MANUAL TRANSMITTAL

8.24.1

Department of the Treasury
Internal Revenue Service

SEPTEMBER 28, 2021

EFFECTIVE DATE

(09-28-2021)

PURPOSE

(1) This document transmits revised IRM 8.24.1, Collection Appeals Program and Jeopardy Levy, Collection Appeals Program (CAP).

MATERIAL CHANGES

(1) This IRM contains the following substantial changes:

IRM	Brief Description
8.24.1	Updated for editorial changes throughout.
8.24.1.1.2(2)	Clarified IRC 6159(e) authorizes an appeal of IA terminations and Treas. Reg. 301.6159-1(e)(5) authorizes an appeal of both IA terminations and modifications by the IRS.
8.24.1.1.6(2)	Updated TBOR content based on guidance from the Division Counsel/ Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration).
8.24.1.2(5)(b)	Noted an exception to the 5 business day turnaround goal on CAP cases, related to taxpayer access to the administrative file.
8.24.1.2(5)(c)	Added a note emphasizing that Appeals consider the appropriateness of the monthly installment amount upon review of the taxpayer's financial information, when addressing a CAP IA.
8.24.1.2(5)(c) (Example 1)	Moved from 8.24.1.3.8(13) for effective placement of the guidance.
8.24.1.3(2)(g)(Note)	Revised note to indicate that a request to return levy proceeds must be made within 2 years from the date of such levy; removed reference to the prior 9 month deadline from the date of the levy, if it was made on or before March 22, 2017, to make a request to return levy proceeds.
8.24.1.3(4)	Clarified that third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the Service and applied toward the taxpayer's liability.
8.24.1.3(5)	Clarified that a taxpayer who claims that the levy is "erroneous" is entitled to a CAP before the levy proceeds are turned over to the Service and applied toward the taxpayer's liability. Once the levied proceeds are applied toward the taxpayer's liability, the taxpayer may make an administrative claim, per Publication 5149.
8.24.1.3(5)(Note)	Added note to clarify the taxpayer may request the return of levied funds via the managerial conference. If the taxpayer's request is disallowed, the taxpayer may file a CAP, which would meet the administrative claim requirements under Treasury Reg. 301.6343-3(h).

IRM	Brief Description
8.24.1.3.1	Added guidance from the Taxpayer First Act (TFA) regarding taxpayer access to the administrative file.
8.24.1.3.3(1)	Revised 1st bullet under excluded CAP issues to mirror IRM 5.1.9.4.1(1), Exclusions from CAP, for consistency; changed language from Trust Fund Recovery penalties to Pre or post assessment of Trust Fund Recovery penalties.
8.24.1.3.8(2)(Note)	Updated the note regarding the period to file a wrongful levy suit in lieu of pursuing a CAP hearing; it is 2 years (previously 9 months) from the date of the levy.
8.24.1.3.8(2) (Caution)	Referenced IRM 25.3.8, TC 520 -W Freeze Servicewide Guide, for additional information on the -W freeze.
8.24.1.3.8(5)(a)	Noted cross reference IRM 8.24.1.3.1, Taxpayer Access to the Administrative File (CAP Cases), regarding an exception to the rule allowing no more than 5 business days to schedule a conference.
8.24.1.3.9(3)(Note)	Referenced use of Letter 5180, Appeals Premature Referral - Collection Issues - Jurisdiction Released, to advise a taxpayer or third party their CAP appeal is being returned to Collection, along with the reason for the return (e.g., issued excluded from CAP), as a premature referral.
8.24.1.3.9(3) (Example)	Added an example regarding the appropriate usage of Letter 5180, Appeals Premature Referral - Collection Issues - Jurisdiction Released, in a situation involving a premature referral.

(2) This IRM has been updated for editorial changes throughout.

EFFECT ON OTHER DOCUMENTS

IRM 8.24.1, Collection Appeals Program (CAP), dated September 3, 2019, is superseded.

AUDIENCE

Appeals Employees

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8.24.1
Collection Appeals Program (CAP)

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8.24.1.1
(09-28-2021)
Program Scope and Objectives

(1) Purpose: This IRM provides an overview of the procedures and general authorities associated with the Collection Appeals Program (CAP).

(2) Audience: Appeals Technical Employees (ATE), Appeals Account Resolution Specialists (AARS) and Appeals Team Managers (ATM).

(3) Policy Owner: Policy, Planning, Quality and Analysis is under the Director of 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 of Policy, Planning, Quality and Analysis.

(5) Contact Information: Appeals employees should follow established procedures on How Contact an Analyst. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.24.1.1.1
(09-03-2019)
Background

(1) In 1996, the Service implemented the Collection Appeals Program (CAP). This program provides an administrative appeal for certain collection actions. The appealable actions were initially limited to liens, levies and seizures.

(2) The legislative history of IRC 7123, enacted by RRA 1998, reflects Congressional intent that the CAP program be continued, although CAP is not specifically mandated by statute.

(3) On January 1, 1997, terminated installment agreements (IA) were added to the program through the Taxpayer Bill of Rights 2, enacted July 30, 1996.

(4) The IRS Restructuring and Reform Act of 1998 (RRA 98) followed, providing taxpayers the right to appeal the rejection of installment agreements.

(5) Currently, CAP is available for appeals involving IA rejections, modifications and terminations, as well as liens, levies and seizures.

8.24.1.1.2
(09-03-2019)
Authority

(1) IRC 7122(e) serves as the authority to appeal the rejection of an IA. CAP is the program through which to file an appeal.

(2) IRC 6159(e) authorizes an appeal of IA terminations by the IRS. Treas. Reg. 301.6159-1(e)(5) authorizes an appeal of both IA terminations and modifications by the IRS. CAP is also the available mechanism through which to file an appeal.

(3) Part 5 (Collection Process) of the IRM is also a reference for the legal and procedural requirements that Appeals must follow in making determinations on CAP cases.

8.24.1.1.3
(09-03-2019)
Responsibilities

(1) The Policy analyst shown on the Product Catalog page as the originator is the assigned author of this IRM.

8.24.1.1.4
(09-03-2019)
Program Reports

(1) Policy, Planning, Quality and Analysis (PPQA) provides trend and data analyses and detailed summary reports for Appeals.

8.24.1.1.5
(09-28-2021)
Terms and Acronyms

(1) The table below lists common acronyms used in this section:

Term	Acronym
Appeals Account Resolution Specialists	AARS
Appeals Case Memo	ACM
Appeals Centralized Database System	ACDS
Automated Collection System	ACS
Account Management Services	AMS
Account and Processing Support	APS
Appeals Team Manager	ATM
Appeals Technical Employee	ATE
Collection Appeals Program	CAP
Collection Due Process	CDP
Department of Justice	DOJ
Enterprise Electronic Fax	E-eFax
Installment Agreement	IA
Notice of Federal Tax Lien	NFTL
Personally Identifiable Information	PII
Shared Team of Administrative & Redaction Support	STARS
Taxpayer Advocate Service	TAS

8.24.1.1.6
(09-28-2021)
Related Resources

(1) Guidance for Account & Processing Support (APS) employees for CAP processing procedures is contained in IRM 8.20.5 (carding in) and IRM 8.20.7 (closing).

(2) 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 *https://www.irs.gov/taxpayer-bill-of-rights*.

8.24.1.2
(09-28-2021)
Distinctions Between CAP and Collection Due Process (CDP) Hearings

(1) RRA 98 expands taxpayer rights to allow a "hearing" under Collection Due Process (CDP) after a Notice of Federal Tax Lien (NFTL) has been filed and before a levy may be made (jeopardy levies, levies on state income tax refunds, disqualified employment tax levies and levies on federal contractors are appealable after levy). The taxpayer has the right to file a tax court petition regarding Appeals' determinations under CDP, but not under CAP.

(2) CAP is available to taxpayers or third parties in a wide range of situations. See IRM 8.24.1.3, CAP Appeals. CAP is also available where the Collection Due Process (CDP), Equivalent Hearing (EH), or Retained Jurisdiction (RJ) right is not available (due to lapse of time or previous exercising of this one-time right for each tax period).

(3) Taxpayers who file a CAP request may also be entitled to, and file for, a Collection Due Process, Equivalent, or Retained Jurisdiction hearing, if a CDP notice was issued. See IRM 8.22.9.18, Retained Jurisdiction (RJ) Hearings. Determine which of these options is most beneficial for each taxpayer based on their indicated interests.

(4) If the taxpayer requests both a CDP and a CAP about the proposed levy or the NFTL filing, the taxpayer must choose one or the other. If the taxpayer chooses CAP, explain to the taxpayer what rights are being given up by withdrawing the CDP hearing request. Also secure a withdrawal for the CDP hearing, further ensuring the taxpayer understands they are giving up the right to seek judicial review. If the taxpayer will not sign a withdrawal or cannot decide between a CDP and CAP, the taxpayer should be given the CDP hearing. The Appeals hearing officer should clearly document the case history with the details of the discussion regarding the taxpayer's appeal rights.

Note: When a CAP and CDP are simultaneously requested (on a proposed levy or NFTL filing), there is no legal requirement that a taxpayer be given the right to a CAP hearing. Appeals may decide for policy reasons not to provide a CAP hearing (e.g. taxpayer will not sign CDP withdrawal or is unsure about which option to pursue). In this case, the Appeals hearing officer would close the CAP case using Closing Code 14 on the Form 5402. The Closing Letter should note the CAP was withdrawn in favor of exercising the taxpayer's CDP rights. This information should also be documented in the case history.

Note: The prior involvement requirement is not applicable to CAP hearings. However, if the taxpayer believes the assigned Appeals hearing officer, who was assigned and worked a prior CDP (involving the same taxpayer, tax and tax period), is biased against him/her, Appeals may decide to assign a different Appeals hearing officer to conduct the CAP hearing.

(5) Under CAP:

a. Appeals' administrative decision is final.
b. The goal is to provide a response with a 5 business-day turnaround. See IRM 8.24.1.3.1 (5) for an exception regarding this objective.
c. Appeals' review is for appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances.

Note: For CAP IA appeals, consider the appropriateness of the monthly installment amount upon review of the taxpayer's financial information. See the example below for an illustration regarding a CAP IA case.

Example: Rejected Installment Agreement

A BMF taxpayer requests an installment agreement (IA) with payment terms of $2,000 per month to resolve their outstanding corporate income tax liabilities of approximately $100,000. The taxpayer provides the requested financial documentation and they are in compliance with no issues precluding them from qualifying for an IA.

The Revenue Officer informs the taxpayer the proposal is rejected because Collection's review of the financial documentation reflects they can pay $3,000 per month. The Independent Reviewer concurs with the rejection determination and the taxpayer files a CAP appeal to protest the denial.

Copies of the Collection Information Statement (Form 433B) and attachments are forwarded to Appeals for the CAP hearing. The assigned Appeals hearing officer reviews the financial documentation and calculates the taxpayer has the ability to pay $2,500 per month.

In this case, if the taxpayer is agreeable to a monthly IA of $2,500, Appeals will direct Collection to arrange an IA for this amount. If the taxpayer is not agreeable to a monthly IA of $2,500 and they insist on their original IA request of $2,000 per month, Appeals will sustain Collection.

d. Appeals does NOT consider alternatives to the issue under appeal, but solely determines the appropriateness of the issue under appeal.

Example 1: Proposed NFTL Filing

The taxpayer submits a CAP appeal request upon completion of the required managerial conference, which did not produce a resolution to the disagreement concerning the proposed NFTL filing. During the Appeals conference, the Appeals hearing officer determines the taxpayer's income tax liability is under audit reconsideration and confirms with Examination that the balance is going to be reduced to an amount that would qualify the taxpayer for a streamlined installment agreement.

In this case, Appeals does not sustain Collection's position concerning the proposed Notice of Federal Tax Lien filing. Appeals' determination directs that Collection's lien determination will be deferred, pending Collection's consideration of a streamlined installment agreement. Having considered the appropriateness of the issue under appeal, the Appeals hearing officer ***will not*** negotiate the collection alternative(s) (e.g. installment agreement).

Example 2: Levy

The taxpayer submits a CAP appeal, requesting a levy release. The taxpayer acknowledges he has a delinquent return but claims the levy is creating an economic hardship. Aside from the delinquent return, the taxpayer is cooperative, having provided the requested Collection Information Statement (CIS) and supporting financial documentation to Collection.

Appeals reviews the financial documentation forwarded by Collection and determines the levy is creating an economic hardship against the taxpayer. Considering IRC 6343(a)(1)(D), Appeals does not sustain Collection, directing that the levy be released. Having considered the appropriateness of the issue under appeal, the Appeals hearing officer ***will not*** consider any other case resolutions (e.g., collection alternatives or placing the account in CNC status).

(6) Under CDP:

a. Appeals' determination may be appealed in court.
b. Appeals:
•verifies that legal and procedural requirements have been met
•explores collection alternatives or challenges to the liability
•balances the proposed collection action with taxpayer's legitimate concern of intrusiveness
c. Appeals retains jurisdiction over its determinations.

8.24.1.3
(09-28-2021)
CAP Appeals

(1) The following publications inform taxpayers about the CAP program:

- Pub 594, The IRS Collection Process
- Pub 1660, Collection Appeal Rights

(2) 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. A Notice of Federal Tax Lien (NFTL) that has been or will be filed.
c. The filing of a NFTL against an alter-ego or nominee's property.
d. Denials of requests to issue lien certificates, such as subordination, withdrawal, discharge or non-attachment.
e. Rejected, proposed for modification or modified, or proposed for termination or terminated installment agreements.

Note: A modification of an installment agreement can involve a proposal by the IRS or the taxpayer.

f. Disallowance of taxpayer's request to return levied property under IRC 6343(d).
g. Disallowance of property owner's (third party's) claim for return of property under IRC 6343(b) (request for return of wrongfully levied property). See the example below for more information:

Example:

A third party may file a CAP to appeal the disallowance of a wrongful levy claim under IRC 6343(b). This includes a wrongful levy claim that is disallowed by Collection because it was not timely filed within the 2 year deadline (see Publication 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b), for complete administrative claim filing guidelines) and given no consideration.

When Collection rejects a third party wrongful levy claim based on an untimely claim, they issue a Letter 3973, Wrongful Levy Claim Rejection Letter - Untimely Claim, citing the third party may appeal the determination through CAP. If the third party files a CAP in this situation, Appeals will review the disallowance of the claim

regarding the timeliness issue and either sustain Collection or direct Collection to take the appropriate corrective action (i.e., review and consider the wrongful levy claim if it was timely filed).

If Collection subsequently reviews the claim, as directed by Appeals, and issues a Letter 3974, Wrongful Levy Claim Rejection Letter, Appeals may review the facts and circumstances of the case if the third party files a CAP appeal.

Note: A request to return levy proceeds must be made within 2 years from the date of such levy.

(3) A taxpayer may appeal in CAP:

a. A levy or seizure on each asset or even the same asset previously levied if a newly discovered legal defect is the issue. The reason for this is that each levied or to be levied asset may have different issues. For example, a bank account in a different bank than previously levied on may actually be the asset of the child of the taxpayer but the taxpayer's SSN is on the account. Subsequent levies on the same asset, e.g., the same bank account, are not entitled to another CAP appeal unless there is a legal issue on the subsequent levy.
b. A NFTL filed in each subsequent location.
c. Each rejection, proposed modification, modification, proposed termination or termination of an IA.

(4) Third parties claiming property was wrongfully levied are entitled to CAP before the levy proceeds are turned over to the Service and applied toward the taxpayer's liability. Once the levied proceeds are applied toward the taxpayer's liability, the third party may 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 regarding the denial.

(5) A taxpayer who claims that the levy is "erroneous" (see IRM 5.11.2.3.2, Wrongful and Erroneous Levies) is entitled to a CAP before the levy proceeds are turned over to the Service and applied toward the taxpayer's liability. Once the levied proceeds are applied toward the taxpayer's liability, the taxpayer may make an administrative claim to Advisory under the procedures described in Pub 5149, Making an Administrative Return of Property Claim Under Internal Revenue Code (IRC) Section 6343(d). If the administrative claim is denied, the taxpayer can request a CAP appeal regarding the denial.

(6) Appeals has a goal to complete CAP cases as soon as possible with the ATE normally resolving the CAP within 5 business days from the date the case is assigned to them.

Note: The 5-day timeframe begins upon the ATE's receipt of the case and ends with the input of AC/FR on ACDS.

(7) Due to the swift resolution and limited nature of CAP reviews, most CAP cases are resolved by telephone or correspondence. However, there may be rare situations in which an in-person hearing request should be granted to reach account resolution. These situations will more than likely be rare, but if

requested, the employee and his/her manager should consider the facts and circumstances in making the determination to approve or deny the request. Appeals conference techniques are described in IRM 8.6.1, Conference and Settlement Practices - Conference and Issue Resolution.

Note: If an in-person hearing is not necessary to resolve the account or fully explain Appeals' determination to the taxpayer or representative, the conference should be held by telephone.

(8) NFTL withdrawals or lien discharges, IA, seizure, and claim issues may be quite complicated or require verification and will generally take longer than 5 business days to resolve. These cases should normally be resolved within 15 business days.

(9) Third parties may appeal an IRC 6325(b)(4) "right of substitution of value" discharge. If a certificate of discharge has been issued and the third party wants to challenge the Service's determination of the value of the government's interest in the property under IRC 7426(a)(4), the third party has only 120 days after the day on which such certificate is issued to file an action in federal district court.

(10) Before a taxpayer requests a CAP appeal, he or she must discuss the problem with the Collection manager. Taxpayers or representatives who make themselves unavailable to the manager for the mandatory discussion will not be entitled to a CAP appeal unless it is apparent the IRS manager did not offer a "reasonable" opportunity for such discussion to occur.

Note: The discussion with the group manager on proposed modification, modified, proposed termination, terminated or rejected installment agreements is not mandatory due to statutory right to appeal these actions. See IRC 7122(e)(2).

(11) The CAP guidance on premature referrals is in IRM 8.24.1.3.9, CAP Premature Referrals.

(12) By policy, collection action is suspended while lien, levy and seizure CAP cases are in Appeals. Collection may continue enforcement action, however, if they believe withholding the action would put collection of the tax liability at risk. Below are examples of such situations:

- Evidence that the taxpayer is dissipating assets
- Pyramiding additional tax liabilities, including unpaid Federal Tax Deposits (FTD)

Note: Appeals should be notified immediately if Collection determines that enforcement should continue. That contact should simply let Appeals know what will happen, and not the reason why enforcement should continue. The ex parte rules set forth in Rev. Proc. 2012–18 must be followed by both Collection and Appeals employees. Any discussion of why enforcement should continue would require bringing the taxpayer into the discussion which might be detrimental to any jeopardy action.

(13) For IA rejections and terminations, levy action is prohibited by statute. See IRC 6331(k)(2).

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

8.24.1.3.1
(09-28-2021)
Taxpayer Access to the Administrative File (CAP Cases)

(1) In accordance with the Taxpayer First Act (TFA) and IRC 7803(e)(7), ATEs will ensure that qualifying taxpayers have access to the non-privileged portion of the case file on record regarding the disputed issues. ATEs will note the communications with each taxpayer regarding this issue in the case history.

(2) Taxpayers who fall within the established parameters (adjusted gross income of $400,000 or less for any taxable year in question for an individual and gross receipts that do not exceed $5 million for any taxable year in question for a business entity) are entitled to request access to the case file. If the taxpayer requests access to the case file, ensure that they are provided access no later than 10 days before the date of the scheduled conference (unless the taxpayer has elected to receive the file no later than the date of the conference).

(3) Since all CAP cases are received electronically, the privileged portion of the case file should be redacted and the non-privileged portion of the case file should be made immediately available to the taxpayer so that a conference can he held as swiftly as possible (at least 10 calendar days after the taxpayer receives access). In general, the ATE must submit a *Shared Team of Administrative & Redaction Support (STARS) request* for scanning/copying and redacting of the file. However, in circumstances in which the use of STARS is impractical (for example, the taxpayer appears for an in-person conference and asks the ATE for a copy of a particular document from the file), ATEs may decide to provide access and redact the file themselves. Requests submitted to STARS will be reassigned to the lead redactor who will then expedite redaction services. No conference should be held until access to the file has been offered and provided to qualified taxpayers that request access.

(4) If the taxpayer elects to view the case file and requests a conference sooner than 10 days from access, the ATE may hold the conference and record the taxpayer's request in the case history.

(5) Our goal to resolve CAPs within 5 business days from ATE receipt, as noted in IRM 8.24.1.3(4), will be extended to 5 business days from the end of the 10-day period if the taxpayer elects to access the file.

(6) Below is an example of a communication with a taxpayer concerning this issue.

Example: In accordance with the Internal Revenue Code, you have the right to access the nonprivileged portion of your case file. If you want your case file, please advise me and we will schedule our conference no sooner than 10 days from your access to the file (unless you elect to waive the 10 day period and receive the file no later than the date of the conference).

8.24.1.3.2
(01-01-2006)
Referrals to the Taxpayer Advocate Service (TAS)

(1) A taxpayer should be referred to the Taxpayer Advocate Service (TAS) (see IRM Part 13, Taxpayer Advocate Service) in accordance with local procedures using a Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), under the following two circumstances:

a. When the taxpayer meets TAS criteria (See IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria) and the taxpayer's issue cannot be resolved within 24 hours. If the taxpayer's issue can be resolved within 24 hours or you have taken steps to begin resolving the taxpayer's issue within 24 hours, do not forward the case to TAS, unless the taxpayer asks to be referred to TAS.
b. When a taxpayer asks to be referred to TAS and their issue meets TAS criteria, their case should be forwarded even if the issue can be resolved the same day. See IRM 13.1.7.4, Same Day Resolution by Operations.

(2) To the extent possible, complete the Appeals determination before the local TAS office makes a relief determination, since the appeal process may resolve the taxpayer's concerns.

8.24.1.3.3
(09-28-2021)
Exclusions from CAP

(1) Several collection and examination issues have separate appeal procedures. Advise taxpayers who raise these issues under CAP to proceed with the appropriate appeal procedure. These include:

- Pre or post assessment of Trust fund recovery penalties
- Offers in compromise
- Penalty appeals
- Jeopardy levies: unless the time to appeal under IRC 7429 has expired **and** the taxpayer will not be given a CDP hearing (e.g., 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); or, unless the jeopardy levy was issued during an IA, OIC, or on the date of a summons. See IRM 5.11.3, Jeopardy Levy without a Jeopardy Assessment.
- Audit reconsideration
- Claims for refund or requests for abatement of tax

Note: Third party wrongful levy claims under IRC 6343(b) that have been rejected are appealable under CAP. See Pub 4528.

(2) Also excluded from CAP:

- Actions with respect to an asset under the control of a court (e.g., bankruptcy petition filed by the taxpayer, probate proceedings, and receivership proceedings). See IRM 21.5.6.4.44, -V freeze.
- Modules referred to Area Counsel to file suit (e.g., suit to reduce an assessment to judgment) or modules subject to a suit filed by the taxpayer (e.g., refund suit of a divisible tax) in which the Department of Justice (DOJ) will defend the Service's interest. See IRM 21.5.6.4.46(2), -W freeze.
- Challenges by a third party to a nominee, alter ego, or transferee lien or levy with respect to any property when the third party's status as nominee, alter ego, or transferee is at issue in a suit against the United States (e.g., wrongful lien or levy suit under IRC section 7426 or quiet

title action under 28 USC 2410 in which DOJ will defend the Service's interest, regardless of whether the property subject to challenge is at issue in suit).

- Issues not within the scope of Internal Revenue laws, i.e., moral, religious or constitutional issues.
- Challenges to the existence or amount of a liability (liability issues are addressed under CDP; see IRM 8.22.8, Liability Issues and Relief from Liability
- Collection's decision not to ***release*** a lien. See Treas. Reg. 301.6326–1(f) and IRC 6326.

Note: Other denials of requests to issue lien certificates, such as subordination, discharge, withdrawal, or nonattachment may be appealed under CAP.

(3) Cases controlled by Criminal Investigation (CI) where CI concurs with the collection activity may be entitled to a CAP. Appeals will generally delay a CAP hearing during the pendency of criminal investigation and proceedings, unless the determination is made consistent with IRM 1.2.1.5.11, Policy Statement 4-26, and that the CAP hearing will not imperil prosecution.

8.24.1.3.4
(09-03-2019)
Rejected, Modified, Proposed for Modification, Terminated and Proposed for Termination Installment Agreements under CAP

(1) The following table provides the time frames and citations regarding CAP IA appeals:

If the CAP involves a...	Then the taxpayer has...	Pursuant to...
Rejected IA	30 days to request an appeal; the appeal must be timely postmarked.	IRC 7122(e) ***Note:*** IRC 6331(k)(2)(B) provides no levy may be made for 30 days after rejection of an IA, and, if an appeal is filed in that 30 day period, during the period the appeal is pending.

If the CAP involves a...	Then the taxpayer has...	Pursuant to...
Modified or Proposed Modification of IA	30 days from the proposed modification of the IA to submit an appeal; the TP may also appeal prior to the expiration of the 30-day period commencing the day after the modification is to take effect. ***Note:*** If a CAP hearing is requested prior to modification, the taxpayer may not appeal the decision again once the modification takes place.	Treas. Reg 301.6159-1(e)(5)
Proposed Termination of IA (Defaulted IA)	30 days from the proposed termination of the IA to submit an appeal; the taxpayer may also appeal prior to the expiration of the 30-day period commencing the day after the termination is to take effect. ***Note:*** Unless the taxpayer appeals within the 30-day period or cures the default, the IA will terminate by law.	• IRC 6159(e) • Treas. Reg 301.6159-1(e)(5)
Terminated IA	30 days to request an appeal after the IA is terminated; the 30 day period commences the day after the date the notice says the termination is to take effect. ***Note:*** If the taxpayer appeals the proposed termination, the taxpayer may not appeal again after the termination takes effect.	• IRC 6159(e) • Treas. Reg 301.6159-1(e)(5)

(2) For a proposed termination of IA, the taxpayer has 30 days from the date of the notice of intent to terminate in which to request an appeal. Unless the taxpayer appeals within 30 days of the date of the notice, or cures the default, the IA will terminate by law. After the termination of the IA, the taxpayer's right to appeal will continue for an additional 30 days (see above chart).

(3) IRC 7122(e) provides that rejected installment agreements will have an independent administrative review by a designated official within Collection before the rejection is communicated to the taxpayer.

(4) Collection function will input the required TC 971 codes for levy suspension on rejected installment agreements.

(5) The most common reasons for termination are:

a. Failing to make agreed payments,
b. Incurring new unpaid liabilities subsequent to the IA, or
c. See IRM 5.14, Installment Agreements, for additional reasons.

(6) When the IRS believes a taxpayer has defaulted on an IA a notice is sent proposing termination. CP 523 is sent for campus cases and Letter 2975 is sent for field cases. Both letters ask the taxpayer to contact the Service or appeal within 30 days. Otherwise, the agreement is terminated.

(7) Terminated installment agreements.

- Have an automatic reversion from status 64 (terminated IA) to status 22 (ACS case) after 13 cycles.
- For any terminated IA case not closed by the twelfth cycle after an agreement is terminated, a STAUP 22-09 needs to be input for additional time.
- An additional STAUP 22-xx may be necessary if the case is not resolved in the additional 9 cycles that were requested by the STAUP. xx is equal to the number of cycles for which the additional cycles STAUP are being requested.
- It is the Appeals hearing officer's responsibility to monitor the status of the CAP and ensure it does not default to status 22 while they are working the CAP.
- Either the Collection function or Appeals may input the STAUP, per local arrangement, but Appeals is responsible for ensuring that it is done.

8.24.1.3.5
(09-03-2019)
Collection Field CAP Cases

(1) Form 9423, Collection Appeal Request, is recommended for field Collection CAP appeals. This form also provides instructions on how to appeal. While Form 9423 is recommended for CAP appeals, any written request for a CAP hearing will be honored.

(2) Taxpayers can obtain Form 9423 and these publications from the field Collection groups and the Service's web page at *http://www.irs.gov/*. Employees can obtain these forms from the internal Multimedia web site.

(3) The request for a CAP appeal does not need to be completed prior to the group manager conference. Taxpayers, however, need to let the Collection office know within two (2) business days after the conference with the Collection manager that they plan to submit Form 9423. The Form 9423 must be received or postmarked within three (3) business days of the conference with the Collection manager or collection may resume on all actions except rejected or terminated installment agreements. A conference with the group manager is not required on IA CAP appeals.

Note: Taxpayers will still be entitled to a CAP appeal if their Form 9423 (or other written request) is received up to ten business days after the required managerial conference (the CAP request should be submitted to the office or revenue officer that took the action). However, the stay of collection is not

required if their request is received more than two business days after the conference date. This does not apply to IA appeals.

(4) If a taxpayer requests a conference and is not contacted by a manager within two (2) business days of making the request, the taxpayer may 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 he/she was not contacted by a manager should be noted in Block 15 of the Form 9423. The Form 9423 should be received or postmarked within four (4) business days of the taxpayer's request for a conference or collection action may resume.

(5) Cases should be efaxed to the Memphis Appeals Campus using the following Enterprise Electronic Fax (E-eFax) number: **855–214–7525**. This E-eFax number is for internal use (i.e. by IRS employees) and it converts the paper fax into an electronic pdf file, ready to be carded in and routed to the designated Appeals Team Manager for assignment.

Note: If Collection secures a CAP request through E-eFax, it will be in pdf form and should be forwarded via encrypted email to the following mailbox: **AP Collection Appeals Program*.

- CAP cases on liens, levies or seizures are sent to Appeals within 2 business days of the manager's rejection or receipt of the taxpayer's or third party's request, whichever occurs later.
- CAP cases on rejected or terminated installment agreements are to be expeditiously sent to Appeals due to the statutory restrictions on levy.

(6) The information needed for a CAP appeal will be efaxed to the Appeals Office. Generally, a copy of the entire case file is not necessary and is burdensome. Although infrequent, should additional documentation be necessary, Collection and Appeals, on a case by case basis, may determine together what portion of the file needs to be transmitted to Appeals to adequately consider the appeal. Any communications should be limited to ministerial, administrative or procedural matters and not extend into the merits, accuracy of the facts or strengths and weaknesses of the case (see Rev. Proc. 2012–18, Section 2.03(2) &(3)).

(7) At a minimum, the Appeals file should include:

a. Form 15044, Transmittal of Collection Appeals Program (CAP) Hearing Request.
b. Form 9423, Collection Appeal Request, and any taxpayer correspondence
c. Copies of the relevant levy, lien, and/or seizure documents
d. Form 433A and/or Form 433B
e. Any other relevant documents, such as copies of deeds, mortgages, counsel opinions and appropriate financial documentation
f. Copy of Form 2848, Power of Attorney and Declaration of Representative, if the POA is not on IDRS

(8) All Appeals offices have access to the Integrated Data Retrieval System (IDRS) and Integrated Collection System (ICS). The ATE can access the Revenue Officer's 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:

- ICS history
- TXMODs
- Power of attorney information (IDRS cc CFINK)
- Installment agreement details (IDRS cc IADIS)

(9) The Appeals hearing officer or their manager will contact the Revenue Officer or group manager to obtain additional information within the Service's control or readily available to the Collection employee that is needed to adequately consider the issues raised by the taxpayer.

Caution: Communications between Appeals and other IRS employees are strictly limited to ministerial, administrative, or procedural matters and the merits of the case cannot be discussed. See Rev. Proc. 2012-18 *at §2.03(2) regarding such matters. Additional information and clarification concerning ex parte communications is available under IRM 8.1.10, Ex Parte Communications*.

(10) Seizures are appealable either before the seizure action takes place or after it is completed. However, taxpayers have 10 business days after the Notice of Seizure is received or left at their home or business to appeal to the Collection manager.

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

(11) The appeal will generally be handled in the Appeals Office serving the taxpayer's home address or in the case of a corporation, the principal place of business.

(12) See IRM 5.1.9, Collection Appeal Rights, for field Collection CAP procedures.

8.24.1.3.6
(09-03-2019)
ACS CAP Cases

(1) Taxpayers may make an oral request for a CAP appeal on Automated Collection System (ACS) cases. This request for an appeal and a statement about the issue is documented in the Comments section of the ACS Entity Screen.

(2) Taxpayers must speak to the ACS Manager prior to the case being sent to Appeals. CAP cases on liens or levies should be sent to Appeals within two business days of receipt of the taxpayer's or third party's request, subsequent to the conference with the manager, which did not result in a resolution.

Note: A managerial conference is not required on IA CAP appeals.

(3) The ACS CAP coordinator will efax the following documents to the Appeals Office serving the taxpayer's address:

- Form 15044, Transmittal of Collection Appeals Program (CAP) Hearing Request
- Copies of Taxpayer's correspondence
- Form 9423, if available
- Form 433F, Form 433A and/or Form 433B, if available
- Copy of Form 2848, (Power of Attorney) if the POA is not on IDRS
- ACS screen prints, including the Entity, Comments, and Module screens

- The Integrated Case Processing screen information available through Account Management Services (AMS)
- Other pertinent information
- Form 4442, Inquiry Referral, if used

(4) To obtain additional ACS case file information, Appeals hearing officers can access Account Management Services (AMS). Further information on AMS can be obtained by accessing *http://ams.web.irs.gov*. You can also request additional information from the ACS manager.

(5) Upon closing an ACS CAP case, the closing documents (Form 5402, Closing Letter and Appeals Case Memo, if prepared) will be sent via encrypted email to the originating ACS CAP coordinator.

8.24.1.3.7
(09-03-2019)
Accounts Management CAP Cases

(1) A taxpayer may make an oral request for a CAP appeal on cases which are worked by Accounts Management. These will normally be cases which are not assigned to either ACS or Field Collection.

(2) Form 15044, Transmittal of Collection Appeals Program (CAP) Hearing Request, will be used to efax CAP cases to the Appeals office.

(3) Customer Service sites have a two business day period to send cases on liens or levies to Appeals. Taxpayers must speak to the Customer Service Manager prior to the CAP being sent to Appeals. Normally the CAP will be forwarded to Appeals by the CAP coordinator for the location where the CAP is received.

Note: The managerial conference is not required on IA CAP appeals.

(4) In addition to Form 15044, Customer Service personnel should also efax a copy of:

- Form 15044, Transmittal of Collection Appeals Program (CAP) Hearing Request
- Form 4442, if used, which has a space for a brief description of the taxpayer's inquiry and proposed resolution
- The taxpayer's correspondence
- The Integrated Case Processing screen information available through Account Management Services (AMS)
- Other pertinent information

(5) When a CAP case has been forwarded to Appeals, Accounts Management Services will utilize IDRS to input a STAUP for four cycles and to enter a history item indicating a CAP case has been received and forwarded to Appeals.

- CAPLNOP - CAP, Lien Issue
- CAPLVOP - CAP, Levy Issue
- CAPIAOP - CAP, IA Termination
- IADENIAL - CAP, IA Denial

(6) Upon closing an Accounts Management CAP case, the closing documents (Form 5402, Closing Letter and Appeals Case Memo, if prepared) will be sent via encrypted email to the initiating CAP coordinator.

8.24.1.3.8
(09-28-2021)
Case Procedures under CAP

(1) Appeals hearing officers should treat CAP cases as their first priority (unless a statute will expire on another case within 5 days).

(2) When resource limitations rather than case complexities will not allow cases to be closed in 5 business days from the Appeals hearing officer's receipt, work CAP cases in the following priority:

a. In-business employment tax cases
b. Other lien and levy (includes seizure) cases
c. Installment agreement rejections, modifications or terminations

Note: Cases with complex issues, such as NFTL withdrawals, discharges or subordinations, IA, seizure or claim issues, may be quite complicated and/or require verification and cannot realistically be completed within 5 business days. Employees should give the issue the necessary time for completion in a quality manner. If the case involves an issue for which the period for filing suit (wrongful levy suit is 2 years from the date of the levy) is due to expire, the party should be directed to file suit in lieu of a CAP hearing (when a third party has already filed a request for the return of property under IRC 6343(b), the period for filing a wrongful levy suit is 12 months from the date of filing the request or 6 months from the date of the disallowance by Collection, whichever is shorter).

Caution: Once the taxpayer files suit and the action is under the control of the DOJ, the department has exclusive authority over any issues. Refer to IRM 21.5.6.4.46(2), -W Freeze, for the codes that define a DOJ case. IRM 25.3.8, TC 520 -W Freeze Servicewide Guide, is available for additional information.

(3) Employees should hold a conference with the taxpayer within 2 business days of case receipt to allow maximum flexibility for decision-making and paperwork preparation.

(4) The stringent time frames were set for the following reasons:

a. To give taxpayers an almost immediate decision,
b. To ensure that taxpayers do not appeal these actions solely to delay collection, and
c. To avoid inconveniencing third parties longer than is necessary when these parties are holding attached property.

(5) Phone conferences are common in these cases.

a. If requested, allow taxpayers a reasonable time to schedule a conference. Normally this should be no more than 5 business days. See IRM 8.24.1.3.1, Taxpayer Access to the Administrative File (CAP Cases), regarding an exception to this rule.
b. Generally, if the taxpayer does not elect a conference within the limits given, Appeals will make a decision based on available information.

Note: More time may be granted in exceptional circumstances, such as medical emergencies.

c. Communicate and coordinate any delays with Collection.

(6) It is vital that the Collection case be fully and clearly documented, since missing and unclear information could cause a case to take more than 5 business days to resolve or result in Appeals reversing the collection action proposed or taken.

a. Before the conference with the taxpayer, contact the Revenue Officer to clarify the content of any illegible or unclear statements or documents or to secure a document referred to in the file that was not included with the file. Such contact is permissible ex parte contact. See Rev. Proc. 2012–18 at § 2.03(2)(a) Examples (i) and (iii).

b. Question the Revenue Officer about any unclear procedural matters, such as where compliance with the IRM requirements for seizure was contemporaneously documented. Such contact is permissible ex parte contact. See IRM 8.1.10.3.2, Administrative File. But, do not discuss the actions themselves.

(7) 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, but communication may not be conducted ex parte. 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. In this event, the taxpayer must be given a reasonable opportunity to respond. See IRM 8.1.10.3.1.3, New Information Received or New Issues Raised.

Note: Due to the quick turnaround goal on CAP cases (5 days), it is extremely rare that Appeals will ask Collection to review and comment on new information. Ultimately, however, the assigned Appeals hearing officer will need to exercise judgment and consider if any new taxpayer information should be reviewed by Collection or if the current facts and circumstances (as provided to Collection and forwarded to Appeals) are sufficient for Appeals to determine the appropriateness of the issue under appeal.

(8) Appeals should review the case for appropriateness of the action, proposed or taken, based on law, regulations, policy, and procedures (national and local), considering all of the relevant facts and circumstances.

(9) Local procedures will only be considered appropriate if they are written and consistent with the IRM.

(10) Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse the Collection function's action if evaluation of the taxpayer's history and current facts and circumstances indicate that the proposed or taken action is inappropriate.

(11) Due to the extensive investigation and multiple levels of approval required in seizing property, the appropriate approval authority in Appeals must concur before a decision to direct release of a seizure is shared with Collection. If a Collection Area Director approved the seizure, the Director of Collection Appeals must approve the release; if the Collection Territory Manager approved the seizure, the Appeals Area Director must approve the determination to release.

(12) Appeals should inform both the Collection function and the taxpayer of the decision as soon as possible after receiving the necessary approvals to direct release of a seizure.

a. Approval may initially be oral to speed up the notification process.
b. Follow any oral communication of approval with managerial documentation in the case activity record.
c. The written closing letter should be faxed or mailed to the taxpayer's current address no later than 3 business days after the final approval of Appeals' decision. If a fax number is not available and the taxpayer's current address is unknown, send the letter to the last known address. APS will ensure the closing letter is timely faxed or mailed (if a fax number is not available).
d. The Appeals decision will be implemented, as applicable, after both Collection and the taxpayer have been informed of the decision. Collection will be informed via encrypted email.

(13) Appeals' CAP hearing decision is limited to sustaining Collection or otherwise directing Collection to take the appropriate corrective action (e.g. release levy).

Example: Proposed Seizure

During a field visit to the taxpayer's address of record, the Revenue Officer (RO) is informed the property is being rented and the taxpayer resides at another location. The taxpayer is uncooperative with information concerning the real property but the RO conducts research and learns the taxpayer owns the property and it is unencumbered.

The RO proceeds with the required pre-seizure paperwork and advises the taxpayer that seizure is the next planned action, pursuant to IRM 5.10.1.6.1, Personal Contact to Advise the Taxpayer of Proposed Seizure Action. In response, the taxpayer's POA submits a CAP appeal against the proposed seizure after the required managerial conference does not generate a resolution.

During the CAP hearing, the POA acknowledges the subject property is free and clear but informs the Appeals hearing officer that the home is occupied by the taxpayer's former spouse and dependent minor children.

Upon Appeals' discovery concerning the occupancy of the home, it is acknowledged that judicial approval is required prior to seizure pursuant to IRC 6334(e)(1) and IRM 5.10.2.3, Judicial Approval for Principal Residence Seizures. As a result, Appeals directs Collection to cease pursuing seizure of the property until judicial approval is secured.

(14) The taxpayer's closing letter should clearly outline the following:

a. Any agreement reached with the taxpayer,
b. Any relief given,
c. Rationale for decision, and
d. If the action of the Collection function was fully supported.

Note: Letter 5100 is available as a CAP template letter on ACDS.

(15) Prepare an Appeals Case Memo (ACM). The ACM should include complete instructions on the decisions made and any action that will need to be completed, e.g., establish an IA for XXX amount per month, investigate discharge, whether there are no restrictions on enforcement, etc.

Note: Closing letters with sufficient information may serve as the ACM. Appeals managers will verify the appropriateness of tone and completeness of closing letters used as an ACM. Both the government's position and the taxpayer's proposal need to be discussed, and the rationale for and appropriateness of the Appeals' decision must be clearly shown through the analysis of the taxpayers' history and current facts and circumstances. If the case involved a third party claimant to property under IRC 6343(b) and Appeals sustains Collection's denial of the request, the closing letter must include the claimant's rights. For example, the third party should be informed of the opportunity to file a wrongful levy suit pursuant to IRC 7426(a)(1). Include the applicable time limitations provided in IRC 6532(c).

(16) An Appeals Case Memo (ACM), if prepared, is not required to be issued to the taxpayer as an attachment to the closing letter.

(17) The Appeals hearing officer will forward the entire closed CAP case file (i.e. the original efaxed documents, any additional documents received from the taxpayer/representative during the hearing and the closing documents), via encrypted email, to the ATM for approval.

(18) If the taxpayer filed a Form 911, Request for Taxpayer Advocate Service Assistance, or if the case was otherwise referred to the Taxpayer Advocate Service, provide a copy of the closing letter and the ACM to the controlling local Taxpayer Advocate Service office.

8.24.1.3.9
(09-28-2021)
CAP Premature Referrals

(1) CAP cases should be closed on ACDS as a premature referral (cc 20) in the following instances:

- The taxpayer appealed before entitlement to a CAP hearing.
- The taxpayer or representative did not have the mandatory meeting with the manager (not applicable to IA CAP requests).
- The CAP request is an excluded issue. IRM 8.24.1.3.3, Exclusions from CAP.
- The CAP appeal is not timely. The appeal was submitted later than allowed under the Collection Appeals Program time frames. The time frames for filing a CAP IA are listed in IRM 8.24.1.3.4, Rejected, Modified, Proposed for Modification, Terminated and Proposed for Termination Installment Agreements under CAP. For other CAP appeals, see IRM 8.24.1.3.5, Collection Field CAP Cases.
- The taxpayer submitted an appeal on the same issue based on the same facts after Appeals rendered a decision on the issue (e.g., the taxpayer filed a subsequent CAP appeal against a levy on the same asset, but did not offer any new information).
- The Form 9423 in a Collection Field CAP case is not signed by the taxpayer or an authorized representative.

(2) The following are examples of premature referral considerations (when to return and when not to return a CAP as a premature referral):

Example 1: CAP involving same facts and circumstances - A taxpayer submitted a CAP requesting the consideration and acceptance of a bond in lieu of a Notice of Federal Tax Lien filing. Appeals reviewed the case and directed Collection to allow the taxpayer 21 days to submit a bond proposal to the IRS, citing that Collection must give full consideration to the proposal and follow the IRM procedures and guidelines, as provided in IRM 5.12.3.3.3. Appeals also noted that Collection may proceed with filing the NFTL if the bond proposal is not accepted.

Collection considered the taxpayer's bond proposal, as directed by Appeals, and did not accept the bond in lieu of filing the NFTL. The taxpayer did not agree with the decision and subsequently filed another CAP to request acceptance of a bond in lieu of the NFTL filing. The CAP request contained nominal changes to the original facts and circumstances in the earlier CAP.

Per IRM 5.1.9.4.4(11), decisions by Appeals are binding on the taxpayer and Collection and the taxpayer may not appeal the same issue under CAP once Appeals has decided the issue on the same factual basis. Ultimately, Collection adhered to Appeals' decision in the initial CAP and since the facts are essentially the same, the taxpayer is not entitled to another CAP on this issue. Thus, if the CAP were to be forwarded to Appeals, it would returned as a premature referral.

Example 2: CAP involving an NFTL withdrawal request - An NFTL is filed against the taxpayer, who disputes the lien filing and participates in a conference with the Revenue Officer Group Manager. During the managerial conference, the taxpayer requests an NFTL withdrawal, but no agreement is reached. Subsequently, the taxpayer files a CAP to resolve the issue in Appeals.

In accordance with IRM 8.24.1.3(2)(b), which cites the taxpayer may file a CAP appeal on an NFTL that has been or will be filed, the ATE works within the CAP guidelines as referenced in IRM 8.24.1.3.8(13), Case Procedures under CAP. It notes that Appeals is limited to sustaining Collection or otherwise directing Collection to take the appropriate corrective action. Upon rendering a determination in favor of the taxpayer, the ATE directs Collection to withdraw the NFTL as the appropriate corrective action.

In this example, the taxpayer could have submitted a request for an NFTL withdrawal through Collection Advisory and, if denied, would have been afforded CAP rights. See IRM 8.24.1.3(2)(d). It is not mandatory, however, for the taxpayer to initially pursue an NFTL withdrawal through Collection Advisory. When a CAP is filed to dispute an NFTL filing and Appeals finds in favor of the taxpayer, the appropriate corrective action is to withdraw the NFTL per IRC 6323(j) (e.g., NFTL filing was improvident, incorrect, or administrative procedures were not followed).

Thus, a CAP lien that involves an NFTL withdrawal request that has not been subject to a Collection Advisory review should NOT be returned as a premature referral.

Note: Other lien certificates (e.g., subordination, discharge and non-attachment) require the review of Collection Advisory. Upon denial, the taxpayer may request a CAP lien.

(3) Appeals does not issue a Uniform Acknowledgment Letter for CAP cases. While there is no requirement to notify the taxpayer the CAP request is being returned to Collection as a premature referral, it is a best practice to send a brief letter to the taxpayer advising the CAP appeal is being returned to Collection, along with the reason for the return (e.g., due to issue excluded from CAP).

Note: Letter 5180, Appeals Premature Referral - Collection Issues - Jurisdiction Released, is available to advise the taxpayer their CAP appeal is being returned to Collection, along with the reason for the return (e.g., issue excluded from CAP), as a premature referral.

Example: A third party files a CAP, citing a wrongful levy against them. Since the levied funds have been turned over to the Service and applied toward the taxpayer's account, the third party is not eligible at this stage for a CAP appeal. In this case, it would be courteous and appropriate to send Letter 5180 to the third party, advising they need to file a wrongful levy claim per Publication 4528, Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b), to appeal the levy. Provide a copy of the publication, citing it provides information regarding the deadline to submit the wrongful levy claim, 2 years from the date of the levy, and notes the option to file a civil action in district court. You would further advise that if their claim is denied, they would have an opportunity at that time to file a CAP.

8.24.1.3.10
(09-03-2019)
Effect of Decision under CAP

(1) Decisions by Appeals are binding on the taxpayer and the Collection function, with certain limited exceptions. The Collection function will take the actions directed by Appeals. However, the default of the agreement by the taxpayer will release the Collection function from the terms of the agreement.

(2) Material misrepresentation of fact or failure to fully disclose any material information by the taxpayer will make any agreement - such as a delay in lien or levy or an IA, etc., - reached on behalf of the Service voidable. Before the Collection function declares an agreement void under this provision, the Collection employee will confer with Appeals as described in IRM 8.24.1.3.10.1, Disagreement with Appeals Decision. If Appeals sustains the Collection function's action(s), the Collection function may resume any suspended actions.

8.24.1.3.10.1
(12-02-2014)
Disagreement with Appeals Decision

(1) If there is concern or disagreement with respect to a decision reached by Appeals in a particular case, local management in Collection and Appeals should work to address concerns and resolve disagreements. If resolution cannot be reached informally at the local level, the **AP Formal Dissents* centralized mailbox is available as a formal process to elevate concerns and issues to Appeals. This information is outlined in IRM 5.1.9.5.4, Disagreement with Appeals Decisions. It is expected local management in Collection will contact local Appeals management within two business days of the faxing of information (Form 5402, copy of the closing letter and ACM, if any) from Appeals to Collection.

(2) These discussions will not take place until the Appeals case has been concluded (i.e., determination or decision letter or closing letter issued to the taxpayer) and the case returned to Collection. This will ensure an independent Appeals function within the Internal Revenue Service, to the extent that such communications during Appeals' decision making process appear to compromise the independence of the Appeals hearing officers. See IRM 8.1.10, Ex Parte Communications.

(3) If Appeals determination is reopened then Appeals will notify the taxpayer. The taxpayer will be given an opportunity to respond to Collection's facts and arguments in favor of reopening the determination.

8.24.1.3.11
(09-03-2019)
CAP "Type" and "Closing" Codes for ACDS

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

ACDS Code	Is used for...
CAPLV	levies, third party claims to property under 6343(b), taxpayer requests for return of property under 6343(d)
CAPLN	NFTLs, lien issues, denied requests to issue lien certificates such as subordination, withdrawal, discharge, or non-attachment
CAPSZ	seizures
CAPIA	rejected, modified, proposed for modification, terminated or proposed for termination installment agreements

(2) Closing codes are used under the following circumstances.

If the Collection Action is	Use Closing Code.....	When...
Fully sustained	14	the collection action is supported with no change.
Not sustained	15	the collection action is completely overturned. For example, closing code 15 would be used when a levy is released.
Partially sustained	16	only minor changes are made in the collection action. For example, if filing of a Notice of Federal Tax Lien is proposed, a minor change would be to give the taxpayer 10 more days to come up with the funds before the NFTL is filed.

Note: After filing a CAP appeal, if the taxpayer, or their representative, state they are no longer interested in pursuing the appeal and withdraw their CAP appeal, Appeals should close the case with closing code 14, supporting Collection. In a CAP withdrawal:
- The assigned ATE may sign the Closing Letter
- The Form 5402 does not require an ATM signature

8.24.1.4
(12-02-2014)
APS CAP Case Closing Procedures.

(1) The ATM will enter the ACAPDATE on ACDS and forward the closed CAP file (to include all Appeals documents and the original E-eFax file from the originating function), via encrypted email, to APS for processing.

(2) The critical CAP time restraints require the closing of a CAP case in APS by the end of the business day following the date the case was received in APS.

(3) Close the case on ACDS using general closing instructions. The chart below contains the **closing codes** that are used.

Use CLOSINGCD:	When...
14	Fully sustained. Collection's action is supported with no change.
15	Not sustained. Collection's action is completely overturned (e.g. levy is released).
16	Partially sustained. Minor changes are made to Collection's action (e.g., in a CAP lien, Appeals gives the taxpayer 10 more days to come up with the funds before the NFTL is filed).

(4) APS will forward the following items, via encrypted email, to the originating function:

- Form 5402
- ACM, if prepared
- Closing letter

(5) For additional information on the *Step-by-Step Paperless CAP Process for Non-Field Sourced Cases*, see Exhibit 8.24.1-2.

(6) For additional information on the *Step-by-Step Paperless CAP Process for Field Sourced Cases*, see Exhibit 8.24.1-3.

8.24.1.5
(12-02-2014)
Procedures for Shipping Personally Identifiable Information (PII)

(1) In the extreme rare event that a paper CAP file is shipped, follow the shipping policy for PII documents located at: *http://publish.no.irs.gov/mailtran/piihardcopy.html*.

(2) For additional information on shipping PII, go to *Employee Toolkit*, *Shipping Procedures for Personally Identifiable Information (PII)*.

Exhibit 8.24.1-1 (09-03-2019)
Instructions for Completing Customized CAP Form 5402

Item	Instructions
1. Date	Leave blank; APS will fill in date.
2. Route to	Include complete address of the ACS, Customer Service unit or Collection Field group where case is to be returned
3. From/Appeals Code	Populated from ACDS
4. Description	Select from Drop Down Box
5. Taxpayer	Populated from ACDS
6. SSN/TIN	Populated from ACDS
7. WORKUNIT NO.	Populated from ACDS
8. Tax Years/applicable tax periods	Appeals hearing officer will verify all applicable periods are included on the Form 5402
9. Type of Case	Populated from ACDS
10. Category Code	Populated from ACDS
11. Related Taxpayers	Complete with related taxpayer info as appropriate
12. Disposal Information	ARDI Code 7 automatically populated; Premature Referral Code, Closing Code, Resolution Reason Code will be selected from “pick list;” Other - Optional
13. Special Features	Short statute, Compliance Follow-up, Case involves an “OAR” selected as applicable; Other-Optional
14. Remarks and/or Supporting Statement	Select appropriate closing information from pick list; for field sourced CAPs, enter the email addresses of the originating RO and RO Group Manager.
15. Taxpayer Representative/Phone #	Populated from ACDS
16. Appeals hearing officer Signature/ Date	self-explanatory
17. Approval / Date	ATM signs and dates ***Note:*** A CAP withdrawal does not require an ATM signature.

Exhibit 8.24.1-2 (09-03-2019)
Step-by-Step Paperless CAP Process for Non-Field Sourced Cases

Step No.	Description
1	CAP Case Coordinator uses E-eFax (Enterprise electronic fax # 855-214-7525) to transmit a CAP case to Memphis APS; E-eFax converts the paper fax into a pdf document.
2	Memphis APS cards in the CAP on ACDS and routes the case to a Campus Appeals Team in Memphis.
3	Upon the direction of an Appeals Team Manager (ATM), the group secretary assigns the CAP to an ATE.
4	The assigned ATE holds the hearing with the taxpayer and renders a case decision; should the Appeals hearing officer receive any additional documents during the hearing, they will be scanned and incorporated into the case file.
5	The ATE submits the entire case (including the closing documents), via encrypted email, to the ATM for approval. ***Note:*** In a CAP withdrawal, the Appeals hearing officer can sign the closing documents (Closing Letter and Form 5402). ATM approval is not required.
6	Upon approval of the case decision, the ATM digitally signs the closing documents (Closing Letter and Form 5402) and forwards the entire case file to APS via encrypted email. ***Note:*** In a CAP withdrawal, an ATM signature is not required on the Closing Letter and Form 5402. The ATM will enter the ACAP date on ACDS and forward the case file to APS.
7	APS makes the necessary inputs on ACDS upon receipt of the CAP case closure; if the case is selected for AQMS review as APS inputs the closing data on ACDS (pop-up box will appear), APS uses encrypted email to transmit the entire case file to the designated AQMS reviewer. ***Note:*** A signed and dated copy of the closing letter is required for AQMS review.
8	APS sends the closing documents (Form 5402, Closing Letter and Appeals Case Memo, if prepared) to the CAP Case Coordinator via encrypted email. ***Note:*** APS also faxes or prints & mails the Closing Letter to the taxpayer/representative.
9	APS verifies the closing documents were received by the originating function (CAP Case Coordinator) through a confirmation of receipt of the encrypted email.
10	Upon verification that the closing documents were received by the CAP Case Coordinator, the closed case is purged per the IRM requirement.

Exhibit 8.24.1-3 (09-03-2019)

Step-by-Step Paperless CAP Process for Field Sourced Cases

Step No.	Description
1	The Field Collection Revenue Officer (RO) uses E-eFax (Enterprise electronic fax # 855–214–7525) to transmit a CAP case to Memphis APS; E-eFax converts the paper file into a pdf document. ***Note:*** If Field Collection secures the CAP via E-eFax, it will already be a pdf document and may be forwarded via encrypted email to the APS mailbox: **AP Collection Appeals Program*.
2	Memphis APS cards in the CAP and routes the case, via encrypted email, to the designated ATM of the Appeals Field Office per the CAP Case Routing page on the Appeals website.
3	The ATM assigns and transmits the CAP case to the ATE via encrypted email.
4	The assigned ATE holds the hearing with the taxpayer/representative and reaches a case decision; any additional documents submitted by the taxpayer will be secured via E-eFax and incorporated into the case file.
5	The ATE submits the entire case, including the closing documents, via encrypted email to the ATM for approval. ***Note:*** On the Form 5402 (in the Remarks section), the Appeals hearing officer will include the email addresses of the originating RO and RO Group Manager. ***Note:*** In a CAP withdrawal, the ATE can sign the closing documents (Closing Letter and Form 5402). ATM approval is not required.
6	Upon approval of the case decision, the ATM electronically signs the closing documents (Closing Letter and Form 5402) and forwards the entire case file to APS via encrypted email. ***Note:*** In a CAP withdrawal, an ATM signature is not required on the Closing Letter and Form 5402. The ATM will enter the ACAP date on ACDS and forward the case file to APS.
7	APS makes the necessary inputs on ACDS upon receipt of the CAP case closure. If the CAP is selected for AQMS review, APS will forward the case file (including all original efaxed documents, any additional documents received during the hearing and the closing documents) to the designated reviewer, via encrypted email, and proceed with Step 8 of the process. ***Note:*** A signed and dated copy of the closing letter is required for AQMS review.

Exhibit 8.24.1-3 (Cont. 1) (09-03-2019)
Step-by-Step Paperless CAP Process for Field Sourced Cases

Step No.	Description
8	APS sends the closing documents (Form 5402, Closing Letter and Appeals Case Memo, if prepared), via encrypted email, to the Field Collection RO with a cc to the RO Group Manager. ***Note:*** APS will input the date on the Closing Letter. ***Note:*** APS will select the "Request a Delivery Receipt" option to track the email. ***Note:*** APS will fax or print and mail (if a fax number is not available) the Closing Letter to the taxpayer/representative the same day the closing documents are emailed to Collection.
9	APS verifies the closing documents were received by Collection through a confirmation of receipt of the encrypted email.
10	APS purges the closed CAP case per the IRM requirement.