



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.22.4

MAY 12, 2022

EFFECTIVE DATE

(05-12-2022)

PURPOSE

- (1) This transmits revised IRM 8.22.4, Collection Due Process, Collection Due Process Appeals Program. This revision incorporates from Appeals Interim Guidance memorandum AP-08-0520-0005, Reissuance of Interim Guidance for Paperless Collection Due Process (CDP) Case Work Received from Automated Collection System Support (ACSS), and includes guidance not originally intended to be incorporated into the IRM.

MATERIAL CHANGES

- (1) See the table below for material changes in this IRM:

| | Title and Brief Description |
|---|--|
| 8.22.4.1, Program Scope and Objectives | Revised this section to agree with current Servicewide Policy, Directives and Electronic Research (SPDER) guidelines. |
| 8.22.4.2.3, Statute Responsibility in CDP | At (1) and (3), rephrased to clarify that Appeals has no responsibility to protect a collection statute from expiration, or to prepare Form 3999, Statute Expiration Report, when a collection statute expires. |
| 8.22.4.2.5, Attach Certain Documents to ACDS | At (3), added: Message files from taxpayer digital communications (TDC). |
| 8.22.4.2.6, Destruction of Paper Documents | Incorporates from Appeals Interim Guidance memorandum AP-08-0520-0005, Reissuance of Interim Guidance for Paperless Collection Due Process (CDP) Case Work Received from Automated Collection System Support (ACSS). New section added discussing when to destroy a paper document after having scanned and digitally attached the document to ACDS. |
| 8.22.4.2.7, Retain Related Paper Files When closing | Incorporates from Appeals Interim Guidance memorandum AP-08-0520-0005, Reissuance of Interim Guidance for Paperless Collection Due Process (CDP) Case Work Received from Automated Collection System Support (ACSS). New section added to address the retention of paper case files. |
| 8.22.4.3, Equivalent Hearing (EH) | At (4), clarified that levy is generally suspended during an EH, as a matter of policy. |

| | Title and Brief Description |
|---|---|
| 8.22.4.4, Collection's CDP Procedures | At (13), removed language referring to "appellate court." |
| Exhibit 8.22.4-1, Delegation Order Appeals-193-1 | Revised to correct title of Form 12257 and Director title. |
| Exhibit 8.22.4-2, CDP/EH Forms, Letters and Other Documents | <ul style="list-style-type: none"> • Clarified Letter 3846 is used when the taxpayer raises frivolous and non-frivolous issues. • Clarified Letter 4380 is used when the taxpayer raises only frivolous issues. |
| Exhibit 8.22.4-3, Common Terms and Acronyms Used in Collection Due Process | Revised to include BAPCPA, The Bankruptcy Abuse Prevention and Consumer Protection Act (2005), and TDC, Taxpayer Digital Communications. |
| Exhibit 8.22.4-4, CDP Naming Conventions for Electronic Attachments to ACDS | Revised to include file name for the initial file upload from ACSS/Collection. |
| Throughout | Revised to: <ul style="list-style-type: none"> • Update citations and references. • Generally incorporate plain language writing, active voice, grammar and organization. |

EFFECT ON OTHER DOCUMENTS

IRM 8.22.4, dated August 26, 2020, is superseded. This revision incorporates from Appeals Interim Guidance memorandum AP-08-0520-0005, Reissuance of Interim Guidance for Paperless Collection Due Process (CDP) Case Work Received from Automated Collection System Support (ACSS), and includes guidance not originally intended to be incorporated into the IRM.

AUDIENCE

Appeals Officers, Appeals Account Resolution Specialists and Appeals Team Managers

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Director, Case and Operations Support

8.22.4

Collection Due Process Appeals Program

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- 8.22.4.1
(05-12-2022)
Program Scope and Objectives
- (1) Purpose: This Internal Revenue Manual (IRM) section provides an overview of the Collection Due Process (CDP) program to Appeals Officers (AOs) and other Appeals employees working CDP cases and related matters. CDP cases are received from Automated Collection System Support (ACSS) sites located in Wage & Investment (W&I) and Small Business/Self-Employed (SB/SE) divisions, as well as SB/SE Field Collection.
 - (2) Audience: The primary users of this IRM are Appeals Officers (AOs) and Appeals Team Managers (ATMs) handling CDP, Equivalent Hearing (EH), Retained Jurisdiction (RJ) and CDP Timeliness Determination (CDPTD) cases.
 - (3) Policy Owner: Policy, Planning, Quality and Analysis is under the Director, Case and Operations Support.
 - (4) Program Owner: Appeals Policy is the program office responsible for providing technical and procedural guidance to the Appeals organization and is under the Director, Policy, Planning, Quality and Analysis (PPQ&A).
 - (5) Contact Information: Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.
- 8.22.4.1.1
(08-26-2020)
Background
- (1) The IRS Restructuring and Reform Act of 1998 (RRA 98) created Collection Due Process (CDP) appeal rights and, with them, the ability for taxpayers to contest their liability under certain circumstances.
- 8.22.4.1.2
(08-26-2020)
Authority
- (1) Internal Revenue Code (IRC) sections 6320 and 6330 are the primary sources of authority, in addition to applicable IRM sections. Further, the Taxpayer Bill of Rights, IRC 7803(a)(3), applies to Appeals employees' interactions with taxpayers.
- 8.22.4.1.3
(08-26-2020)
Responsibilities
- (1) The Policy analyst shown as the originator on the Product Catalog page is the assigned author of this IRM.
- 8.22.4.1.4
(08-26-2020)
Program Reports
- (1) PPQ&A provides trend and data analyses and detailed summary reports for Appeals.
- 8.22.4.1.5
(08-26-2020)
Terms and Acronyms
- (1) See IRM Exhibit 8.22.4-3, Common Terms and Acronyms Used in Collection Due Process, for such common terms and their definitions.
- 8.22.4.2
(11-05-2013)
CDP Process Overview
- (1) This section provides an overview of the CDP process and Appeals' role and responsibilities within the process.
- 8.22.4.2.1
(05-12-2022)
Appeals Policy
- (1) Appeals' mission is to resolve tax controversies on a basis which is fair and impartial to the Government and the taxpayer. To accomplish this mission in CDP cases, the Appeals hearing officer is responsible for making a determination based on the facts and the law known to Appeals during the time of the hearing.

- (2) The Tax Court's standard of review for non-liability CDP determinations is for abuse of discretion. The Tax Court considers:
- Whether Appeals' factual and legal conclusions reached at a CDP hearing are reasonable, not whether they are best possible or indisputable
 - The reasonableness of Appeals' ultimate decision
- In *Dalton v. Commissioner*, 682 F.3d 149, the First Circuit held that a deferential standard of review is appropriate, noting the record usually available to the Tax Court in CDP cases.
- (3) CDP files sent to Appeals should contain sufficient documentation for Appeals to make a determination. Due to statutory requirements, if a CDP file lacks documentation, it cannot be returned to Collection as a premature referral. Instead, the hearing officer must decide whether to:
- Request relevant information from the taxpayer, or
 - Issue an Appeals Referral Investigation (ARI) for Collection to secure or verify information
- (4) Part 5 Collection Process IRM contains the primary administrative policies and procedures for considering alternatives to collection and case resolutions such as:
- Offer in Compromise - IRM 5.8
 - Federal Tax Liens - IRM 5.12
 - Installment Agreements - IRM 5.14
 - Financial Analysis - IRM 5.15
 - Currently Not Collectible - IRM 5.16
 - Liability Collection, Balance Due - IRM 5.19.1 for Automated Collection Service (ACS) cases.
- (5) Appeals researches Part 5, in general, to:
- Verify whether administrative procedures were followed in issuing a Notice of Intent to Levy and/or filing a Notice of Federal Tax Lien (NFTL)
 - Review Collection case actions and decisions, taking into account any special circumstances
 - Evaluate any offers of collection alternatives by the taxpayer
- (6) References in IRM Part 5 to take or propose any enforcement or investigative activity do not apply to Appeals employees.

8.22.4.2.2
(08-26-2020)
**Summary of CDP
Process**

- (1) Taxpayers may request a CDP hearing upon receipt of a:
- Letter 3172, Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320
 - Letter 11, Final Notice - Notice of Levy and Notice of Your Right to a Hearing
 - ACS LT 73
 - ACS LT 75
 - Letter 1058, Final Notice Reply within 30 Days
 - Letter 1058 (BR), Final Notice Reply within 30 Days (Braille Version)
 - Letter 1058 (SP), Final Notice Reply within 30 Days - Spanish
 - Letter 1058-A, Notice of Intent to Levy and Notice of Your Right to a Hearing for Joint Filers

- Letter 1058-A (SP), Notice of Intent to Levy and Notice of Your Right to a Hearing for Joint Filers (Spanish)
 - Letter 1058-B, Final Notice Reply Within 30 Days - Branded Prescription Drugs
 - Letter 1058-D, Post Levy Collection Due Process Notice
 - Letter 1058-D (SP), Post Levy Collection Due Process Notice (Spanish)
 - Letter 1058-F, Post Levy Federal Contractor Collection Due Process
 - Letter 1058-F (SP), Post Levy Federal Contractor Collection Due Process (Spanish)
 - Letter 1058-I, Final Notice Reply within 30 Days - Insurance Provider Fee
 - CP 77, 90, 92, 242 and 297
 - Letter 2439, Notice of Jeopardy Levy and Right of Appeal
- (2) IRC 6320 requires the IRS to notify the taxpayer of the filing of a Notice of Federal Tax Lien (NFTL) and the right to request a CDP lien hearing within 5 business days after the first NFTL for a tax period is filed.
- (3) IRC 6330 requires the IRS to notify the taxpayer of the right to request a CDP hearing not less than 30 days before issuing the first levy to collect a tax period.

Note: The IRS waits 10 days after issuing the notice of assessment of tax and demand for payment before issuing the Notice of Intent to Levy. However, Treas. Reg. 301.6331-2(a)(1) permits concurrent issuance of the notice of assessment and the Notice of Intent to Levy.

- (4) IRC 6330(f) contains exceptions to a right to a hearing before levy. When a levy is served in the following instances, the taxpayer is offered an opportunity to request a post-levy hearing:
- a. Collection of the tax was in jeopardy
 - b. State Income Tax Levy Program (SITLP)
 - c. "Disqualified" employment tax levy (DETL)
 - d. Federal contractor levies under the Federal Payment Levy Program (FPLP)
- (5) IRC 6320 and IRC 6330 provide for one hearing per type of tax and tax period for the tax debt listed on the NFTL or Notice of Intent to Levy. The right to request a CDP hearing applies to the first NFTL filed or the first levy notice issued for a particular tax debt.

Example: IRS filed an NFTL in Washington County on 01/11/14 listing a Form 1040 tax debt for tax year 2011. An NFTL was also filed in Lincoln County on 03/17/14 listing the same 2011 Form 1040 tax debt. The NFTL filed 01/11/14 in Washington County is the NFTL to which the right to a hearing under IRC 6320 applies.

Note: A Letter 3172 is also issued when a NFTL is subsequently filed for the same tax period, but includes an additional assessment (e.g., TC 290, TC 300, TC 240) that is not shown on the previous NFTL. In this circumstance, a hearing is granted for the additional assessment. See IRM 5.12.6.3.6.2, CDP Notice for NFTL on Additional Assessments.

- (6) The taxpayer may receive more than one CDP pre-levy hearing under IRC 6330 where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed.

Note: Collection cannot systemically isolate an additional assessment of tax when issuing the CDP levy notice. A CDP levy notice for additional tax includes the balance for the whole period. If the taxpayer requests a CDP hearing, the hearing only covers the additional tax assessment if the taxpayer already had an opportunity for a hearing on the original tax assessment.

- (7) The taxpayer is not entitled to another CDP hearing under IRC 6330 if the additional assessment represents accruals of interest, penalties, or both. However, an exception to one hearing per type of tax and tax period can occur with penalties. The taxpayer is entitled to a second CDP notice/second opportunity for a hearing for Failure to Pay (FTP) penalty if the prior CDP notice listed **no** accrued or assessed FTP. See Treas. Reg. 301.6330-1(d)(2) Q&A D-1.

- (8) IRC 6320 refers to IRC 6330 for the legal requirements regarding:

- Matters considered by Appeals at the hearing- IRC 6330(c)
- Judicial review of the determination made by Appeals-IRC 6330(d)
- Suspension of collection activity and the statutory period of limitations- IRC 6330(e)

- (9) A CDP lien hearing is held in conjunction with a CDP levy hearing whenever an NFTL is filed and Notice of Intent to Levy are concurrently issued, and the taxpayer requests a hearing under both Code sections.

- (10) In making a CDP determination, IRC 6330(c)(3) requires Appeals to:

- a. Verify applicable law and administrative procedure were met;
- b. Consider relevant issues relating to the unpaid tax, the filing of the NFTL or the proposed levy; and
- c. Consider whether the action taken or proposed balances the government's need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary.

- (11) The taxpayer may raise any non-frivolous issue relating to the NFTL or the proposed levy.
- (12) An issue may not be raised at the CDP lien or levy hearing if the taxpayer participated meaningfully in any previous administrative or judicial proceeding where the same issue was already raised and considered.
- (13) The taxpayer may seek judicial review of the Notice of Determination by filing a petition in the United States Tax Court.

8.22.4.2.3
(05-12-2022)

**Statute Responsibility in
CDP**

- (1) In CDP, Appeals has no responsibility to protect a collection statute from expiration.
- (2) Appeals has no requirement in CDP to prepare a Form 3999, Statute Expiration Report, for expired collection statutes.

- (3) Refer to IRM 8.21.5, Statutes on Collection Cases, for collection statute issues.

8.22.4.2.4
(08-26-2020)
Use of Digital Signatures

- (1) The use of digital signatures in taxpayer correspondence is commonplace. When digitally signing any document being sent to the taxpayer or representative, the signature must be **only** a scanned facsimile of your actual signature.
- (2) Signatures must **not** include Adobe graphics, the date, SEID, e-mail address or other employee information or be merely a typewritten signature font.
- (3) Contact Appeals BSP, the lead program analyst for CDP, or the *Appeals Exchange* web site for assistance creating digital signatures.

8.22.4.2.5
(05-12-2022)
Attach Certain Documents to ACDS

- (1) Regardless of how the CDP case file is managed (as a paper file, electronic, or a hybrid of the two), certain key documents should always be attached electronically to the ACDS record. This will ensure the secure storage and ease of availability of these key documents.
- (2) Documents should be attached electronically to the ACDS record for the CDP key file.
- (3) These documents include the following:
 - Appeals Case Memorandum or NOD Attachment
 - Counsel Memorandums
 - Notice of Determination or Decision Letter
 - Message files from Taxpayer Digital Communications (TDC)
 - Written verification of IRC 6751(b)(1) supervisory approval of certain penalties; See IRM 8.22.5.4.2.1.7
 - Form 14559, Appeals Offer in Compromise Memorandum
 - Form 14561, Income and Expense / Asset Equity Table
 - Form 14640, OIC Addendum
 - Form 12256, CDP Withdrawal
 - Form 12257, Summary Notice of Determination and Waiver of Judicial Review
 - Form 2209, Courtesy Investigation
 - Form 2261, Collateral Agreement (any)
 - Form 3870, Request for Adjustment
 - Letter 3978, Supplemental NOD
 - Letter 4000, Collection Due Process Last Chance Letter
 - Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment
 - Form 433-D, Installment Agreement
 - Form 5402, Appeals Transmittal and Case Memo
 - Letter 5490, OIC Acceptance
 - Letter 5521, OIC Acceptance - Doubt as to Liability
 - Form 656, Offer in Compromise
 - Form 656-L, Offer in Compromise, DATL
 - Form 7249, OIC Acceptance Report

Note: When created in ACDS, some of the items listed above may already be systematically attached electronically to the system.

Note: Other attachments may also be included.

- (4) See Exhibit 8.22.4-4, CDP Naming Conventions for Documents Attached to ACDS, for appropriate file naming conventions for certain uploaded documents.
- 8.22.4.2.6
(05-12-2022)
Destruction of Paper Documents
- (1) Appeals manages an increasing number of Collection Due Process cases via electronic means. This process renders most paper documents obsolete once they have been scanned and uploaded to ACDS.
- (2) For cases that are managed electronically or as a paper/electronic hybrid, take the following steps for scanned documents:
- Scan the paper document
 - Review the scanned document to ensure it is legible and matches the paper original
 - Save the scanned document to a destination on your computer, using appropriate naming conventions. For naming conventions, see Exhibit 8.22.4-4, CDP Naming Conventions for Documents Attached to ACDS
 - Upload the file to ACDS
 - Confirm the upload attached to ACDS
 - Destroy the paper documents once attachment to ACDS has been confirmed
- Note:** See also (4) below.
- (3) For cases managed by fully electronic means, be sure to retain electronically in ACDS **all documents** you reviewed in making your determination. Such documentation is necessary to frame the complete basis of your decision, which is critical in the event a case needs to be defended in Tax Court. See IRM 8.22.9.2 for details pertaining to the content of the administrative record.
- (4) Documents that **require** an original signature should be retained but also attached to the electronic record in ACDS. At closing, following existing procedures, any documents that require an original signature should be forwarded by APS to the appropriate compliance function monitoring section that will monitor the agreement.
- 8.22.4.2.7
(05-12-2022)
Retain Related Paper Files When Closing
- (1) Retain with the CDP case any related work unit (WUNO) or other paper files that were used in making your determination. If a Notice of Determination (NOD) is issued, these related paper files should be suspended along with the CDP administrative file, whether the CDP was managed as a paper file, fully electronically, or as a paper and electronic hybrid. For more information, see IRM 8.20.6.20.2, CDP Notices of Determination (NOD), and IRM 8.22.9.2, Administrative Record.
- 8.22.4.3
(05-12-2022)
Equivalent Hearing (EH)
- (1) A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing, but may request an administrative Appeals hearing, which is referred to as an Equivalent Hearing (EH). In an EH, follow the same procedures and consider the same issues as a CDP hearing.
- (2) A taxpayer must submit a written request for an EH within the one-year period beginning the day after the date of the CDP levy notice. For a CDP lien EH, a taxpayer must submit a written request for the EH within the one-year period beginning the day after the end of the five-business-day period following the

filing of the NFTL. If a taxpayer does not request an EH within the prescribed time, the taxpayer forgoes the right to an EH.

- (3) Appeals confirms a request for an EH was not timely in the CDP separate timeliness determination (CDPTD). See IRM 8.22.5.9, Collection Due Process Timeliness Determinations (CDPTD).
- (4) During an EH, levy action is generally suspended as a matter of policy:
 - On tax periods **not** subject to a CDP levy hearing, unless all pre-levy notifications have been met or the section 6331(d) notice has been given and one of the exceptions in 6330(f) applies,
 - On tax periods subject to the EH
 - On tax periods subject to a CDP NFTL hearing for which all pre-levy notifications have been met

Note: Because the statutory period under IRC 6330(e) is not suspended during an EH, Collection **may** determine it to be necessary to levy despite the above factors. IRM 8.22.4.4(15) below describes when Collection may deem it appropriate to levy while an EH case is open.

- (5) Appeals issues a Decision Letter instead of a Notice of Determination. The taxpayer is not entitled to seek judicial review of Appeals' decision in an EH case unless one or more of the following issues are raised:
 - a. Spousal relief under IRC 6015
 - b. Abatement of interest under IRC 6404(h)
 - c. Timeliness of the request for a CDP hearing
- (6) There is no retained jurisdiction in an EH case.
- (7) See Treas. Reg. 301.6330-1(i) for more information on EH hearings.

8.22.4.4
(05-12-2022)
**Collection's CDP
Procedures**

- (1) Collection should only issue one CDP levy notice and one CDP lien notice per tax period, unless an additional amount of tax (other than interest and penalty accruals) is assessed.

Exception: Collection must issue separate CDP notices to husband and wife when the liabilities are joint, even if they reside at the same address

Exception: Collection may issue separate CDP notices to individual partners as well as the partnership entity in partnerships

- (2) Integrated Data Retrieval System (IDRS) Transaction Code (TC) 971 with an appropriate Action Code (AC) is input as follows after the IRS mails a CDP notice:
 - TC 971 AC 069 - Notice of Intent to Levy and Notice of Your Right to a Hearing
 - TC 971 AC 252 - Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320
- (3) Once a Form 12153, Request for a Collection Due Process or Equivalent Hearing, is received from a taxpayer, Collection may continue to work with the taxpayer for up to 90 days, if the taxpayer is willing. If Collection determines there are indicators of fraud, Collection may hold a CDP hearing request for 90

days while developing a fraud referral. See IRM 5.1.9.3.3, Processing CDP and EH Requests. Collection promptly forwards a case to Appeals in the following instances:

- a. Frivolous issues are raised
 - b. The taxpayer only wants to work with Appeals
 - c. The taxpayer is not seeking to resolve the issue but is using the CDP process as a method for delay, i.e., pyramiding in-business trust fund taxpayer
 - d. Bankruptcy was filed after the CDP levy or lien notice was sent
 - e. The trust fund assessment (MFT) 55 or 17 is being challenged (ACS only)
 - f. The only issue is a request for an IA and the assessed balance is \$250,000 or more (ACS only)
 - g. Cases with a TC 914, 916 or 918 Criminal Investigation (CI) where the taxpayer raises concern over the CI issue
- (4) Collection prepares a CDP transmittal document for every CDP and EH case sent to Appeals:
- Field Revenue Officers (RO) use Form 14461, Transmittal of CDP/ Equivalent Hearing Request
 - ACS uses Form 12153-B, Referral Request for CDP Hearing from ACS Support
- (5) In addition to the CDP transmittal document, Collection should also provide the following documentation:
- Form 12153 or other written request for a hearing along with the envelope, if received by mail
 - Copy of the CDP notice, such as the Letter 1058, Final Notice - Notice of Intent to Levy and Your Right to a Hearing , or Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320
 - Copy of Form 2848, Power of Attorney and Declaration of Representative, or IDRS command code CFINK print
 - Collection Information Statement or other financial information
 - Copies of correspondence to and from the taxpayer or Power of Attorney
 - Copy of original or amended return, if available
- (6) The RO or ACS employee enters the date of receipt of the CDP hearing request on the CDP transmittal document. Based on the data entered, a TC 520 with one of the following closing codes (cc) is input onto each tax period starting the suspension of the CSED:
- a. cc 76 for CDP lien case (DPLN)
 - b. cc 76 for combination CDP lien and levy case (DPL2)
 - c. cc 77 for CDP levy case (DPLV)
- (7) Responsibility for input of the TC 520 cc 76/77 is:
- a. ACS for ACS-sourced cases
 - b. Account and Processing Support (APS) for RO-sourced cases
- (8) Appropriate Individual Master File (IMF) CSED indicators are also input with the TC 520. The indicators are:

- **P** = primary TIN spouse
 - **S** = secondary TIN spouse
 - **B** = both primary and secondary TINs
- (9) The CSED is systemically calculated and updated via the TC 520 and TC 521 entries. An exception to this systemic CSED update is an IMF account involving a joint income tax liability where only one spouse has requested the hearing.
- (10) The CSED is not suspended during an EH case, so a TC 971 AC 278 is entered onto each EH tax period.
- (11) IRS uses Automated Levy Programs (ALPs) through which select federal tax debts are matched with state taxing authorities and federal agencies disbursing funds, such as salary, pension, and vendor payments. See IRM 5.19.9, Automated Levy Programs (ACS), and IRM 5.11.7, Automated Levy Programs (Collection field) for more information about ALPs and the procedures used to administer the programs, which are divided into three categories:
- Alaska Permanent Fund Dividend Levy Program (AKPFD) – attaches to the Permanent Fund Dividend distributed by Alaska
 - Federal Payment Levy Program (FPLP) – attaches federal payments to individuals or businesses
 - Municipal Tax Levy Program (MTLP) - matches a Master File database of delinquent taxpayers eligible to be levied against a database of local income tax refunds for each municipality participating in MTLP
 - State Income Tax Levy Program (SITLP) – attaches state income tax refund
- (12) The following TC 971 action codes identify ALPs and may appear in either CDP or EH cases:

| TC 971 Action Code | Explanation |
|---------------------------|--|
| 060 | Input each time the account goes to FPLP |
| 600 | Input annually when in SITLP program |
| 601 | Input annually when in AKPFD program |

- (13) In most instances, collection of the tax by levy is suspended on tax periods in a timely CDP levy hearing. The exceptions include:
- a. Disqualified employment tax levy (DETL)
 - b. Systemic levy of a state income tax refund under SITLP
 - c. Systemic levy of federal contractors under FPLP
 - d. During an appeal to the Tax Court, where the underlying tax is not at issue, levy action may continue if the Tax Court determines that the IRS has shown good cause not to suspend the levy. Counsel contacts Collection if they are considering a motion to permit levy.
 - e. To collect the jointly owed tax from the non-requesting spouse where only one spouse has requested a CDP hearing.
 - f. When the IRS determines collection of the tax is in jeopardy

| Type | Jeopardy Exception |
|-----------------------|--|
| Installment Agreement | Treas. Reg. 301.6159-1(f)(2): Paragraph (f)(1) of this section shall not prohibit levy if the taxpayer files a written notice with the IRS that waives the restriction on levy imposed by this section, the IRS determines that the proposed installment agreement was submitted solely to delay collection, or the IRS determines that collection of the tax to which the installment agreement or proposed installment agreement relates is in jeopardy. |
| Offer in Compromise | Treas. Reg. 301.7122-1(g)(3): The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether that offer will be accepted if it determines that collection of the liability is in jeopardy. |

- (14) Collection of the tax by levy is generally suspended on tax periods that are the subject of:
- An EH
 - Timely-filed request for a CDP lien hearing if all pre-levy requirements are met
 - During a retained jurisdiction proceeding
- (15) Collection may deem levy action appropriate in a CDP lien or EH case if:
- a. Collection is at risk, e.g., the taxpayer is dissipating assets or pyramiding additional liabilities
 - b. The taxpayer raises only frivolous issues
 - c. The taxpayer is requesting an installment agreement or offer in compromise solely to delay the collection process
- (16) In such instances, Collection contacts the hearing officer's Appeals Team Manager (ATM) by secure e-mail to advise levy action is planned and asks whether Appeals has information that may affect the decision to levy. The ATM responds within 5 days with 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
- (17) Collection may file an NFTL while a CDP lien or levy hearing is pending. Before doing so, they contact the ATM to advise of the planned action and to see if Appeals has any information that would affect the NFTL filing decision.
- (18) Collection cannot include an Affordable Care Act (ACA) individual shared responsibility payment (SRP) MFT 35 liability on an NFTL or proposed levy. As a result, MFT 35 periods should never be in CDP.

8.22.4.5
(08-26-2020)
Appeals Employees in CDP

- (1) The issues for which the taxpayer requests Appeals consideration guide who in Appeals considers such issues. Generally, those responsible for conducting CDP hearings and considering technical issues include:
- Appeals Account Resolution Specialist (AARS)
 - Appeals Officers (AO)
 - Appeals Team Managers (ATM)

- (2) See IRM 8.20.5, Carding New Receipts, and IRM 8.20.7, Closing Procedures, for APS processing of CDP and EH cases.

8.22.4.5.1
(08-26-2020)
Appeals Officers (AO)

- (1) AOs conduct hearings by considering issues and alternatives to collection action in CDP cases. AOs are generally specialized to work either Examination or Collection issues.

8.22.4.5.2
(09-25-2014)
**Appeals Account
Resolution Specialists
(AARS)**

- (1) AARS duties may include, but are not limited to:
 - Screening and developing cases for AOs
 - Monitoring cases in suspense
 - Working Separate Timeliness Determination cases
 - Scheduling appointments
 - Working certain less complex CDP/EH cases
- (2) The AARS may document the receipt of a case for screening and corrective actions taken. Verification actions during the screening process include:

| Verification Action | Corrective Action |
|--|---|
| Request for hearing (Form 12153, Request for a Collection Due Process or Equivalent Hearing , other written request) was properly signed by the taxpayer or the taxpayer’s authorized representative | Contact the taxpayer or representative to ‘perfect’ the hearing request following procedures in IRM 8.22.5.2.3, Imperfect Hearing Request |
| Ensure information on Case Summary Card is accurate <ul style="list-style-type: none"> • Type of hearing • Type of tax and tax periods match CDP Notice • Statute suspension (Integrated Data Retrieval System (IDRS) Transaction Code (TC) 520) and closing code (76/77) on a timely request was correctly input on CDP periods • Statute suspension (TC 520) and closing code (76/77) was not placed on Equivalent Hearing periods • The work unit (WUNO) contains the correct Appeals Database Control System (ACDS) feature codes - see IRM 8.22.5.2.2.3, Feature Codes | Work with Account and Processing Support (APS) to correct Case Summary Card errors |

- (3) AARS may request a withdrawal of the CDP hearing using Letter 4388, Withdrawal Solicitation. See IRM 8.22.5.2.5, CDP Withdrawals.
- (4) The Fresno AARS team provides Customer Service on closed cases. The following are examples of problems that AARS can resolve:
 - IA, OIC and Currently Not Collectible (CNC)
 - Account freezes
 - Form 3870, Request for Adjustment, processing
 - Misapplied/Missing payment research
 - Innocent spouse allocations including the mirroring process
 - Application of Tax Court decisions
 - Erroneous refunds
 - Unpostable transaction codes
 - Excess collections issues
- (5) AARS does not have the authority to change case determinations or decisions.

8.22.4.5.3
(05-12-2022)

**Appeals Team Managers
(ATM)**

- (1) ATMs generally have supervisory responsibilities for Appeals Officers and Appeals Account Resolution Specialists (AARS). ATMs review cases for completeness, accuracy and decision quality. ATMs have approval authority in most CDP cases. See Exhibit 8.22.4-1, Delegation Order Appeals-193-1.
- (2) ATMs are also responsible for monitoring compliance with ex parte communication requirements.

8.22.4.6
(08-09-2017)

Ex Parte Communication

- (1) For guidance on ex parte communications between Appeals employees and employees of other IRS functions, see IRM 8.1.10, Ex Parte Communications, and Rev. Proc. 2012-18.

8.22.4.7
(08-09-2017)

**Fast Track Mediation
(FTM)**

- (1) The objective of Fast Track Mediation (FTM) is to allow SB/SE Collection personnel and SB/SE taxpayers an opportunity to mediate their collection disputes with an Appeals official serving as a neutral party, or mediator. FTM is optional for the taxpayer and does not eliminate or replace existing dispute resolution options, including the taxpayer's opportunity to request a hearing before Appeals. For guidance on FTM, see IRM 8.26.3, Alternative Dispute Resolution (ADR) Program, Fast Track Mediation for Collection Cases.

Exhibit 8.22.4-1 (05-12-2022)
Delegation Order Appeals-193-1

| Authority | Delegated to |
|--|---|
| To conduct hearings and make determinations under sections 6320 and 6330 of the Internal Revenue Code (relating to notice and opportunity for hearing upon filing of notice of lien and before levy). | <ul style="list-style-type: none"> • AOs • AARS |
| To review and approve determinations made under sections 6320 and 6330 of the Internal Revenue Code (relating to notice and opportunity for hearing upon filing of notice of lien and before levy), except in the case of any Form 12257, Summary Notice of Determination and Waiver of Judicial Review, that the Director, Case and Operations Support,) determines in writing does not require review and approval. | ATMs |
| To determine which Appeals employees may accept from the taxpayer, and execute on behalf of the IRS Form 12257, Summary Notice of Determination and Waiver of Judicial Review | Director, Case and Operations Support |

Redelegations and Sources of Authority

| Redelegation | Sources of Authority |
|---|---|
| The above authorities may not be redelegated. | <ul style="list-style-type: none"> • IRC 6320 • IRC 6330 • Servicewide Delegation Order No. 1-23 (formerly DO-193, Rev. 6) |

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified. This order supersedes Delegation Order App 8-a (Rev. 1)

Exhibit 8.22.4-2 (05-12-2022)
CDP/EH Forms, Letters, and Other Documents

Pre-Conference Letters

| Form/Letter Number and Name | Purpose |
|--|---|
| Letter 3846: Appeals Received Your Request for a Collection Due Process Hearing | <ul style="list-style-type: none"> Used when the taxpayer raises frivolous and non-frivolous issues Schedules telephone conference Offers taxpayer the opportunity to withdraw the frivolous positions |
| Letter 4837: Substantive Contact Uniform Acknowledgement Letter | <ul style="list-style-type: none"> Schedules a telephone conference Advises of opportunity to request an in-person conference Details supplemental information needed |
| Letter 4000: Last Chance Letter | Used if taxpayer fails to respond to Substantive Contact Letter to offer the taxpayer the mandatory second opportunity to provide information for consideration. |
| Letter 4380: Appeals Received Your Request for a Collection Due Process and/or Equivalent Hearing | <ul style="list-style-type: none"> Acknowledges a CDP submission raising only frivolous issues Solicits a withdrawal of the frivolous positions |

Withdrawal and Waiver Forms and Letters

| Form/Letter Number and Name | Purpose |
|--|---|
| Form 12256 : Withdrawal of Request for Collection Due Process or Equivalent Hearing | Taxpayer withdraws from either CDP or EH. |
| Form 12257: Summary Notice of Determination and Waiver of Judicial Review | Taxpayer agrees with the resolution reached with Appeals and waives the right to judicial review. |
| Form 14041: Waiver of Right to Request New AO/SO | Taxpayer waives the prior involvement of an Appeals employee, allowing them to conduct the current hearing. |
| Letter 4382: Form 12257 Closing Letter | Transmits the waiver Form 12257 to taxpayer. |
| Letter 4388: Withdrawal Solicitation | Solicits withdrawal where Collection resolved the taxpayer's issue. |

CDP Notice of Determination Letters and Attachment

| Form/Letter Number and Name | Purpose |
|---|---|
| Letter 3193: Notice of Determination Concerning Collection Actions Under 6320 and 6330 | <ul style="list-style-type: none"> Issued in timely CDP cases. Gives taxpayer the right to petition Tax Court for review of Appeals' determination. Sent separately to each joint filer with a copy to Power of Attorney (POA), if applicable. |

Exhibit 8.22.4-2 (Cont. 1) (05-12-2022)
CDP/EH Forms, Letters, and Other Documents

| Form/Letter Number and Name | Purpose |
|---|---|
| Letter 3978: Supplemental Notice of Determination | A supplemental CDP determination issued after the Tax Court has remanded a case to Appeals. |
| Letter 4389: Notice of Determination - Abatement of Interest | <ul style="list-style-type: none"> • Notice of Determination in timely CDP hearing. • Provides the timeframe for filing for a petition for judicial review of the interest abatement issue. |
| Letter 4390: Notice of Determination - Request for Relief from joint and Several Liability | <ul style="list-style-type: none"> • Notice of Determination in timely CDP hearing. • Provides the timeframe for filing for a petition for judicial review of the innocent spouse issue. |
| CDP Attachment | Attachment template for the Notice of Determination and Decision Letter. |

Equivalent Hearing Decision Letters and Attachment

| Form/Letter Number and Name | Purpose |
|--|--|
| Letter 3210: Decision Letter on Equivalent Hearing under IRC section 6320 and/or 6330 | <ul style="list-style-type: none"> • Decision in EH • No right to petition Tax Court for a review of Appeals' determination • Sent separately to each joint filer with copy to POA if applicable. |
| Letter 4439: Decision Letter - Equivalent Hearing & Innocent Spouse | <ul style="list-style-type: none"> • Decision in EH. • Provides timeframe for filing a petition for judicial review of the innocent spouse issue. |
| Letter 4440: Decision Letter - Equivalent Hearing and Interest Abatement | <ul style="list-style-type: none"> • Decision in EH. • Provides timeframe for filing a petition for judicial review of the interest abatement issue. |
| Letter 5145: Agreed Equivalent Hearing Closing Letter | Agreed decision in EH cases. |
| CDP Attachment | Attachment template for the Notice of Determination and Decision Letter. |

Other Closing Letters

| Form/Letter Number and Name | Purpose |
|--|---|
| Letter 4381: Disregard CDP/EH Request | Disregards a frivolous/delaying hearing request. |
| Letter 4383: Collection Due Process/Equivalent Hearing Withdrawal Acknowledgement | Acknowledges taxpayer's withdrawal of CDP/EH request. |

Exhibit 8.22.4-2 (Cont. 2) (05-12-2022)
CDP/EH Forms, Letters, and Other Documents

Bankruptcy Case Forms

| Form/Letter Number and Name | Purpose |
|--|--|
| Letter 5010: Collection Due Process Offer in Compromise Bankruptcy Return | Used by Appeals when an OIC is returned by Appeals due to taxpayer's bankruptcy. |
| Bankruptcy Resolution Checklist for CDP/EH File | |

Compliance Function Referral Forms and Letters

| Form/Letter Number and Name | Purpose |
|--|--|
| Letter 3820: Appeals Received Your Offer in Compromise and We Can Consider It | <ul style="list-style-type: none"> Generated by Appeals but mailed by Centralized Offer in Compromise (COIC). Advises the CDP OIC has been sent to Collection and that the taxpayer will have an opportunity to respond. |
| Form 13933: Collection Due Process/Equivalent Hearing Offer in Compromise Cover Sheet | <ul style="list-style-type: none"> Used by Appeals to transmit a CDP OIC to COIC. COIC uses the same form to acknowledge receipt of the OIC. |
| Collection Due Process (CDP) Hearing - TP Disputes TFRP Civil Penalty | Request for a copy of 1153 letter and proof of delivery. |
| Form 14111: Automated Substitute for Return(ASFR)/Substitute for Return (SFR) Cover Sheet | Cover Sheet for sending returns to ASFR/SFR unit for processing. |
| Letter 5208: Notification of Appeals Referral Investigation | Used by Appeals to notify taxpayers that information they provided to Appeals is being referred to Collection for evaluation. |

Exhibit 8.22.4-3 (05-12-2022)

Common Terms and Acronyms Used in Collection Due Process

| | |
|----------|--|
| AARS | Appeals Account Resolution Specialist |
| ABINT | Interest Abatement |
| ACA | Affordable Care Act |
| ACDS | Appeals Centralized Database System |
| ACM | Appeals Case Memorandum |
| ADR | Alternative Dispute Resolution |
| AKPFD | Alaska Permanent Fund Dividend (Levy Program) |
| AO | Appeals Officer (may refer to a Collection AO or Exam AO) |
| AOIC | Automated Offer-in-Compromise (system) |
| APGOLF | Appeals Generator of Letters and Forms. APGOLF and APGOLF 2.0, are subsystems of ACDS, and contain a compilation of most of the letters and forms used by Appeals employees. |
| APS | Account and Processing Support, the unit responsible for the administrative processing of cases in Appeals. |
| AQMS | Appeals Quality Measurement System |
| ARI | Appeals Referral Investigation |
| ATE | Appeals Technical Employee is an umbrella term used to refer generally to any Appeals employee who is assigned a case for settlement consideration (generally, an Exam AO, Collection AO or AARS). |
| ATFR | Automated Trust Fund Recovery (system) |
| ATM | Appeals Team Manager |
| AUR | Automated Under Reporter |
| ASED | Assessment Stature Expiration Date |
| ASFR/SFR | Automated Substitute for Return/Substitute for Return |
| BAPCPA | Bankruptcy Abuse Prevention and Consumer Protection Act (2005) |
| BBA | Bipartisan Budget Act of 2015 |

Exhibit 8.22.4-3 (Cont. 1) (05-12-2022)

Common Terms and Acronyms Used in Collection Due Process

| | |
|--------------------|--|
| “Big Three” Review | CDP requirement to verify the following: <ul style="list-style-type: none"> • that legal and administrative requirements were met • the issues raised • balancing of intrusiveness and fairness |
| CAP | Collection Appeals Program |
| CAR | Case Activity Record |
| CCISO | Cincinnati Centralized Innocent Spouse Operation |
| CDP | Collection Due Process |
| CDP Lien Notice | Refers to the notice issued to taxpayers to advise them of the CDP rights available when a notice of federal tax lien is filed. |
| CDPTD | Collection Due Process Timeliness Determination |
| CFR | Code of Federal Regulations |
| CI | Criminal Investigation |
| CML | Certified Mail List |
| CNC | Currently Not Collectible |
| COIC | Centralized Offer-in-Compromise |
| CSED | Collection Statute Expiration Date |
| CSO | Child Support Obligations |
| CZ | Combat Zone |
| DATC | Doubt as to Collectibility (OIC) |
| DATCSC | Doubt as to Collectibility with Special Circumstances (OIC) |
| DATL | Doubt as to Liability (OIC) |
| DETL | Disqualified Employment Tax Levy |
| DDIA | Direct Debit Installment Agreement |
| DIMS | Document Information Management System |
| DOJ | Department of Justice |
| eCase | Subsystem within ACDS that allows ACDS to electronically send, receive and store case data from the database of an IRS partner organization |
| EH | (CDP) Equivalent Hearing |
| ESRP | Employer’s Shared Responsibility Payment |
| ETA | Effective Tax Administration (OIC) |

Exhibit 8.22.4-3 (Cont. 2) (05-12-2022)

Common Terms and Acronyms Used in Collection Due Process

| | |
|-------|--|
| FICA | Future Income Collateral Agreement (OIC) |
| FORT | Field Office Resource Team (Collection) |
| FTM | Fast Track Mediation |
| FPLP | Federal Payment Levy Program |
| FRIV | Frivolous Return / Submission / Issue(s) |
| IA | Installment Agreement |
| IBTF | In-Business Trust Fund |
| ICS | Integrated Collection System |
| IDRS | Integrated Data Retrieval System |
| IDT | Identity Theft |
| IRC | Internal Revenue Code |
| IRM | Internal Revenue Manual |
| IS | Innocent Spouse |
| ISTS | Innocent Spouse Tracking System |
| L&A | Legal and Administrative Procedure Review |
| MMIA | Manually Monitored Installment Agreement |
| MOIC | Monitoring Offer-in-Compromise |
| NOL | Net Operating Loss |
| OIC | Offer in Compromise |
| PENAP | Penalty Appeal |
| POA | Power of Attorney |
| PPIA | Partial-Payment Installment Agreement |
| RBA | Restitution-Based Assessment |
| RJ | Retained Jurisdiction |
| RO | Revenue Officer |
| RRAP | Rapid Response Appeal Process |
| SCL | Substantive Contact Letter |
| SITLP | State Income Tax Levy Program |
| SNOD | Statutory Notice of Deficiency |
| SRP | Shared Responsibility Payment |
| TDC | Taxpayer Digital Communications |
| TEFRA | Tax Equity and Fiscal Responsibility Act of 1982 |

Exhibit 8.22.4-3 (Cont. 3) (05-12-2022)**Common Terms and Acronyms Used in Collection Due Process**

| | |
|-------|---|
| TFA | Taxpayer First Act of 2019 |
| TIPRA | Tax Increase Prevention and Reconciliation Act (2005) |
| USTC | United States Tax Court |
| VSD | Virtual Service Delivery |
| Webex | Video Conference Application |
| WUNO | Work Unit Number |

Exhibit 8.22.4-4 (05-12-2022)**CDP Naming Conventions for Electronic Attachments to ACDS**

(1) For uniformity, the table below provides naming conventions to be used when documents are attached electronically to ACDS:

| Document | Document Number | Document Title | Description When Attaching to ACDS |
|-----------------|------------------------|---|---|
| | | ACSS/Collection File Initial Upload | ACSS/Collection File |
| Form | | ACDS Update Request Form | ACDS Update Request |
| Form | | 30-40 Transfer Form | 30-40 Form |
| Document | | Appeals Case Memorandum or CDP Attachment | ACM |
| Document | | Fax Cover Page - to TP | Fax to TP |
| Document | | Fax Cover Page - to REP | Fax to REP |
| Form | 12256 | Withdrawal of Request for CDP or EH | CDP Withdrawal |
| Form | 12257 | Summary Notice of Determination and Waiver of Judicial Review | CDP Waiver |
| Form | 14111 | ASFR-SFR Routing Sheet | ASFR-SFR Routing Sheet |
| Form | 14559 | Appeals OIC Memorandum | OIC ACM |
| Form | 14561 | Income and Expense/Asset Equity Calculation Table | IET/AET |
| Form | 14640 | Addendum to Form 656 | 656 Addendum |
| Form | 2209 | Courtesy Investigation | Courtesy Investigation |
| Form | 2261 | Collateral Agreement | Collateral Agreement |
| Form | 2261(A, B or C) | Collateral Agreement | Collateral Agreement (A, B or C) |
| Letter | 3193 | Notice of Determination | NOD |
| Letter | 3210 | EH Decision Letter | Decision LTR |
| Letter | 3846 | Contact - Frivolous Issues | SCL FRIV |
| Form | 3870 | Request for Adjustment | 3870 Adjustment |

Exhibit 8.22.4-4 (Cont. 1) (05-12-2022)

CDP Naming Conventions for Electronic Attachments to ACDS

| | | | |
|--------|-------|---|-------------------------|
| Letter | 3978 | Supplemental NOD | Supplemental NOD |
| Letter | 4000 | CDP Last Chance | Last Chance LTR |
| Form | 433-A | Collection Information Statement for Wage Earners and Self-Employed Individuals | 433-A CIS |
| Form | 433-B | Collection Information Statement for Businesses | 433-B CIS |
| Form | 433-D | Installment Agreement | IA |
| Form | 433-F | Collection Information Statement | 433-F CIS |
| Form | 4183 | Recommendation re: Trust Fund Recovery Penalty Assessment | 4183 |
| Form | 4340 | Certificate of Assessments and Payments | Cert of Assessments |
| Letter | 4380 | Frivolous Acknowledgement | FRIV ACK |
| Letter | 4381 | Disregard Frivolous | FRIV Disregard |
| Letter | 4382 | Form 12257 Closing Letter | 12257 Closing LTR |
| Letter | 4383 | Withdrawal Acknowledgement Letter | Withdrawal ACK |
| Letter | 4388 | Withdrawal Solicitation | Withdrawal Solicitation |
| Letter | 4389 | NOD: CDP/ABINT | NOD ABINT |
| Letter | 4390 | NOD: CDP/IS | NOD IS |
| Letter | 4439 | Decision: EH & IS | Decision LTR IS |
| Letter | 4440 | Decision: EH & ABINT | Decision LTR ABINT |
| Letter | 4837 | Substantive Contact UAL | SCL ACK |
| Form | 4844 | Request for Terminal Action | Terminal Action |
| Form | 5402 | Customized | 5402 AO Signed |
| Form | 5402 | Customized | 5402 ATM Signed |
| Form | 5402 | Customized | 5402 - Dated - Final |
| Letter | 5490 | OIC Acceptance Letter | OIC Acceptance |

Exhibit 8.22.4-4 (Cont. 2) (05-12-2022)

CDP Naming Conventions for Electronic Attachments to ACDS

| | | | |
|--------|------|---------------------------------|---|
| Letter | 5521 | DATL OIC Acceptance Letter | DATL OIC Acceptance |
| Form | 656 | Offer in Compromise | F656 |
| Form | 7429 | Offer Acceptance Report | F7249 |
| | | Correspondence to TP | CORR TO TP (MMDDYYYY) |
| | | Correspondence to REP | CORR TO REP (MMDDYYYY) |
| | | Correspondence to Third Party | CORR to Third Party (MMDDYYYY) |
| | | Correspondence from TP | CORR FROM TP (MMDDYYYY) |
| | | Correspondence from REP | CORR from REP (MMDDYYYY) |
| | | Correspondence from Third Party | CORR from Third Party (MMDDYYYY) |
| | | IDRS Prints | IDRS (SUMRY, TXMODA, ENMOD, etc.) |

