

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8809]

RIN 1545-AW76

Notice and Opportunity for Hearing before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property the IRS intends to levy. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622-3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6330 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and

Reform Act of 1998 (RRA).

Prior to January 1, 1983, the IRS was only required to notify a taxpayer of its intention to levy in the case of proposed levies on salary or wages. Section 6331(d) was amended as a part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The TEFRA amendment required the IRS to give a taxpayer a notice of its intention to levy, in non-jeopardy situations, before any levy was made upon the salary, wages, or other property of the taxpayer. The legislative history of the TEFRA amendment recognized that, although a single notice of intent to levy relating to all property would be sufficient, the IRS was not precluded from sending multiple notices of intention to levy.

Under section 6331(a), the IRS may levy upon a taxpayer's property and rights to property if a taxpayer fails to pay a tax liability. Exemptions from levy are provided for certain property under section 6334(a). The first step toward levy generally occurs when the IRS provides a taxpayer with a written notice and demand for payment. Under section 6303, a notice and demand is a notice which states that the tax has been assessed and demands that payment be made. If, in non-jeopardy situations, the taxpayer fails to pay the tax within 10 days after notice and demand, the IRS may seize a taxpayer's property or rights to property 30 days after sending the taxpayer a notice required under section 6331(d), called a Notice of Intent to Levy. Although the notice and demand and the Notice of Intent to Levy may be combined and sent at the same time under Treas. Reg.

§301.6331-2(a)(1), under current practice these two notices are usually sent separately. Generally, the notice and demand is sent first and, as the second step in the levy process, the Notice of Intent to Levy is sent at a later time. The IRS is permitted to proceed with immediate seizure of a taxpayer's property or rights to property without regard to the 10-day waiting period if it determines that the collection of the tax is in jeopardy.

Under section 6331(d), the Notice of Intent to Levy must contain a brief statement, in simple, nontechnical terms, that sets forth (A) the statutory provisions relating to the levy and sale of property, (B) the procedures applicable to the levy and sale of property, (C) the administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals, (D) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), (E) the statutory provisions relating to redemption of property and the release of liens on property, and (F) the procedures applicable to the redemption of property and the release of a lien on property. The Notice of Intent to Levy must be given in person, left at the taxpayer's dwelling or usual place of business, or sent by registered or certified mail to the taxpayer's last known address.

Prior to January 19, 1999, the IRS generally complied with the requirements of section 6331(d) by giving the taxpayer a Final Notice of Intent to Levy, and enclosing certain IRS

publications which explain the law, IRS levy and redemption procedures, administrative appeal processes and procedures, and various collection alternatives.

Section 6330 provides that, except when the Secretary finds that collection of the tax is in jeopardy or a levy is issued to collect State tax refunds due to the taxpayer, no levy may be made on or after January 19, 1999, unless the Secretary notifies the taxpayer in writing of a right to a hearing before the IRS Office of Appeals (Appeals) with respect to the unpaid tax for the tax period. When the Secretary has found jeopardy exists and in cases where a levy is made on a State tax refund, the taxpayer will be given notice of a right to, and the opportunity for, a hearing within a reasonable time after the levy action has actually occurred.

Except when it determines that collection of the tax is in jeopardy or it levies on State tax refunds, the IRS is prohibited from levying upon the taxpayer's property or rights to property until 30 days after providing the taxpayer with the notice of a right to a hearing before Appeals. If the taxpayer requests such a hearing, the IRS is, in the absence of jeopardy, prohibited from levying upon the taxpayer's property until the determination reached by Appeals becomes final.

In order to implement the provisions of section 6330, the IRS is going to modify the procedures it follows leading up to the issuance of a levy. In the absence of a determination that collection of the taxes is in jeopardy, the IRS will continue to

provide a number of notices to a taxpayer before levying upon the taxpayer's property.

Under the procedures the IRS is adopting to implement section 6330, the levy process will continue to begin with issuance to the taxpayer of a written notice and demand for payment. Absent a jeopardy determination, a taxpayer who fails to pay the tax specified in the notice and demand within 10 days after notice and demand may, in addition to other notices such as the annual notice of tax delinquency required under section 7524, be sent an Urgent Notice. The Urgent Notice will inform the taxpayer that the IRS may levy upon a taxpayer's State tax refund after 30 days from the date of that notice. This Urgent Notice will include all information required under section 6331(d) and will constitute the notice required under that section. Accordingly, the Urgent Notice will also begin the ten-day period leading to an increase in the failure to pay penalty prescribed by section 6651(d).

These temporary regulations implement the provisions of section 6330 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of a right to a hearing before Appeals, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not

request a hearing under section 6330 within the 30-day period following the date of notification. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide that, except in the case of jeopardy levies or levies on State tax refunds, the IRS must notify the taxpayer of its intention to levy prior to issuing a levy. The notification under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail, return receipt requested, to the taxpayer's last known address at least 30 days prior to the first proposed levy action with respect to the amount of the unpaid tax for the tax period. The temporary regulations also provide procedures to be followed in the event the notification, if mailed, is not mailed to the taxpayer's last known address. In jeopardy situations and in cases where a levy is made on a State tax refund, notification to the taxpayer of a right to a hearing is not required to be given until the levy action has actually occurred. The temporary regulations set forth the procedures to be followed for making the required pre-levy and post-levy notifications.

Both such notifications must (A) set forth the amount of unpaid tax, (B) notify the taxpayer of the right to request a hearing within the 30-day period that commences the day after the

date of notification, (C) indicate, as appropriate, that the IRS has levied or plans to levy, and (D) describe the rights of the taxpayer with respect to such action, including a brief statement which explains (1) the provisions of the Internal Revenue Code (Code) relating to levy and sale of property, (2) the procedures applicable to the levy and sale of property under the Code, (3) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals, (4) the alternatives available to taxpayers which might forestall future levies on property (including installment agreements under section 6159), and (5) the provisions of the Code and procedures relating to redemption of property and release of liens on property.

Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a collection due process hearing, Appeals will hold one section 6330 collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the collection due process notice (CDP Notice). The taxpayer is entitled to have a hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. A taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. Hearings with respect to levies may be held in conjunction with hearings under section 6320, involving liens.

If the taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecution, and relating to suits are suspended until the suspension ends as a result of the taxpayer's withdrawal of the request for a CDP hearing or until the determination reached at the CDP hearing becomes final by the expiration of the time for seeking review or reconsideration before the appropriate court. Prior to issuance of the Appeals determination, the Appeals officer must verify that all legal and administrative requirements pertaining to the proposed levy have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous hearing under section 6320 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a

Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provides rules and procedures with respect to the administrative hearing (referred to as an "equivalent hearing") the IRS will provide to taxpayers who do not timely request a hearing under section 6330.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805 (f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6330-1T is added under the undesignated centerheading "Seizure of Property for Collection of Taxes" to read as follows:

§301.6330-1T Notice and opportunity for hearing prior to levy (temporary).

(a) Notification--(1) In general. Except as specified in paragraph (a)(2) of this section, the district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to provide persons upon whose property or rights to property the IRS intends

to levy on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process hearing (CDP hearing) with the Internal Revenue Service Office of Appeals (Appeals). This Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail, return receipt requested, to such person's last known address.

(2) Exceptions--(i) State tax refunds. Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect State tax refunds owing to the taxpayer. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to give notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to the tax liability for the tax period for which the levy on the State tax refund was made on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a State tax refund is referred to as a post-levy CDP Notice.

(ii) Jeopardy. Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to levy when there has been a determination that collection of the tax is in jeopardy. However, the district director, the service center director, and the Assistant

Commissioner (International), or their successors, are required to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy is also referred to as post-levy CDP Notice.

(3) Questions and answers. The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the "person" to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is only required to be given to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a State tax refund or in the case of a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a). Pursuant to section 6331(a), notice is to be given to the person liable to pay the tax due after notice and demand who refuses or neglects to pay (hereinafter referred to as the taxpayer).

Q-A2. Will the IRS notify a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to the taxpayer of its intention to issue a levy?

A-A2. No. Such a person is not the person described in

section 6331(a), but such persons have other remedies. See A-B5 of this paragraph (a)(3).

Q-A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A-A3. Yes. The notification of intent to levy or of the issuance of a jeopardy or State tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q-A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A-A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q-A5. When will the IRS provide this notice?

A-A5. Pursuant to section 6330(a)(1), beginning January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of its intent to levy on property or rights to property, other than State tax refunds and in jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a State tax refund or issues a jeopardy

levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q-A6. What must the pre-levy CDP Notice include?

A-A6. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth--

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q-A7. What must the post-levy CDP Notice include?

A-A7. Pursuant to section 6330(a)(3), the notification must

include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS has levied upon the taxpayer's State tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth--

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q-A8. How will this pre-levy or post-levy notification be accomplished?

A-A8. (i) The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate.

The additional information IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with that Notice. The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q-A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A-A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which

the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q-A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A-A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing.

(4) Examples. The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in Example 1, except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) Entitlement to a CDP hearing--(1) In general. A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the pre-levy or post-levy CDP Notice provided the taxpayer. The taxpayer must request such a hearing

within the 30-day period commencing on the day after the date of the CDP Notice.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is the taxpayer entitled to a CDP hearing where a levy for State tax refunds is served on or after January 19, 1999, even though the IRS had previously served other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A-B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the tax and tax period set forth in such a levy issued on or after January 19, 1999.

Q-B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice with respect to a tax period, provides subsequent notice to that taxpayer that it intends to levy on property or rights to property of the taxpayer for the same tax and tax period shown on the CDP Notice?

A-B2. No. Under section 6330, only the first pre-levy or post-levy Notice with respect to liabilities for a tax and tax period constitutes a CDP Notice. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination with respect to collection activity relating to that tax and tax period. The IRS generally provides additional notices or

reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q-B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6330 CDP Notice was previously sent, is the taxpayer entitled to a second section 6330 CDP hearing?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q-B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A-B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(c) Requesting a CDP hearing--(1) In general. Where a taxpayer is entitled to a CDP hearing under section 6330, such a hearing must be requested during the 30-day period that commences that day after the date of the CDP Notice.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(ii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1-800-829-3676.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the

IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A-C3. A taxpayer must submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6330 within the 30-day period commencing the day after the date of the CDP Notice. This period is slightly different from the period allowed taxpayers to submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules under section 7502 and the regulations thereunder and section 7503 and the regulations thereunder will apply to determine the timeliness of the taxpayer's request for a

CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C6. Where should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q-C7. What will happen if the taxpayer does not request a section 6330 CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice?

A-C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the tax and tax

period or periods shown on the CDP Notice. In addition, the IRS will be free to pursue collection action at the conclusion of the 30-day period following the date of the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing

be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(d) Conduct of CDP hearing--(1) In general. If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed

as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the CDP Notice.

Q-D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A-D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with

respect to the tax and tax period or periods?

A-D5. The taxpayer must sign a written waiver.

(e) Matters considered at CDP hearing--(1) In general.

Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) Spousal defenses. A taxpayer may raise any appropriate

spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) Questions and answers. The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the

existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in

a CDP hearing under these circumstances.

Q-E5. What collection alternatives are available to the taxpayer?

A-E5. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E6. What issues may a taxpayer raise in a CDP hearing under section 6330 if he previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period shown in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q-E7. How will Appeals issue its determination?

A-E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of

Determination will set forth Appeals's findings and decisions:

(A) It will state whether the IRS met the requirements of any applicable law or administrative procedure.

(B) It will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax.

(C) It will include a decision on any appropriate spousal defenses raised by the taxpayer.

(D) It will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action.

(E) It will respond to any offers by the taxpayer for collection alternatives.

(F) It will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

(ii) The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(iii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless as a result of these discussions, the

taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A-E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q-E9. Why is the Notice of Determination and its date important?

A-E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) Examples. The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in Example 1, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a

subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) Judicial review of Notice of Determination--(1) In general. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal Appeals's determination to the Tax Court or to a district court of the United States.

Q-F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015(b) or (c), but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only wants Tax Court review of Appeals's denial of relief under section 6015(b) or (c), the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015(b) or (c) claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely

appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) Effect of request for CDP hearing and judicial review on periods of limitation--(1) In general. The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) Questions and answers. The questions and answers

illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking its review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

(3) Examples. The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in Example 1, except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) Retained jurisdiction of Appeals--(1) In general. The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) Questions and answers. The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the

course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods to which the unpaid tax relates. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a subsequent hearing appealable to the Tax Court or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) Equivalent hearing--(1) In general. A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) Questions and answers. The questions and answers

illustrate the provisions of this paragraph (i) as follows:

Q-I1. What issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q-I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) Effective date. This section is applicable with respect to any levy which occurs on or after January 19, 1999, and before January 22, 2002.

/s/ Robert E. Wenzel
Deputy Commissioner of Internal Revenue

Approved: January 13, 1999

/s/ Donald C. Lubick
Assistant Secretary of the Treasury