



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

CC-2001-05  
August 20, 2001  
Attachment 1

GL-107560-01  
CC:PA:CBS:Br1LKWilliams

**ACTION ON DECISION**

SUBJECT: Mesa Oil, Inc. v. United States  
86 A.F.T.R.2d (RIA) 7312 (D. Colo. 2000)

**Issue:** Whether a verbatim recording of a Collection Due Process (CDP) hearing is required under I.R.C. §§ 6320 and 6330 to create a judicially reviewable administrative record.

**Discussion:** Mesa Oil, Inc., a corporation engaged in processing used oil for industrial use, was delinquent in paying its payroll taxes for several quarters. In an attempt to collect the unpaid taxes, the Service filed a notice of federal tax lien and issued to Mesa Oil a Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320. The Service also issued to Mesa Oil a Notice of Intent to Levy and Your Right to a Hearing. Mesa Oil requested and was given a CDP hearing by the IRS Office of Appeals on the filing of the notice of federal tax lien. Appeals issued Mesa Oil a notice of determination sustaining the lien filing, from which, pursuant to section 6330(d), Mesa Oil appealed to the district court. The district court held the administrative record to be inadequate for judicial review under section 6330(d)(1)(B), because "no record of the hearing was kept, no record of the evidence or arguments presented at that hearing was made, and no analysis of the evidence or arguments was presented in the determination." The district court ordered that the record on remand "may be made" either through audiotape, videotape or stenographic transcription.

We do not believe that sections 6320 and 6330 require a CDP hearing to be recorded verbatim. Congress did not intend CDP hearings to be conducted in a manner different from proceedings with Appeals instituted prior to the passage of the IRS Restructuring and Reform Act of 1998. Davis v. Commissioner, 115 T.C. 35, 41 (2000) ("The references in section 6330 to a hearing by Appeals indicate that Congress contemplated the type of informal administrative Appeals hearing that has been historically conducted by Appeals and prescribed by section 601.106(c), Statement of Procedural Rules"); see H.R. Conf. Rep. No. 105-599, pp. 290-291. The fundamental purpose of proceedings with Appeals is to provide an informal setting in which taxpayers and appeals officers can resolve tax issues. To maintain a productive informal forum for the resolution of tax issues, these procedures do not include a verbatim recording requirement and should not now include such a requirement for

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CDP hearings.

To the extent the district court in this case intended to hold that CDP hearings must be recorded by videotape, audiotape or stenographic transcription, we disagree. CDP hearings should be carefully documented by appeals officers in determination letters and case memoranda which, with any documents provided by the taxpayers or otherwise obtained by the appeals officers, will constitute the record for review by the court.

**Recommendation:** Nonacquiescence.

**Reviewers:** Gary D. Gray, Assistant Chief Counsel  
CC:PA:CBS  
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