



2015

IRSNationwide

TaxFORUM

CDP Balancing Test: Advocating for your client before the IRS Office of Appeals in Collection Due Process Hearings



2015

IRSNationwide

TaxFORUM

Collection Due Process

- IRC § 6320
- IRC § 6330
- After a NFTL has been filed and/or after a levy has been proposed (but before the levy is imposed)



CDP Timeline

- Taxpayer receives an intent to levy notice or NFTL.
 - Taxpayer has 30 days to request a hearing
- Appeals conducts the hearing
- Appeals issues a notice of determination
- Review by Tax Court

2015

IRSNationwide

TaxFORUM



Requesting a Hearing

- Signed and dated written request within the applicable time period
- Include the reasons for requesting a hearing

2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Requesting Hearings, cont.

- Equivalent hearings
 - If a taxpayer misses the deadline
- Face-to-face hearings
 - Generally approved but not guaranteed



2015

IRSNationwide

TaxFORUM

Role of Appeals Officer

- Impartial
 - IRC § 6320(b)(3)
 - *Moosally v. Commissioner*, 142 T.C. 183 (2014)
- No *Ex parte* communication
 - Rev. Proc. 2012-18



The “Big Three”

- Appeals considers these issues at a CDP hearing:
 - Verification that any applicable law or administrative procedure have been met;
 - Issues raised under IRC § 6330(c)(2);
 - Whether the proposed collection action balances the need for efficient collection of taxes with the taxpayer’s legitimate concern that the collection action be no more intrusive than necessary.



2015

IRSNationwide

TaxFORUM



Verification of law/procedure

- The Appeals Officer *shall* verify the requirements of any applicable law or procedure have been met
 - CSED, ASED
 - Sufficiency of notice
- *Hoyle v. Commissioner*, 131 T.C. 197 (2008)



2015

IRSNationwide

TaxFORUM



IRC § 6330(c)(2)

- The taxpayer may raise certain issues, which Appeals must consider
 - Related to the unpaid tax/collection action
 - Related to the underlying liability
- *Morgan v. Commissioner*, T.C. Memo. 2011-290

2015

IRSNationwide

TaxFORUM



CDP Balancing Test

- weigh the issues raised by the taxpayer;
- determine whether the collection action balances the need for efficient collection with the legitimate concern of the taxpayer that any collection be “no more intrusive than necessary”

2015

IRSNationwide

TaxFORUM



Balancing Test – Case Law

- Most cases favored the IRS
- Even if Appeals used *pro forma* statements that the test had been performed
- Abuse of discretion standard of review



2015

IRSNationwide

TaxFORUM

Balancing Test – Case Law

- ***BALANCING FACTORS***
- *Budish vs. Commissioner*, T.C. Memo 2014-239
- *Fifty Below Sales & Marketing, Inc. v. United States*, 497 F.3d 828 (8th Cir. 2007)



CDP cases, cont.

- *Murphy v. Commissioner*, 469 F.3d 27 (1st Cir. 2006)
- *Judge v. Commissioner*, T.C. Memo 2009-135

2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Administrative Record

- A primary way to help your client
- Notice CC-2014-002 (May 5, 2014)



How to advocate

- Inform taxpayers that CDP rights exist
- Monitor deadlines
- *Make sure the case is fully developed*
- Refer taxpayers to LITC if necessary

2015

IRSNationwide

TaxFORUM



2015

IRSNationwide

TaxFORUM

Seek TAS Assistance if You:

- Are experiencing or about to experience economic harm, significant cost, or irreparable injury,
- Have experienced a delay of more than 30 days to resolve your tax issue, or
- Have had no response or resolution to your problem by the date that was promised by the IRS.



Contact TAS

- www.TaxpayerAdvocate.irs.gov
- www.youtube.com/tasnta
- www.facebook.com/YourVoiceAtIRS
- twitter.com/YourVoiceatIRS
- www.taxpayeradvocate.irs.gov/2014-Annual-Report
- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)*



2015

IRSNationwide

TaxFORUM