the request to the receiving office and deduct that amount of time from the received date. In general, use three days for regular mail and seven days for overseas mail.
- (9) Notice 2016-30, 2016-18 IRB 676, Designated Private Delivery Services, lists the designated Private Delivery Service (PDS) providers for purposes of the timely mailing treated as timely filing/paying rule of IRC 7502. The current designated PDSs are DHL Express (DHL), Federal Express (FedEx), and United Parcel Service (UPS). Only the specific delivery services enumerated in the listing in the notice are designated delivery services for purposes of IRC

7502(f). If the postmark is made by a non-U.S. Postal Service (USPS) system, such as a private postage meter stamp or a designated PDS, 26 CFR 301.7502-1(c) requires both of the following to be considered timely:

- a. Legible postmark must be dated on or before the due date.
 - b. The appeal must be received by the required IRS office not later than the time that a letter sent by the same class of mail would ordinarily have been received if it were sent from the same point of origin via the U.S. Post Office on the last day for timely mailing the appeal.
- (10) IRC 7508 and IRC 7508A postpone certain time-sensitive acts when a person is serving in the Armed Forces in a combat zone or serving in support of such Armed Forces, or there is a presidentially declared disaster. An updated list of time-sensitive acts is published in a revenue procedure which is currently Rev. Proc. 2018-58 includes the time period for requesting a CDP NFTL or CDP levy hearing as acts that may be postponed.
- (11) A request for CDP hearing is untimely if:
- a. The request was not received within the required time period.
 - b. The timely but nonprocessable request is made processable by the taxpayer after the reasonable time period given for perfection. For a description of the perfection process and processability criteria, refer to IRM 5.1.9.3.2.3, Perfection of Hearing Requests.
- (12) IRC 7508 suspends the period for requesting a hearing while the taxpayer is in a combat zone, **or** part of a contingency operation away from the taxpayers permanent duty station, **or** recuperating during a qualified hospitalization, plus 180 days. Check IDRS for any Transaction Code (TC) 500 that may extend the 30-day period for requesting a hearing. Refer to IRM 5.1.7.10, Accounts of Taxpayers Who Serve in a Combat Zone. The time period for requesting a hearing resumes when the IRC 7508 status ends (e.g. combat zone exit date plus 180 days). CDP requests that appear untimely may in fact be timely if made by taxpayers who were in IRC 7508 status at the time of the original notice issuance or during the time period for requesting a hearing. Look for prior TC 500s and their reversals on all untimely requests and compare those dates to the CDP notice dates. The TC 500 indicates the date the taxpayer entered IRC 7508 status and its reversal the date of exit from a combat zone, contingency operation, or qualified hospitalization. All requests received in that time-frame or during the following 180 days should be honored as timely, with an explanation on the case when sent to Appeals. See IRM 25.6.1.10.2.9.6, Combat Zone, for complete information.
- (13) When a hearing request is untimely, the request must be sent to Appeals for a separate timeliness determination. Refer to IRM 5.1.9.3.2.5, Separate Timeliness Determination.

Note: A separate timeliness determination is not needed if the request is a timely CDP or EH request.

5.1.9.3.2.2
(10-19-2023)
**Equivalent Hearing (EH)
and Timeliness of EH
Requests**

- (1) If the taxpayer requests a CDP hearing after expiration of the time period for requesting a timely hearing (refer to IRM 5.1.9.3.2.1, Timeliness of CDP Hearing Request), the taxpayer may request an administrative hearing with Appeals, which is referred to as an EH. Appeals will hold the EH, generally following the same procedures for a timely CDP hearing. Appeals will not,

however, issue a Notice of Determination. Instead, Appeals will issue a Decision Letter, and the taxpayer is not entitled to judicial review. CSED's are not suspended during an EH.

- (2) The time frame for requesting an EH is as follows:
 - a. Levy notice - Within the one-year period commencing the day after the date of the CDP levy notice.
 - b. NFTL notice - Within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.
- (3) If the request is received or if mailed, postmarked after the one-year period, send the hearing request to Appeals for a separate timeliness determination. If Appeals agrees the request is late, notify the taxpayer of their available rights such as CAP or requesting assistance from TAS. Refer to IRM 5.1.9.3.2.5, Separate Timeliness Determinations.
- (4) Late CDP hearing requests are not automatically treated as EH requests. The taxpayer can request an EH either by:
 - a. Checking the Equivalent Hearing box on Form 12153,
 - b. Verbally confirming that they want an untimely CDP hearing request to be treated as an EH when notified by Collection of an untimely CDP hearing request, or
 - c. Indicating in writing that the taxpayer wishes an EH, if the CDP hearing request is untimely.
- (5) For late filed CDP hearing requests where the taxpayer has not checked the box on Form 12153 or otherwise indicated in writing that the request is to be treated as a request for an EH, notify the taxpayer either verbally or in writing of the late filed request and advise the taxpayer of the right to request an EH (unless the CDP hearing request is postmarked after the expiration of the one-year period for requesting an EH). The taxpayer can request an EH either orally or in writing. There is no need for the taxpayer to file a separate request for an EH. Explain to the taxpayer:
 - a. That a CDP hearing and an EH are substantially the same, but there is no judicial review of an EH.
 - b. The taxpayer is entitled to challenge in the hearing the determination that the request is untimely.
- (6) If the taxpayer has checked the Equivalent Hearing box on Form 12153 or submitted any other written request for an EH, stamp the request with a received date.
 - a. Use the date received in the office listed on the CDP hearing notice to determine the timeliness of the EH request.
 - b. If the received date is after the one-year time frame for filing a timely EH but the request was postmarked timely, use the postmark date as the receipt date. Timely mailing constitutes timely filing if the taxpayer's request for an EH is correctly addressed to the IRS office listed in the CDP hearing notice.
 - c. When the postmark is illegible or the envelope is missing, ascertain a reasonable period for mail delivery from the origin of the request to the receiving office and deduct that amount of time from the received date.

- d. If the day on which the one-year period expires is a Saturday, Sunday, or federal holiday, and the postmark is for the next business day, it is timely. Keep the envelope in which the hearing request was mailed and associate it with the hearing request.
- (7) If a taxpayer has elected to treat the CDP hearing request as an EH request, use the postmark date of the CDP hearing request as the date the EH request was submitted. If the taxpayer submitted a CDP hearing request within the one-year period and the taxpayer responded within the specified time period that the taxpayer wanted an EH but the taxpayer's response was later than the one-year period, the request for EH is timely.
- (8) A taxpayer's request for an EH can be submitted via fax or electronically. The transmission date will be the received date. The transmittal sheet should be retained along with the hearing request.
- (9) Following an EH, the appeals officer sends the taxpayer a letter explaining the results of the hearing. In an EH, the decision by Appeals is final. The taxpayer cannot appeal the decision to Tax Court.

Exception: If spousal defenses under IRC 6015 or abatement under IRC 6404 is raised during the EH, the taxpayer may seek judicial review of those issues. The taxpayer has 90 days to file a petition for review of a denial of innocent spouse relief and 180 days to file a petition for review of denial of interest abatement. There is also the potential for litigation over whether or not the CDP request is timely.

- (10) An EH request is untimely:
 - a. When an EH request is not received within the one-year period or
 - b. When a timely but nonprocessable EH is made processable **after** the reasonable time period for perfection specified by Collection **and after** the one-year period for requesting an EH has expired. For a description of the perfection process and processability criteria, refer to IRM 5.1.9.3.2.3, Perfection of Hearing Requests.
- (11) Send an untimely EH request to Appeals for a separate timeliness determination. Refer to IRM 5.1.9.3.2.5, Separate Timeliness Determination.

5.1.9.3.2.3
(08-27-2021)
**Perfection of Hearing
Requests**

- (1) In some cases, Forms 12153 or other written hearing requests are timely filed, but incomplete. The hearing request may be missing required information. If possible, missing information should be obtained from IRS systems, such as IDRS. If this information is not available through a search of IRS systems, then the taxpayer will need to furnish it. If an authorized signature is missing, the taxpayer will need to provide it. The taxpayer must provide the following:
 - a. Signature of taxpayer(s) or authorized representative. Both spouses' signatures are required on joint tax periods if both spouses are requesting a hearing.
- Note:** A missing signature date on a validly signed request does not require perfection.
- b. SSN, ITIN, or EIN. This information should be listed on the Form 12153 but may also be found on the CDP notice, if attached. If there is no SSN, ITIN or EIN on the Form 12153 or other written hearing request and the

- CDP notice is not attached, then attempt to identify the SSN, ITIN or EIN on IRS systems using the taxpayer's name and address if available.
- c. Taxpayer's name. If the taxpayer supplies the SSN, ITIN, or EIN, the name can be obtained from IRS systems. The request should not be treated as an imperfect request if this information can be obtained from IRS systems.
 - d. Type of tax/tax period(s). This information should be listed on the Form 12153, but may also be found on the CDP notice, if attached. If the taxpayer supplies the SSN, ITIN, or EIN, the tax/tax period(s) can be obtained from IRS systems. The request should not be treated as an imperfect request if this information can be obtained from IRS systems.
 - e. Statement that the taxpayer requests a hearing. If the taxpayer did not submit Form 12153, but it is evident that the taxpayer is requesting a hearing, then the taxpayer has met this requirement. For example, if the taxpayer provides the taxpayer's name, address, SSN, and the tax and period at issue, and the IRS records show that a CDP notice was recently sent to the taxpayer, then the taxpayer has met this requirement. Similarly, if the taxpayer attached the CDP notice, the taxpayer has met this requirement.
 - f. Reasons for disagreement with the filing of the NFTL or the levy. Form 12153 lists common reasons for disagreement. If the taxpayer checks a reason on Form 12153 that is sufficient. If the taxpayer checks "other", the taxpayer still needs to provide a reason in the remarks section or in an attachment to the Form 12153. The IRS can disregard any portion of a hearing request that is based on a position identified as frivolous by the IRS in a published list or reflects a desire to delay or impede the administration of federal tax laws. If the entire hearing request meets one or both of these criteria the taxpayer may be denied a hearing entirely. Refer to IRM 5.1.9.3.15, Hearing Request with Frivolous, Delaying, or Impeding Issues, for procedures for disregarding portions of hearing requests or denying hearing requests altogether. For a list of positions identified by the IRS as frivolous, see Notice 2010-33 or any successor guidance.

Note: A request is not imperfect if the request does not have a daytime telephone number or address. If the taxpayer submits an SSN, ITIN or EIN, then the taxpayer's last known address should be available on IDRS.

Note: If the reason is not frivolous, Collection can orally secure the reason for the request from the taxpayer and document the reason in ICS. On Form 14461, Section 9, indicate "hearing reason orally secured" under "Other". The taxpayer does not need to make a further written submission for non-frivolous issues.

- (2) If the hearing request is filed timely, but needs to be perfected, make a reasonable attempt to contact the taxpayer and allow a reasonable time (generally 15 calendar days) for the taxpayer to perfect the request. If taxpayer forgot to sign the request or failed to furnish required information, the taxpayer may perfect the request by supplying the missing signature or by providing the missing information. If the request is signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, the taxpayer may perfect the request by affirming in writing that the request was submitted on the taxpayer's behalf.

Note: The taxpayer can provide the missing information, including a valid reason for requesting the hearing, by telephone to the RO. Signatures must be in writing.

Note: A Form 12153 is considered valid and processable if the taxpayer or the authorized representative signed correspondence attached to the Form 12153 but failed to sign the Form 12153 itself.

Note: The regulations do not authorize a digital or electronic signature with a CDP hearing request. If a request includes a digital or electronic signature, contact the taxpayer to secure the taxpayer's signature.

- (3) If the timely but incomplete hearing request is processable when received, then it is timely even if the taxpayer perfects the request late or only perfects the request partially or does not respond. A hearing request is processable unless the request is:
- Not signed.
 - Signed but the signer is not authorized to sign on behalf of the taxpayer (example: an unenrolled return preparer or spouse).
 - Signed but the signer does not have proper authorization (no Power of Attorney on file).
 - Does not have a valid SSN, ITIN or EIN and one could not be identified. See 1(b) above.
 - Does not include a reason for the request.
- (4) If the hearing request is timely but not processable when received and, within the reasonable time period specified, the taxpayer makes the request processable, then the hearing request is considered timely filed. Such request is timely even if the perfection occurs after the end of the time frame for requesting a timely hearing.
- (5) If the taxpayer makes the request processable after the reasonable perfection period, treat the request as a new request.

Note: If the taxpayer demonstrates that the late response was due to extenuating circumstances, such as being in the hospital or out of the country during that period, then process the request.

- (6) If after the perfection process the timely but incomplete request is not processable, the taxpayer is not entitled to the hearing.
- Notify the taxpayer either orally or in writing that the taxpayer's request for a hearing cannot be processed.
 - In the case of an unprocessable CDP hearing request, explain that the taxpayer may be eligible to make a request for an EH on or before the expiration of the one-year period applicable to IRC 6320 or 6330. In the case of an unprocessable EH request, explain that the taxpayer may make another request for an EH on or before the expiration of the one-year period applicable to IRC 6320 or 6330.
 - If the one-year period for requesting an EH has expired, explain that the taxpayer can pursue resolution with Collection, request a CAP appeal, or request assistance from TAS.
 - If the taxpayer expresses an interest in CAP or in requesting TAS assistance, explain the process.

- Document the ICS case history with the reason why the request could not be processed. Include a copy of the hearing request and any written correspondence to and from the taxpayer in the case file.

5.1.9.3.2.4
(10-19-2023)
**Invalid CDP Notices and
Rescinding a Valid CDP
Notice**

- (1) If a CDP NFTL or levy notice is invalid, a substitute notice must be issued in order for the taxpayer to be entitled to a hearing. Situations warranting the issuance of a substitute CDP notice because the CDP notice was invalid include when the taxpayer:
 - a. Did not receive the CDP notice or makes an untimely request because the notice was not sent to the taxpayer's last known address (in which case the notice is invalid).
 - b. Is in bankruptcy and the automatic stay prohibits the issuance of collection notices and collection by levy (in which case the CDP levy notice is treated as void and is invalid). The substitute CDP levy notice can be issued when the automatic stay is no longer in effect.
 - c. Did not receive a CDP notice because it was not sent individually to each joint filer. A notice may be valid as to one or both of the joint filer(s) if there is proof that person actually received the notice or that person timely requested a CDP hearing. If the taxpayer makes a timely hearing request from the invalid notice, a substitute notice need not be issued.
- (2) If a taxpayer makes a timely hearing request from a CDP NFTL or levy notice that is invalid because it was not sent to the last known address or not sent individually to a joint filer, treat the request as timely. By making a timely hearing request, the taxpayer is deemed to have waived any defect in the issuance of the CDP notice.
- (3) A valid CDP levy notice issued in error can be rescinded but only if:
 - a. The rescission is accomplished before the expiration of the time period in which the taxpayer may request a CDP hearing; and
 - b. The taxpayer has not requested a CDP hearing.
- (4) You should rescind a valid CDP levy notice during the 30-day period for requesting a hearing before you receive a taxpayer's hearing request, if you learn that the notice was issued when the case is in a status in which levy action is prohibited.
 - a. Situations where levy action is prohibited include a pending installment agreement request, pending OIC, pending innocent spouse claim and while an installment agreement is in effect.

Note: Refer to IRM 5.11.1.3.3.8, Invalid Collection Due Process Notice and Rescinding a Valid Collection Due Process Notice, for procedures to rescind a CDP levy notice.

- (5) IRC 7508 suspends the period for requesting a hearing while the taxpayer is in a combat zone, **or** part of a contingency operation away from the taxpayer's permanent duty station, **or** recuperating during a qualified hospitalization, **plus** 180 days.
- (6) The time period for requesting a hearing resumes when the IRC 7508 status ends (e.g. combat zone exit date plus 180 days). Because the time period for requesting a hearing is extended when the taxpayer is in IRC 7508 status, the time period for rescinding the notice is also extended. Check IDRS for any TC

500 that may extend the 30-day period for requesting a hearing. (See IRM 25.6.1.10.2.9.6, Combat Zone, for complete information.)

- (7) If the taxpayer submits a hearing request in response to a valid CDP levy notice issued when levy is prohibited and the CDP levy notice has not been previously rescinded, the taxpayer is still entitled to a CDP hearing. Explain the error to the taxpayer. If the taxpayer no longer wants a hearing, the taxpayer must withdraw the request for a hearing. Refer to IRM 5.1.9.3.3.1, Processing Withdrawal Request for CDP Hearing. Explain to the taxpayer that if the hearing request is withdrawn, the proposed offer, installment agreement request or innocent spouse claim will not be decided by Appeals and they will not get another opportunity for a CDP hearing.
- (8) A valid CDP NFTL notice can be rescinded only if:
 - a. Within the time period for requesting a CDP hearing the IRS agrees either to withdraw the Notice of Federal Tax Lien (NFTL) or release the federal tax lien;
Note: The Notice of NFTL Withdrawal or Certificate of Release of the lien need not be filed within the time period for requesting a hearing.
 - b. The rescission is accomplished before the expiration of the time period for requesting a hearing; and
 - c. The taxpayer has not requested a CDP hearing.
- (9) The CDP NFTL notice is valid and the taxpayer is entitled to a hearing if requested even though the NFTL is ineffective, for example, because a recording office never receives the NFTL or because the NFTL was filed in violation of the bankruptcy automatic stay. Appeals will suspend the hearing while the bankruptcy proceeding is pending. Upon resumption of the hearing, the taxpayer would still be entitled to a hearing. Refer to IRM 8.22.5.4.2.4.2, Corrective Action on Improperly Issued CDP Notices and Notices Issued in Error. If a NFTL filing violated the automatic stay, contact Insolvency to have the NFTL withdrawn. See IRM 5.9.3.5.1, Violations of the Automatic Stay.
- (10) Insolvency Groups are responsible for deciding if a CDP NFTL notice may be rescinded when a NFTL filed in violation of the automatic stay is withdrawn. Advisory Groups are responsible for deciding if a CDP NFTL notice may be rescinded when a NFTL is withdrawn for any other reason, including because the taxpayer is in a combat zone. Insolvency or Advisory Group employees may contact you to find out if and when a taxpayer requested a hearing from a CDP NFTL notice.
- (11) Once the time period for requesting a CDP hearing has expired after the issuance of a valid CDP notice, the taxpayer has been afforded an opportunity for a hearing, and the notice may not be rescinded.
- (12) In situations where a valid CDP levy notice was previously issued, and a subsequent CDP levy notice is issued in error, the notice issued in error does not afford the taxpayer an additional opportunity to request a hearing. Timeliness of any hearing request is based on the date of the original CDP levy notice.

5.1.9.3.2.5
(10-19-2023)**Separate Timeliness
Determination**

- (1) Send the hearing request to Appeals for a separate timeliness determination in the following situations:

If	And
The CDP hearing request was not timely received	The taxpayer did not request an EH by either "checking" the Equivalent Hearing box on Form 12153 or verbally indicating they want an EH. Refer to IRM 5.1.9.3.2.1, Timeliness of the CDP Hearing Request.
The CDP hearing request was timely received yet unprocessable	The taxpayer perfects or partially perfects after the reasonable time frame allowed so the request is processable and the taxpayer does not want an EH.
An EH request was requested	It was received after the year allowed for filing a request. Refer to IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of EH Requests.
An EH request that was timely received (with the one-year period) but unprocessable	The taxpayer perfects or partially perfects the request after the reasonable time frame and after the one year period for requesting an EH.

- (2) Document the ICS history with the reason the request was determined to be untimely received.
- (3) Prepare a cover sheet that includes the following:
- Write "SEPARATE TIMELINESS DETERMINATION" at the top.
 - Include the Taxpayer Name and last 4 of TIN.
 - List the MFT(s) and Tax Period(s) subject to the Timeliness Determination.
 - Identify the Taxpayer Type (Primary, Secondary, Both, etc.).
 - State the Case Type (Lien, Levy or Both).
 - Date the Appeal Request was made.
 - State whether or not there is a POA.
- (4) Forward the following documents to Appeals by uploading the file to the *Electronic Case Receipts (ECR) page* and selecting Separate Timeliness Determination (CDP) under Type of Case:
- a. Cover sheet
 - b. Form 12153 or other hearing request,
 - c. The envelope it was mailed in,
 - d. A copy of the CDP notice (L3172 or L1058),
 - e. Any written correspondence to and from the taxpayer, including any documents submitted by the taxpayer.

Note: Appeals has access to the ICS history.

(5) Within 15 calendar days of receipt, Appeals will either:

- Agree with Collection's timeliness determination.
- Disagree with Collection's timeliness determination.
- Partially agree with Collection's timeliness determination because there are multiple modules. If Appeals partially disagrees, Appeals will identify which periods should be returned to Appeals as a regular CDP or EH hearing request.

(6) Appeals does not communicate with the taxpayer regarding timeliness determinations. Appeals provides Form 5402, Appeals Transmittal and Case Memo, to Collection via EEFAX to document the timeliness determination and Collection then notifies the taxpayer. If Appeals agrees that the request was filed late, inform the taxpayer orally or in writing that the request is not timely. Determine and explain what appeal options are available to the taxpayer:

- CAP appeal
- Assistance from TAS

Note: Appeals provides Form 5402 to Collection. Do not use this form to communicate the determination to the taxpayer.

(7) If Appeals determines that the request is timely, process the hearing request under standard procedures. Refer to IRM 5.1.9.3.3.2, Sending Hearing Request to Appeals.

Note: If a hearing request includes periods that are timely and periods that are late, do not send the timely periods to Appeals until after receiving Appeals' response to the separate timeliness determination. If Appeals determines that the separate timeliness determination periods are timely, all the timely periods can be included on one referral to Appeals.

5.1.9.3.3
(10-19-2023)
**Processing CDP and EH
Requests**

(1) Upon receipt of a hearing request:

- a. Determine if the hearing request is complete and can be processed. If the request is missing information, try to perfect the hearing request with the taxpayer. See IRM 5.1.9.3.2.3, Perfection of Hearing Requests.
- b. Determine if the hearing request is timely. See IRM 5.1.9.3.2.1, Timeliness of the CDP Hearing Request, and IRM 5.1.9.3.2.2, Equivalent Hearing (EH) and Timeliness of EH Requests. A late filed request requires a Separate Timeliness Determination. See IRM 5.1.9.3.2.5, Separate Timeliness Determination.
- c. If the hearing request is timely and can be processed, document receipt on the ICS CDP application as soon as possible, but no later than 10 calendar days from receipt.

Note: Do not add nonprocessable hearing requests or separate timeliness determinations to the ICS CDP application.

Note: Hearing requests received and processed by Insolvency and COIC are not added to the ICS CDP application.

- d. When the module is added to the ICS CDP application, a TC 971 will be systemically generated with AC 275 (timely CDP) and AC 630 if CDP levy, or AC 278 (EH).

Note: If the module is not added to the ICS CDP application or if the applicable TC 971 with action code cannot be systemically generated using ICS, use Form 4844 to request input of the TC 971 with applicable action codes. Forward requests for input to CCP via email using secure messaging to **CTR PHI CS GCP*.

- (2) Taxpayers are encouraged to continue to work with Collection to resolve the tax issue after a hearing request is submitted. Review the hearing request to determine the issues raised and collection alternatives proposed. If information needed by Appeals to consider the issue can be secured or if the case can be resolved prior to Appeals consideration, it expedites the process for the taxpayer.

- (3) If the taxpayer raises a collection alternative,

- a. Contact the taxpayer within ten calendar days of receipt to secure information needed to resolve the issue. Letter 5139, *CDP Contact Letter*, can be used to request delinquent returns, financial statement information, or both, as needed to address the collection alternative raised by the taxpayer.

Note: A taxpayer can be placed in currently not collectible (CNC) hardship, even if the taxpayer has not filed all required returns. Refer to IRM 5.16.1.2.9, Hardship.

- b. If the taxpayer responds to the request, the RO should continue to work with the taxpayer towards resolution. If resolution is reached, ask the taxpayer if they want to voluntarily withdraw the hearing request. Refer to IRM 5.1.9.3.3.1, Processing Withdrawal of Request for Collection Due Process Hearing.

Note: If resolution is reached, e.g. full pay, IA secured, CNC determination reached, and the taxpayer does not withdraw, send the hearing request to Appeals.

- c. If the taxpayer responds to the request but resolution cannot be reached, offer the taxpayer the opportunity to discuss the issue with the group manager in an effort to reach resolution prior to sending the request to Appeals. The group manager should try to hold the conference with the taxpayer within five business days. If the taxpayer does not wish to have the conference with the group manager, send the request to Appeals.

Note: If discussions are at an impasse because an appropriate collection resolution, e.g., IA, could not be reached, the sole appeal rights will be through the CDP or EH already requested by the taxpayer.

- d. If the taxpayer does not respond to the request for information needed, the RO should, within 15 calendar days of the deadline established, send the request to Appeals.

- (4) If a CIS is secured, conduct the necessary financial verification (Refer to IRM 5.15.1.4, Verifying Financial Information) before transferring the case to Appeals. Appeals relies on Collection to conduct the appropriate review and

verifications of a CIS secured prior to referral to Appeals. Appeals will accept the CIS information as accurate unless corrections/revisions to the form are noted in the case history.

Note: If the CIS is not secured and Appeals secures a CIS during the hearing, Appeals may refer the CIS to Collection for verification. See IRM 5.1.9.3.8, Appeal Process.

- (5) If not previously done, make a Notice of Federal Tax Lien (NFTL) filing determination. Refer to IRM 5.12.2.3, Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations). The authority to file an NFTL is not suspended during the hearing. If the determination is to file a NFTL and the taxpayer disagrees, explain the CAP procedures to the taxpayer.
- (6) If the taxpayer raises a non-frivolous issue relating to the unpaid tax, such as missing or misapplied payments, determine whether additional research or a payment tracer is necessary to resolve the issue.
- (7) If the taxpayer raises doubt as to liability issues take the necessary steps to address the issue with the taxpayer. Allow the taxpayer the opportunity to file an amended or corrected return, or determine whether an adjustment is necessary. Appeals will determine if the taxpayer can raise liability issues during the hearing. A taxpayer may challenge the underlying liability in a CDP hearing if the taxpayer did not:
 - Receive a notice of deficiency or
 - Sign a consent to assessment or otherwise
 - Have a prior opportunity to dispute the tax liability

Note: Request the tax return and include it with the hearing file sent to Appeals. This does not apply when the doubt as to liability is based solely on frivolous arguments.

- (8) If the taxpayer raises innocent spouse issues, secure Form 8857, if the taxpayer did not include it with the hearing request. Forward the claim to the Cincinnati Centralized Innocent Spouse Operation (CCISO) for consideration. Refer to IRM 25.15.8.5.2.2, Processable Form 8857, for additional information. Include a copy with the hearing request sent to Appeals.
- (9) If it has been 45 days since receipt of the hearing request, secure group manager concurrence to continue working with the taxpayer for an additional 45 days. The taxpayer's willingness to address the hearing issues with Collection beyond a 45-day period should be documented in the file. If resolution is not expected or withdrawal not secured within the next 45 days, send the request to Appeals. Even after the request is sent to Appeals, action to resolve the collection issues may continue. Refer to IRM 5.1.9.3.5, Collection Action during the Period of the CDP or EH.
- (10) In some instances it may be appropriate to refer the hearing request immediately to Appeals because resolution is unlikely. In these instances, promptly, within 15 days, send the hearing request to Appeals.
 - Collection alternatives have already been explored and discussions are at an impasse when the taxpayer requests a CDP hearing; or
 - The taxpayer raises frivolous issues (Refer to IRM 5.1.9.3.15, Hearing Requests with Frivolous, Delaying or Impeding Issues); or

- The taxpayer is not seeking to resolve the issue but using the CDP process as a method for delay, e.g., pyramiding in-business trust fund taxpayer; (Refer to IRM 5.1.9.3.3.2.1, Rapid Response Appeals Process (RRAP)) or
- The taxpayer has other recently filed hearing requests pending in Appeals, or
- The taxpayer files bankruptcy after the hearing request has been filed. Appeals will suspend the hearing until after the bankruptcy. Refer to IRM 8.22.6.8, Bankruptcy.
- The taxpayer does not want to work with Collection after making the request for a CDP hearing.

Note: Document the reason for the immediate transfer to Appeals on the Form 14461.

- (11) In situations where the taxpayer contests the TFRP liability, Appeals will first review the ICS history to determine if Letter 1153 was hand-delivered or mailed. If the Letter 1153 was hand-delivered, the ICS history entry would serve as a contemporaneous recording and prima-facie evidence and, therefore, the taxpayer will not be able to challenge the liability at the CDP hearing. If the Letter 1153 was mailed, Appeals will request a copy of the Letter 1153 and certified mailing listing from Advisory. Appeals must verify that the taxpayer received the Letter 1153.
- (12) CDP notices issued by automated levy programs (FPLP, SITLP, and Alaska Permanent Fund Program) direct the taxpayer to file the CDP request with the ACS campus CDP units. If a request is received on a case assigned to a RO, the CDP units will document the ICS system notifying the RO of the request. If the RO has had contact with the TP, the RO should contact the CDP unit and they will forward the request to the RO for processing to Appeals, otherwise the CDP unit will process the request. The same procedure applies if ACS issues a CDP levy notice or CDP NFTL notice and the case is assigned to a RO by the time the CDP request has been received.
- (13) If there are indicators of fraud, a revenue officer may hold a hearing request for 90 days while the fraud referral is being developed. After 90 days, if additional time is needed to develop the fraud referral, secure Fraud Technical Advisor (FTA) concurrence, documented in the ICS history, to hold the hearing request for an additional 90 days, after which, the request must be sent to Appeals.
- (14) If the taxpayer full pays the liability after the hearing request has been filed, see if the taxpayer wants to withdraw the request since the NFTL will be released and levy action is no longer applicable. If the taxpayer does not withdraw the request, process the request to Appeals.
- (15) If the taxpayer files bankruptcy after the hearing request has been filed, the hearing request is still valid and needs to be processed to Appeals. Appeals will suspend the hearing until after the bankruptcy. Refer to IRM 8.22.6.8, Bankruptcy.

5.1.9.3.3.1
(08-30-2018)
**Processing Withdrawal
of Request for CDP
Hearing**

- (1) A taxpayer that reaches a satisfactory resolution with Collection after filing a request for a CDP hearing can withdraw the request for a CDP hearing. When resolution is reached, explain to the taxpayer the option to withdraw the request for a CDP hearing and the effect of doing so, i.e., the taxpayer will lose CDP rights with respect to the CDP tax periods and proposed collection action, including the right to judicial review. The decision to withdraw belongs to the taxpayer. A taxpayer can also withdraw the request for hearing with Appeals.
- (2) Form 12256, Withdrawal of Request for Collection Due Process or Equivalent Hearing, under IRC 6320 and/or 6330 is available to taxpayers to use for withdrawing the CDP hearing request. A written request not on Form 12256 will also be honored.

Note: If a withdrawal is not secured, the timely CDP hearing request **must** be sent to Appeals even if the account is otherwise resolved.

Note: A withdrawal form is not needed when the taxpayer wants to withdraw a request for an EH. If the matter is resolved and the taxpayer does not want to go to Appeals, document the case history and take the necessary closing actions. If the taxpayer later disputes the withdrawal of the hearing request, the taxpayer will be given an EH.

- (3) If both spouses signed the CDP hearing request, both spouses need to sign the withdrawal. If only one spouse signs the withdrawal, the CDP hearing request applies to the spouse that did not sign the withdrawal.
- (4) Date stamp the receipt of Form 12256 and maintain with the case file.
- (5) Upon receipt of the withdrawal request:
 - Document receipt of the withdrawal on the ICS CDP application. This will generate a TC 971 with AC 276 if it is a CDP request or AC 279 if it is an EH.

Note: If the module was not added to the ICS CDP application, use Form 4844 to request input of the TC 971 with action code 276. Forward requests for input to CCP via email using secure messaging to **CTR PHI CS GCP*.
 - The suspension of the statute of limitations on the period of collection under the provisions of IRC 6320 and 6330 is no longer in effect.
- (6) If the withdrawal is received after the hearing request was sent to Appeals, notify the Appeals office assigned the case and forward the withdrawal, Form 12256, to Appeals so Appeals can input the TC 521 and close the case.

Note: Field Collection Group Managers can access the Appeals Centralized Database System to determine the location of CDP cases in Appeals.

5.1.9.3.3.2
(10-19-2023)
**Sending Hearing
Request to Appeals**

- (1) If the taxpayer is an in-business trust fund taxpayer (IBTF) that is not current with employment tax deposits or a large dollar taxpayer that does not qualify for a collection alternative, determine if the request qualifies for the Rapid Response Appeals Process (RRAP) and process accordingly. Refer to IRM 5.1.9.3.3.2.1, Rapid Response Appeals Process (RRAP).

- (2) To send the request to Appeals, complete Form 14461, Transmittal of CDP/Equivalent Hearing Request. The transmittal sheet is used by Appeals in their initial processing and screening of the request. The transmittal should not include any statements or information intended to advocate for a particular position or otherwise influence Appeals.

Note: Transmittals that include prohibited ex parte communications need to be shared with the taxpayer at the time the case is sent to Appeals. Refer to IRM 5.1.9.5.3, Administrative File.

- (3) The transmittal lists:

- The date the hearing request was received. For timely hearing requests, this is also the TC 520 date.
- The type of hearing request, tax, and tax periods.
- The documents transmitted, and
- A summary of the issues. The summary needs to be limited to neutral statements without any discussion regarding the strengths or weakness of the taxpayer's appeal. Examples of neutral statements include but are not limited to: Collection Information Statement (CIS) transmitted, Taxpayer requesting Installment Agreement, Taxpayer has unfiled returns, etc.

Note: If the case involves a Son of Boss Non-Participant, when forwarding a case to Appeals, clearly mark "Son of Boss Non-Participant" on the transmittal.

Reminder: If a case has been referred to DOJ or is otherwise under DOJ jurisdiction, indicate that the taxpayer has been informed that any hearing with Appeals may be held in abeyance until the litigation is resolved.

Note: When using the ICS CDP/EH application, complete the "Documents Being Transmitted" and "Summary of Issues" sections. ICS uses this information to generate the Form 14461 when the group manager approves the transfer.

- (4) Follow the steps in the chart below to complete sending the hearing request to Appeals:

Step	Description	Notes/Information
1	The RO scans in and names the case files.	<p>After scanning, files should be named using the following naming convention: (Six digit Group T-sign) (Four Character Name Control) (Last Four of TIN) (Date of appeal receipt in MMDDYYYY format). Example: AOTGR SMIT 1111 MMDDYYYY</p> <p>The file transmitted to Appeals should include, as applicable:</p> <ol style="list-style-type: none"> Form 14461 Transmittal Sheet <p>Note: When using the ICS CDP Application, this will be systematically generated once the manager approves the transfer.</p> <ol style="list-style-type: none"> Form 12153 or substitute written request Copy of the CDP Notice (Letter 1058, Letter 3172, or both) Copy of Notice of Federal Tax Lien Copy of the envelope Copy of POA unless present on IDRS cc CFINK Form 433-A, Form 433-B or other financial statement If doubt as to liability is raised, original or amended return, if available Additional documentation/correspondence sent by the taxpayer with the Form 12153 Any additional documentation/information in the case file pertinent to the issue(s) raised by the taxpayer <p>Note: If you receive an original Form 656, do not send to Appeals. Follow IRM 5.8.1.14.1 and send the original to COIC. If a copy of Form 656 is included with the CDP package, clearly identify as a "COPY, sent to COIC on (date)".</p> <p>Due to the size of some paper case files, it may not be practical to scan all documents to a PDF. For example, there is no requirement to scan:</p> <ul style="list-style-type: none"> Documents asserting frivolous arguments Documents verifying expense items that are not required to be verified (i.e., National Standard expenses) Documents otherwise having no bearing on collectability or liability issues raised by the taxpayer <p>In addition, documents are not required to be scanned if technical issues will prevent scanning for an extended period (e.g., if scanning machines are unavailable).</p> <p>When it's not practical to scan all documents, scan as many documents as feasible including the first 8 items listed above, as applicable. Note on the Form 14461, item 8, Other - that additional documents are available. The appeals officer (AO) assigned the case will request the documents via secure e-mail and the RO will send the additional documents to the assigned AO via overnight mail, EEFAX, as a PDF attachment on a secure email or another agreed to method.</p> <p>Note: Retain a copy of the completed CDP package PDF until at least step 3 below is complete to prevent the need to re-scan these documents.</p>

Step	Description	Notes/Information
2	Naming convention for multiple files	<p>If more than one hearing type is included in a taxpayer request that was received <i>on the same day</i> (such as for a CDP/EH Lien and/or Levy combination case) two files will be needed, named as in the example below:</p> <ul style="list-style-type: none"> AOTGR SMIT 1111 MMDDYYYY AOTGR SMIT 1111 MMDDYYYY (2) <p>If additional hearing types are identified and also received on the same day, follow the same naming convention using (3), (4), etc.</p>
3	Collection uploads the new CDP/EH case to the Appeals <i>Electronic Case Receipts (ECR)</i> page	<p>The RO sends the CDP file to the GM for approval. After the GM approves the transfer to Appeals, the GM or GM designee uploads each new case to Appeals via the ECR as soon as is practicable following the <i>Upload Files to Appeals</i> desk guide. No Form 3210 Transmittal is used. A message will generate if the upload was not successful. If the upload is not successful, repeat the process.</p> <p>Note: The maximum file size is 100 MB. Files larger than this will need to be split before uploading.</p> <p>Once it is uploaded, the user can confirm the upload by clicking on the “Case Status” section on the ECR landing page. The check status page will list cases recently uploaded by the user. Once Appeals adds the case to their ACDS system, ACDS sends information to ICS to document receipt. If after 30 days ICS does not reflect receipt, check ACDS. If not on ACDS, resubmit the request.</p>
4	Appeals APS unit cards in the new CDP/EH case and uploads the PDF documents from SharePoint to ACDS	<p>APS will access the SharePoint Shared Programs Hub on the ECR site. The APS TE will create the new receipt in ACDS, attach the electronic file received from Collection to the ACDS database and add the feature code PL.</p>
5	Case assigned to Appeals Technical Employee	<p>In ACDS, the Appeals Team Manager (ATM) or delegate reviews the new receipts and selects a technical employee to be assigned the case(s).</p> <p>The Technical employee works the CDP/EH case under existing procedures.</p>
6	Certain Closures Returned via E-mail	<p>Certain closures will be returned to Collection from APS via secure E-mail or EEFAX. These cases include:</p> <ul style="list-style-type: none"> Withdrawals Premature referrals F frivolous/Disregarded cases closed with L4381 <p>Documents will include the original PDF file, closing documents and digital copies of any other documents submitted to Appeals. APS will forward the documents to the originator of the case in Collection located on the Form 14461.</p>

Step	Description	Notes/Information
7	CDP/EH Closures Returned via E-mail or EEFAX	<p>Appeals closes the case on ACDS and performs all established closing procedures following IRM 8.20.7.20.11.2.</p> <p>Except for the PDF file Collection sent with the initial referral to Appeals, upon closing the CDP case, APS will send all other ACDS digital attachments to the RO via encrypted E-mail with a "cc" to the RO group manager. Contact info can be found on the Form 14461 that was in the PDF file sent to Appeals.</p> <p>If neither Collection recipient is available via E-mail, APS will take no further action. If the digital attachments are later needed by Collection, they will contact the Appeals AARS Customer Service Team via its <i>Customer Service SharePoint</i> page and choose "Submit Customer Service Request Form".</p>

- (5) Keep a copy of the Form 12153 and envelope with the collection case file.

5.1.9.3.3.2.1
(10-19-2023)

**Rapid Response
Appeals Process (RRAP)**

- (1) Appeals gives priority consideration to pyramiding in-business trust fund cases that qualify for RRAP processing. A case meeting all of the following criteria qualifies for RRAP:

- The taxpayer is in-business and owes employment taxes.
- The taxpayer is not making Federal Tax Deposits (FTD) in the current quarter.
- The unpaid tax due, including accruals, is \$10,000 or more.
- Receipt of a timely request for a CDP hearing regarding a levy or a combined levy and NFTL.
- There are no existing modules against which levy action can be taken, such as those subject to an equivalent hearing, those for which a CDP levy has already been held, or the one year period to request an equivalent hearing has already expired

Note: If levy action can be taken against other modules, the CDP levy hearing does not qualify for RRAP except as provided in IRM 5.1.9.3.3.2.1(3) below..

- (2) Field Collection CDP cases meeting all of the following criteria also qualify for RRAP:

- The taxpayer requests a timely CDP hearing regarding a levy or a combined levy and NFTL.
- The taxpayer is in-business and owes more than \$250,000 including accruals (on any BMF return type) **or** is an individual who owes more than \$500,000 including accruals (IMF) **or** is an individual who owes more than \$100,000 in TFRP (MFT 55).

Note: These total amounts are minimums owed on the CDP periods the appeal is requested for and are not total account balances owed.

- The taxpayer has two or more periods of liability in collection status.
- The taxpayer does not qualify for the requested collection alternative (e.g., installment agreement or Offer in Compromise) because the taxpayer has not met IRM requirements (e.g., unfiled tax returns or is not

current with FTD's or estimated tax payments) even after being given an opportunity to come into compliance; **or** the taxpayer has provided necessary information, but Collection and the taxpayer cannot reach resolution due to a disputed issue (e.g., installment agreement amount); **or** the taxpayer has not provided the necessary financial or other information needed to make an ability to pay determination.

- (3) In those extremely rare cases where Collection believes that expedited consideration under RRAP is warranted, but not all criteria in IRM 5.1.9.3.3.2.1(1) or (2) are met, the Collection group manager should contact the *Appeals RRAP Technical Coordinator* for the area prior to forwarding the case to Appeals. Only with prior approval from the Technical Coordinator can the case be submitted under RRAP contrary to the criteria listed above.

Example: Taxpayers attempting to avoid collection actions through alter-egos, nominees, successor-in-interests, etc **should** be considered for RRAP.

- (4) The following cases do not qualify for RRAP:
- Equivalent hearings (EH).
 - Request solely for a CDP NFTL hearing.
 - Taxpayer qualifies for Disqualified Employment Tax Levy (DETL) processing.
 - Levy action can be taken against other tax periods.
 - Case is not forwarded to Appeals within 45 calendar days of Collection's receipt of the taxpayer's request for a CDP hearing.
 - Case would otherwise qualify for RRAP but was not submitted by Collection electronically via the *Electronic Case Receipts (ECR)* page.
 - Actions under control of the Department of Justice are excluded from RRAP.
- (5) Appeals will not identify a case as a pyramiding "PY" case or for RRAP processing once it is received in Appeals through the routine CDP referral process. For a case to be considered and worked as a RRAP case, it must be identified by the RO **prior** to the case transmittal to Appeals. It must be forwarded to Appeals using the RRAP procedures below.
- (6) After approval by the RO's group manager, the electronic case documents should be sent to Appeals, via upload to the *Electronic Case Receipts (ECR)* page.
- (7) Select "RRAP - Rapid Response Appeal Process (CDP)" in the "Type of Case" drop down menu.
- (8) Use ICS Sub Code 919 for IBTF RRAP CDP.
- (9) The documents uploaded to the *Electronic Case Receipts (ECR)* page by Collection will include, at a minimum, the following electronic documents:
- Form 14461, Transmittal of CDP/Equivalent Hearing Request
 - Form 12153, Request for a Collection Due Process or Equivalent Hearing, or substitute written request
 - Copy of the CDP Notice (Letter 1058 and, if applicable, Letter 3172 and Notice of Federal Tax Lien)
 - Copy of the envelope

- Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, Form 433-B, Collection Information Statement for Businesses, or other financial documentation, if available
 - Additional documentation/correspondence sent by the taxpayer with the Form 12153
 - Any additional documentation/information in the case file pertinent to the issue(s) raised by the taxpayer
- (10) Once the case is assigned in Appeals, the appeals officer (AO), after completing the initial case review, will:
- Make a substantive contact with the taxpayer via either telephone or letter within 10 business days of assignment.
 - Hold a conference within 14 calendar days of the date of the substantive contact letter or the telephone contact.

Note: When warranted, the conference can be scheduled for after the 14 calendar day period.

Note: Initial timeframes may be delayed if the taxpayer requests access to the case file under the Taxpayer First Act.

- (11) If Appeals sends a request for an Appeals Referral Investigation (ARI) to verify information secured during the hearing, the assigned RO should promptly complete the ARI and respond through their group manager (GM) to Appeals within 45 days.

Note: Due to the expedited processing of RRAP cases, the RO needs to respond via encrypted E-mail or overnight mail delivery.

Exception: If the taxpayer or the taxpayer's representative is working with the RO to reach a collection alternative, the GM can approve the RO's request for an extension, if warranted. Promptly notify Appeals of any extensions, via a secure E-mail from the RO GM to the Appeals Team Manager (ATM) of the assigned AO.

- (12) After the decision is final, Appeals will EEFAX copies of the Appeals closing documents to the originating RO within 10 days. At a minimum, this should include:
- The fax cover sheet prepared by the AO
 - Form 5402, Appeals Transmittal and Case Memo
 - Letter 3193, Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330
 - Appeals Case Memorandum (ACM)
 - Other documents obtained by Appeals during the CDP hearing process.
- Note:** If the "other documents" exceed 15 pages and are **not** in a digital format, **all** documents may be mailed to the RO using overnight mail.

5.1.9.3.4
(10-19-2023)
**Controlling and
Monitoring Cases While
in Appeals**

- (1) The ICS CDP application allows the field to use ICS to track valid hearing requests from receipt through resolution in Appeals or withdrawal of the request by the taxpayer.
- (2) After adding a hearing request to ICS CDP/EH, ICS generates a follow-up for 45 days from the hearing receipt date. Refer to IRM 5.1.9.3.3, Processing CDP and EH Requests.
- (3) If the taxpayer withdraws the request, update the ICS CDP/EH application to reflect the withdrawal. If the withdrawal occurs after the group manager approved the transfer but prior to actual transfer, input the withdrawal date. If you sent the request to Appeals, forward the withdrawal to Appeals. Refer to IRM 5.1.9.3.3.1, Processing Withdrawal of Request for CDP Hearing.
- (4) After transferring the request to Appeals, ICS systemically updates the received in Appeals date and the closed date based on data Appeals sends weekly to ICS. This systemic update should occur within two weeks after Appeals assigns/closes the case. If the systemic updates of the received/closed in Appeals date did not occur, manually input the date after verifying receipt/closure.

Note: Only the group manager can make updates after transfer approval.

- (5) When the group manager (GM) approves the transfer of the CDP to Appeals on ICS, a CDP OI is systemically opened. The CDP/EH OI serves as a control while the case is pending in Appeals and it ensures that the case stays on ICS. Even if there are multiple requests pending in Appeals, there is only one CDP/EH OI. The CDP OI is automatically assigned to the RO that has the Bal Due case assignment. Once receipt of the CDP in Appeals is confirmed and there is no open Bal Due or Del Ret and no further collection actions are warranted, the CDP OI should be assigned to the CDP Appeals Hold File, AOTO XX91 for monitoring at the group level. Before requesting transfer of the CDP OI to the CDP Appeals Hold File (AOTO XX91), the RO will update the CDP OI Closure Due Date for 270 days from the date Appeals received the CDP.
 - Review AOTO XX91 ICS Notifications periodically for Appeals closures and/or reassignment to an RO.
 - If a new assignment, i.e., Bal Due or Del Ret, is received, the GM will transfer the CDP OI back to the RO.
 - If the new Bal Dues / Del Ret are resolved and Appeals still has an open CDP case, the RO will request transfer of the CDP OI back to the CDP OI hold file, AOTO XX91.
 - If the Bal Due or Del Ret is transferred to another group, the CDP OI also transfers.
 - ICS will systemically close the CDP/EH OI when all requests pending in Appeals have a closed date entered on the ICS CDP/EH application.
- (6) The CDP case is sent to Appeals electronically. Appeals acknowledgment is received on ICS with action dates updated on the ICS CDP Application. If you do not receive an acknowledgment within 45 days, Field Collection Group Managers can access the Appeals Centralized Database (ACDS) to determine receipt of the case in Appeals. If Appeals did not receive the request, re-send the request to Appeals.

- (7) ICS will generate systemic histories and update the ICS CDP application based on information received from Appeals. Appeals will send data to ICS weekly when:
- The case is assigned in Appeals for the first time,
 - The case is updated in Appeals, such as a change in hearing type or tax periods added or removed, or
 - The case is closed in Appeals.
- (8) The history generates if the case originated in the field and if the case is open on ICS allowing the history to post.

Note: If Appeals changes the hearing type, i.e., from EH to DP or adds or removes periods to a hearing request, this may effect collection action. The ICS CDP application needs to reflect the hearing conducted by Appeals. Update the ICS CDP application to reflect the correct hearing type when notified.

5.1.9.3.5
(10-19-2023)

**Collection Action during
the Period of the CDP or
EH**

- (1) The RO can continue to work with the taxpayer after the request is sent to Appeals, especially if there are other assigned modules that are not part of the hearing request. If a resolution is reached, such as a full pay, CNC determination or an IA and it involves modules in Appeals, the RO should solicit a withdrawal of the hearing request.
- If a withdrawal is secured, notify Appeals and forward the withdrawal, Form 12256, to Appeals so Appeals can input the TC 521 and close the case. The appeals officer will close the CDP case within 10 business days of receipt of a copy of Form 12256.
 - If a withdrawal is secured and the taxpayer has an appeal pending in Tax Court, notify the Counsel attorney assigned the CDP case regarding the proposed collection alternative or if full payment is received.
 - If a resolution is reached but the taxpayer does not withdraw, notify Appeals of the resolution reached.
- (2) If the RO secures additional information from the taxpayer while the case is pending in Appeals, such as a financial statement or delinquent tax returns, notify Appeals. The notification is a permitted ex parte communication as long as there is no discussion of the merits of the case. This way Appeals will not have to request information already secured. The RO should advise the taxpayer that the information will be provided to Appeals.
- (3) If an in-business trust fund taxpayer is assessed additional tax periods while other tax periods are pending in Appeals, the RO assigned the case should determine whether levy action, such as a disqualified employment tax levy, is appropriate.
- (4) The Collection Statute Expiration Date (CSED) is not suspended during an equivalent hearing, so collection action can continue as appropriate.
- (5) The authority to file a NFTL is not suspended during the hearing. If the determination is to file a NFTL and the taxpayer disagrees, the taxpayer can request a CAP appeal.
- (6) While a CDP NFTL hearing is pending, if the RO determines that an additional NFTL needs to be filed on the same type of tax and tax periods that are the subject of the hearing, the collection group manager or designee needs to contact the Appeals Team Manager (ATM) of the assigned hearing officer, pref-

erably via email, to advise them that filing of the NFTL is planned. Determine whether Appeals has new information that may affect the decision. For example, the taxpayer may have provided Appeals with information raising doubt as to the validity of the liability.

- (7) Monitor the case to ensure that the NFTL is refiled during the refiling period. Refer to IRM 5.12.8, Notice of Lien Refiling.

5.1.9.3.5.1 (08-30-2018)

Levy Action during the Period of the CDP or EH

- (1) If the taxpayer files a timely request for a CDP hearing during the IRC 6330 notice period, levy actions on the assessments that are the subject of the CDP notice must be suspended during the appeal period and while any court proceedings are pending with the following exceptions:

- Jeopardy levy situations,
- Levies on state income tax refunds,
- Levies served on Federal contractors,
- Disqualified employment tax levies

- (2) Levy action is generally suspended:

- On tax periods not subject to the CDP levy hearing, unless all pre-levy notifications have been met,
- On tax periods subject to an equivalent hearing,
- On periods subject to a CDP NFTL hearing.

- (3) Levy action may proceed if Collection determines it to be appropriate in the following situations:

- Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
- Taxpayer raises only frivolous issues;
- Taxpayer is requesting an installment agreement or offer in compromise solely to delay the collection process.

- (4) Prior to initiating levy action, check IDRS for actions that may prohibit levy action, i.e., TC 480 (OIC) or TC 971 AC 043 (IA). If there is no evidence on TXMOD of actions in Appeals that would be grounds to delay or prohibit enforcement, then contact the ATM of the assigned hearing officer, preferably via email, to advise them that levy action is planned. Determine whether Appeals has new information that may affect the decision to levy. The ATM will respond within 5 days with a yes or no response:

- Yes, Appeals has information that levy would create an economic hardship for an individual taxpayer, or
- Yes, Appeals has information that would prohibit levy absent a determination that collection of the tax is in jeopardy, or
- No, Appeals has no information that would prohibit levy action.

Note: If levy action is planned during an appeal to the Tax Court or appellate court, contact the Counsel attorney assigned the case to advise them of the planned levy action and to determine if there is any new information that may affect the decision to levy.

Note: Contacting Appeals to determine if Appeals has information that might affect the decision to levy is a permitted ex parte communication. See IRM 5.1.9.5.1, Permitted Ex Parte Communications.

- (5) During an appeal to the Tax Court or appellate court, where the underlying tax is not at issue, levy action may continue if the court determines that the IRS has shown good cause not to suspend the levy. Counsel will contact Collection if they are considering a motion to permit levy. In addition, if Collection is aware of situations that warrant levying during the judicial appeal, i.e., pyramiding cases where there are leviable assets, Collection should prepare a memo requesting Associate Area Counsel to file a motion with the court to allow the IRS to take levy action. If the court grants the motion, Counsel will contact the assigned RO so that levy action can proceed immediately.

Note: Levy action is generally suspended on EH modules and non-CDP tax periods that are not part of the CDP case, but are included in a collection alternative that is being reviewed by the Court. The Counsel attorney assigned the CDP case will contact the collection office assigned the case if special circumstances (e.g. jeopardy levy) require levy action on non-CDP modules.

- (6) In joint liability situations, where only one spouse has requested a CDP hearing, levy action can continue with respect to the spouse who has not requested a CDP hearing. This may occur in situations where the spouses are separated or divorced. Otherwise, levy action will generally be suspended for both spouses. If the hearing request was intended to cover both taxpayers, the CDP hearing request can be amended to list both spouses. The spouse whose name is added should also sign the request for a CDP hearing.
- (7) In a situation where a levy has been issued, and then the taxpayer files an appeal, either a timely CDP hearing under IRC 6320 or an EH under IRC 6320 or 6330, determine if the levy should be released.

Example: The taxpayer does not respond to the pre-levy notice. A continuous wage levy is issued. The RO then files a NFTL. The taxpayer receives the IRC 6320 CDP hearing notice and files a timely request for a CDP hearing. A decision needs to be made whether or not to release the levy. Refer to IRM 5.11.2.3.1, Legal Basis for Releasing Levies.

- (8) Actions under automated levy programs, such as the State Income Tax Levy Program (SITLP) and the Federal Payment Levy Program (FPLP), are not suspended during an EH. If appropriate, the automated levy block, TC 971 AC 061, can be placed on each appropriate module. Refer to IRM 5.11.7, Automated Levy Programs.
- (9) If the taxpayer alleges economic hardship under IRC 6343, consider whether return of levied property is appropriate. Refer to IRM 5.11.2.4, Returning Levied Property to the Taxpayer. In a situation where a levy is pending when the taxpayer files a request for an EH, determine if the levy should be released. IRC 6343 requires the full or partial release of certain levies.

5.1.9.3.6
(02-07-2014)
**Suspension of
Collection Statute of
Limitations**

- (1) The statute of limitations is suspended from the date the IRS receives a timely request for a CDP hearing to the date the taxpayer withdraws their request for a CDP hearing or the date the determination from Appeals becomes final, including any litigation. The Collection Statute Expiration Date (CSED) is suspended even if the account is full paid as long as the taxpayer does not agree with the offset/payment that full paid the account.

- a. The date the determination from Appeals becomes final is the date the 30-day period within which the taxpayer could appeal to the Tax Court expires, if the taxpayer does not exercise their right to seek judicial review (or 90 days, if the CDP petition includes innocent spouse relief, or 180 days, if CDP petition includes interest abatement).
 - b. If the taxpayer timely petitions the Tax Court, the statute of limitations is suspended and the determination is not final until the court determination becomes final including any appellate court decision.
 - c. If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is extended to equal 90 days.
- (2) Upon receipt of a hearing request, determine if the collection statute needs to be suspended. The collection statute is suspended only when a taxpayer files a **timely** request for a CDP hearing. The collection statute is not suspended on EH cases unless the request includes another basis for suspending the collection statute, such as an innocent spouse request under IRC 6015.

Example: On March 15, 2022, a taxpayer is issued an IRC 6330 notice for 941 taxes for the quarter ended December 31, 2021 while the account is in ACS. No request for a CDP hearing is filed. The account is transferred to Field Collection. A 941 tax return for the quarter ending March 31, 2022 is received. The RO issues a CDP levy notice on June 11, 2022 for the quarter ending March 31, 2022. The taxpayer files a Request for a Collection Due Process Hearing on July 2, 2022 that lists both quarters and includes a copy of the notice sent by the RO. The taxpayer would be entitled to receive the following:

Return type and period	Appeal type
941 for December 31, 2021	EH; no suspension of the collection statute
941 for March 31, 2022	CDP; collection statute is suspended

- (3) When the CDP collection statute suspension occurs at the same time but differs with other applicable collection statute suspensions, e.g., those under the innocent spouse provisions of IRC 6015 or bankruptcy, the latest suspension period controls.
- (1) A TC 520 identifies the beginning date of the collection statute suspension.
 - (2) When the collection statute expiration date (CSED) is to be suspended, Appeals will request input of the TC 520 with the appropriate closing code (CC) for each module subject to the CSED suspension. Appeals will generally use the date the RO lists on the Form 14461 as the date the hearing request was received as the TC 520 date. For CDP hearing requests that are received after the 30-day time period for making a timely request but are postmarked as timely, use the postmark date as the receipt date.
 - (3) TC 520 CC 76 is used if the CDP hearing request is made in response to a CDP NFTL notice (IRC 6320). TC 520 CC 77 is used if the CDP hearing request is made in response to a CDP levy notice (IRC 6330). If both IRC

5.1.9.3.6.1
(06-24-2014)
**Transaction Code TC
520 and TC 521 CC
76/77**

6320 and IRC 6330 are applicable, use TC 520 CC 76. Prior to January 2000, TC 520 CC 70 was used for CDP hearing requests.

- (4) For TC 520s and TC 521s posted as of January 2001, the CSED is systemically calculated and updated. If the recomputed 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 IMF CSED TIN indicator with the TC 520. The indicators are as follows:
 - “P” - CSED suspended only for the primary TIN spouse.
 - “S” - CSED suspended only for the secondary TIN spouse.
 - “B” - CSED suspended on both primary and secondary TINS. The CSED is systemically updated when the CSED indicator is “B”.
- (5) 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 manually updated by the input of a TC 550 with AC 10.
- (6) A TC 521 is needed to identify the ending period of the CSED suspension. This would be the date the hearing determination is final or the hearing request is withdrawn. If TC 520 with CC 76 or 77 posted in cycle 200101 or later, it must be reversed using TC 521 with CC 76 or 77. If the TC 520 CC 76 or 77 posted BEFORE cycle 200101, then it must be reversed using TC 521 WITHOUT a closing code.

5.1.9.3.7
(08-27-2021)
**Conducting the Trust
Fund Recovery Penalty
(TFRP) Investigation
while Case in Appeals**

- (1) When a corporation, partnership, or LLC owing trust fund taxes requests a CDP hearing or EH, the TFRP needs to be addressed. There is no prohibition against asserting the TFRP against responsible persons while the CDP/EH is pending. Since the statutory period of limitations for assessing the TFRP is **not** suspended while the CDP/EH hearing is pending, the TFRP investigation should continue unless the RO has a reasonable expectation of the account being fully satisfied.
- (2) The RO should note in the case history whether or not the TFRP investigation is continuing. The investigation can proceed as far as the assertion of the penalty against each responsible person. This includes providing each responsible person with their TFRP appeal rights.

5.1.9.3.8
(10-19-2023)
Appeal Process

- (1) Appeals makes the final determination about timeliness of a CDP or EH request.
 - a. If the CDP hearing request is timely, the taxpayer will receive a CDP hearing.
 - b. If the CDP hearing request is untimely, the taxpayer will receive an EH if the taxpayer timely requests one.
- (2) In both instances, the hearing is held in Appeals. It is conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax. However, the taxpayer may waive this requirement.
- (3) To the extent practicable, a hearing under IRC 6320 (NFTL) and a hearing under IRC 6330 (levy) will be held simultaneously.

- (4) The appeals officer is required to verify that the requirements of the Internal Revenue Code or administrative procedure with respect to the proposed collection action have been met. Appeals will verify:
 - a. That the taxpayer has a valid tax liability for the period and its amount and
 - b. That procedures for filing the NFTL or issuing the L-1058 have been met.
- (5) Clearly and completely document preliminary actions as Appeals will rely on the information in the case file or will seek clarification of items that appear to be incomplete within the case file.
- (6) Appeals may request and Collection will secure information pertaining to the taxpayer's appeal, such as verification of financial information and courthouse checks. Appeals will request this information via an Appeals Referral Investigation (ARI). Refer to IRM 5.1.9.3.8.2, Appeals Referral Investigation (ARI).
- (7) During the appeal process, the taxpayer or their representative may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:
 - Appropriate spousal defenses,
 - Challenges to the appropriateness of collection actions,
 - Offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an IA, or an offer-in-compromise,
 - Issues related to an economic hardship determination, and
 - Challenges to the existence or amount of the underlying tax liability including a liability reported on a self-filed return for any tax period specified on the CDP notice if they did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

Note: The taxpayer cannot challenge the amount of a restitution-based assessment in CDP. See IRM 8.22.8.4, Issues Precluded from CDP Under IRC 6330(c)(4), for examples of precluded issues.

- (8) A non-liability issue may not be raised at the hearing if:
 - a. The issue was raised and considered at a previous hearing under IRC 6320 or in any other previous administrative hearing before appeals or judicial proceeding; and
 - b. The person seeking to raise the issue participated meaningfully in such hearing or proceeding.
 - c. This prohibition does not apply to consideration of collection alternatives when there has been a significant change in the taxpayer's financial condition. In that situation, a taxpayer may continue to make new proposals for an OIC or IA, or other collection alternative, even if one was raised and rejected at a previous hearing or administrative proceeding.

5.1.9.3.8.1
(04-18-2016)
**CDP and Offer in
Compromise (OIC)
Cases**

- (1) During a CDP or an EH assigned to Appeals, an OIC may be submitted by the taxpayer as a collection alternative resolution. Refer to IRM 8.22.7.10, Offers in Compromise (OIC), for procedures on offers submitted during CDP or EH hearings.

- (2) All offers submitted during a CDP hearing or EH will be investigated in a COIC site or by a field offer specialist. Refer to IRM 5.8.4, Offer in Compromise, Investigation.
- (3) In certain instances, Appeals may request a review of additional documents submitted by the taxpayer after a recommendation to reject the offer is made by the COIC offer examiner (OE) or Field offer specialist (OS). Refer to IRM 5.8.4, Offer in Compromise, Investigation.

5.1.9.3.8.2
(08-30-2018)
**Appeals Referral
Investigation (ARI)**

- (1) If Appeals is unable to secure, from internal sources, information needed to determine the appropriateness of a collection alternative or CNC hardship, then Appeals may ask Collection to secure information pertaining to the taxpayer's appeal, such as verification of financial information and courthouse checks. Refer to IRM 8.22.7.4, Appeals Referral Investigation (ARI),
- (2) Appeals will request this information via an ARI on Form 10467, Appeals Division Feedback Report, or Form 2209, Courtesy Investigation. The request will state the specific information requested.

Example: "We are conducting a CDP/EH hearing and the taxpayer has raised [collection alternative] which require [specify what it is Collection should do]. Please see the attached forms and verify necessary items."

- (3) For hearing requests that originated in Field Collection, Appeals will route the ARI to the group manager of the revenue officer group covering the taxpayer's zip code. When creating the Other Investigation on ICS, the receiving office will select "Other" under Action Requested and in the Remarks section, begin the remarks with "ARI" and describe the action needed.

Note: Appeals will send hearing requests originating in ACS to ACS. ACS will refer Appeals' request to Field Collection if the case balance exceeds ACS authority.

Note: Appeals will send requests to review additional documents submitted by the taxpayer after a recommendation to reject the offer is made to the COIC site RO or Field OIC group manager/drop point based on current procedures. Refer to 5.8.4, Offer in Compromise, Investigation.

- (4) Appeals will send a letter to the taxpayer notifying the taxpayer that Appeals is referring the issue to Collection. Appeals will include a copy of the letter with the ARI.

Example: "You requested Appeals consider [specify issue]. Appeals has asked Collection to review the information provided while we retain jurisdiction of your case. It may be necessary for Collection to contact you and/or third parties for information to complete the review. You will have an opportunity to respond once the results of the review are shared with you."

- (5) If Collection needs to contact the taxpayer regarding the request, the contact is on behalf of Appeals. Give the taxpayer a specific deadline to provide the necessary verification. If unable to contact the taxpayer directly, send a letter requesting the additional information setting a specific deadline by which to respond. If the taxpayer does not respond within 15 days of the deadline, note in the response to Appeals that the taxpayer did not respond and failed to

provide the needed information. Contact with third parties to verify or obtain information may be necessary (see IRM 25.27.1, Third Party Contact Program).

- (6) Document the results of the ARI investigation in the ICS history and close the ARI OI.
- (7) Provide a separate response to Appeals since Appeals cannot access ICS history after they have conducted the initial case analysis due to ex parte. This could be a copy of the ICS history entry documenting the results of the ARI investigation. Use secure email or mail to respond to the Appeals employee who originated the request. Appeals will share the results of the ARI with the taxpayer.
- (8) ARIs are mandatory. See IRM 5.1.8.5.1, Types of Mandatory OIs. The ARI deadline is as follows:
 - 45 days after issuance if the action address is within the United States, Puerto Rico or the Virgin Islands.
 - Six months after issuance if the action address is within any other US possession or territory or located within a foreign country.
- (9) Report the action taken to the originator by the deadline. Submit a status report if the complete report will not be timely. Enter the report date in the ICS history and extend the OI due date. Submit the report on Form 2209-A, Status Report. Appeals will share the status report with the taxpayer.

5.1.9.3.8.3
(08-30-2018)
**Three-way Conference
with Appeals**

- (1) Appeals may schedule a three-way conference when Appeals believes it is advisable to do so. Refer to IRM 8.6.1.5.4, Participation in Conference by IRS Employees.

Note: Collection does not schedule the three-way conference.

- (2) A three-way discussion is not a prohibited ex-parte communication when the taxpayer or representative has a chance to participate. If Appeals needs or agrees to a conference with Collection, Appeals will invite the taxpayer/representative to participate. Refer to IRM 5.1.9.5.2.1, Opportunity to Participate.
- (3) Appeals will send the request for a three-way conference through the group manager of the RO. Appeals will state the specific purpose for the conference and provide any pertinent information to be discussed.
- (4) When confirming availability for the conference with Appeals, do not include any discussion or opinion of the case. Refer to IRM 5.1.9.5.2, Prohibited Communications.

5.1.9.3.9
(02-07-2014)
Appeals Determination

- (1) The Appeals determination will take into consideration the following:
 - a. The verification that the requirements of the Internal Revenue Code and administrative procedure have been met;
 - b. The issues being raised; 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.

- (2) For a timely filed due process hearing, the taxpayer will receive a Notice of Determination letter that explains the taxpayer's right to petition Tax Court within 30 days of the date of the letter. Appeals Processing (APS) will suspend the case for 60 days after issuing the Notice of Determination to the taxpayer. The suspension period will be longer if the CDP hearing included a spousal defense determination under IRC 6015 or an interest abatement determination under IRC 6404. If no further appeals are filed, the Notice of Determination is final. If the taxpayer contacts you during the Notice of Determination suspension period, you can assist the taxpayer in carrying out the determination of Appeals, (i.e., Installment Agreement) or otherwise assist in resolving the liability.

Note: The CDP levy suspension remains in effect until the determination is final. Refer to IRM 5.1.9.3.5.1, Levy Action during the Period of the CDP or EH.

- (3) For an EH, the taxpayer will receive a decision letter. In an EH, the decision by Appeals is final, and there is no appeal to court, except as it relates to certain spousal defenses under IRC 6015 (if a petition is filed within 90 days after denial is issued), denial of a request for interest abatement (if a petition is filed within 180 days after denial), or if the taxpayer disagrees with Appeals' decision that the taxpayer's CDP hearing request was not timely.
- (4) In both the Notice of Determination letter and decision letter, Appeals will provide clear information regarding any agreement reached with the taxpayer, any relief given, and any necessary actions required by Collection. If the tax liability is upheld or the enforcement action is appropriate, the letter will so state, even if the appeals officer decides to provide the taxpayer a different collection alternative. The letter will also set forth specific ramifications should the taxpayer not comply with the terms of the agreement.
- (5) Appeals will generally follow the IRS guidelines for collection set forth in the Internal Revenue Manual (IRM). Appeals, however, also considers the impact of the hazards of litigation, which may be applicable especially if tax liability is the issue. In addition, Appeals is required to balance tax collection needs with the legitimate concerns of the taxpayer that any collection action be no more intrusive than necessary and renders its determination accordingly.

5.1.9.3.10
(06-24-2014)
Tax Court Appeal

- (1) After Appeals makes its determination in a CDP hearing, the taxpayer may, within 30 days of the date of the determination letter, petition the Tax Court.
- (2) To allow time to be notified of any court petitions, Appeals will hold cases subject to Tax Court review for an additional 30 days (60 days after issuance of the Notice of Determination). If the taxpayer reaches an agreement with Appeals and does not wish to go to court, Appeals employees may use Form 12257, which serves as a summary Notice of Determination, and waives the right to go to court and the suspension of levy action. If the taxpayer waives the right to judicial review, the determination is final and the case can be returned to collection.
- (3) Once Appeals issues the notice of determination, the taxpayer may raise collection alternatives with Collection. If the taxpayer has an appeal pending in Tax Court, notify the Counsel attorney assigned the CDP case regarding the proposed collection alternative or if full payment is received.

5.1.9.3.10.1
(08-30-2018)
**Post Petition
Investigation**

- (4) In an EH, the decision is final when Appeals issues its decision letter, except as it relates to certain spousal defenses under IRC 6015 and denials of interest abatement under IRC 6404.
 - (1) While the Tax Court case is pending, the Counsel attorney may determine that an issue should be reviewed by Collection. This may occur, for example, when there is a substantial change in the taxpayer's circumstances since the CDP hearing or the taxpayer did not respond to Appeals during the CDP hearing due to illness or travel and the taxpayer is now offering a viable collection alternative which would resolve the case.
 - (2) The assistance requested by Counsel may include review and investigation of an OIC or consideration of a proposed IA or possible currently not collectible determination. Counsel will inform Collection of any deadlines imposed by the court on the IRS's consideration of the collection alternative, and for seeking any continuances necessary for adequate investigation and review.
 - (3) If the issue involves an OIC, Counsel will forward the OIC to the appropriate COIC site to complete a processability determination and transfer to an OIC drop point group, if appropriate. Refer to IRM 5.8.10.12, Docketed Tax Court Cases. For other collection alternatives, Counsel will contact Advisory to determine the appropriate collection office to provide the assistance. If the CDP case originated in a field group, there will be a Non Field Other Investigation (NF OI) opened using AC 123 (Appeals/Counsel Liaison) as a control. An Other Investigation (OI) will be forwarded to the original Field Collection group unless there is already an open control in the originating group. In rare instances, a CDP case that originated in ACS, may require field consideration. The request will be referred to the group assigned that zip code. Advisory will refer the request via OI.
- Note:** Counsel requests are mandatory OIs. Refer to IRM 5.1.8.5.1(3), Types of Mandatory OIs. Extensions to the OIs issued will not be granted without Counsel concurrence.
- Note:** If the CDP appeal originated from an ACS case and does not need field consideration, it will be referred back to the ACS CDP coordinators for action.
- (4) Upon completion of the investigation, if a collection alternative is reached, provide sufficient information back to Counsel to document that resolution or if a resolution could not be reached, document the reasons why. For example, if an IA is secured, provide the payment terms (amount and due date). If a determination is made that the account is not collectible, provide a copy of the Form 53, Report of Currently Not Collectible Taxes, for Counsel. If full payment is available, notify Counsel of the collectibility of the account. The NF OI and the OI will be closed upon completion of the investigation.
 - (5) If the Tax Court case is settled based on the collection alternative reached, Counsel will return the closed docketed CDP case to Appeals. If Counsel obtains a Stipulated Decision with a waiver of the 90-day appeal period, Counsel will return the case immediately to Appeals. If the Stipulated Decision has no waiver language, Counsel will hold the case for 100 days. Counsel will provide information regarding the collection alternative to allow Appeals to complete the back end process.

5.1.9.3.11
(10-19-2023)
**After the Appeals
Determination is Final**

- (1) Once the hearing determination is final, the clerical unit of Appeals, Appeals Processing Service (APS), completes back end processing. APS will
 - Input the TC 521, when applicable,
 - Input IAs (only exception are manually monitored IAs which Appeals cannot input to IDRS. If Appeals has accepted an IBTF IA, see (4) below),
 - Input CNC determinations,
 - Input adjustments,
 - Input TC 971 AC 277 (CDP request) or AC 280 (EH). These AC's identify when Appeals closes the hearing request.
- (2) APS will return the case file to the referring Collection group via encrypted E-mail with copies of all correspondence generated during the hearing along with the applicable Appeals closing letter:
 - a. Notice of Determination (CDP),
 - b. Decision letter (EH),
 - c. Form 12257, Summary Notice of Determination, and cover letter, or
 - d. Form 12256 Withdrawal and acknowledgment letter.
- (3) Review the determination and document a plan of action with respect to the determination.
 - If the request was closed as a premature referral because it was not processable, follow procedures in IRM 5.1.9.3.2.3, Perfection of Hearing Requests.
 - If the request was closed as a premature referral because the taxpayer is not entitled to a hearing, for example, no CDP notice issued, notify the taxpayer and explain what appeal options are available.
 - If the request was closed as a disregarded hearing request, refer to IRM 5.1.9.3.15, Hearing Requests with Frivolous, Delaying or Impeding Issues.
 - If Appeals determines a request or periods included on a request were processed to Appeals as timely but are not timely, Appeals will conduct a separate CDP timeliness determination (CDPTD). Refer to IRM 5.1.9.3.2.5, Separate Timeliness Determination.
 - If Appeals has accepted an IBTF IA, Collection is responsible to address the TFRP prior to forwarding the IBTF IA to CCP. If needed, secure Form 2750 waivers from all responsible parties, recommend assertion of the TFRP or when applicable, create a Trust Fund Recovery Investigation Other Investigation (OI) on ICS to control completion of the TFRP assessment. Refer to IRM 5.14.7.4.1, Trust Fund Recovery Penalties and Installment Agreements.
 - If Appeals determines trust fund liabilities are CNC, Collection is responsible to address the TFRP. When applicable, create a Trust Fund Recovery Investigation OI on ICS to control completion of the TFRP assessment.
 - If not previously done, make a Notice of Federal Tax Lien (NFTL) filing determination. Refer to IRM 5.12.2.3, Notice of Federal Tax Lien Filing Determination (Pre-filing Considerations). If the determination is to file a NFTL and the taxpayer disagrees, explain the CAP procedures to the taxpayer.

- (4) When all the hearing requests in Appeals are closed on the ICS CDP applications, the CDP OI should systemically close. If the CDP OI does not systemically close, the RO should alert the group manager to take needed action to close the CDP OI.
- (5) Upon receipt of a closed case, if the TC 521 to reverse the Status 72 has not been input, contact the Appeals Account Resolution Specialist (AARS) via email at **AP Account Resolution* for corrective action.

5.1.9.3.12
(10-19-2023)

Jurisdiction Retained by Appeals

- (1) The Office of Appeals retains jurisdiction with respect to any Notice of Determination issued under IRC 6320 or IRC 6330, including subsequent appeals requested by the taxpayer who requested the original Collection Due Process hearing on issues regarding:

- a. Whether the taxpayer believes Collection did not carry out Appeals' determination as it was stated.
- b. Whether there is a change in the taxpayer's circumstances which affects Appeals' determination.

- (2) Taxpayers, who request subsequent review of their case by Appeals under the changed circumstance provision under retained jurisdiction, must first exhaust all administrative remedies, such as having a conference with the Collection manager. Use the Appeals *Electronic Case Receipts (ECR)* page and select case type of CDP (Collection Due Process) from Field Revenue Officers to send the case to Appeals. Transmit the retained jurisdiction request with Form 3210, Document Transmittal, or a cover sheet summarizing the issue(s).

Note: Appeals Account Resolution Specialists (AARS) at *AP Inquiries will accept cases closed in Appeals if the Appeals determination, as it relates to completion of administrative procedures, was not carried out correctly. See IRM 8.1.9.2, AARS Closed Case Referrals, for exceptions.

- (3) If there has been a change in circumstances with respect to the taxpayer affecting the IRC 6320 or IRC 6330 determination, Appeals, under the retained jurisdiction provision, may consider only those issues that were raised and considered at the previous hearing.
- (4) The statutory period for collection is not suspended during the retained jurisdiction proceeding.
- (5) NFTL filing and levy actions are not required by statute to be suspended during the retained jurisdiction proceeding. However, even when not required by statute, levy action is generally suspended unless collection is at risk. When it is identified that collection is at risk, Collection personnel should initiate the appropriate actions to protect the government's interest. Evidence that the taxpayer is dissipating assets is an example where collection is at risk. Also, pyramiding of additional tax liabilities, including unpaid employment tax deposits and unfiled tax returns while in Appeals, are indicators that collection may be at risk. Refer to IRM 5.7.8, In-Business Repeater or Pyramiding Taxpayers, for additional information regarding in-business trust fund taxpayers. The group manager must concur with the planned levy action during the appeal. Appeals must be advised immediately of any decision to take levy action.

- (6) Actions under automated levy programs, such as the SITLP and the FPLP, are not suspended during a retained jurisdiction hearing. Appeals can address the lien or levy action during the retained jurisdiction hearing.
- (7) Similar to a Collection Appeal Program (CAP) appeal (Refer to IRM 5.1.9.4, Collection Appeals Program (CAP)), the taxpayer will receive a letter upon completion of the review under the retained jurisdiction provision. The decision by Appeals is final with no judicial review.

5.1.9.3.13
(08-30-2018)
**Jeopardy Levy, State
Income Tax Levy
Program (SITLP), and
Federal Payment Levy
Program (FPLP)**

- (1) There are exceptions to the pre-levy notice requirements of IRC 6330. They are:
 - a. When the collection of tax is in jeopardy under IRC 6331(a), or
 - b. A levy is served on a State to collect a Federal tax liability from a State tax refund, referred to as the SITLP, or
 - c. A disqualified employment tax levy is served, or
 - d. A Federal contractor levy is served.
- (2) A post-levy CDP notice is issued when the taxpayer did not have a prior opportunity for a CDP hearing under IRC 6330. Post levy CDP notices include:
 - Letter 2439, Notice of Jeopardy Levy and Right of Appeal
 - CP 92 or CP 242, Notice of Levy on Your State Tax Refund, Notice of Your Right to a Hearing
 - Letter 1058-D, Post Levy Collection Due Process (CDP) Notice
 - Letter 1058-F, Post Levy Federal Contractor Collection Due Process
- (3) For more information on post-levy CDP's, refer to IRM 5.11.3, Jeopardy Levy Without a Jeopardy Assessment, IRM 5.19.9, Automated Levy Programs, IRM 5.11.3.5, Forms and Letters for a Jeopardy Levy without a Jeopardy Assessment, IRM 5.19.9.3.4, SITLP Notices, IRM 5.11.1.5.4, Issuing Notice of Levy/ Notice of a Right to a Hearing in Field Collection, and IRM 5.11.1.6.3, Issuing Notice of Intent to Levy and Notice of Your Right to a Hearing in Field Collection FEDCON Case.

5.1.9.3.14
(10-19-2023)
**Disqualified Employment
Tax Levy**

- (1) A disqualified employment tax levy (DETL) is comprised of these three components:
 - a. A levy served to collect an employment tax liability;
 - b. The levy is for taxes owed by a taxpayer who previously requested a CDP levy hearing;
 - c. The prior CDP hearing involved unpaid employment taxes that arose in the two-year period before the period for which the levy is served.
- (2) Even if a taxpayer's employment tax liabilities meet the criteria for a DETL, this action is discretionary and determined on a case by case basis. The IRS has the option to issue a pre-levy CDP notice for DETL periods, if the situation warrants. For example, if there has been no contact with the taxpayer within the last 180 days, the issuance of a pre-levy CDP notice might be advisable to resolve the issue. Also, if no IRC 6331(d) notice (CP 504 notice or "Status 58" notice) has been issued, then issuing the L-1058 meets both the requirements of IRC 6331(d) and IRC 6330.
- (3) The prior request refers to a timely, processable CDP hearing request. Refer to IRM 5.1.9.3.2.1, Timeliness of the CDP Hearing Request, for information

regarding the timeliness and processability of CDP hearing requests. Even if the request is subsequently withdrawn, it qualifies as a prior hearing request.

Note: Requests for an equivalent hearing (EH) or untimely requests for CDP hearings do not satisfy the requirement of having had a prior hearing request. Thus, if the taxpayer requests an EH or submits an untimely request for a CDP hearing, that request cannot be used as a basis for a DETL.

Note: A post-levy request for a CDP hearing made in response to a Letter 1058-D, Notice of Levy and Notice of Your Right to Hearing, regarding a post-levy CDP notice, a state refund levy, a levy served on a Federal contractor or a jeopardy levy also can constitute a prior CDP levy hearing request as a basis for a DETL.

- (4) The following can be helpful in determining if the taxpayer requested a prior CDP levy hearing involving unpaid employment taxes.
 - a. First hand knowledge of a prior CDP levy hearing. In most instances involving pyramiding trust fund taxpayers, the RO assigned the case will be aware of previously requested hearings.
 - b. Case history.
 - c. A TC 971 AC 630 on prior modules indicates a prior timely levy hearing request.
 - d. By contacting Appeals at 559-233-1267 to see if they have record of a prior hearing request received in Appeals.
- (5) If the taxpayer requested a prior CDP levy hearing involving employment taxes, determine if the CDP levy tax periods occurred in the two-year "look back" period. The two-year look back period is measured from the beginning of the period for which the DETL is served. If the CDP levy hearing periods fall within this two-year period, the new period meets the criteria for a DETL. See examples below.

Prior CDP Levy Hearing for 941 Quarter Ending	New 941 Tax Assessed for Quarter Ended	Beginning Date for New 941 Tax Quarter	Look Back Period Starts with Beginning Date for New 941 Tax Quarter	Then subtract 2 years for Look Back Period	Did the Quarter for the Prior CDP Levy Hearing Fall within Look Back Period?	Does New 941 Tax Quarter Qualify for DETL?
12/31/2021	06/30/2022	04/01/2022	04/01/2022	04/01/2020	Yes	Yes
12/31/2022	03/31/2022	01/01/2022	01/01/2022	01/01/2020	No	No
03/31/2020	06/30/2022	04/01/2022	04/01/2022	04/01/2020	No	No

- (6) If a DETL is served, the post-levy CDP notice is sent with the taxpayer's copy of the levy. This should be done as soon as possible but no more than 10 days after the levy. Letter 1058-D, *Notice of Levy and Notice of Your Right to a Hearing* is used to provide post levy CDP rights. If using the mail to deliver the post-levy CDP notice, it should be sent to the taxpayer's last known address by certified or registered mail. Include a copy of the levy, Form 12153, Request

for a Collection Due Process or Equivalent Hearing, Pub 594, The IRS Collection Process, and Pub 1660, Collection Appeal Rights, with the letter.

Note: If the taxpayer received a pre-levy CDP notice for the period being levied, do not issue a post-levy CDP notice.

- (7) Process the post-levy DETL hearing request in the same way as other hearing requests. If a timely filed post-levy CDP hearing request is filed, the CSED is suspended.
- (8) A DETL levy may be served during a timely requested pre- or post-levy CDP hearing or judicial review of such hearing to collect employment tax liabilities (DETL tax periods) subject to the hearing. For example, a DETL levy may be served during a hearing or judicial review if collection is at risk (e.g., taxpayer's business is deteriorating or taxpayer is pyramiding).
 - If the DETL levy is to take place during the hearing, check IDRS for actions that may prohibit levy action, i.e., TC 480 or TC 971 AC 043. If there are no apparent TC codes, then contact the Appeals Team Manager of the assigned hearing officer, preferably via email, to inform Appeals that levy action will be taken. Determine whether Appeals has information that prohibits levy or may affect the decision to levy.
 - If the DETL levy is to be issued during the judicial review, contact the Counsel attorney assigned the case to advise them of the planned levy action and to determine if there is any new information that may affect the decision to levy.

5.1.9.3.15
(08-27-2021)
**Hearing Requests with
Frivolous, Delaying or
Impeding Issues**

- (1) If the taxpayer provides a frivolous basis for requesting a hearing, then that portion of the hearing request is to be treated as if the hearing request was not submitted. In addition, IRC 6702 (b) provides for a penalty of \$5,000 if any portion of a request for a hearing is based on a specified frivolous position, or reflects a desire to delay or impede the administration of federal tax laws.

Note: The penalty under IRC 6702(b) does not apply if the hearing request is a request for an Equivalent Hearing (EH). Where the taxpayer makes a hearing request on Form 12153 (or a successor form) and checks the box that states, "I would like a hearing equivalent to a CDP hearing if my CDP hearing request is too late," and the IRS receives the form outside the 30-day period, the request should be treated as a request for an EH and the penalty does not apply.

If	Then
A timely CDP Hearing request is made under IRC 6320 or 6330	Treat the request as a CDP request and the IRC 6702(b) penalty applies.
The request is untimely and (i) it contains no request for an EH if late or (ii) Form 12153 is used and the EH box is not checked	Treat the request as an untimely CDP request and the IRC 6702(b) penalty applies.

If	Then
The request is untimely and (i) it contains a request for an EH if late or (ii) Form 12153 is used and the EH box is checked	Treat the request as a request for an EH and the IRC 6702(b) penalty does not apply.

- (2) If a taxpayer files a hearing request that includes a reason that appears to be frivolous or reflects a desire to delay or impede the administration of federal tax laws, forward the request to Appeals. Note “Frivolous Issue Raised” on the Form 3210, Document Transmittal. Appeals will make the determination regarding whether the hearing request or any part of the hearing request is based on a specified frivolous position, or reflects a desire to delay or impede the administration of federal tax laws.
- A request is deemed frivolous if the sole reason for the request is based on a specified frivolous position identified by the IRS in Notice 2010-33 or its successor notice and any revenue rulings issued since the publication of the notice that identifies frivolous argument. See Exhibit 25.25.10-1, Frivolous Arguments, of IRM 25.25.10.
 - A request is deemed to reflect a desire to delay or impede the administration of federal tax laws if it only lists a reason that, while not one of the published specified frivolous positions, is a position which on its face has no basis for validity in existing law, or which has been deemed frivolous in a published opinion of the United States Tax Court or other court of competent jurisdiction.

Note: To comply with IRC 6751(b), the official from Appeals making the initial determination that the taxpayer is liable for the penalty under IRC 6702 must secure written approval from their immediate supervisor. See IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements, and IRM 8.22.9.9, IRC 6702(b) Penalty - Failure to Withdraw Frivolous or Delaying Position.

- (3) In cases in which the IRC 6702(b) penalty might apply, if a frivolous or desire to delay reason is the only issue raised, Appeals will issue a letter to the taxpayer that will give them 30 days from the date of the letter to amend the request, directing the taxpayer to either:
- Withdraw the reason and provide a valid reason based on existing law; or
 - Withdraw the entire hearing request.
- (4) The taxpayer must amend or withdraw the request in writing to avoid the \$5,000 IRC 6702(b) penalty. If the taxpayer does not take corrective action, Appeals will disregard the hearing request and return the case to the originating Collection office.
- (5) If, in addition to a frivolous or desire to delay reason, the taxpayer provides a non-frivolous issue, such as hardship or innocent spouse claims, Appeals will disregard the frivolous/desire to delay portion of the hearing request and conduct the hearing only on the legitimate issue. In cases in which the IRC 6702(b) penalty might apply, Appeals will issue a letter giving the taxpayer 30 days from the date of the letter to withdraw the frivolous or desire to delay position to avoid the \$5,000 IRC 6702(b) penalty as well as to schedule a con-

ference for the legitimate issue. After the hearing, Appeals will issue a Notice of Determination or Decision Letter addressing the legitimate issues and will include a statement that the taxpayer also raised a frivolous or desire to delay position if such position or desire to delay reason is not withdrawn.

- (6) Appeals will not make a determination regarding the assessment of the IRC 6702(b) penalty. However, it will identify when the request meets the criteria for penalty assessment. The hearing request containing a frivolous or desire to delay position will be returned to Collection when an entire hearing is disregarded or when the hearing is concluded if a legitimate issue is raised in addition to a frivolous or desire to delay position. Appeals will return the case with the following:
 - a. Form 5402, Appeals Transmittal and Case Memo - It will include a statement that Appeals has determined that the issues raised in the CDP/EH request were either a specified frivolous position identified by the IRS in Notice 2010-33 or intended to delay or impede the hearing process,
 - b. A copy of the taxpayer's frivolous CDP/EH hearing request (Form 12153),
 - c. A copy of the letter or letters Appeals issued soliciting a withdrawal of taxpayer's specified frivolous position or desire to delay position,
 - d. A copy of Appeals case history notes documenting any discussion it had with the taxpayer regarding the withdrawal request,
 - e. A copy of any written communication received from the taxpayer in response to the withdrawal solicitation, and
 - f. A copy of the notice of determination or decision letter (for cases where the taxpayer raises a legitimate issue and an un-withdrawn frivolous or desire-to-delay issue).
- (7) Upon receipt of the information from Appeals that the request meets the criteria for assessment of the \$5,000 IRC 6702(b) penalty, the collection employee should independently:
 - a. Determine the taxpayer was given an opportunity to withdraw the position and failed to do so.
 - b. Verify that the criteria for penalty assessment has been met, and
 - c. Take the necessary steps to have the penalty assessed.
- (8) To recommend assessment of the penalty, forward the IRC 6702(b) Referral Package to the Frivolous Return Program (FRP) in accordance with the procedures in IRM 25.25.10.3, Referrals to Frivolous Return Program.
- (9) IRC 6702(d) authorizes the reduction of the frivolous tax submission penalties assessed under IRC 6702 if it is determined that a reduction would promote compliance with and administration of the federal tax laws. Rev. Proc. 2012-43 provides eligibility requirements for reduction. For additional information, refer to IRM 20.1.10.12.3, IRC 6702(d) Reduction of Frivolous Submission IRC 6702 Penalties, and IRM 25.25.10.13, Reduction of the Frivolous Return Penalty IRC 6702(d).

5.1.9.4
(02-07-2014)
**Collection Appeals
Program (CAP)**

- (1) A taxpayer, or a third party whose property is subject to a collection action, may appeal the following actions under CAP:
 - a. Levy or seizure action that has been or will be taken
 - b. NFTL that will be or has been filed

- c. A filed special condition NFTL attaching taxpayer property held in the name of a third party (i.e. a nominee, alter ego, transferee, etc. NFTL)
 - d. Denials of requests to issue lien certificates, such as subordination, discharge or non-attachment as well as denials of requests to withdraw an NFTL
 - e. Rejected, proposed for modification, modified, proposed for termination or terminated installment agreements
 - f. Disallowance of taxpayer's request to return levied property under IRC 6343(d)
 - g. Disallowance of third-party property owner's claim for return of wrongfully levied property under IRC 6343(b)
- (2) A taxpayer may appeal in CAP:
- a. Levy or seizure on each asset or even the same asset previously levied if a newly discovered legal defect is the issue, or the taxpayer's circumstances have changed, or new issues have arisen. The reason for this is that each levied or to be levied asset may have different issues. For example, a different account than previously levied on may actually be the asset of the child of the taxpayer but the taxpayer's SSN is on the account. However, subsequent levies on the same asset, e.g., the same bank account within a reasonable amount of time, are not entitled to another CAP appeal unless there is a legal issue on the subsequent levy, the taxpayer's circumstances have changed, or new issues have arisen.
 - b. NFTL filed in each subsequent location.
 - c. Each rejection or termination of an installment agreement.
- (3) Third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the IRS. Once the levy proceeds are turned over, the third party must submit an administrative claim to Advisory under the procedures described in Pub. 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b). If the administrative claim is denied, the third party can request a CAP hearing about the denial.
- (4) A taxpayer who claims that the levy is "erroneous" (Refer to IRM 5.11.2.3.2, Wrongful and Erroneous Levies) is entitled to a CAP before the levy proceeds are turned over to the IRS. Once the levy proceeds are turned over, the taxpayer must make an administrative claim under 26 CFR 301.6343-3(h). If the administrative claim is denied, the taxpayer can request a CAP appeal about the denial.
- (5) If a taxpayer seeking to file a CAP appeal is also entitled to a CDP hearing, tell the taxpayer that there is a strict time frame for requesting a CDP hearing. Explain the differences between a CAP appeal and a request for a CDP hearing so the taxpayer can make an informed decision. Document the discussion in the case history. The decision to request a CDP hearing or a CAP appeal belongs to the taxpayer. A taxpayer may request both a CAP and a CDP on the same event, i.e. proposed levy. If an issue is raised and decided in a CAP appeal that concluded before the taxpayer requests a CDP hearing and the taxpayer participated meaningfully in the CAP appeal, the issue may not be raised in a CDP hearing, unless new information is presented. The determination about whether an issue raised in a CAP appeal can be raised in a CDP hearing will be made by Appeals. A CAP appeal can provide an expedited review of a specific collection action that may satisfactorily address the taxpayer-

er's concern. The CDP hearing provides for the submission of collection alternatives, further judicial review, and retained jurisdiction.

5.1.9.4.1
(08-27-2021)
Exclusions from CAP

- (1) Several collection issues have separate appeal procedures in place. When a taxpayer requests an appeal under CAP in error, advise the taxpayer of the correct appeal procedures. Examples of such requests are:
 - Pre or post assessment of Trust Fund Recovery Penalties.
 - Rejection of Offer in Compromise.
 - Penalty appeals.
 - Jeopardy levies: unless the time to appeal under IRC 7429 has expired or the jeopardy levy is not subject to IRC 7429 review and the taxpayer will not be given a CDP hearing (i.e., no hearing request was submitted within 30 days of the notice granting CDP rights or a prior CDP hearing was held for the liability at issue) For example, CAP may be available for a jeopardy levy issued during an IA, OIC, or on the date of a summons. Refer to IRM 5.11.3, Jeopardy Levy without a Jeopardy Assessment.
 - Audit reconsideration.
 - Claims for refund or abatement.
 - Original requests for return of levied property.
 - Actions under the control of a court of competent jurisdiction.
- (2) CAP cannot be used to determine a taxpayer's liability including reopening examinations or claims for refund. Examination reconsiderations and claims are appealable under their own appeals procedures. Refer to IRM 5.1.15.4.6.4, Appeal Rights on Reconsiderations.
- (3) Actions under control of the Department of Justice are excluded from CAP. Refer to IRM 5.17.4.2.1, General Procedures, (4) and (5).
- (4) Cases on taxpayers under the control of Criminal Investigation (CI) where CI concurs with collection activity may be reviewed under a CAP. Follow CAP procedures. Appeals will generally delay a CAP hearing during the pendency of criminal investigation and proceedings, unless the determination is made consistent with Policy Statement P-4-26 that the CAP hearing will not imperil prosecution.
- (5) CAP cannot be used to address issues not within the scope of Internal Revenue laws, i.e., moral, religious, solely frivolous requests, or requests that reflect a desire to delay or impede the administration of federal tax laws.
- (6) CAP cannot be used to address Collection's decision not to release a lien. Refer to 26 CFR 301.6326-1 (f) and IRM 5.12.3.9, Erroneously Filed Notice of Federal Tax Lien.
- (7) Refer taxpayers to the Taxpayer Advocate Service (TAS) (Refer to IRM Part 13, Taxpayer Advocate Service) when the contact meets TAS criteria (Refer to IRM 13.1.7, TAS Case Criteria) and you can't resolve the taxpayer's issue the same day. The definition of "same day" is within 24 hours. "Same day" cases include cases you can completely resolve within 24 hours as well as cases in which you have taken steps within 24 hours to begin resolving the taxpayer's issue. Do not refer "same day" cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria. Refer to IRM 13.1.7.6, Same-Day Resolution by Operations. When you refer cases to TAS, use Form 911, Request for Taxpayer Advocate Service Assistance (and Application for

Taxpayer Assistance Order), and forward to TAS. While TAS is attempting to work with the taxpayer to resolve the tax problem, action to collect the tax, such as filing of NFTL or levy, while not prohibited, will generally be suspended. If the RO believes such action is necessary, e.g., the taxpayer is dissipating assets; TAS should be contacted and advised of Collection's plans in advance.

5.1.9.4.2
(08-30-2018)
**Request for a CAP
Appeal**

- (1) If the taxpayer or third-party requests a CAP appeal, verbally or in writing, the taxpayer or third-party must first discuss the case with the group manager. The group manager or designee must reply to the request for a CAP appeal conference in a timely manner not to exceed two workdays. The discussion with the group manager on proposed termination, proposed modification, modified, terminated or rejected IAs is not mandatory due to the statutory right to appeal these actions. These appeal requests can be forwarded directly to Appeals without prior group manager conference. However, holding a group manager conference for these types of cases is encouraged.
- (2) A taxpayer may submit Form 9423 prior to the group manager conference. Treat this as a request for a CAP appeal conference and contact the taxpayer within two workdays. The instructions on the Form 9423 state that if the taxpayer previously requested a conference and was not contacted, the taxpayer can contact Collection again or submit Form 9423. If the taxpayer chooses to submit Form 9423, the date of the taxpayer's request for a conference and information reflecting they were not contacted by the group manager should be noted in Block 15. The instructions further state, "The Form 9423 should be received or postmarked within four (4) business days of your request for a conference as collection action may resume."
- (3) Once a seizure action is taken, the taxpayer has 10 business days to appeal under CAP from the date the Notice of Seizure is provided to the taxpayer, or left at their usual abode or place of business. Publication 1660, Collection Appeal Rights, must be included with the Notice of Seizure. The 10 business day limitation does not apply to other actions appealable under CAP.
- (4) Other than appeals relating to seizures which must be made in 10 business days as discussed above and installment agreement appeals discussed in paragraph (7) below, **there is no deadline for requesting a CAP appeal.** However, a delay in requesting an appeal may in certain circumstances result in the taxpayer not being able to appeal the issue.

Example: If the taxpayer does not appeal a levy until after the IRS receives the levy payments, the taxpayer cannot appeal the levy, but instead would need to file an administrative claim seeking return of the levied proceeds. If the IRS denies the claim, the taxpayer could appeal the claim denial.

- (5) If agreement is not reached at the manager conference, advise the taxpayer or third-party that they can have the issue addressed by Appeals by filing a request in writing. Advise the taxpayer to use Form 9423, Collection Appeal Request. If the taxpayer intends to submit a Form 9423, the taxpayer needs to let the manager or RO know within two business days of the conference with the manager or collection action may resume (except for appeals related to IAs). If the taxpayer mails the Form 9423, it must be postmarked within three business days after the date of the conference with the group manager to avoid collection action. Due to the short time frame, taxpayers may want to

submit the Form 9423 at the conference, via fax or electronically and should be advised accordingly. If the taxpayer submitted the Form 9423 prior to the conference, the taxpayer can request that the same Form 9423 be used to submit the case to Appeals. If the issue is not resolved and the taxpayer submits a request to go to Appeals, forward the request to Appeals within 2 business days.

Note: When the taxpayer is appealing a levy action, it may be appropriate to contact the levy source to ask them to hold the funds until after the decision regarding the levy is made in Appeals, especially in the case of a levy on a retirement account because funds will not be able to be put back into the account and the levy may cause an income tax consequence to the taxpayer.

- (6) While the stay of collection is no longer required if the taxpayer does not submit a Form 9423 postmarked within three business days after the conference, taxpayers are still entitled to a CAP appeal if their Form 9423 (or other written request) is received in a reasonable time after the manager conference, e.g., ten business days. Requests that come in after the time frame may be the result of continuing collection action and may qualify as a new CAP request if new issues are raised.
- (7) For IA appeals, the taxpayer has 30 days to appeal. During that time and during a timely requested appeal, levy action is prohibited by statute.

Note: Levy action is generally suspended for an additional 15 days to allow for mailing and receipt of the request. See IRM 5.11.1.4.8, Pending & Active Installment Agreements, IRM 5.14.1.5, Levy Restrictions and Installment Agreements, IRM 5.14.9.7, Independent Administrative Review after Recommended Rejection of Installment Agreement Requests, and IRM 5.14.11.4, Defaults and Terminations: IDRS Monitored Agreements, for additional information.

- a. For rejected IAs — The taxpayer has 30 days from the date of the letter rejecting the proposed IA to appeal.
- b. For modified/proposed modification of an installment agreement - The taxpayer has 30 days from the date of the proposed modification of the installment agreement to submit an appeal. The taxpayer may also appeal prior to the expiration of the 30 day period commencing the day after the modification is to take effect.
- c. For defaulted/proposed termination of an IA — The taxpayer has 30 days to request an appeal after termination of an IA is proposed. Unless the taxpayer appeals within the 30 day period or cures the default, the IA will terminate.
- d. For terminated IAs — The taxpayer has 30 days to request an appeal after an IA is terminated. If a taxpayer appeals prior to termination under (c) above, the taxpayer may not appeal the decision again once the termination takes effect.

5.1.9.4.3
(10-19-2023)
Sending CAP Request to Appeals

- (1) Generally, a copy of the entire case file is not necessary and is burdensome. At a minimum, the Appeals file should include:

- a. Form 9423, Collection Appeal Request, and any taxpayer correspondence which accompanied the CAP request.
- b. Copies of the relevant levy, lien, and/or seizure documents.
- c. Form 433A or Form 433B.
- d. Any other relevant documents, such as copies of deeds, mortgages, counsel opinions, copies of appropriate financial documentation, and/or taxpayer correspondence.
- e. Form 15044, Transmittal of CAP Hearing Request. The form includes taxpayer identifying information, POA identifying information (if applicable) the reason for the CAP appeal, list of documents transmitted, date of manager's conference, when required, your name and contact information, and lists the tax periods included in the CAP appeal.

Note: When using the ICS CAP application to document receipt and transfer of the CAP request, the system will generate Form 15044 when the manager approves the transfer of the CAP request to Appeals.

- f. In addition, any narrative statement included must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history without any further discussion regarding the strengths and weaknesses of the taxpayer's appeal. The manager must ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. Refer to IRM 5.1.9.5, Communications with Appeals.

Note: Transmittals that include prohibited ex parte communications need to be shared with the taxpayer at the time the case is sent to Appeals.

Note: Remember, Appeals can more quickly resolve the CAP case when you provide all of the necessary information to resolve the case with the initial transmittal of the case to Appeals. A good guideline is to be sure to provide all of the information you would want to have for review if you were making the Appeals decision on the CAP.

- (2) The CAP appeal and associated documents should be scanned and named using the following naming convention: (FC = Field Collection; NF = Non-Field) (Four Character Name Control) (Last Four Digits of TIN) Hearing Type:

Example: FC SHAS XXXX CAPLV

Note: If more than one type of hearing is selected, the main issue should be entered on the naming convention (e.g., CAPLV) and the Form 15044, Transmittal of Collection Appeals Program (CAP) Hearing Request, should document **all** the hearing types. Only one Form 15044 and supporting documents are necessary.

- (3) Each new CAP receipt is uploaded and sent to Appeals through the *Electronic Case Receipts (ECR) page* intake site. A *Form 15044*, Transmittal of Collection Appeals Program (CAP) Hearing Request needs to be completed and included with the CAP appeal.

Note: On the MFT and Tax Period fields on the ECR page, enter "See attached Form 15044".

- (4) All Appeals offices have access to the Integrated Data Retrieval System (IDRS) and Integrated Collection System (ICS). The Appeals technical employee can access the ICS case file that includes case history, information on account transactions and the manager's comments regarding the conference. Collection no longer needs to provide paper copies of the following:

- a. ICS history
- b. TXMODs
- c. Power of attorney information (IDRS cc CFINK)

Note: If the current information is not on IDRS, provide a copy of the Form 2848.

- d. Installment agreement details (IDRS cc IADIS) unless the current IA information is not on IDRS

- (5) Appeals may contact the revenue officer or group manager to seek clarification of an illegible or unclear statement in the file, to question them about procedural matters, or to obtain additional information available to the collection employee which is needed by Appeals to adequately consider the issues raised by the taxpayer.

Note: Communications between Appeals and originating function employees are limited to administrative, ministerial, and procedural matters and the merits of the case cannot be discussed. Refer to IRM 5.1.9.5, Communication with Appeals.

- (6) Send to Appeals only those cases that meet CAP criteria. Appeals will return CAP cases as a premature referral, if:

- a. Taxpayer appealed before entitlement to a CAP hearing
- b. Taxpayer or representative did not have the mandatory meeting with the manager

Exception: installment agreement CAP requests.

- c. Request is for an excluded issue

Note: Refer to IRM 5.1.9.4.1, Exclusions from CAP.

- d. CAP appeal is not timely

5.1.9.4.4 (10-19-2023) CAP Process

- (1) The Appeals organization tries to resolve CAP cases within five business days of the receipt of the case by the appeals officer unless there are case complexities that require more time for quality case consideration. The more complex cases should normally be resolved within 15 business days. Appeals will attempt to hold a conference with the taxpayer within two days of receipt of the case. However, if the taxpayer requests a conference delay, and it is warranted, then a reasonable delay will be allowed. Usually, such a delay will not exceed five business days. If the taxpayer does not elect a conference within the time limits given, Appeals will return the case to Collection as a premature referral.

Note: Appeals conducts CAP appeals according to Appeal guidelines and procedures. See IRM 8.24.1, Collection Appeals Program (CAP).

- (2) The short time frames have been set to give taxpayers an almost immediate decision on lien issues, levies, seizures, and rejection or termination of IAs. It also helps to ensure that taxpayers do not appeal solely to delay collection.
- (3) 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, in accordance with the ex parte requirements. To the extent the revenue officer is expected to orally comment on the accuracy of the new information or the relative importance of the information to Appeals' decision, the taxpayer/representative must be given an opportunity to participate in any discussions with the revenue officer. If comments on the information are in writing, the comments should be sent simultaneously to Appeals and the taxpayer.
- (4) When levy action is being appealed, further levy action is generally suspended. However, levy action can be taken if it is determined to be appropriate in the situation. Levy action may be appropriate if:
 - Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
 - Taxpayer raises only frivolous issues;
 - Taxpayer is seeking solely to delay the collection process.
- (5) The group manager must concur with the planned action during the appeal. Prior to initiating levy action, check with Appeals to determine whether they have new information that may prohibit levy or may affect the decision.
- (6) Levy action during a CAP appeal will be suspended when required by law, for example, when the 30-day time period for rejection or termination of an IA is running or during the appeal.
- (7) When the filing of the NFTL is the subject of the appeal, further NFTL action is generally withheld unless appropriate to protect the government's interests. The group manager must concur with the planned action during the appeal. Prior to taking further NFTL action, check with Appeals to determine if they have any new information from the taxpayer that may affect the decision.
- (8) Appeals will review the case based on law, regulations, policy, and procedures (National and local), considering all the facts and circumstances. Local procedures will only be considered if they are written and in accordance with the IRM.
- (9) Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse Collection's action if evaluation of the taxpayer's history and current facts and circumstances indicate that the proposed or taken action is inappropriate.
- (10) Appeals will inform both Collection and the taxpayer of their decision as soon as possible within the five business day time frame. Appeals will contact Collection immediately upon making a decision. A copy of the closing letter together with the Form 5402, Appeals Case Memo (if prepared) will be sent via encrypted email or EEFAX to the revenue officer.
- (11) If Appeals has sustained the collection action, enforcement action may resume upon receipt of the decision, unless otherwise prohibited. For example, if the 30-day time period after rejection of an IA is still running, levy action is prohibited during that time. Otherwise, the decision made by Appeals will be

implemented. Appeals will give the closing letter to the taxpayer with a copy to Collection. The closing letter should clearly outline any agreement reached with the taxpayer. In cases where a Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), has been filed by the taxpayer, Appeals will give a copy of the closing letter to the controlling Taxpayer Advocate Office.

- (12) Decisions by Appeals are binding on the taxpayer and Collection. Collection will take the actions directed by the Appeals decision. However, if the taxpayer defaults on the decision directed by Appeals, Collection is released from the terms of the agreement. The taxpayer may not appeal the same issue under CAP once Appeals has decided the issue on the same factual basis, e.g., a subsequent levy on the same asset.
- (13) Should taxpayers withhold pertinent information or frame a false representation, any agreement made on behalf of the IRS by Appeals will be voidable. Before Collection declares an agreement void under this provision, the Collection group manager will confer with Appeals. Only if Appeals concurs with Collection's determination, may enforcement action resume immediately.
- (14) If there is concern or disagreement with respect to a decision reached by Appeals, refer to IRM 5.1.9.5.4, Disagreement with Appeals Decisions.

5.1.9.5
(02-07-2014)
**Communications with
Appeals**

- (1) To ensure an independent Appeals function within the Internal Revenue Service, communications between Appeals employees and originating function employees are generally prohibited to avoid the appearance of compromising the independence of appeals officers and other Appeals employees. See Rev. Proc. 2012-18, 2012-1 C.B. 455, Ex Parte Communications between appeals officers and Other Internal Revenue Service Employees.
- (2) Ex parte is a term used in legal proceedings to describe a one-sided or partisan point of view received on behalf of or from one side or party only. In this context ex parte communications are communications which take place between Appeals employees and originating function employees, including ROs, without giving the taxpayers/representatives an opportunity to participate in the communications.
- (3) Communications between appeals officers and other Internal Revenue Service employees are generally prohibited ex parte communications except as provided in Rev. Proc. 2012-18. The prohibition applies to any form of communication, oral or written.
- (4) This prohibition does not apply to database inquiries if they involve neither dialogue nor interaction with Appeals. For example, there is no prohibition for a collection employee to check the status of a case in Appeals on the Appeals Centralized Database System (ACDS).

Note: Not all database inquiries are exempt because some databases, such as ICS, are used to maintain a record of case activities. See IRM 5.1.9.5.3, Administrative File.

- (5) The prohibition does not apply to Fast Track Mediation because Appeals serves as a mediator but does not assume jurisdiction of the case.
- (6) It is the responsibility of all IRS employees to ensure compliance with the ex parte communication rules. Collection employees need to make every effort to

promptly terminate communications with Appeals if the communication is not permitted by the ex parte communication rules. When contact with Appeals is needed, clearly document the purpose and results of the contact. Consider using email when appropriate to limit discussion.

5.1.9.5.1
(08-30-2018)
**Permitted Ex Parte
Communications**

- (1) Not all ex parte communications are prohibited. Appeals or the originating function may ask questions or provide information that involve ministerial, administrative, or procedural matters and do not address the substance of the issues.
- (2) Communications regarding ministerial, administrative, or procedural matters include, but are not limited to, the following:

- Communications about whether certain information was requested and whether it was received.
- Providing information received from the taxpayer.

Example: The taxpayer files a refund return with the RO. The RO provides a copy of the return to the AO working the CDP case.

- Communications to clarify the content of illegible documents or writings.
- Communications about case controls and transactions on the IRS management information systems.
- Communications regarding receipt of a case or the status of the case that Appeals is reviewing, such as whether the case or an issue in the case has been resolved or when a case is expected to be closed.

Note: This does not include any discussion of the terms of the resolution prior to the case being closed. Permitted communications concerning the status of the case should be limited to a direct, narrow exchange of information without any surrounding discussion.

Note: Field Collection Group Managers can access the Appeals Centralized Database System (ACDS) to determine the status of cases in Appeals.

- Providing information regarding planned collection actions.

Example: An RO contacts the appeals officer and advises them the next planned collection action on this case is levy action of tax years that were previously heard and sustained in Appeals and inquires if the taxpayer has a pending IA or OIC with respect to the current years under Appeals jurisdiction. In this situation, Collection is providing information regarding planned collection actions and seeking to verify compliance with legal and administrative requirements. Communications seeking to verify compliance with legal and administrative requirements in this situation would be considered ministerial, administrative or procedural inquiries. The appeals officer's response to the RO is not a prohibited ex parte communication.

- Communications in connection with a CDP hearing to verify compliance with legal or administrative requirements and communications with respect to verification of assets/liabilities involving a collection alternative during a CDP hearing.

(3) See section 2.03(2)(a) of Revenue Procedure 2012-18 for examples of permissible communications that are considered ministerial, administrative, or procedural.

5.1.9.5.2
(08-27-2021)
**Prohibited
Communications**

- (1) A general discussion of the strengths and weaknesses of issues and positions should not be held, unless the taxpayer/representative is provided with an opportunity to participate in the discussion.
- (2) Prohibited ex parte communications include:
- Discussions about the accuracy of the facts presented by the taxpayer/representative and the relative importance of the facts to the determination.
 - Discussions of the originating function's perception of the demeanor or credibility of the taxpayer/representative.
 - Discussions of the originating function's views concerning the level of cooperation (or lack thereof) of the taxpayer/representative during the originating function's consideration of the case.
 - Discussions regarding the originating function's views concerning the strengths and weaknesses of the case or the parties' positions in the case.
 - Communications from the originating function to advocate for a particular result or to object to a potential resolution of the case or an issue in the case.
- (3) If a questionable communication is encountered, notify your immediate manager. The manager will review the issue and, if appropriate, will contact the Appeals manager regarding the potential ex parte violation. When contacting the Appeals manager, only the specific details of the questionable communication will be addressed. Both Appeals and Collection are responsible to ensure they do not initiate a prohibited ex parte communication. Appeals is responsible for taking the necessary steps to cure a prohibited ex parte communication. Refer to Revenue Procedure 2012-18, Section 2.10, Remedies Available to Taxpayers, and IRM 8.1.10.6, Curing Ex Parte Communication Breaches.

5.1.9.5.2.1
(08-30-2018)
**Opportunity to
Participate**

- (1) Communications between Collection and Appeals involving a discussion of substantive issues are not considered ex parte communications IF the taxpayer/representative is given an opportunity to participate in the communications.
- a. Oral Communication – The phrase “opportunity to participate” means that the taxpayer/representative will be given a reasonable opportunity to attend a meeting or be a participant in a conference call between Appeals and the originating function when the strengths and weaknesses of the facts, issues, or positions in the taxpayer's case are discussed. If Appeals needs or agrees to an oral conference with the originating function, Appeals will invite the taxpayer/representative to participate. If the taxpayer/representative is not able to participate at the scheduled time, reasonable accommodations will be made to reschedule the discus-

sion. This does not mean that Appeals will delay scheduling a meeting for a protracted period of time to accommodate the taxpayer/representative. Facts and circumstances will govern what constitutes a reasonable delay. If the taxpayer/representative declines to participate or seeks to delay the meeting/conference call beyond a reasonable time, Appeals can proceed with the meeting or discussion. Refer to Revenue Procedure 2012-18, Section 2.01(3), Opportunity to Participate, and IRM 8.1.10.5, Opportunity to Participate.

- b. Written communications – A taxpayer/representative is considered to have been given an “opportunity to participate” with respect to a written communication that is received by Appeals if the taxpayer/representative is furnished a copy of the written communication and given a chance to respond to it either orally or in writing. Refer to Revenue Procedure 2012-18, Section 2.01(3)(b), Written communications. If Collection submits a written communication addressing substantive issues to Appeals, Collection must concurrently provide the same to the taxpayer/representative. See below for further discussion and examples.
- (2) The administrative appeals file transmitted to Appeals should be complete and sufficient for Appeals to consider the issue. However, after a case has been sent to Appeals, there may be rare instances where Collection will secure significant new information that needs to be provided to Appeals to allow Appeals to fully evaluate an issue. In these rare instances, supplemental information can be provided to Appeals in writing as long as Collection concurrently provides the same information to the taxpayer/representative. Appeals will give the taxpayer/representative the chance to respond to the supplemental information.
 - (3) When supplemental information is provided to Appeals, the group manager will prepare a letter to the taxpayer/representative that identifies the new information and explains that the information is being provided to Appeals. Include a copy of the written communication to Appeals and any documents being sent to Appeals. Document issuance of the letter in the ICS history (AOIC remarks if additional information is being transmitted by a Centralized Offer in Compromise (COIC) offer examiner) and include a copy of the letter with the supplemental information and any documentation sent to Appeals.

Example: After transmitting a CDP to Appeals, the revenue officer obtains approval and files a special condition Notice of Federal Tax Lien (NFTL). The revenue officer seeks group manager concurrence that this is significant new information needed by Appeals. The group manager concurs. The manager issues a letter to the taxpayer/representative explaining what information will be shared with Appeals regarding the special condition. This letter is sent along with the taxpayer’s Letter 3886, “Notice to Taxpayer of [special condition] Federal Tax Lien Filing” a copy of the special condition NFTL and a copy of the transmittal memo to Appeals. The manager includes a copy of the letter sent to the taxpayer/representative with the supplemental information sent to Appeals.

5.1.9.5.3
(08-30-2018)
Administrative File

- (1) The administrative file transmitted to Appeals is not an ex parte communication since it sets forth the boundaries of the dispute between the taxpayer and the IRS and forms the basis for Appeals to assume jurisdiction.

- (2) Any transmittal memorandum or any similar document used to transmit the administrative file (transmittal) should not include statements or comments intended to influence Appeals' decision-making process.
 - Summary statements included on a transmittal must be limited to a neutral list of documents and neutral statements regarding actions taken and documented in the case history without any further discussion regarding the strengths and weaknesses of the taxpayer's appeal.
 - The manager needs to ensure this requirement is met and that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. This eliminates the need to send a copy of the transmittal to the taxpayer.
 - A transmittal that includes prohibited ex parte communications needs to be shared with the taxpayer at the time the case is sent to Appeals.
- (3) If a rebuttal to the taxpayer's protest is prepared by the originating function, it must be shared with the taxpayer/representative by the originating function at the time that it is sent to Appeals.
- (4) Employees are required to maintain and document the administrative file according to established procedures. Statements or documents that are pertinent to the consideration of the issues and included in the administrative file according to procedure are permitted even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file. Notes, memoranda, or other documents not in accordance with procedures should not be included in the administrative file if the reason for including this material is to attempt to influence Appeals' decision-making process.
- (5) When a taxpayer submits a request for a CDP, EH or CAP appeal, the request for Appeals' consideration does not mean collection actions need to stop with respect to the tax periods in Appeals, other tax periods not in Appeals, or both. As such, statements or documents contemporaneously added to the administrative file by Collection after the taxpayer requests Appeals' review do not violate the ex parte communication rules if they are made to resolve the tax debt(s) or further evaluate the taxpayer's financial condition and are in accordance with established procedures. It is permissible to contemporaneously include statements or documents that are pertinent to Collection's consideration of the case in the administrative file even if the substance of those comments, statements, or documents would be prohibited if they were communicated to Appeals separate and apart from the administrative file.

Example: A revenue officer received a Form 12153 requesting a CDP hearing under IRC 6330. The taxpayer attached a letter requesting an installment payment agreement for \$101/month. The revenue officer continued to work with the taxpayer by securing and evaluating financial information and contemporaneously documenting their case history. The revenue officer and the taxpayer were not able to agree on a monthly payment amount, so the CDP hearing request was sent to Appeals. There were no ex parte communication violations in this example because the revenue officer's case history entries, even the entries made after receipt of the Form 12153 regarding their evaluation of the taxpayer's financial information and installment payment agreement proposal, were made contemporaneously and were pertinent to Collection's consideration of the case, so they were properly included as part of the administrative file.

5.1.9.5.4
(08-30-2018)
**Disagreement with
Appeals Decisions**

- (1) If there is concern or disagreement with respect to an Appeals decision in a particular CAP or CDP case, the group manager may contact the ATM to address the concern and resolve the disagreement.
- (2) The Appeals decision will be implemented even as the decision is elevated for review. Elevating the issue can help ensure similar concerns do not arise with future decisions.
- (3) If resolution cannot be reached informally at the local level, then a formal process is available to elevate concerns and issues to Appeals. Prepare a written dissent within 90 days of receiving the Appeals decision.
- (4) A written dissent needs to:
 - a. Clearly outline the nature of the dissent and the supporting rationale.
 - b. Include specific facts that should have been considered or given more weight, if Collection believes Appeals did not properly consider the facts.
 - c. Provide the applicable law, policy, or procedure, e.g., Code Section, Regulation, Revenue Ruling, IRM policy or procedure that should have been considered or accorded different weight.

Note: Formal dissents by Collection will generally not be appropriate in an Appeals case where hazards of litigation were considered in the settlement of the case.

- (5) Field Collection will forward written dissents through the SB/SE territory manager and Collection area director or AI area manager to the director, Collection Appeals via the “*AP Formal Dissents” centralized mailbox. The Appeals area director will provide a written response to the Collection area director or the AI area manager generally within 90 days of receipt of the written dissent.

Note: If Collection asks Appeals to consider reopening a CAP appeal, the objection and dissenting memorandum are ex parte communications and a copy needs to be provided to the taxpayer if it is determined that the case will be reopened. If Collection is not asking Appeals to reopen the CAP appeal or if Collection asks Appeals to consider reopening the CAP appeal but it is not reopened, the objection and dissenting memorandum are not ex parte communications since they cannot result in a change in the Appeals decision.

- (6) Once Collection receives the response, they may request a post-Appeals conference by contacting the Appeals Area Director within 15 days.
- (7) In certain unique situations a delay in implementing the CAP appeals decision may be warranted to allow Appeals an opportunity to consider whether Appeals will reopen its decision. If implementation of the appeals decision is being delayed, alert the ATM via email within two business days of the date the decision was sent by Appeals via fax and received in Collection. Within five business days of receiving the decision, secure approval of the Area Director and submit a written dissent to Appeals and provide a copy to the taxpayer.

Note: This process is not applicable to CDP hearings.

- (8) Appeals will reopen a CAP decision ONLY if the decision involved:
 - a. Fraud,

- b. Malfeasance,
 - c. Concealment,
 - d. Misrepresentation of material fact,
 - e. An important mistake in mathematical calculation, or
 - f. Such other circumstances that indicates that failure to take such action would be a serious administrative omission.
- (9) If Collection requests Appeals to reopen the CAP decision, Appeals will notify Collection of its decision within five business days of the receipt of their request in Appeals. If Appeals does not agree to reopen the CAP decision, Collection will immediately implement Appeals decision.
- (10) Concerns regarding Appeals decisions not satisfactorily addressed through this process need to be brought to Headquarters attention. They should be forwarded to the Program Manager, Campus Policy. These procedures do not preclude any activities already in place involving Advisory Boards or the exchange of information between Collection analysts and Appeals analysts.

