

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

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subject: Determining the Timeliness of a Taxpayer's Collection Due Process (CDP) or
Equivalent Hearing Request

ISSUES

1. If a taxpayer sends a CDP hearing request to an incorrect IRS office, and that office receives the request before the statutory deadline but incorrectly forwards it directly to Appeals, which results in the correct collection office receiving the request after the statutory deadline, has the taxpayer made a timely hearing request?
2. If a taxpayer sends a written request for an equivalent levy hearing and a CDP lien hearing to only the office specified in the taxpayer's lien notice, but not also to the office specified in the taxpayer's levy notice, should the taxpayer be required to submit a proper equivalent levy hearing request before Appeals grants both hearings from the proper lien hearing request?

CONCLUSION

1. No. A CDP hearing request that is not received by the proper processing office before the statutory deadline is not timely. But the taxpayer may be eligible for an equivalent hearing.

2. No. There is no legal barrier to Appeals granting both the CDP lien hearing and the equivalent levy hearing from the proper lien-hearing request.

LAW AND ANALYSIS

Section 6320(a)(2) of the Internal Revenue Code provides that, no later than five business days after the IRS files a Notice of Federal Tax Lien (NFTL) against a taxpayer, the IRS must notify the taxpayer of the right to a CDP lien hearing. Similarly, section 6330(a) provides that, at least 30 days before the IRS levies against a taxpayer's property, the IRS must notify (with the exception of the four situations listed in section 6330(f)) the taxpayer of the right to a CDP levy hearing.

To request a CDP hearing, a taxpayer must submit a written hearing request to the IRS office specified in the CDP notice. Treas. Reg. §§ 301.6320-1(c)(2), Q&A-C6 and 301.6330-1(c)(2), Q&A-C6. Typically, that office will be one of four automated-collection-system support sites. See IRM 5.19.8.4.2 (Aug. 27, 2010) (listing those sites as Philadelphia, Cincinnati, Kansas City, and Fresno); IRM 5.12.1.2.14(4) (Jan. 9, 2009) (providing that requests for hearings based on automated lien filings be mailed to the support site identified in the taxpayer's notice). But if a taxpayer's account has been assigned to Field Collection, that office will be the office of the assigned revenue officer. See IRM 5.12.1.2.14(2) (Jan. 9, 2009).

The Code limits the amount of time that a taxpayer has to submit a CDP hearing request. If a taxpayer wants to request a CDP lien hearing, the taxpayer must submit a request within the 30-day period that begins on the day after the fifth business day following the filing of the NFTL. I.R.C. § 6320(a)(3)(B). If a taxpayer wants to request a CDP levy hearing, the taxpayer must submit a request no later than 30 days after the date the taxpayer's levy notice is mailed. Section 6330(a)(3)(B). A hearing request submitted after the statutory deadline will not be timely. But if a hearing request is properly addressed, with postage prepaid, and postmarked before the statutory deadline, in accordance with section 7502(a)(2), the IRS will deem the request timely if it is not timely received. Sections 301.6320-1(c)(2), Q&A-C4 and 301.6330-1(c)(2), Q&A-C4.

Sometimes, a taxpayer will send a CDP hearing request to an incorrect IRS office. When that happens, the taxpayer cannot benefit from section 7502. See section 7502(a)(2)(B) (requiring a properly-addressed envelope for the rule to apply); sections 301.6320-1(b)(2) and 301.6330-1(b)(1). As a result, the taxpayer's hearing request must arrive at the correct collection office by its due date to be timely.

To help ensure that misaddressed requests reach their correct destinations by their due dates, the Internal Revenue Manual directs the offices that initially receive them to fax them to the correct collection offices. IRM 5.19.8.4.2(1) (Aug. 27, 2010). Sometimes, though, an office that initially receives a misaddressed hearing request will incorrectly fax it directly to Appeals, thereby leading to its untimely delivery to the correct collection office. When that happens, even though the office that initially received the request did

not follow IRM procedures, Appeals should not treat the taxpayer's CDP hearing request as timely.

The regulations often require taxpayers to file returns or documents at particular locations. See, e.g., Treas. Reg. § 1.6091-2 (specifying the place for filing income tax returns); Treas. Reg. § 301.6402-2(a)(2) (specifying the place for filing claims for credit or refund). In many instances, courts have dismissed cases because taxpayers did not file documents with the correct IRS office. See, e.g., *Kuhl v. United States*, 467 F.3d 145, 148 (2nd Cir. 2006) (holding that the Bankruptcy Court lacked jurisdiction to award damages and attorney's fees under the Internal Revenue Code because the taxpayer failed to exhaust her administrative remedies by sending her administrative claim to the wrong IRS office); *Amwest Surety Insurance Co. v. United States*, 28 F.3d 690 (7th Cir. 1994) (dismissing for lack of jurisdiction a wrongful levy action where plaintiff sent its claim to the wrong IRS office). Those instances include cases in which the IRS failed to follow its procedures by forwarding the documents to the correct office. See, e.g., *Batte v. Commissioner*, T.C. Memo. 1989-319 (1989) (mailing of Form 872-T ineffective because it was addressed to the incorrect IRS office). The same should be true here. Furthermore, a taxpayer would have no grounds for asserting estoppel against the IRS because these situations do not involve the IRS committing affirmative misconduct. See, e.g., *Morgan v. Commissioner*, 345 F.3d 563, 566 (8th Cir. 2003) (noting that affirmative misconduct is a "heavy burden to carry"); *LaBonte v. United States*, 233 F.3d 1049, 1053 (7th Cir. 2000) (quoting *Gibson v. West*, 201 F.3d 990, 994 (7th Cir. 2000) (noting that affirmative misconduct is more than mere negligence and that it requires an affirmative act to misrepresent or mislead). We, therefore, conclude that Appeals should not treat a taxpayer's CDP hearing request as timely if the taxpayer mails the request to the wrong IRS office and, as a result, the request is received by the correct collection office after the due date, even if the original office did not forward the request as directed in the IRM.

A taxpayer whose CDP hearing request is untimely may, however, be entitled to an equivalent hearing. An equivalent hearing is held by Appeals and generally follows Appeals' procedures for holding CDP hearings. Sections 301.6320-1(i)(1), 301.6330-1(i)(1). Like the rules for CDP hearing requests, taxpayers must submit equivalent hearing requests to the IRS office specified in their CDP notice. Sections 301.6320-1(i)(2), Q&A-I10 and 301.6330-1(i)(2), Q&A-I10. Likewise, taxpayers only have a limited timeframe to submit their equivalent-hearing requests: for a lien hearing, one year plus the five-business-day period that starts the day after the filing of the NFTL; for a levy hearing, one-year starting from the day after the date of the taxpayer's levy notice. Sections 301.6320-1(i)(2), Q&A-I7 and 301.6330-1(i)(2), Q&A-I7. But a taxpayer who submits an untimely written CDP hearing request will be offered, and may obtain, an equivalent hearing without having to submit an additional written request. Sections 301.6320-1(c)(2), Q&A-C7 and 301.6330-1(c)(2), Q&A-C7. Thus, in the situation discussed above, the taxpayer would be able to obtain an equivalent hearing without having to submit an additional written request.

Sometimes, a taxpayer will receive a CDP levy notice, but not request a CDP levy hearing. Several months later, that same taxpayer may receive a CDP lien notice, which covers the same tax liability as the earlier levy notice, and will request a CDP lien hearing. In that request, the taxpayer will include a request for an equivalent levy hearing with respect to the earlier levy notice, even though the address given in the taxpayer's levy notice was different from the address given in the lien notice. In this situation, when the taxpayer includes a timely, misaddressed request for an equivalent levy hearing with a timely, properly-addressed CDP lien-hearing request, we conclude Appeals may grant the equivalent-hearing request along with the proper CDP lien-hearing request, and schedule both hearings to be held simultaneously. There is no need to require the taxpayer to resubmit the equivalent levy-hearing request to the proper office. When the equivalent-hearing request is submitted well before the one-year deadline for such requests, asking the taxpayer to submit a new request would just impose an unnecessary paperwork burden. Furthermore, Appeals should hold lien hearings in conjunction with levy hearings when possible. Sections 301.6320-1(d)(2), Q&A-D3 and 301.6330-1(d)(2), Q&A-D3. Flexibility is appropriate in this situation since unlike CDP hearings, equivalent hearings are not required by statute and are not subject to judicial review. See sections 301.6320-1(i)(2), Q&A-I6 and 301.6330-1(i)(2), Q&A-I6. Additionally, equivalent hearings do not toll any of the periods of limitation under sections 6502, 6531, or 6532 of the Code. See sections 301.6320-1(i)(2), Q&A-I3 and 301.6330-1(i)(2), Q&A-I3. We conclude that Appeals can grant both hearings from the properly-filed lien-hearing request without requiring the taxpayer to resubmit the equivalent-hearing request.

We would be glad to assist you in drafting new IRM provisions in accordance with this advice.

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Please call Christopher Jones at [REDACTED] if you have any further questions.