



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
July 11, 2002

CC:SBSE:SWatson
GL-109620-02-02

MEMORANDUM FOR C. JOHN CRAWFORD

Deputy Director, Compliance Services S:C:CS

FROM:

Kevin M. Brown *VMB*
Division Counsel, Small Business Self Employed CC:SBSE

SUBJECT:

Frivolous Filer Taxpayer Advocate Service/Appeals Determination

This memorandum is in response to your request for advice with respect to the handling of an alleged Collection Due Process (CDP) request by [REDACTED] (taxpayer), based upon a referral by the Taxpayer Advocate Service (TAS). Because of the significant legal issues raised, we requested advice from Collection, Bankruptcy & Summonses in Chief Counsel's National Office. This week, we received a copy of the Collection, Bankruptcy & Summonses Division's June 25, 2002, Significant Service Center Advice (SCAN), a copy of which is attached for your information.

SCAN Advice

Briefly, the SCAN concludes that any document that has met the minimum requirements of Treas. Reg § 301.6320-1(c)(2)Q&A-C1(i) or § 301.6330-1(c)(2)Q&A-C1(i) should be treated as a request for a CDP hearing. (A copy of the regulation is attached.) The requirements are the taxpayer's name, address, and daytime telephone number. In addition the taxpayer or the taxpayer's representative must date and sign the request. The SCAN calls for substantial compliance; therefore, a request that omits the taxpayer's telephone number, for instance, should not be rejected. The Service Center should contact the taxpayer and request the missing information. The Service Center may treat failure to perfect the CDP request within a reasonable time period as an invalid request for a CDP hearing. A document that may be deficient in some, or all, of these requirements, but which has attached the original CDP notice, should almost always be accepted since most of the pertinent information will appear on the original CDP notice. The covering correspondence need only be signed and dated. Sometimes the taxpayer may even sign and date the original CDP notice, or a copy, and return it. If not, the Service Center should contact the taxpayer who should perfect the hearing request.

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The Service Center has more discretion with documents that would otherwise qualify, but that are untimely. When the Service Center receives an untimely request for a CDP hearing, it may treat it as a request for an equivalent hearing. Congress suggested in the legislative history to RRA98, of which the CDP legislation was a part, that taxpayers who miss the filing deadline should still receive a hearing that is substantially similar to a CDP hearing. Taxpayers who are untimely, of course, do not have recourse to judicial appeal. Since these documents are untimely and often vague with regard to the taxpayer's intentions, the memorandum recommends contacting the taxpayer with respect to the taxpayer's intentions. As in the case of a timely request, the taxpayer must indicate the desire for an equivalent hearing within a reasonable period of time provided for by the Service Center or the taxpayer will not be granted an equivalent hearing.

Documents which raise frivolous arguments should still be treated as requests for CDP hearings if the regulatory requirements are met. Even though the arguments contained in the documents are frivolous, if as a procedural matter the taxpayer has made a proper request for CDP hearing, the appropriate freeze code should be entered and the documents should be forwarded to Appeals.

Application of SCAN Advice to Emerson

We have also been able to ascertain additional information about what transpired in the [REDACTED] case. Following is a brief synopsis of the events in the [REDACTED] case.

The Service sent a CDP Notice dated January 27, 2001, to the taxpayers [REDACTED] and his wife). In response, the taxpayers mailed a document to the Ogden Service Center entitled "Claim for Release of Erroneous Notice of Lien/Levy Appeal Alleging Procedural Errors in the Filing on Notice of Tax Lien; Demand for Impartial Judicial Hearing if Claim is Denied." The taxpayers also attached a copy of the CDP Notice to this document. The document was dated February 13, 2001, and was received by the Ogden Service Center on Feb 22, 2001. The Service Center apparently did not treat this document as a timely CDP request, or possibly did treat it as a CDP request, but did not input the IDRS code identifying that a taxpayer had requested a CDP hearing. Either way, no freeze code was input and the Service levied on the taxpayers' funds sometime later in the year. The documents were not forwarded to Appeals.

After the levy, the taxpayers sought help from the TAS in Phoenix, Arizona. The TAS informally contacted the Office of Appeals in Phoenix to determine whether the document should have been treated as a timely request for a CDP hearing. Appeals Officer Doug DeSoto agreed with the TAS that the document should have been treated as a timely

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request. Since Appeals Officer DeSoto knew that the taxpayer had attached the CDP notice to his vague document, this clears up any confusion about what information he had when he determined that the document was a timely request for a CDP hearing. The taxpayers had not received a CDP hearing so the levy was premature. Subsequently, the TAS asked Compliance to release the levied funds. The Service manually refunded \$ [REDACTED] to the taxpayers.

After the funds were released, the TAS belatedly transferred the CDP request to Appeals. Phoenix Appeals reported that it did not receive the case until June 10, 2002. Doug DeSoto currently has the case, but he is in the process of reassigning it to another Appeals Officer. Since Doug had some involvement in the case, I.R.C. § 6330(b)(3) requires that he transfer it to an impartial Appeals Officer who has had no involvement with respect to the unpaid tax for the same period.

Based on the analysis in the SCAN, the actions taken by TAS and Appeals were proper. The taxpayer's request for a CDP hearing was timely, and apparently he had substantially complied with the regulations. The Ogden Service Center now has appropriate instructions with which to analyze vague or frivolous correspondence from taxpayers that may be requests for CDP hearings.

We apologize for the delay in providing advice in this matter. Please contact Miriam A. Howe, Manager, General Litigation-Collection, if you have any questions or wish to discuss this matter. She may be reached at (202) 283-7272.

**Attachments: Copy of SCAN Advice
Copy of pertinent parts of the Regulations**