



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR Associate Area Counsel, Salt Lake City, CC:SB:5:SLC

FROM: Mitchel S. Hyman
Senior Technician Reviewer
Collection, Bankruptcy & Summonses
CC:PA:CBS:BR1

SUBJECT: Significant Service Center Advice: Frivolous Collection Due
Process Hearing Requests

This responds to your request for significant advice dated March 26, 2002, in connection with a question posed by the Ogden Service Center.

ISSUES

1. Should taxpayer correspondence that contains a vague request for a hearing embedded in a lengthy document comprised of frivolous arguments be considered a request for a CDP hearing if such correspondence is submitted within the time periods prescribed in I.R.C. §§ 6320(a)(3)(B) and/or 6330(a)(3)(B)?
2. Should such taxpayer correspondence be treated as a request for an equivalent hearing if such correspondence is submitted outside of the time period prescribed by sections 6320 and/or 6330?

CONCLUSIONS

1. Frivolous correspondence submitted by the taxpayer within the thirty-day period after the issuance of a CDP notice, with language that can be reasonably construed as a request for a hearing, should be treated as a request for a CDP hearing.
2. Frivolous correspondence submitted by the taxpayer outside of the time period, with language that can be reasonably construed as a request for a hearing, should similarly be treated as a request for an equivalent hearing. However, if a document contains vague language that does not specifically request an equivalent hearing,

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the Service has the discretion to require the taxpayer to verify that an equivalent hearing is being requested.

FACTS

The following fact pattern is common in cases handled by the Ogden Frivolous Return Program (FRP). A taxpayer files a frivolous income tax return with the Service. After a notice of deficiency is issued, and either defaulted or litigated in Tax Court, the tax is assessed against the taxpayer, and a notice and demand is sent to the taxpayer. The taxpayer fails to pay the assessed deficiency and the Service issues a CDP notice as required by sections 6320 and/or 6330.

At some point before or after the expiration of the time period provided for making a timely CDP request, the taxpayer sends the Service a document, usually consisting of several pages of text, containing various types of frivolous arguments. The CDP notice itself may or may not be attached. In addition, this document contains language that may be construed as a request for a CDP hearing.

You conclude that if the Service can establish a nexus between the incoming document and the CDP notice and the incoming document is timely, the Service should treat the document as a proper request for a CDP hearing. This request should then be forwarded to Appeals, even if it only contains frivolous arguments and does not clearly state that a CDP hearing has been requested. You also conclude, however, that similar documents which are untimely should not be forwarded to Appeals unless they specifically request a hearing.

Your memorandum requests our views on the procedures that the Service Centers should use in handling such documents.

LAW AND ANALYSIS

Section 6320 Notice of Federal Tax Lien

For a Notice of Federal Tax Lien (NFTL) filed after January 18, 1999, the Service must notify the taxpayer of the filing and provide the taxpayer with an opportunity for a CDP hearing before an impartial appeals officer. Section 6320; Treas. Reg. § 301.6320-1(a). The notice must be in writing and must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail to the taxpayer's last known address no more than five business days after the NFTL was filed. Section 6320(a)(2).

Section 6330 Notice Prior to Levy

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Section 6330 provides that (except in cases of jeopardy levies or levies on state tax refunds) no levy may be made on any property or right to property of any taxpayer unless the Service notifies the taxpayer of its intent to levy and the taxpayer's right to request a CDP hearing. Section 6330(a)(3). The notice must be in writing and must be issued to the taxpayer at least thirty days before the levy is made. Section 6330(a)(2). The CDP notice under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address. Section 6330(a)(2).

CDP Hearing

The taxpayer is entitled to one CDP hearing per tax period covered by a lien notice under section 6320 or levy notice covered by section 6330. The taxpayer must request a CDP hearing within the thirty day time period that commences the day after the end of the five business day period following the filing of the NFTL. Treas. Reg. § 301.6320-1(c)(2)Q&A-C3. Additionally, a taxpayer has thirty days from the date the pre-levy CDP notice is issued in which to request a CDP hearing. The Service may not levy while the CDP hearing and any appeals therefrom are pending. I.R.C. § 6330(e)(1).

A CDP request must be in writing. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1; 301.6330-1(c)(2)Q&A-C1. Taxpayers are encouraged to use a Form 12153, *Request for a Collection Due Process Hearing*, to request a CDP hearing. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1(iii); 301.6330-1(c)(2)Q&A-C1(iii). A Form 12153 requests the following information: the taxpayer's name, address, daytime phone number, taxpayer identification number, type of tax involved, tax period(s) at issue, a statement that the taxpayer requests a hearing with Appeals concerning the proposed collection action, and the reasons why the taxpayer disagrees with the proposed collection action. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1(ii); 301.6330-1(c)(2)Q&A-C1(ii). However, the failure to use such a form does not invalidate the taxpayer's CDP request. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1; 301.6330-1(c)(2)Q&A-C1. Although a taxpayer is not required to use a specific form in requesting a CDP hearing, the request must substantially comply with the regulatory requirements so that the Service can identify the writing as a request for a CDP hearing. A writing which requests a CDP hearing, other than a Form 12153, must include the taxpayer's name, address, daytime telephone number, and must be signed by the taxpayer or taxpayer's representative and dated. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1(i); 301.6330-1(c)(2)Q&A-C1(i).

Equivalent Hearing

A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Treas. Reg. §§ 301.6320-1(i); 301.6330-1(i). However, a taxpayer may request an equivalent hearing. *Id.* An equivalent hearing is similar to a CDP

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hearing in that it generally follows the same procedures. Treas. Reg. §§ 301.6320-1(i)(2)Q&A-I1; 301.6330-1(i)(2)Q&A-I1. The chief distinction is that an Appeals' determination made as a result of an equivalent hearing is not subject to judicial review. Kennedy v. Commissioner, 116 T.C. 255 (2001); see also Treas. Reg. §§ 301.6320-1(i)(2)Q&A-I5; 301.6330-1(i)(2)Q&A-I5.

Service Center Procedures and CDP Requests

We now turn to the specific questions your memorandum presented with respect to the manner in which Service Centers should respond to certain taxpayer correspondence.

1. In a situation when a taxpayer timely responds to the Service Center within the thirty-day time period from the issuance of a CDP notice through correspondence, other than a Form 12153, which contains frivolous arguments, and language in the correspondence can reasonably be construed as a request for a hearing, we agree that the document should be treated as a proper CDP hearing request.

Every taxpayer who makes a timely CDP request is entitled to an opportunity for a hearing. All taxpayers have a statutory right to a hearing regardless of the issues raised. See sections 6320(b) and 6330(b). At the appeals hearing, the appeals officer does not need to entertain frivolous arguments raised by the taxpayer and may conclude the hearing once it is determined that the taxpayer has no relevant issues to raise. See I.R.M. 8.7.2.3.7 (2). See Generally, Tipp v. Commissioner, T.C. Memo 2001-272 (2001); Goza v. Commissioner, 114 T.C. 176 (2000). However, even if the taxpayer raises only frivolous issues at a hearing, the appeals officer must verify that the requirements of any applicable law or administrative procedure have been met, and consider whether the proposed collection action balances the need for the efficient collection of taxes with the concern that no collection action be more intrusive than necessary. Section 6330(c)(3). Thus, the fact that a taxpayer raises no significant issues has no bearing on whether he has a right to a hearing. Further, so long as the incoming document can be construed as a request for a CDP hearing, even though only vague language such as a request for an "administrative process" or an "adjudication" is used, a timely filed document should be treated as a valid request for a hearing. We do not believe it is necessary for the timely filed document to expressly request a CDP hearing.

As previously discussed, a written request for a CDP hearing in any form other than through the use of a Form 12153 must include the taxpayer's name, address, daytime telephone number, and be signed and dated by the taxpayer or the taxpayer's representative. Treas. Reg. §§ 301.6320-1(c)(2)Q&A-C1(i); 301.6330-1(c)(2)Q&A-C1(i). Thus, in situations where the Service receives correspondence from a taxpayer within the thirty day time period after the issuance of a CDP notice and the correspondence lacks one or more of the above requirements, the Service

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can request that the taxpayer provide the the missing information. If the taxpayer does not perfect the CDP request by providing the required information within the reasonable time period provided, then no valid CDP request has been made.

2. In the situation where a taxpayer responds to a CDP notice more than thirty days after it is issued through correspondence which contains only frivolous arguments, we believe such requests should be treated as described below.

The legislative history that accompanied the Internal Revenue Service Restructuring Act of 1998 provided that the Service “must provide a hearing equivalent to the pre-levy hearing if later requested by the taxpayer.” H.R. Rep. No. 105-599, 105 Cong., 2d Sess. 266 (1998). The regulations, at Treas. Reg. §§ 301.6320-1(i)(1) and 301.6330-1(i)(1), reflect Congressional intent that taxpayers who file untimely requests be treated administratively the same as taxpayers who file timely requests, i.e., they be given the same rights to a hearing before Appeals. We conclude that if a taxpayer submits an untimely document containing only frivolous arguments but with language that can be construed as a request for a hearing, and the Service Center can reasonably link that document to a CDP notice sent to the taxpayer, such document should, as a general matter, be treated as a valid request for an equivalent hearing.

However, in light of the fact that equivalent hearings are not required by statute, the Service has some discretion to develop reasonable procedures in responding to frivolous documents. Where the untimely document contains frivolous and vague language and does not specifically request an equivalent hearing in response to a CDP notice, the Service has the discretion to require the taxpayer to verify by a specified deadline that an equivalent hearing is being requested. If the taxpayer declines to verify that he is requesting an equivalent hearing, then the Service has the discretion not to grant a hearing.

Please call the attorney assigned this case at 202-622-3610 if you have any further questions.