



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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MEMORANDUM FOR NORTH CENTRAL DISTRICT COUNSEL

Attn: Tracey A. Martinez

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT: Request for Advice: RRA 98, Section 3401 - Collection Due
Process Issues - Supplemental Request

This advice is in response to your memorandum concerning the above subject.
This document is advisory only and is not to be relied upon or otherwise cited as
precedent.

LEGEND:

City: N/A
Taxpayer: N/A
SSN: N/A
Years: N/A
Assessment Amount: N/A

ISSUES:

1. After receiving a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing, can the taxpayer waive his right to a Collection Due Process (CDP) hearing before the 30-day period has run?
2. After waiving his right to a CDP hearing, can the taxpayer change his mind and request a CDP hearing before the 30-day period has run?

CONCLUSIONS:

1. After receiving a Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing, the taxpayer can waive his right to a CDP hearing before the 30-day period has run.

2. After waiving his right to a CDP hearing, we would generally not expect the taxpayer to change his mind and request a CDP hearing before the 30-day period has run. Theoretically, however, the taxpayer could make such request, for example, to raise collection alternatives with respect to the seizure of additional property. However, any property seized pursuant to his waiver would not have to be returned.

FACTS:

The RRA 98 Collection Coordinator for the North Central District requested in a memorandum dated July 12, 1999, advice from your office regarding a number of day to day collection issues. You have prepared a memorandum containing proposed responses to the issues, and you have requested our office to pre-review these responses. We agree with all of your proposed responses except for response six. Question six in the Collection Coordinator's memorandum reads as follows:

6(a). After we have sent Letter 1058, can the taxpayer waive his rights to a CDP hearing before the 30-day period has run? If so in what manner or form? Note: We have taxpayers who would find it advantageous for the IRS to levy prior to third party actions.

6(b). If the taxpayer waives his rights before 30 days have run, can he then change his mind and request a CDP hearing before 30 days have run?

Your proposed response to question 6 is as follows:

6(a). We are unaware of any provision in Sections 6320 or 6330 which allows the taxpayer to affirmatively waive their right to a CDP hearing prior to the expiration of the 30-day period.

6(b). See response to Question no. 6a.

LAW AND ANALYSIS:

While I.R.C. §§ 6320 and 6330 do not specifically permit a taxpayer to affirmatively waive a right to a CDP hearing before the 30-day period has run, those sections do not prohibit taxpayers from making such waivers. The temporary regulations promulgated under those sections permit waiver under certain circumstances. Accordingly, we believe a waiver can be granted to a taxpayer on informal basis. ^{1/}

^{1/} We are assuming in this situation that the taxpayer has not made an initial written request for a CDP hearing. If the taxpayer has already made an initial written

The Internal Revenue Service (Service) should not present the waiver option to the taxpayer unless the Service believes that such a waiver may be in the best interests of the taxpayer. If the taxpayer makes an unsolicited request for a waiver, Collection should then seek guidance from their local District Counsel.

Our office has reviewed and approved waiver language that is to be used when a taxpayer wishes to waive his right to a CDP hearing when such CDP hearing has not previously been requested in writing. The waiver language should provide that the taxpayer must have received and read the CDP Notice before signing the waiver. The language should also provide that by signing the waiver, the taxpayer understands that he has “knowingly and voluntarily” waived his rights to a CDP hearing and the 30-day waiting period before levy.

Once the taxpayer signs the waiver form, we would not expect that the taxpayer would change his mind and request a CDP hearing. However, there may be situations in which the taxpayer changes his mind and requests a hearing after waiver within the 30-day waiting period. For example, the taxpayer may realize the seizure he has agreed to will not generate sufficient assets to fully pay his liability. In such a case, the taxpayer may desire a hearing concerning possible collection alternatives. However, we believe that if the levy has already occurred, prior to his revocation of the waiver, that the seizure itself is proper and the property would not have to be returned.

If you have any further questions, please contact General Litigation, Branch 1 at (202) 622-3610.

cc: Assistant Regional Counsel (GL), Midstates Region

request for a CDP hearing, then the taxpayer would have to submit a Form 12256, Withdrawal of Request for Collection Due Process Hearing, to waive his right to a CDP hearing. Treas. Reg. § § 301.6320-1T(e)(3)Q&A-E7(ii), 301.6330-1T(e)(3)A&Q-E7(iii).