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[Third Party Communication:

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**From:** [REDACTED]

**Sent:** Tuesday, April 07, 2015 11:57:05 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** RE: Abatement question

You have asked whether an Appeals Officer in CDP who cannot independently verify that a Statutory Notice of Deficiency was properly mailed to the taxpayer's last known address (by certified mail) combined with a taxpayer who cannot not remember receiving the SNOD is sufficient to trigger the concluding clause of paragraph 5 of IRM Part 8.22.8.3(5) (*i.e.*, is a determination that the SNOD was not properly mailed or otherwise received, which renders the assessment invalid). You are correct that, because this matter arises in the context of a CDP hearing, the issue likely is whether the T/P should be allowed to raise a challenge to the existence or amount of the underlying tax at issue. See section 6330(c)(2)(B). Paragraph 5 of the IRM Part you cite discusses what must be done (abatement) in a case in which the Service affirmatively determines that the SNOD was not properly mailed (and was not otherwise timely received). In this situation, the Service should abate on its own. This is true regardless of the CDP posture of the matter. In your case, however, the Service (initially) presumes that the assessment is valid and timely. In investigating whether the T/P may raise a challenge to the underlying liability, the Service learned that it might be difficult to demonstrate actual receipt of the SNOD to a court, because the presumption of official regularity in mailing will easily be rebutted (and indeed will not arise in the first instance) without document (or other) evidence.

. However, I do not think that the Service has concluded that the assessment was (in fact) invalid. Accordingly, it has no authority to abate (see section 6404). Having said that, there is a hazard that the T/P will challenge the validity of the assessment. Additionally, the AO has a duty to verify the validity of the assessment independent of whether the T/P raises a challenge (Hoyle) and this might be the issue that the AO is considering. If this is or becomes the issue, then the Service might be required to abate the assessment (*e.g.*, if the court (or the AO on his or her own) determines that the assessment was invalid). But at this point, this remains only a hazard. So you need to find out what the T/P is arguing.

. Does this make sense?

Feel free to give me a call to discuss.