

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

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CC:PA:03:DAKohn

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to: Cynthia Vassilowitch
Director
Appeals Tax Policy & Procedure
(Collection & Processing)

from: Mitchel S. Hyman
Senior Technician Reviewer, Branch 3
(Procedure and Administration)

subject: IRS's Authority to Collect by Administrative Means when Notice and Demand Are
Untimely under I.R.C. § 6303(a)

This memorandum responds to legal questions that have been raised in CDP hearings pertaining to the Internal Revenue Code's requirement that the Service provide notice and demand within 60 days of making an assessment.

ISSUE

Is the Service required to provide notice and demand within 60 days of assessment in order to collect by lien and levy?

CONCLUSION

No. Sections 6321 and 6331 do not require that notice and demand be provided within 60 days, and the Treasury regulations state that the Service's failure to provide notice and demand within 60 days does not invalidate the notice. Accordingly, notice and demand provided outside the 60-day period is still valid, and administrative collection can still proceed.

DISCUSSION

Section 6303(a) of the Internal Revenue Code states that, unless otherwise provided in the Code:

PMTA 2011-25

[T]he Secretary shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

The Treasury regulation issued pursuant to section 6303 states that notice and demand:

shall be given as soon as possible and within 60 days [of assessment].
However, the failure to give notice within 60 days does not invalidate the notice.

Treas. Reg. § 301.6303-1(a).¹

Notice and demand must be provided to a taxpayer before the Service can collect through the tax lien or by levy. I.R.C. §§ 6321, 6331(a). Section 6321 states that a federal tax lien arises "[i]f any person liable to pay any tax neglects or refuses to pay the same after demand...." Section 6331(a) states that "[i]f any person liable for any tax neglects or refuses to pay the same within 10 days after notice and demand," the Service can collect such tax by levy.

Because sections 6321 and 6331 provide that notice and demand is a prerequisite for the tax lien and levy, the issue has arisen whether failure to give timely notice and demand precludes the tax lien and levy authority from arising. Our conclusion, consistent with our longstanding position, is that the lien and levy authority is not affected by untimely notice. Sections 6321 and 6331(a) do not impose any limit on the time within which notice and demand must be provided, nor do they cross-reference the 60-day limit of section 6303(a). Under the plain language of sections 6321 and 6331(a), notice and demand give rise to the tax lien and the Service's levy authority regardless of when they are provided.

Furthermore, even if a court were to hold that section 6321 or section 6331(a) refers to the same notice and demand provided for by section 6303, the Treasury regulation cited above states that the notice is valid even if untimely. If a challenge to a regulation is litigated in a court, the court must give deference to the Service's interpretation embodied in the regulation, if it is a reasonable construction of the statute. *Mayo Foundation for Medical Education and Research v. United States*, 131 S. Ct. 704 (2011). No court decision to date has expressly ruled on the validity of the regulation in light of this deference standard. We believe the regulation will be upheld as a

¹ Where a transcript of account indicates that formal notice and demand was provided, the Service is, absent a showing of irregularity, entitled to rely on the transcript to demonstrate that notice and demand was provided in a proper fashion. See, e.g., *Battle v. Commissioner*, T.C. Memo. 2009-171; *Nestor v. Commissioner*, 118 T.C. 162, 166 (2002).

reasonable construction of the statute because it is consistent with the overall statutory scheme for Treasury to provide by regulation that the untimeliness of notice and demand will not render the notice and demand invalid.

When a taxpayer has an unsatisfied tax liability, he receives numerous communications from the Service long before any collection action is taken. Transactions are posted daily to individual taxpayers' accounts. If a taxpayer's account shows a balance after daily posting, the Service will send out a balance due notice, such as CP-14, Balance Due \$5 or More, No Math Error, on the sixth business day after the date of the daily posting. The CP-14 lists the tax period and the amount owed, explains the penalties and interest posted to the account, and gives the taxpayer 21 days to pay the balance due before additional penalties and interest accrue. If a taxpayer does not properly respond to the initial balance due notice, he will receive Integrated Data Retrieval System (IDRS) notices. The first IDRS notice, CP-501, is issued five weeks after the date of the balance due notice and warns the taxpayer that the Service may file a notice of federal tax lien if payment is not made within 10 days. A taxpayer who does not respond to the CP-501 will be sent follow-up notices (CP-502 and CP-504) before being placed in a Taxpayer Delinquent Account status. Any of these notices sent to a taxpayer before collection action is taken can constitute the notice and demand required by section 6303(a) of the Code.

Even where the Service cannot verify that it has issued to a taxpayer the customary notice and demand (via the notices described in the prior paragraph), the notice and demand requirement in section 6303(a) can still be satisfied. In addition to the above notices, various delinquency and other notices are typically received by the taxpayer before any administrative collection action is actually taken. These notices include the annual notice of tax delinquency under section 7524 and the notice of intent to levy under section 6331(d). Furthermore, the taxpayer will receive a CDP notice in connection with the first filing of a Notice of Federal Tax Lien, and a separate CDP notice addressing proposed levy action. These notices can all constitute the notice and demand required by section 6303(a), since notice and demand need not be provided in any particular form. See, e.g., *Hughes v. United States*, 953 F.2d 531, 536 (9th Cir. 1992); *Elias v. Connett*, 908 F.2d 521, 525 (9th Cir. 1990). Thus, the Service may generally commence administrative collection action after such notices are provided, and regardless of how long after assessment they are provided.

In conclusion, notice and demand provided after the 60-day period will give rise to the federal tax lien and to the Service's right to administratively levy.

We hope that this advice is helpful. If you have further questions, please contact Debbie Kohn in Branch 3 (Procedure and Administration) at 202-622-3600.