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MEMORANDUM FOR NANCY W. HALE, ASSOCIATE AREA COUNSEL (SB/SE),
NASHVILLE CC:SB:3:NAS:1

FROM: */s/*
Joseph W. Clark, Chief
Branch 3, Collection Bankruptcy and Summonses

SUBJECT: Jeopardy Levy

This Chief Counsel Advice (CCA) responds to your August 15, 2002 e-mail request for our views. In accordance with I.R.C. § 6110(k)(3), this CCA should not be cited as precedent.

ISSUES:

- (1) Is every "jeopardy levy" made by the Service covered by the procedures described in I.R.C. § 7429?
- (2) If the "jeopardy levy" in this case falls outside the coverage of section 7429, what administrative appeal rights should the Service provide to the taxpayer?

CONCLUSIONS:

- (1) No. The only "jeopardy levies" which are covered by section 7429 procedures are those within the time frames of section 7429(a)(1) and Treas. Reg. § 301.7429-1. These are levies made fewer than 30 days after the Service gives the taxpayer the notice described under I.R.C. § 6331(a) (the first notice of assessment and demand for payment) or section 6331(d) (the first notice of intent to levy). "Jeopardy levies" made outside of these time frames under I.R.C. §§ 6330(f)(1), 6331(i)(3)(A)(ii), and 6159(b), or under other applicable Service procedures for making a "jeopardy levy" (e.g., IRM 5.11.1.2.1(5)) are not covered by section 7429 procedures.
- (2) The jeopardy levy in this case was made 33 days after the Service gave the taxpayer the combined notices described in sections 6331(d) and 6330(a), so this jeopardy levy pursuant to IRM 5.11.1.2.1(5) is not covered by section 7429 procedures.

The taxpayer did not make a timely request for a collection due process (CDP) hearing under section 6330(b), so the taxpayer also should not be given a CDP hearing. The Service apparently gave the taxpayer mistaken advice after it made the jeopardy levy that the taxpayer was covered by the section 7429 procedures. Thereafter, within 30 days of the jeopardy levy (and 52 days after the CDP notice was given), the taxpayer requested administrative review by the Service's Appeals office of the jeopardy levy. The Service's mistaken advice to the taxpayer of the existence of section 7429 rights in this case does not confer those rights on the taxpayer and it does not appear the taxpayer was prejudiced by receiving this mistaken advice. Under the circumstances, the Service's Appeals office may treat the taxpayer's request for administrative review of the jeopardy levy as a taxpayer request for a hearing under the Collection Appeals Program (as referenced in IRM 5.11.1.2.1(5) (third Exception)) or as an "equivalent hearing" under Treas. Reg. § 301.6330-1(i).

FACTS:

Following a regular assessment, the regular notices were issued, including notice of assessment and demand for payment, notice of intent to levy, and notice of right to a section 6330 CDP hearing. The thirty-day period for the taxpayer to seek the CDP hearing expired and the taxpayer has not requested the CDP hearing.

The IRS made a jeopardy levy within less than 15 days after expiration of the CDP request period. Within five days after making the jeopardy levy, the IRS provided the taxpayer with a statement of the grounds upon which the IRS relied in making the jeopardy levy, and the IRS mistakenly notified the taxpayer of a right to seek administrative review of the jeopardy levy under section 7429 within thirty-days, and a right to seek judicial review of an adverse decision by the IRS on the administrative review. The taxpayer requested an administrative review within 30 days.

ANALYSIS:

(1) It was not the intention of Congress to include within the jeopardy levy review provision of section 7429 every jeopardy levy made by the Service. Prior to enactment of section 7429, jeopardy levies were declared subject to a right for judicial due process review (at least where a prepayment forum was not previously offered) which was met by a proceeding subject to the high standard of the Enochs v. Williams Packing, 370 U.S. 1 (1962), exception to the Anti-injunction Act, I.R.C. § 7421. See, Commissioner v. Shapiro, 424 U.S. 614 (1976) (jeopardy assessment under I.R.C. § 6861 and jeopardy levy).

When first enacted, section 7429 covered jeopardy and termination assessments, and did not cover jeopardy levies. P.L. 94-455, § 1204, 90 Stat. 1695 (1976); Conference Report, 1976 U.S. Code Cong. & Admin. News, pp. 4188-4189. This initial limitation to jeopardy and termination assessments responded to concern that the taxpayer had not been offered an opportunity for prepayment judicial review before the making of the

jeopardy or termination assessment. Conference Report, 1976 U.S. Code Cong. & Admin. News, p. 4189. This is in contrast to a jeopardy levy based on a regular assessment as to which taxpayer has been offered an opportunity for prepayment judicial review of the tax. It was not until the 1988 amendment of section 7429 that some jeopardy levies were included under section 7429. P.L. 100-647, § 6237; Conference Report, H.R. Report No. 1104, 100th Cong., 2d Sess. p. 223 (Oct. 21, 1988). As to the jeopardy levies included by the 1988 amendment or by Treas. Reg. § 301.7429-1, section 7429 replaces the review under the Williams Packing standard and provides the due process referred to in Shapiro, supra. The jeopardy levies not covered by section 7429 remain subject to the high standard of the Williams Packing exception to section 7421, see, Shapiro, supra.

The jeopardy levies which are covered by section 7429 procedures are those described in section 7429(a)(1) and Treas. Reg. § 301.7429-1. These are jeopardy levies made fewer than 30 days after the Service gives the taxpayer the notice described under I.R.C. § 6331(a) (the first notice of assessment and demand for payment) or section 6331(d) (the first notice of intent to levy).

Jeopardy levies made outside the 30-day time frames under I.R.C. §§ 6330(f)(1), 6331(i)(3)(A)(ii), and 6159(b), or under other applicable Service procedures for making a "jeopardy levy" (e.g., IRM 5.11.1.2.1(5)), are not covered by section 7429 procedures.

(2) The jeopardy levy pursuant to IRM 5.11.1.2.1(5) in this case falls outside the coverage of section 7429. The jeopardy levy was made 33 days after the Service gave the taxpayer the combined notices described in sections 6331(d) and 6330(a). The taxpayer did not make a timely request for a CDP hearing under section 6330(b). 1/ A taxpayer who fails to timely request a CDP hearing is not entitled to a CDP hearing. Treas. Reg. § 301.6330-1(i)(1).

There are, nonetheless, administrative appeal rights which the Service could provide to the taxpayer. A taxpayer who fails to timely request a CDP hearing may nevertheless request an equivalent hearing with Appeals. Treas. Reg. § 301.6330-1(i)(1). The equivalent hearing will generally follow Appeals procedures for a CDP hearing, and Appeals will consider the same issues it would have considered at a CDP hearing on the same matter. Treas. Reg. § 301.6330-1(i)(1),(2)(A-11). Appeals will not, however,

1/ The Service apparently gave the taxpayer mistaken advice after it made the jeopardy levy that the taxpayer was covered by the section 7429 procedures. Thereafter, within 30 days of the jeopardy levy (and 52 days after the CDP notice was given), the taxpayer requested administrative review from the Service's Appeals office of the jeopardy levy. The Service's mistaken advice to the taxpayer of the existence of section 7429 rights in this case does not confer those rights on the taxpayer and it does not appear the taxpayer was prejudiced by receiving this mistaken advice.

issue a Notice of Determination but, instead, will issue a Decision Letter, which will generally contain the same information as a Notice of Determination. Treas. Reg. §301.6330-1(i)(1), (2)(A-14). Section 6330 does not authorize the taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. Treas. Reg. § 301.6330-1(i)(2)(A-15).

IRM 5.11.1.2.1(5) (third Exception) provides in part:

The appeal process in IRM 5.11.3.6 does not apply, because the thirty-day waiting period has passed. ... If [the taxpayer failed to timely request a CDP hearing,] the taxpayer can still discuss the levy with the group manager or the Taxpayer Advocate, as well as discussing it with Appeals under the Collection Appeals Program. **2/**

Under the circumstances, although the taxpayer should not be given a right to a CDP hearing, the Service's Appeals office may treat the taxpayer's request for administrative review of the jeopardy levy as a taxpayer request for a hearing under the Collection Appeals Program (referenced in IRM 5.11.1.2.1(5) (third Exception)) or as an "equivalent hearing" under Treas. Reg. § 301.6330-1(i).

If you have any questions, contact us at 202-622-3630.

2/ See, IRM 8.7.2.1. Compare, IRM 8.7.2.2.1(1) and IRM 8.7.2.3(1), (11).