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**From:**

**Sent:** Wednesday, July 04, 2012 10:26:43 AM

**To:**

**Cc:**

**Subject:** FW: Currently Not Collectible Determination in a CDP Case --

This provides our response to your e-mail requesting guidance on CNC determinations in CDP cases:

If Collection finds that the taxpayer has assets from which the Service may collect, Collection may remove the taxpayer's accounts from currently not collectible (CNC) status, notwithstanding Appeals' earlier CDP determination to place the taxpayer's accounts into CNC status. The existence of the authority of Collection to take this action is supported by section Section 6330(d)(2)(B), which grants to Appeals retained jurisdiction of the original CDP determination "on issues regarding a change in circumstances with respect to [the taxpayer] which affects such determination." If Collection was not authorized to take action in response to a change in the taxpayer's circumstances, there would be no reason for this provision. See Tucker v. Commissioner, 135 T.C. 114, 142-143 (2010), aff'd, (D.C. Cir. 2012) ("[B]y its nature a collection determination [by Appeals] could be binding only until there has been a change in the taxpayer's circumstances.")

If Collection removes the taxpayer's accounts from CNC status and the taxpayer is not able to resolve his disagreement with Collection (exhaust administrative remedies), then the taxpayer may request and would be entitled to receive a retained jurisdiction hearing with Appeals. A taxpayer may invoke Appeals' retained jurisdiction under section 6330(d)(2)(B) when Collection, based on a change in the taxpayer's circumstances, takes or proposes an action contrary to Appeals' determination. See Treas. Reg. §§ 301.6320-1(h)(1), 301.6330-1(h)(1) (under retained jurisdiction, Appeals "may consider whether changed circumstances warrant a change in its earlier determination."). A change in circumstances under section 6330(d)(2)(B) may include, as in this case, a discovery by Collection that the taxpayer has assets held by a nominee or alter ego, about which Appeals was unaware. If an unemployed taxpayer's accounts are put into CNC status as a result of a CDP determination and the taxpayer later gets a job, the taxpayer's receipt of wages or salary as a collection source would be a change in the taxpayer's circumstances that could trigger Appeals' retained jurisdiction. See Tucker v. Commissioner, 135 T.C. 114, 143 (2010), aff'd, (D.C. Cir. 2012).

Appeals' determination resulting from a retained jurisdiction hearing is not judicially reviewable by the Tax Court. Treas. Reg. §§ 301.6320-1(h)(2) Q&A-H2, 301.6330-

1(h)(2) Q&A-H2. Nevertheless, at the conclusion of the retained jurisdiction hearing, the taxpayer should be provided with a "retained jurisdiction determination", with detailed findings and conclusions, similar to a regular notice of determination. These detailed findings and conclusions will permit us to defend the retained jurisdiction determination in the event the Tax Court decides it has review jurisdiction.

I apologize for the delays in getting back to you on this one. Please let me know if we can assist further.