



MINUTES

Internal Revenue Service Advisory Council Public Meeting

May 8, 2024, 3 p.m. ET

Meeting Called to Order: John Lipold, Designated Federal Officer

Purpose: to provide insight to the public on where the committee is headed for the remainder of the year

Turned Meeting Over to IRSAC Chair Annette Nellen:

- Extended overview of IRSAC
- Listing of five subgroups
- Today's public meeting will discuss issues proposed for inclusion in this year's public report

General and Subgroup Report-Outs:

Christine Freeland, IRSAC Vice Chair, presents the following issues for consideration in the 2024 annual report of the IRSAC:

1. IRS Funding
 2. Authorization Technique to Enable Businesses to Utilize Online Account
 3. SOP Assessment and Analysis
 4. State Payments Taxability and Information Reporting
 5. Enrolled Agents Continuing Education to Include Units for Practice Management
 6. Identity Theft Prevention
- *IRSAC Voting – no objections to inclusion in this year's public report*

Wendy Walker, Chair for the Information Reporting Subgroup, presents the following issues for consideration in the 2024 annual report of the IRSAC:

1. Secure Act 2.0 reporting issues
 2. Worker Classification Clarification Needed due to New DOL Rules
 3. Businesses Need Large Corporate Representative Support
 4. Updates Needed for Form 15397, *Application for Extension of Time to Furnish Recipient Statements*
 5. Electronic Delivery of Recipient Statements
- *IRSAC Voting – no objections to inclusion in this year's public report*

Katrina Welch, Chair for the Large Business & International Subgroup, presents the following issues for consideration in the 2024 annual report of the IRSAC:

1. Improvements to LB&I Exam Procedures
 2. CARES Act of 2020 and NOL Carrybacks
 3. Online capabilities for businesses
 4. Streamlining Entity Compliance for Delinquent International Tax Obligations
- *IRSAC Voting – no objections to inclusion in this year’s public report*

Jeff Porter, Chair for the Small Business/Self-Employed Subgroup, presents the following issues for consideration in the 2024 IRSAC report:

1. Using cutting edge tech to communicate and address tax matters with the IRS
 2. Educate the public on the Revenue Officer position and how to prepare for appointments
 3. Reasonable Cause/First Time Abatement
 4. Disaster Assistance and Emergency Relief To improve the taxpayer experience
- *IRSAC Voting – no objections to inclusion in this year’s public report*

Brian Yacker, Chair for the Tax-Exempt/Government Entities Subgroup, presents the following issues for consideration in the 2024 IRSAC report:

1. Improve TEOS and EO Business Master File (BMF)
 2. Improving Communications & Data Sharing with State Agencies
 3. New Determination Letter Program for 401(a) Individually Designed Plans
 4. Providing Tribal Tax-Exempt Bond Guidance
 5. Create a Late Filing Reasonable Cause “Template” for Nonprofits that have file Their Nonprofit Tax Returns Late
 6. Providing Submission Acknowledgements to Certain Exempt Organizational Filers
- *IRSAC Voting – no objections to inclusion in this year’s public report*

Alison Flores, Chair for the Taxpayer Services Subgroup, presents the following issues for consideration in the 2024 IRSAC report:

1. Voicebots and Chatbots
 2. Expansion of VITA/TCE Services for Gig Economy
 3. Mitigate Impacts When Wet Ink Signatures are Required for POAs
- *IRSAC Voting – no objections to inclusion in this year’s public report*

Acknowledgements:

Written statements (3) were received from Nancy Schaedler on various issues and rights of third parties involved in a Collection Due Process (CDP) hearing. Statements were distributed to all IRSAC members and will be included as a part of the meeting minutes and public record for this meeting and will be uploaded in facadatabase.gov.

Meeting adjourned

IRSAC Public Meeting Attendees – May 8, 2024

IRSAC

Annette Nellen, IRSAC Chair
Christine Freeland, IRSAC Vice Chair
Amanda Aguillard
Robert Barr
Joseph Bender
Andrew Bloom
Elizabeth Boonin
Beatriz Castaneda
Sam Cohen
Alison Flores
Steven Grieb
Aidan Hunt
John Kelshaw
Jodi Kessler
Mason Klinck
Anthony Massoud
Susan Nakano
Jeffrey Porter
Dawn Rhea
Brayan Rosa-Rodriguez
Lawrence Sannicandro
Tara Sciscoe
Peter Smith
Cory Steinmetz
Hussein Tarraf
Wendy Walker
Sean Wang
Lucinda Weigel
Katrina Welch
Thomas Wheadon
Brian Yacker
Nicholas Yannaci

IRS

John Lipold, IRSAC DFO
Tanya Barbosa
Stephanie Burch
Anna Millikan
Martiza Rabinowitz
Maria Salazar
Tanya Taylor
Brian Ward

Members of the Public who Registered to Attend

Kristin D. Adams
Melissa Adams
Rayna Alexander
Kathy Brown
Garret Cole
Kenneth Dettman
Carol Flynn

Marcus T. Heard
Tomiko Ladkin
Carolynn J. Lear
Catharine Drake Madeley
Tasha Preisner
Nancy Schaedler
Guita Sharifi
Rolanda Watson
Keiona Wright

**Written Statements submitted to the IRS Advisory Council
for its May 8, 2024, Public Meeting**

Statements #1 – 3 – from Nancy Schaedler, dated May 5, 2024

From: [nancy.schaedler](#)
To: [*Public Liaison](#)
Subject: [EXT] Three (3) Written Statements for May 8, 2024 IRSAC Meeting (ATTN: Anna Millikan)
Date: Sunday, May 5, 2024 6:17:53 PM
Attachments: [Provide escalation path for taxpayer or third party when get to an impass.pdf](#)
[Statute of Limitations on IRS collection activities on property legally owned by third parties that do not owe tax.pdf](#)
[CDP Rights and Taxpayer Bill of Rights for Third Parties Holding Legal Title to Properties.pdf](#)

Please find three (3) separate written statements (topics) for review during the upcoming May 8, 2024 public meeting of the Internal Revenue Service Advisory Council (IRSAC); Topics include: 1-CDP Rights for Third Parties, 2-Statute of Limitations for Third Parties, 3-Escalation and Taxpayer Bill of Rights for Third Parties.

Please include Nancy Schaedler as an attendee of this public meeting of the IRSAC on May 8, 2024.

Please confirm receipt of this email, request to attend, and all three (3) written statements to be included in the topics for discussion during the public meeting of the IRSAC on May 8, 2024.

Thank you.
Nancy Schaedler

PS - if you have any questions or comments regarding the written statements, please contact me so that I may address prior to the meeting.

Third Parties Holding Legal Title to Property Subject to IRS Collection Actions have no rights and as such no escalation path when their rights are violated.

Issue(s):

- 1) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions do not have rights under the Taxpayer Bill of Rights. (<https://www.taxpayeradvocate.irs.gov/get-help/taxpayer-rights>; see Exhibit A).
- 2) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions **do not have a mechanism to escalate “impasses”** (potentially lasting years) that the Third Party has with the local Advisory Group, Revenue Officers, and Taxpayer Advocate Office that oversees the county where the Third Party’s property resides.
- 3) A Third Party Holding Legal Title to Property Subject to IRS Collection Actions **can be completely ignored for years** and has no rights to a phone call or way to get to resolution other than an expensive legal Quiet Title Action where attorneys charge \$600/hour.
- 4) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions may be upstanding taxpaying citizens who do not owe any tax to the IRS, yet their “property” does; (semantics – The IRS is making the taxpayer’s debt the third party’s debt via their property without any rights to defend their property).

Background:

The IRS will only talk to a Taxpayer with the debt. **The IRS will not talk to a Third Party** (nominee, alter-ego, or legitimate owner/transferee with material and financial interest in their property).

Discrepancies, in-person meetings, etc. are denied because the debt is not the Third Party’s debt, and the IRS cannot discuss someone else’s debt with the Third Party even though the IRS is going to take the Third Party’s property to pay someone else’s debt.

In researching collections, it appears that the IRS is **supposed** to provide information regarding the IRS’s assessment of value of the property at the time of transfer, and the amount of tax owed by the transferor that the IRS says the third party’s property is liable for; Transferee with Limited Liability form and Assessment against Transferee form are supposed to be filled out by the IRS and provided to the Third Party.

There is nothing available for a Third Party to get the IRS to talk to the Third Party or give the Third Party any rights as described in the Taxpayer Bill of Rights, because the Third Party does not owe the tax and it is not the Third Party’s debt. There is no mechanism in place for Third Parties to get closure and resolution to the situation when dealing with the IRS.

Recommendation(s):

- 1) Ensure Third Parties are provided rights stated in the Taxpayer Bill of Rights (especially as it pertains to IRS collection actions related to the Third Party’s property). A third party should be able to have someone return their call timely and get their issue resolved timely (and not wait 3 years without a resolution in sight).
- 2) Provide escalation path for Third Parties. Allow Third Parties the ability to report and talk to a live human being at the IRS who has the authority and ability to provide a final resolution the Third Party’s issue(s).

Third Parties Holding Legal Title to Property Subject to IRS Collection Actions have no rights and as such no escalation path when their rights are violated.

- 3) Expand the TIGTA complaint options to allow for escalation of IRS representatives (especially collection and revenue officers) who refuse to return phone calls or work with the Third Party to get questions answered, clarifications and discrepancies answered, meetings scheduled, etc.



Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Examinations, Appeals, Collections, and Refunds

Examinations (Audits)

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change; or, you may receive a refund.

The process of selecting a return for examination usually begins in one of two ways. First, we use computer programs to identify returns that may have incorrect amounts. These programs may be based on information returns, such as Forms 1099 and W-2, on studies of past examinations, or on certain issues identified by compliance projects. Second, we use information from outside sources that indicates that a return may have incorrect amounts. These sources may include newspapers, public records, and individuals. If we determine that the information is accurate and reliable, we may use it to select a return for examination.

Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, explains the rules and procedures that we follow in examinations. The following sections give an overview of how we conduct examinations.

By Mail

We handle many examinations and inquiries by mail. We will send you a letter with either a request for more information or a reason why we believe a change to your return may be needed. You can respond by mail or you can request a personal interview with an examiner. If you mail us the requested information or provide an explanation, we may or may not agree with you, and we will explain the reasons for any changes. Please do not hesitate to write to us about anything you do not understand.

By Interview

If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If our examiner proposes any changes to your return, he or she will explain the reasons for the changes. If you do not agree with these changes, you can meet with the examiner's supervisor.

Repeat Examinations

If we examined your return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the examination.

Appeals

If you do not agree with the examiner's proposed changes, you can appeal them to

the Appeals Office of the IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, Your Appeal Rights and How To Prepare a Protest If You Don't Agree, and Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund.

If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Collections

Publication 594, The IRS Collection Process, explains your rights and responsibilities regarding payment of federal taxes. It describes:

- What to do when you owe taxes. It describes what to do if you get a tax bill and what to do if you think your bill is wrong. It also covers making installment payments, delaying collection action, and submitting an offer in compromise.
- IRS collection actions. It covers liens, releasing a lien, levies, releasing a levy, seizures and sales, and release of property.
- IRS certification to the State Department of a seriously delinquent tax debt, which will generally result in denial of a passport application and may lead to revocation of a passport.

Your collection appeal rights are explained in detail in Publication 1660, Collection Appeal Rights.

Innocent Spouse Relief

Generally, both you and your spouse are each responsible for paying the full amount of tax, interest, and penalties due on your joint return. However, if you qualify for innocent spouse relief, you may be relieved of part or all of the joint liability. To request relief, you must file Form 8857, Request for Innocent Spouse Relief. For more information on innocent spouse relief, see Publication 971, Innocent Spouse Relief, and Form 8857.

Potential Third Party Contacts

Generally, the IRS will deal directly with you or your duly authorized representative.

However, we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information we have received. If we do contact other persons, such as a neighbor, bank, employer, or employees, we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity in your case. If we do contact other persons, you have a right to request a list of those contacted. Your request can be made by telephone, in writing, or during a personal interview.

Refunds

You may file a claim for refund if you think you paid too much tax. You must generally file the claim within 3 years from the date you filed your original return or 2 years from the date you paid the tax, whichever is later. The law generally provides for interest on your refund if it is not paid within 45 days of the date you filed your return or claim for refund. Publication 556, Examination of Returns, Appeal Rights, and Claims for Refund, has more information on refunds.

If you were due a refund but you did not file a return, you generally must file your return within 3 years from the date the return was due (including extensions) to get that refund.

Taxpayer Advocate Service

TAS is an **independent** organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

Tax Information

The IRS provides the following sources for forms, publications, and additional information.

- **Tax Questions:** 1-800-829-1040 (1-800-829-4059 for TTY/TDD)
- **Forms and Publications:** 1-800-829-3676 (1-800-829-4059 for TTY/TDD)
- **Internet:** www.irs.gov
- **Small Business Ombudsman:** A small business entity can participate in the regulatory process and comment on enforcement actions of the IRS by calling 1-888-REG-FAIR.
- **Treasury Inspector General for Tax Administration:** You can confidentially report misconduct, waste, fraud, or abuse by an IRS employee by calling 1-800-366-4484 (1-800-877-8339 for TTY/TDD). You can remain anonymous.

There are no notification requirements and/or time limits associated with Third Parties Holding Legal Title to Property Subject to IRS Collection Actions; the IRS treats Third Parties worse than the Taxpayer with the debt.

Issue(s):

- 1) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions **may be totally unaware** that the IRS believes the IRS has an interest in the Third Party's property.
- 2) Years can go by and a Third Party Holding Legal Title to Property Subject to IRS Collection Actions **will never be notified by the IRS alerting the Third Party of the IRS's interest** unless the IRS decides to take the Third Party's property to collect on the taxpayer "transferor's" personal 1040 NFTLs that are not the Third Party's tax liability nor debt.

Background:

Third Parties are unaware until they may have invested years of time and money and lost opportunity when they learn that the IRS intends to "steal" the equity the Third Party earned over time; the IRS's justification is to pay the taxpayer's "transferor's" debt to the IRS and leave the Third Party with no equitable solution for the years, time, money, effort, opportunity cost, etc.

The IRS may determine that the Third Party is a legitimate owner of the property and is not a nominee nor an alter-ego and as such the IRS will not file a nominee lien nor alter-ego lien.

This Third Party, who is neither a nominee nor alter-ego, is a "transferee" and the taxpayer with the debt is the "transferor." In these cases, the IRS is to complete a Transferee with Limited Liability form and Assessment against Transferee form and provide it to the Third Party. If the IRS does not complete the forms (**do nothing**), the Transferee (Third Party) is unable to resolve the situation.

The IRS is not required to file a lien against a Third Party's property. Since a Third Party does not have any rights, the IRS may do nothing.

If the IRS decides to take a Third Party's property, the Third Party could be left with no equitable solution to compensate the Third Party for years of the Third Party's investment in their property; this can include the mortgage, homeowner's insurance, property tax, utilities, maintenance of the home, improvements to the home, paying down the equity on the home, etc.

It is important that the IRS communicate with the third party as soon as possible to address the IRS's asserted interest in the Third Party's property in order to minimize harm to the Third Party.

Recommendation(s):

- 1) **Notification:** Upon IRS identification of a property that the IRS deems is Subject to IRS collection actions due to NFTLs on a taxpayer that has been transferred to a third party, "transferee", by a taxpayer, "transferor" with personal 1040 SSN NFTL's, the IRS needs to notify the third party "transferee" within a SHORT and REASONABLE period of time (i.e.: **notification to the Third Party needs to be made within two months maximum after the IRS identifies the property the IRS feels is subject to collection actions**; any duration longer, creates financial hardship and duress on a third party "transferee" who is not responsible for the taxpayer's "transferor's" 1040 personal NFTL debt to the IRS.
- 2) **Statute of Limitations for collection actions against a Third Party:** Provide Statute of Limitations of ONE YEAR MAXIMUM for IRS collection actions to be completed against Property

There are no notification requirements and/or time limits associated with Third Parties Holding Legal Title to Property Subject to IRS Collection Actions; the IRS treats Third Parties worse than the Taxpayer with the debt.

Subject to IRS collection actions and are Legally Held by Third Parties; upon notification of the third party (via a nominee tax lien, alter-ego tax lien, or transferee tax lien), **the IRS should have no more than ONE YEAR MAXIMUM to resolve the tax liability** with the nominee, alter-ego, or legitimate transferee.

- 3) **Collection Due Process (CDP):** Provide Third Parties collection due process rights so that they can timely, reasonably, and with respect from the IRS, resolve any issues associated with the property that the Third Party legally owns and hold title to.

Issue(s):

- 1) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions Have NO RIGHTS. (The Taxpayer with the debt, dead or alive, has more rights, protections, and excessive secrecy to protect the Taxpayer's rights, while penalizing and denying the Third Party any rights other than what is "publicly available").
- 2) Unlike the Taxpayer with the debt who transferred the property to the third party, third parties do not have collection due process (CDP) rights and are therefore unable to argue the existence, appropriateness, etc. with anyone at the IRS. The Third Party is only offered Quiet Title Lawsuit or "worthless" procedural only CAP (see below).
- 3) IRS Advisory Groups DENY (or refuse to read for substance) Third Parties' Requests for Certificate of Non-Attachment of Federal Tax Liens. The IRS Advisory Group takes the position that NFTLs attach to the Third Party's property because the NFTL was filed prior to the Third-Party taking ownership; no matter what the Third Party's circumstance is, the IRS Advisory Group will not consider it.
- 4) Unlike the Taxpayer with the debt who transferred the property to the third party, Third Parties are NOT governed by nor granted rights stated in the Taxpayer Bill of Rights as it pertains to IRS collection actions related to the Third Party's property. (The IRS Advisory Group does not have to talk to the third party, return calls, provide payoff amount due, etc.; the IRS Advisory Group can do NOTHING for years, hide behind the Taxpayer's "privacy and protecting the Taxpayer" (even if the taxpayer is dead), refuse to talk to the Third Party about the debt, etc.)
- 5) Third Parties Holding Legal Title to Property Subject to IRS Collection Actions may be upstanding taxpaying citizens who do not owe any tax to the IRS, yet their "property" does; (semantics – The IRS is making the taxpayer's "transferor's" debt the third party's "transferee's" debt via the third party's property without any rights given to the third party to defend their property as a "guardian" of their property).

Background:

For at least three years, the Taxpayer Advocate has provided Legislative Recommendations in the Purple Book to the IRS Subcommittee to provide CDP rights to third parties. (See Exhibit A, B and C).

Taxpayers with debt to the IRS have multiple options available to move forward and resolve their issues with the IRS (i.e.: Notifications/Communications from the IRS, Taxpayer Advocate, 10 Year Collection Statute Expiration Date (CSED) and Statute of Limitation for Collection, Collection Due Process, Offer and Compromise, Tax Settlement, Taxpayer Bill of Rights, Fresh Start Program, ability to obtain a Payoff Amount for Tax Due, etc.).

Third Parties holding legal Title to property subject to IRS collection actions **may not even know** that the IRS believes the IRS has an interest in the Third Party's property.

Third Parties holding legal Title to property subject to IRS Collection actions have **NO RIGHTS**; Third Parties are only allowed Collection Appeals Program (CAP) that temporarily holds off the eventual

seizure and collection actions pending the CAP “hearing” which often times is a 5-minute phone call. The CAP appeals the collection action but does not allow the Third Party to argue the underlying debt or penalty that served as the catalyst for the enforcement action.

CAP provides no value to Third Parties because the underlying tax liability (AKA the lien(s)) have already been assessed and filed as Notice of Federal Tax Liens (NFTLs) against the taxpayer “transferor” for anything in the taxpayer’s name - past, present, and future; most settlement officers REFUSE to take an ACTIVIST (or ADVOCATE) role because Area Counsel has already reviewed and signed off on the lien(s) and no one wants to question the lien(s)’ applicability to the Third Party’s property whether justified or not.

Alternatively, CDP rights would grant the Third Party the ability to dispute the underlying penalty and have the opportunity to show reasonable cause.

The IRS may determine that the Third Party is holding the property in “name” only and is a nominee or an alter-ego; if this is the case, the IRS can file a nominee lien or alter-ego lien against the third party and notice will be provided to the third party.

While the taxpayer is given Collection Due Process (CDP) rights to argue the tax, etc., the nominee, alter-ego, and transferee are not given CDP rights and are relegated to CAP that is worthless and a waste of everyone’s time and money because CAP will not result in the release of a lien or levy.

Third Parties are only given the option to bring suit to sue the government for quiet title.

Only after the government seizes the property, does the third party have the ability to file a wrongful levy claim against the government under Code 7426(a), while the taxpayer “transferor” who caused the nominee, alter-ego, or transferee liens to occur in the first place was given CDP hearing rights.

Third Party Example (impact of Third Party with no CDP rights – an outlier circumstance):

The IRS is able to assess income against a Taxpayer if the Taxpayer does not file tax returns. If the IRS and Taxpayer are unable to reach an agreement or offer and compromise, the IRS may decide to file NFTL(s) on “assessed/purported” income against the Taxpayer whether real or not. While Title companies are to research and find NFTL(s) tied to a person on the chain of title of a property, mistakes happen – especially if the NFTL(s) go back over THIRTY (30) YEARS.

In 1990, the IRS assessed income on a Taxpayer (land developer). In 1993 the IRS recorded NFTLs against the taxpayer. In 2003, the IRS renewed the NFTLs another 10 years. In 2003, the IRS recorded an abstract judgment (on a defaulted case) that the Taxpayer unsuccessfully tried to set aside and have heard on its merits; it appears the Taxpayer ran out of money and had to represent himself (pro per) against the IRS legal organization in IRS tax court.

In 2005 a Third Party loaned the land developer \$200,000 for construction loans for in-field building that replaced an old 800 ft² home with four to six townhomes. A corporation was created for each housing project; the land developer controlled all of the corporations which had two additional officers involved in the actual construction projects.

In 2006 and 2007, the subprime mortgage collapse occurred and the land developer’s projects, while completed, did not sell. The bank would foreclose and the land developer, while personally guaranteeing the loans, was unable to pay the third party.

In 2008, the land developer would look for homes that were depressed and undervalued. He created a corporation for investors and bought a home for the corporation. The title company provided a clear title policy for both lenders and owners insurance to the land developer upon purchase of the home in January 2008. The home was immediately transferred to the corporation. The land developer lived in the home for 6 months to a year at most.

In 2009, the Third Party demanded her money, and the land developer arranged for the Third Party to rent the home purchased for the corporation. In late 2009 the Third Party moved into the property and started paying rent to the land developer; the land developer would not pay the mortgage with the Third Party's rental payments. In 2010, the Third Party demanded her principle that the land developer personally guaranteed and said she was not paying rent anymore. In mid-2011, the land developer told the Third Party that she had to move out of the property as the property she had just finished moving into was in pre-foreclosure and owed the bank more than it was worth due to the global recession. The investors were walking from the property.

In 2012, the Third Party took over the property from the land developer's corporation via notarized meeting minutes (Property value: \$425,000; Property debt to bank: \$500,000 – the house was WORTHLESS with NEGATIVE value. The bank was in superior position and the IRS had no interest in the property – equivalent to a short sale). All property related documents were provided to Third Party in a large box. The Title Company provided preliminary tile report showing clear title that was identical to the clear title provided when the property was purchased in January 2008. The Third Party recorded Quit Claim Deeds. The Third Party agreed to stop calculating interest due on the \$200,000 loaned and personally guaranteed by the land developer. The Third Party paid and has proof of payment of mortgage, homeowner's insurance, property tax, improvements (PACE Loan for new roof, solar, termite and dry rot repair, etc.), maintenance, upgrades, etc. since taking ownership of the property in 2012.

In 2013, the IRS renewed the NFTLs against the land developer (taxpayer) personal 1040 SSN another 10 years.

In 2017, the IRS via the taxpayer advocate, negotiated an offer and compromise with the land developer to reduce his debt to approximately \$100,000 to be paid by the land developer's SSN card. The local Advisory Group found out and immediately halted the offer and compromise and claimed the transfer to the Third Party was fraud forcing the taxpayer advocate to stop helping the land developer.

In January 2018, an IRS Advisory Group revenue officer approached the Third Party at her home (property) and said the Third Party was a nominee. After the Third Party, via an attorney, provided evidence she was the legal owner and paid for her home and was not a nominee, the IRS determined that the Third Party was not a nominee and was in fact the legal owner of her home. The IRS told the Third Party's attorney to have the Third Party get the loan for her home in her name if possible. The attorney, hired by the Third Party, failed to get this determination from the IRS in writing. In talking with the attorney, it was the Third Party's understanding the land developer completed an offer and compromise for his debt taking complete accountability.

In 2019, the Third Party was able to assume the loan (in the land developer's name) that she had been paying on via autopay from her personal checking account since 2012 (**while**

unconventional, all explainable). After reviewing interest amortization schedules, rates, and costs for different lenders, the Third Party obtained a loan from JG Wentworth. The title company provided clear title to the lender **but made a mistake and forgot to provide the Third Party with equivalent owners title insurance.**

In 2020, the Taxpayer (land developer) died. The land developer committed suicide and was buried as an indigent with NO MONEY. The land developer died intestate (without a will); there is no POA for the land developer. The IRS did not put the land developer's file in non-collectible status, rather, the IRS continued to renew liens after the land developer's death.

The liens (NFTLs) have been renewed for FORTY (40) YEARS on a DEAD GUY! What is the basis and justification for extending and renewing the NFTLs on a DEAD GUY past the 10-year Collection Statute Expiration Date (CSED)?

NOTE: the land developer had not been on the chain of title to the Third Party's property since January 2008! The Third Party held legal recorded title to her property since 2012.

On August 18, 2021, the Third Party accepted one of five offers for the sale of her home. On October 6, 2021, the day before escrow was to close on sale of the Third Party's home, the title company submitted a lien discharge application for \$0 interest to the IRS; IRS received all documents requested. The IRS neither denied nor approved the application and let it "evaporate." This "evaporation" started the Third Party's nightmare.

A Third Party has ZERO rights. All documents (PII, bank statements, proof, letters, etc.) provided by the Third Party are placed in the DECEASED Taxpayer's file because it is "his" case. PII violations of Third Party are ignored; all information provided by the Third Party to get the IRS to release the liens on the dead guy are NOT IN HER FILE and are being used against her to further substantiate the IRS's intent to STEAL ALL OF THE EQUITY in the Third Party's property. The IRS has created a misleading paper trail in the Third Party's file. Over four (4) requests for certificate of non-attachment have been submitted by the Third Party, and all requests are ignored stating the liens are attached. Only "publicly available" and recorded documents are available to Third Party. The DECEASED land developer's file is "protected."

In 2022 and 2023, the IRS renewed the NFTLs from 1990 against the DECEASED Taxpayer's estate with the intent to steal a third party's home which the land developer had been on for a day in 2008! The IRS even re-instated a previously released NFTL against the DECEASED land developer.

The property subject to IRS Collection Actions was WORTHLESS upon transfer from the transferor (DECEASED LAND DEVELOPER) to the transferee (Third-Party), **yet over ten (10) years later,** the IRS wants to **take the Third Party's equity** and increased property value to pay the DECEASED Taxpayer's debt **(that is not the Third Party's debt or tax).**

It is now May 2024. The IRS will not talk to the Third Party. The Third Party cannot get the IRS to do anything as her case is "closed." The Third Party is unable to make an appointment to talk to a Revenue Officer about the debt as the debt is NOT the Third Party's debt.

The Third Party is unable to get the IRS Advisory Group to provide an assessment or amount that the IRS says the Third Party's "house" owes the IRS. The Third Party provided proof that the property was

“upside-down” and a WORTHLESS asset when Third Party took over the property in 2012. The IRS refuses to use the recorded Quit Claim Deeds as the date in 2012 as the transfer date of the property, **because if the IRS Advisory Group did, the IRS would have \$0 interest in the Third Party’s property.**

Since the Third Party has no rights afforded to the taxpayer (via the Taxpayer Bill of Rights), the IRS will not talk to the Third Party. The only option the IRS gives the Third Party is an EXTREMELY EXPENSIVE QUIET TITLE – otherwise, the Third Party’s case is “closed.” The Third Party’s PII and all of her documentation has been filed in the deceased land developer’s file. Debt from 1990 has been renewed (after his death); a defaulted abstract judgment recorded on November 3, 2003 was renewed for an additional TWENTY (20) YEARS and recorded on November 29, 2023 after the Trial Attorney reopened the case and made it against the DECEASED LAND DEVELOPER’s ESTATE **(which does not exist).**

The Third Party never received her personally guaranteed \$200,000 principle from the land developer. Now the IRS wants to take the Third Party’s equity from her property claiming that after owning her property and paying for her property for OVER 12 YEARS, that all increased value does not belong to the Third Party.

The IRS has not filed any liens against the Third Party or the Third Party’s property during the TWELVE (12) YEARS the Third Party has owned her property.

Additionally, none of the information supplied by the Third Party should be admissible or able to be used against the Third Party in the IRS’s intent to “STEAL” the equity and property from the Third Party who is now reaching 60.

Recommendations:

- 1) Provide Collection Due Process (CDP) Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions
- 2) Ensure Third Parties are provided rights per the Taxpayer Bill of Rights (especially as it pertains to IRS collection actions related to the Third Party’s property).
- 3) Provide Third Parties notification rights and timely and reasonable statute of limitations on IRS collection actions.
- 4) Update wording in form 1024, Request for Certificate of Non-Attachment, to specifically include verbiage allowing Third Parties, holding legal title to property subject to IRS collection actions, who do not owe the debt and will be injured to submit a Certificate of Non-Attachment and release or discharge lien(s) and NFTLs from the Third Party’s property permanently.
- 5) Allow Third Parties holding legal title to property subject to IRS collection actions, to submit a limited authority form 56 showing legal material and financial interest (and financial obligation) to their property and obtain “guardianship” of their home to discuss any and all potential debt’s affecting their property.

Exhibit A

Legislative Recommendation #26

Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions

PRESENT LAW

Current law authorizes the IRS to file Notices of Federal Tax Lien (NFTLs) and levy upon (seize) all property or rights to property of “any person liable to pay any tax” who neglects or refuses to do so, including property owned by certain third parties (individuals or entities). These third parties include nominees, alter egos and persons to whom lien-encumbered property is transferred (collectively, “affected third parties”).¹ In connection with taking these collection actions, the Secretary must provide collection due process (CDP) rights to “the person described in section 6321” (in the case of liens) and to “any person with respect to any unpaid tax” before levying against property (in the case of levies).²

REASONS FOR CHANGE

Congress created the CDP notice and hearing procedures to give taxpayers the right to a meaningful hearing before the IRS levies their property or immediately after the IRS files an NFTL against their property. During a CDP hearing with the IRS Independent Office of Appeals (Appeals), a taxpayer has the right to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives. If the parties cannot otherwise resolve the issue, Appeals may issue an adverse Notice of Determination that is subject to review in the U.S. Tax Court and that may thereafter be appealed to the U.S. Courts of Appeals.

For purposes of CDP eligibility, the Treasury regulations interpret the statutory term “person” as including only the taxpayer (*i.e.*, the person upon whom the tax was imposed and who refused or neglected to pay following notice and demand). Thus, affected third parties are not afforded CDP rights.³ This interpretation is inconsistent in some respects with the stated congressional intent, and the Treasury Department could have interpreted the statute otherwise. The CDP regime was enacted by the IRS Restructuring and Reform Act of 1998, and in explaining CDP rights, the accompanying conference report referred to “[t]he taxpayer (or affected third party).”⁴ In addition, CDP levy rights are statutorily afforded to “persons,” and are neither limited to taxpayers nor to persons who originally neglected or refused to pay the tax. The term “taxpayer” is defined in IRC § 7701(a)(14) as “any person subject to any internal revenue tax,” which in this context arguably may include affected third parties, given that the IRS is seeking to collect from them.

In some affected third-party circumstances, the IRS seeks to collect from specific property (*e.g.*, encumbered property that has been transferred to a third party, whether or not as a nominee). In other cases, the IRS seeks to collect from all property of the affected third party (*e.g.*, an alter ego).⁵ In both situations, the IRS may file NFTLs that identify the affected third party and levy upon property that, under state law, belongs to the affected third party.

1 See IRC §§ 6323(f) and 6331(a).

2 IRC §§ 6320(a)(1) and 6331(d)(1). See *also* IRC §§ 6321, 6322, 6323(a), 6323(f), 6323(h)(6), and 6331(a). Section 6321 also refers to “any person liable to pay any tax.” A CDP lien notice will only be given to the person described in IRC § 6321 who is named on the NFTL. Treas. Reg. § 301.6320-1(a)(2) Question and Answer (Q&A)-A1. A CDP levy notice will only be given to the person described in IRC § 6331(a). Treas. Reg. § 301.6330-1(a)(3) Q&A-A1.

3 See Treas. Reg. §§ 301.6320-1(a)(2) Q&A-A7, 301.6330-1(a)(3) Q&A-A2, 301.6320-1(b)(2) Q&A-B5, and 301.6330-1(b)(2) Q&A-B5.

4 H.R. REP. NO. 105-599, at 264 (1998) (Conf. Rep.).

5 See *Oxford Capital Corp. v. U.S.*, 211 F.3d 280, 284 (5th Cir. 2000); Internal Revenue Manual 5.17.2.5.7(2), Property Held by Third Parties (Jan. 8, 2016).

Importantly, the current collection regime, including the available remedies for alleged nominees, alter egos, and persons to whom encumbered property is transferred is costly, unduly burdensome, and inefficient, and it lacks adequate procedural safeguards. First, there is no opportunity for administrative review of the IRS's underlying, and sometimes opaque, determination that a person is a nominee or alter ego of a taxpayer. Second, without CDP rights affected third parties may seek administrative relief, where available, only after the respective collection action has occurred – meaning only after the harm, which may be irreparable, has occurred.⁶ Third, the available judicial remedies are not likely to provide expeditious relief from the effect of the third-party NFTL or levy and are costly for the third parties and the government.⁷ Some third parties who cannot afford the significant expense and burden of litigation may never be able to challenge an inappropriate or unlawful collection action.

In pre-pandemic years, the IRS generally issued over 1.5 million CDP notices to taxpayers, tens of thousands of taxpayers requested CDP hearings, and over a thousand taxpayers filed CDP petitions in the U.S. Tax Court.⁸ By comparison, the IRS filed only about 1,500 nominee and 500 alter ego NFTLs annually when we last obtained data.⁹ Thus, expressly providing CDP rights to affected third parties would not impose an undue administrative burden on the IRS. Rather, it would save resources for both the government and the affected third parties by reducing litigation costs.

For these reasons, the National Taxpayer Advocate believes it is inequitable for taxpayers responsible for tax debts to receive the full protection of IRC §§ 6320 and 6330, while innocent third parties holding legal title to property subject to IRS collection actions do not receive these due process protections.

RECOMMENDATION

- Amend IRC §§ 6320 and 6330 to extend CDP rights to affected third parties who hold legal title to property subject to IRS collection actions.¹⁰

6 The third party may seek reconsideration by the IRS office collecting the tax, by requesting a Collection Appeals Program (CAP) hearing before Appeals, or by requesting assistance from the National Taxpayer Advocate. Because a CAP hearing is not a CDP hearing under IRC § 6330, any determination made as part of the CAP hearing is not subject to judicial review by the U.S. Tax Court under IRC § 6330(d)(1).

7 For example, if the IRS has filed an NFTL, the third party who holds the title is left with the option to bring an action to quiet title under 28 U.S.C. § 2410 in district court. To contest a nominee, alter ego, or transferee levy, the affected third party has to file a wrongful levy action under IRC § 7426 in district court.

8 In addition, we identified 107,359 business taxpayers that requested CDP hearings in FY 2021. IRS Compliance Data Warehouse (CDW), Business Master File Transaction History table (FY 2021); IRS CDW, Individual Master File Transaction History table (FY 2021). The total number of CDP petitions filed in the Tax Court was compiled by the IRS Office of Chief Counsel (Nov. 18, 2021). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2021. This data does not include cases on appeal. The IRS has taken fewer collection actions since the start of the COVID-19 pandemic, and CDP requests have therefore been lower over the last two years.

9 See National Taxpayer Advocate 2012 Annual Report to Congress 545, 550 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*).

10 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*).

Exhibit B

Legislative Recommendation #24

Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions

SUMMARY

- *Problem:* When the IRS takes collection action against a taxpayer, the taxpayer is entitled to a collection due process (CDP) hearing at which he or she may raise defenses, challenge the appropriateness of the collection action, and propose collection alternatives. In some cases, the IRS may take collection action against third parties who are liable to pay the tax. These third parties are not entitled to a CDP hearing, giving them less procedural protection than the taxpayer who owes the tax.
- *Solution:* Clarify that affected third parties who hold legal title to property subject to IRS collection actions are entitled to CDP protections to the same extent as the taxpayers who owe the tax.

PRESENT LAW

Current law authorizes the IRS to file a Notice of Federal Tax Lien (NFTL) against and levy upon (seize) all property or rights to property of “any person liable to pay any tax” who neglects or refuses to do so, including property owned by certain third parties (individuals or entities). These third parties include nominees, alter egos, and persons to whom lien-encumbered property is transferred (collectively, “affected third parties”).¹ In connection with taking these collection actions, the Secretary must provide CDP rights to “the person described in section 6321” (in the case of liens) and to “any person with respect to any unpaid tax” before levying against property (in the case of levies).²

REASONS FOR CHANGE

Congress created the CDP notice and hearing procedures to give taxpayers the right to a meaningful hearing before the IRS levies their property or immediately after the IRS files an NFTL against their property. During a CDP hearing with the IRS Independent Office of Appeals (Appeals), a taxpayer has the opportunity and right to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives. If the parties cannot otherwise resolve the issue, Appeals may issue an adverse Notice of Determination that is subject to review in the U.S. Tax Court and that may thereafter be appealed to the U.S. Courts of Appeals.

For purposes of CDP eligibility, the Treasury regulations interpret the statutory term “person” as including only the taxpayer (*i.e.*, the person upon whom the tax was imposed and who refused or neglected to pay following notice and demand). Thus, affected third parties are not afforded CDP rights.³

In some affected third-party circumstances, the IRS seeks to collect from specific property (*e.g.*, encumbered property that has been transferred to a third party, whether or not as a nominee). In other cases, the IRS seeks

¹ See IRC §§ 6323(f) and 6331(a).

² IRC §§ 6320(a)(1) and 6331(d)(1). See also IRC §§ 6321, 6322, 6323(a), 6323(f), 6323(h)(6), and 6331(a). IRC § 6321 also refers to “any person liable to pay any tax.” A CDP lien notice will only be given to the person described in IRC § 6321 who is named on the NFTL. Treas. Reg. § 301.6320-1(a)(2) Q&A-A1. A CDP levy notice will only be given to the person described in IRC § 6331(a). Treas. Reg. § 301.6330-1(a)(3) Q&A-A1.

³ See Treas. Reg. §§ 301.6320-1(a)(2) Q&A-A7, 301.6330-1(a)(3) Q&A-A2, 301.6320-1(b)(2) Q&A-B5, and 301.6330-1(b)(2) Q&A-B5. This interpretation is inconsistent in some respects with the stated congressional intent, and the Treasury Department could have interpreted the statute otherwise. The CDP regime was enacted by the IRS Restructuring and Reform Act of 1998, and in explaining CDP rights, the accompanying conference report referred to “[t]he taxpayer (or affected third party).” In addition, CDP levy rights are statutorily afforded to “persons” and are neither limited to taxpayers nor to persons who originally neglected or refused to pay the tax. The term “taxpayer” is defined in IRC § 7701(a)(14) as “any person subject to any internal revenue tax,” which in this context arguably may include affected third parties, given that the IRS is seeking to collect from them. H.R. REP. NO. 105-599, at 264 (1998) (CONF. REP.).

to collect from all property of the affected third party (e.g., an alter ego).⁴ In both situations, the IRS may file NFTLs that identify the affected third party and levy upon property that, under state law, belongs to the affected third party.

The current collection regime, including the available remedies for alleged nominees, alter egos, and persons to whom encumbered property is transferred, is costly, unduly burdensome, inefficient, and lacks adequate procedural safeguards. A third party may seek administrative review of the nominee/alter ego/lien determination by requesting a Collection Appeal Program (CAP) hearing through Appeals. However, a CAP hearing only provides a summary review, since Appeals' goal is to decide CAP cases within five days.⁵ While Appeals' goal of quickly resolving CAP cases is laudable, the rights of the third party utilizing a CAP appeal can be adversely affected. In addition, no judicial appeal from an adverse Appeals decision is permitted in a CAP case. All CAP decisions are final.⁶

The available judicial remedies require filing in federal district court, which is difficult to navigate without legal representation and is therefore costly for both third parties and the government.⁷ Some third parties who cannot afford the significant expense and burden of litigation may never be able to challenge an inappropriate or unlawful collection action.

In pre-pandemic years, the IRS generally issued over 1.5 million CDP notices to taxpayers, tens of thousands of taxpayers requested CDP hearings, and over a thousand taxpayers filed CDP petitions in the U.S. Tax Court.⁸ By comparison, the IRS generally filed fewer than 1,000 nominee and alter ego NFTLs annually when TAS last obtained data.⁹ Thus, expressly providing CDP rights to affected third parties would not impose an undue administrative burden on the IRS. Rather, it would save resources for both the government and the affected third parties by reducing litigation costs.

For these reasons, the National Taxpayer Advocate believes it is incongruous and inequitable for taxpayers who originally were responsible for tax debts to receive the full protection of IRC §§ 6320 and 6330, while third parties holding legal title to property that makes them currently subject to IRS collection actions do not receive these due process protections.

RECOMMENDATION

- Amend IRC §§ 6320 and 6330 to extend CDP rights to affected third parties who hold legal title to property subject to IRS collection actions.¹⁰

4 See *Oxford Capital Corp. v. U.S.*, 211 F.3d 280, 284 (5th Cir. 2000); Internal Revenue Manual (IRM) 5.17.2.5.7(2), Property Held by Third Parties (Jan. 8, 2016).

5 IRM 8.24.1.3.8, Case Procedures under CAP (Sept. 28, 2021).

6 *Hughes v. Comm'r*, T.C. Memo. 2012-42; IRM 8.24.1.2, Distinctions Between CAP and Collection Due Process (CDP) Hearings (Sept. 28, 2021).

7 For example, if the IRS has filed an NFTL, the third party who holds the title is left with the option to bring an action to quiet title under 28 U.S.C. § 2410 in district court. To contest a nominee, alter ego, or transferee levy, the affected third party must file a wrongful levy action under IRC § 7426 in district court.

8 In addition, we identified 70,481 business taxpayers that requested CDP hearings in FY 2022. IRS Compliance Data Warehouse (CDW), Business Master File Transaction History table (FY 2022); IRS CDW, Individual Master File Transaction History table (FY 2022). The total number of CDP petitions filed in the Tax Court was compiled by the IRS Office of Chief Counsel and totaled 1,181 (Nov. 4, 2022). IRS, Counsel Automated Tracking System, Subtype DU. Inventory pending as of September 30, 2021. This data does not include cases on appeal. The IRS has taken fewer collection actions since the start of the COVID-19 pandemic, and CDP requests have therefore been lower over the last two years.

9 IRS response to TAS information request (Oct. 7, 2022).

10 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Legislative-Recommendations-The-IRS-Should-Provide-Collection-Due-Process-Rights-to-Third-Parties-Holding-Property.pdf>.

Exhibit C

Legislative Recommendation #25

Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions

SUMMARY

- *Problem:* When the IRS takes collection action against a taxpayer, the taxpayer is entitled to a collection due process (CDP) hearing at which he or she may raise defenses, challenge the appropriateness of the collection action, and propose collection alternatives. In some cases, the IRS may take collection action against third parties who the IRS determines are liable to pay the tax. These third parties are not entitled to a CDP hearing, giving them less procedural protection than the taxpayer who owes the tax.
- *Solution:* Clarify that affected third parties who hold legal title to property subject to IRS collection action are entitled to CDP protections to the same extent as the taxpayers who owe the tax.

PRESENT LAW

Current law authorizes the IRS to file a Notice of Federal Tax Lien (NFTL) against and levy upon (seize) all property or rights to property of “any person liable to pay any tax” who neglects or refuses to do so, including property owned by certain third parties (individuals or entities).¹ These third parties include nominees, alter egos, and persons to whom lien-encumbered property is transferred (collectively, “affected third parties”). In connection with taking these collection actions, the Secretary must provide CDP rights to “the person described in section 6321” (in the case of liens) and to “any person with respect to any unpaid tax” before levying against property (in the case of levies).²

REASONS FOR CHANGE

Congress created the CDP notice and hearing procedures to give taxpayers the right to a meaningful hearing before the IRS levies their property or immediately after the IRS files an NFTL against their property. During a CDP hearing with the IRS Independent Office of Appeals (Appeals), a taxpayer has the opportunity to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives.³ If the parties cannot otherwise resolve the issues, Appeals issues a notice of determination that is subject to judicial review in the U.S. Tax Court.⁴

For purposes of CDP eligibility, the Treasury regulations interpret the statutory term “person” as including only the taxpayer (*i.e.*, the person upon whom the tax was imposed and who refused or neglected to pay following notice and demand).⁵ Thus, affected third parties are not afforded CDP rights.⁶

¹ See IRC §§ 6323(f), 6331(a).

² IRC §§ 6320(a)(1), 6331(d)(1). See also IRC §§ 6321, 6322, 6323(a), 6323(f), 6323(h)(6), and 6331(a). IRC § 6321 also refers to “any person liable to pay any tax.” A CDP lien notice will only be given to the person described in IRC § 6321 who is named on the NFTL. Treas. Reg. § 301.6320-1(a)(2) Q&A-A1. A CDP levy notice will only be given to the person described in IRC § 6331(a). Treas. Reg. § 301.6330-1(a)(3) Q&A-A1.

³ IRC §§ 6320(c), 6330(c)(2).

⁴ IRC §§ 6320(c), 6330(d)(1).

⁵ Treas. Reg. § 301.6320-1(a)(2) Q&A-A1; Treas. Reg. § 301.6330-1(a)(3) Q&A-A1.

⁶ See Treas. Reg. §§ 301.6320-1(a)(2) Q&A-A7, 301.6330-1(a)(3) Q&A-A2, 301.6320-1(b)(2) Q&A-B5, and 301.6330-1(b)(2) Q&A-B5. This interpretation is inconsistent in some respects with the stated congressional intent, and the Treasury Department could have interpreted the statute otherwise. The CDP regime was enacted by the IRS Restructuring and Reform Act of 1998, and in explaining CDP rights, the accompanying conference report referred to “[t]he taxpayer (or affected third party).” H.R. REP. NO. 105-599, at 264 (1998) (Conf. Rep.). In addition, CDP levy rights are statutorily afforded to “persons” and are neither limited to taxpayers nor to persons who originally neglected or refused to pay the tax. The term “taxpayer” is defined in IRC § 7701(a)(14) as “any person subject to any internal revenue tax,” which in this context arguably may include affected third parties, given that the IRS is seeking to collect from them.

In some affected third-party circumstances, the IRS seeks to collect from specific property (*e.g.*, property that has been transferred to a third party subject to a tax lien, whether or not as a nominee). In other cases, the IRS seeks to collect from all property of the affected third party (*e.g.*, an alter ego).⁷ In both situations, the IRS may file NFTLs that identify the affected third party and levy upon property that, under state law, belongs to the affected third party.

The current collection regime, including the available remedies for alleged nominees, alter egos, and persons to whom property subject to a tax lien is transferred, is unduly burdensome, inefficient, and lacking adequate procedural safeguards. A third party may seek administrative review of a nominee/alter ego lien or levy determination by requesting a Collection Appeals Program (CAP) hearing through Appeals.⁸ However, a CAP hearing only provides a summary review, since Appeals' goal is to decide CAP cases within five days.⁹ While the goal of quickly resolving CAP cases is laudable, the rights of the third party utilizing a CAP appeal can be adversely affected.

In addition, all CAP decisions are final and not subject to judicial review.¹⁰ The only judicial remedies require filing suit in a U.S. district court,¹¹ which is difficult to navigate without legal representation and can be costly for both affected third parties and the government. Some affected third parties who cannot afford the significant expense and burden of litigation may never be able to challenge an inappropriate or unlawful collection action.

In fiscal year (FY) 2023, the IRS issued 125,800 CDP notices to taxpayers; 9,376 taxpayers requested CDP hearings; and 1,110 taxpayers filed CDP petitions in the U.S. Tax Court.¹² By comparison, the IRS only filed 1,532 nominee and alter ego NFTLs during FY 2023.¹³ Thus, expressly providing CDP rights to affected third parties would not impose an undue administrative burden on the IRS and would reduce litigation costs for both the government and the affected third parties.

For these reasons, the National Taxpayer Advocate believes it is incongruous and inequitable for taxpayers who originally were responsible for tax debts to receive the full protection of IRC §§ 6320 and 6330, while affected third parties holding legal title to property subject to IRS collection actions do not receive these same due process protections.

7 See *Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000); Internal Revenue Manual (IRM) 5.17.2.5.7(2), Property Held by Third Parties (Jan. 8, 2016), https://www.irs.gov/irm/part5/irm_05-017-002.

8 Treas. Reg. § 301.6330-1(b)(2) Q&A-B5; Treas. Reg. § 301.6330-1(b)(2) Q&A-B5.

9 IRM 8.24.1.3.8, Case Procedures under CAP (Sept. 28, 2021), https://www.irs.gov/irm/part8/irm_08-024-001.

10 *Hughes v. Comm'r*, T.C. Memo. 2012-42; IRM 8.24.1.2, Distinctions Between CAP and Collection Due Process (CDP) Hearings (Sept. 28, 2021), https://www.irs.gov/irm/part8/irm_08-024-001.

11 For example, if the IRS has filed an NFTL, the third party who holds the title is left with the option to bring an action to quiet title under 28 U.S.C. § 2410 in a U.S. district court. To contest a nominee, alter ego, or transferee levy, the affected third party must file a wrongful levy action under IRC § 7426 in a U.S. district court.

12 Of the total hearing requests, 5,768 involved individuals and 3,608 involved business taxpayers. IRS Compliance Data Warehouse (CDW), Individual Master File (FY 2023) (through Sept. 28, 2023); IRS CDW, Business Master File (FY 2023) (through Sept. 28, 2023). This data includes FY 2023 CDP notices mailed and CDP hearings requested as indicated on the taxpayers' accounts by Sept. 28, 2023. Actual numbers may be higher because some may not have been posted to taxpayer accounts until FY 2024. The total number of CDP petitions filed in the Tax Court was compiled by the IRS Office of Chief Counsel. IRS, Counsel Automated Tracking System, Subtype DU. This data does not include cases on appeal.

13 IRS response to TAS information request (Oct. 30, 2023).

RECOMMENDATION

- Amend IRC §§ 6320 and 6330 to extend CDP rights to affected third parties who hold legal title to property subject to IRS collection actions.¹⁴

¹⁴ For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544 (Legislative Recommendation: *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Legislative-Recommendations-The-IRS-Should-Provide-Collection-Due-Process-Rights-to-Third-Parties-Holding-Property.pdf>.