

**Office of Chief Counsel
Internal Revenue Service**
memorandum

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to: Michael J. Smith
Appeals Office of Policy and Valuation Operations
Tax Policy and Procedure
Collection & Processing

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subject: Rescission of Notice of Section 6330 Rights Issued During Suspension of Collection of the Section 6707A Penalty

Issue

May the Internal Revenue Service rescind a properly issued section 6330(a) notice if a Final Notice of Intent to Levy and Your Right to a Hearing (a combined section 6331(d) and 6330(a) notice) involved a section 6707A penalty and was issued during the suspension of “enforced collection actions” to collect section 6707A penalties?

Conclusion

Yes. The Service may rescind a section 6330(a) notice issued during the suspension of “enforced collection actions,” but only if: (1) the rescission is accomplished before the expiration of the 30-day period in which the taxpayer may request a CDP hearing; and (2) the taxpayer has not in fact timely requested a CDP hearing.

Background

In a letter dated July 2, 2009, the Commissioner committed to Congress that the Service temporarily would suspend “enforced collection actions” to collect section 6707A penalties pending legislative action. The period of suspension was extended several times and currently is under extension until June 1, 2010. As part of that suspension, the Service has decided not to issue notices of intent to levy. Several Final Notices of Intent to Levy and Your Right to a Hearing, however, have been issued to taxpayers.

Discussion

The Internal Revenue Code neither expressly prohibits nor expressly provides for rescission of a notice of a right to a hearing under section 6330. In general, the Service has the authority to rescind a section 6330 notice. The exercise of this authority is defined by the Treasury regulations promulgated under section 6330.

Congress enacted section 6330 to provide taxpayers with the right to an independent administrative review and determination by the Service's Office of Appeals regarding the Service's decision to levy taxpayer property. The Service is required to notify the taxpayer "only once" of the taxpayer's right to a CDP hearing not less than 30 days before the date of the first levy to collect the unpaid tax for each taxable period. I.R.C. § 6330(a)(1), (2). Under the statute, the taxpayer is entitled to "only one" hearing for each tax and period. I.R.C. § 6330(b)(2).

Treasury regulations under section 6330 interpret these statutory provisions to require that a taxpayer be afforded only one hearing opportunity for each tax and period. The regulations require the Service to provide the taxpayer with an opportunity for a CDP hearing by issuing a section 6330 notice. Treas. Reg. § 301.6330-1(a)(1). The notice must advise the taxpayer of the right to request a CDP hearing. I.R.C. § 6330(a)(3)(B). A taxpayer has 30 days to request a CDP hearing, beginning on the day after the section 6330 notice is issued. Treas. Reg. § 301.6330-1(b)(1). Once the period expires, the requirement to provide the taxpayer with an opportunity to request a CDP hearing is satisfied. Unless the taxpayer timely submitted a CDP hearing request, the taxpayer is no longer entitled to a CDP hearing. For example, if the Service issues a subsequent section 6330 notice more than 30 days after it had issued a previous section 6330 notice, then only the first notice would entitle the taxpayer to request a CDP hearing. Treas. Reg. § 301.6330-1(b)(2) Q&A-B2, Q&A-B4. The Service may levy even if there has not been an actual CDP hearing, as long as the Service afforded the taxpayer a full and complete opportunity in which to request a hearing. See Treas. Reg. § 301.6330-1(c)(2) Q&A-C7.

The Service's authority to rescind a section 6330 notice is thus generally constrained by these regulations to the extent that the rescission takes place after the expiration of the 30-day period, because the taxpayer is neither entitled to a subsequent section 6330 notice nor a CDP hearing based on that notice. Moreover, once a timely CDP request is submitted, the regulations require Appeals to issue a notice of determination unless the taxpayer withdraws the hearing request. Treas. Reg. § 301.6330-1(f)(1). The Service may, therefore, rescind a section 6330 notice before the expiration of the 30-day period and before the taxpayer requests a hearing.

Neither the statute nor the regulations limit the Service's ability to issue a section 6330 notice to only those times in which the Service is permitted to levy. We are not aware of any prohibition on the issuance of a section 6330 notice that is particular to the collection suspension. Although the Service has issued notices of intent to levy during the collection suspension, the issuance of section 6330 rights to a taxpayer is still

effective in providing the taxpayer with an opportunity for a meaningful CDP hearing. The taxpayer would be afforded the opportunity to dispute the liability for the underlying section 6707A penalty as long as the taxpayer had no prior opportunity challenge such underlying tax liability. The taxpayer also would be permitted to raise spousal defenses and other relevant issues.

At the conclusion of the hearing, Appeals should determine whether the section 6707A penalty may be collected by levy after taking into account the issues raised by the taxpayer and the verification under section 6330(c)(1), and after conducting the balancing analysis required by section 6330(c)(3). If Appeals otherwise would determine that the collection action could proceed, then it should identify the collection suspension as a procedural impediment to levy and account for the suspension in the Notice of Determination by finding that the levy action could proceed, but only if and when the collection suspension is lifted.

The Service may rescind section 6330 notices issued during the collection suspension as long as the rescission takes place during the 30-day period in which the taxpayer may request a hearing and before the taxpayer requests a hearing. The decision to rescind, however, must be made in furtherance of sound tax administration.

Please call the P&A Branch 3 and 4 practice group if you have any further questions.