

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

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subject: Submission of Financial Information as a Condition to Granting a Face-to-Face
Collection Due Process Conference About Currently-Not-Collectible Hardship Status

ISSUE

When a taxpayer requests a CDP conference to discuss currently-not-collectible-hardship status, may Appeals condition granting a face-to-face conference on the taxpayer's submission of financial information?

CONCLUSION

Appeals may condition granting a face-to-face conference to discuss CNC hardship on a taxpayer's submission of financial information only if:

- The conference's sole purpose is to discuss CNC-hardship status; and
- Appeals needs the information to determine whether reporting the taxpayer's account as CNC is appropriate.

BACKGROUND

The Internal Revenue Manual gives Appeals the authority to report a taxpayer's account as CNC. See Policy Statement 5-71, I.R.M. 1.2.14.1.14 (Nov. 19, 1980). Appeals may report a taxpayer's account as CNC for many reasons. See I.R.M. 5.16.1 (May 22, 2012) (outlining the grounds for reporting an account as CNC). One of those reasons is hardship. See I.R.M. 1.2.14.1.14(3)–(5) (Nov. 19, 1980); I.R.M. 5.16.1.2.9 (May 22, 2012).

Hardship in this context exists if a taxpayer is unable to pay reasonable, basic living expenses or the enforced collection of an unpaid assessment prevents payment of those expenses. I.R.M. 5.15.1.1(8) (Oct. 2, 2012); I.R.M. 5.16.1.2.9 (May 22, 2012).

To determine whether a taxpayer qualifies for CNC-hardship status, Appeals generally looks at the financial information provided by the taxpayer on Form 433-A or Form 433-B, both of which are collection information statements. I.R.M. 5.16.1.2.9(1). In two circumstances, though, a taxpayer does not need to submit a collection information statement before Appeals makes a hardship determination. The first is when Appeals already has a current collection information statement. A collection information statement is current if it is less than one year old. I.R.M. 8.22.7.7(3) (Mar. 29, 2012).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW AND ANALYSIS

Neither the Internal Revenue Code nor the underlying regulations require face-to-face CDP conferences, though Appeals ordinarily holds face-to-face conferences if taxpayers wish to discuss relevant, non-frivolous issues relating to proposed collection actions. See I.R.C. §§ 6320, 6330; Treas. Reg. §§ 301.6320-1(d)(2), Q&A (D6), (D7); 301.6330-1(d)(2), Q&A (D6), (D7). Those issues include “offers of collection alternatives” and “challenges to the appropriateness of collection actions.” Sections 6320(c), 6330(c)(2).

Appeals will not grant face-to-face conferences to discuss collection alternatives, however, “unless other taxpayers would be eligible for the alternative in similar circumstances.” Sections 301.6320-1(d)(2), Q&A (D8); 301.6330-1(d)(2), Q&A (D8). The regulations provide examples of those circumstances, but the examples are illustrations and are not exclusive. T.D. 9290, 2006-2 C.B. 879; T.D. 9291, 2006-2 C.B. 887.

Counsel has previously advised that Appeals may condition granting face-to-face conferences to discuss offers of collection alternatives on the submission of the financial information needed to evaluate the alternative’s viability. The regulations recognize that “[t]axpayers [are] expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.” Sections 301.6320-1(e)(1), 301.6330-1(e)(1). By conditioning face-to-face conferences on the receipt of relevant information, Appeals ensures the conferences’ productivity by enabling the parties to evaluate and meaningfully discuss the relevant alternatives. See T.D. 9290, 2006-2 C.B. 879; T.D. 9291, 2006-2 C.B. 887 (“There will be instances. . . when a face-to-face conference is not practical. The final regulations identify typical situations in which a face-to-face conference will be neither necessary nor productive.”).

Even though CNC-hardship status is not a collection alternative under section 6330(c)(2)(A)(iii),¹ the same reasoning applies. When Appeals needs financial

¹ Requests for CNC-hardship status are challenges to the appropriateness of collection actions under section 6330(c)(2)(A)(ii). In CDP conferences, taxpayers may raise “offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.” Section 6330(c)(2)(A)(iii) (emphasis added). An offer is “[a] promise to do or refrain from doing some specified thing in the future, conditioned on an act, forbearance, or return promise being given in exchange for its performance.” *Black’s Law Dictionary* (9th ed. 2009). All of the examples in Section 6330(c)(2)(A)(iii) require taxpayers to promise to do “some specified thing in the future” in order for the Service to forgo enforced collection. No promise like that is made when taxpayers request CNC-hardship status. Instead, CNC hardship is a status given to taxpayers by the Service when taxpayers “ha[ve] no assets or income which are, by law, subject to levy” or “if the levy action prevents the taxpayer from meeting necessary living expenses.” I.R.M. 1.2.14.1.14(3), (5) (Nov. 19, 1980). See also I.R.M. 5.16.1.2.9(1) (May 22, 2010) (“A hardship exists if a taxpayer is unable to pay reasonable basic living expenses.”). The Service may revoke CNC-hardship status if it appears there is a change in the taxpayer’s ability to pay. See I.R.M. 5.16.1.1(8) (May 22, 2012); I.R.M. 5.16.1.2.9(11) (May 22, 2012). Because CNC-hardship status is granted without the taxpayer making a promise and is

information to determine whether a taxpayer qualifies for CNC-hardship status, it will not be able to ask probative questions about the taxpayer's assets, income, or expenses and otherwise have a productive discussion at a face-to-face meeting unless it has the information beforehand. In that circumstance, requiring a taxpayer to submit financial information is a reasonable prerequisite for a face-to-face conference.

Likewise, when Appeals needs other information or documentation to report accounts as CNC in accordance with I.R.M. 5.16.1.2.9(3), it may condition the granting of face-to-face conferences on receipt of that information or documentation.² For example, if a taxpayer claims hardship because of excessive medical bills, Appeals may require copies or an itemized listing of the bills before granting a face-to-face conference. In cases where taxpayers claim hardship because of unemployment, Appeals may require documentation showing unemployment. Prior submission will assist Appeals in deciding whether a face-to-face conference is needed³ and, if one is needed, the information or documentation will help the settlement officer ask probative questions to verify the taxpayer's hardship claim.

If a taxpayer submits some, but not all, of the requested financial or other information, or documentation, and Appeals has sufficient information or documentation to practically discuss hardship at a face-to-face conference, Appeals should not deny a face-to-face conference. Decisions on whether submissions are sufficient for a productive face-to-face conference will be made on a case-by-case basis. For example, a taxpayer's failure to complete any of the Monthly Income/Expense Statements in Form 433-A will prevent a productive discussion about whether paying the delinquent tax liabilities will cause hardship. Similarly, a taxpayer's failure to provide copies or an itemized listing of medical expenses will prevent a productive discussion of whether those expenses are excessive. But, a taxpayer's de minimis omission of financial data or medical expense information might not prevent a productive discussion; Appeals may be able to obtain the missing data or information at the conference and still engage in a productive discussion with the taxpayer. Documentation that fails to confirm a taxpayer's unemployment if IRPTR or RTVUE fail to do so could nevertheless provide sufficient information for productive inquiry at a face-to-face conference.

revocable by the Service, it is not a collection alternative under section 6330(c)(2)(A)(iii), but is instead a challenge to the appropriateness of collection action under section 6330(c)(2)(A)(ii).

³ For example, if IRPTR or RTVUE show that a taxpayer had employment income during the last taxable year, and documentation shows the taxpayer has since started receiving unemployment compensation, the settlement officer may decide he or she has a sufficient basis to place the taxpayer's account in CNC-hardship status without a face-to-face meeting. If the taxpayer submits a physician's written verification of the taxpayer's terminal illness, the settlement officer may determine that the verification is sufficiently reliable to place the taxpayer's account into CNC-hardship status without a face-to-face meeting.

Appeals cannot condition face-to-face conferences about CNC hardship on the submission of financial or other information, or documentation, however, without providing taxpayers the opportunity for submission. If, in response to the initial request by Appeals, a taxpayer's submission lacks information or documentation necessary for a productive meeting, Appeals must allow the taxpayer reasonable opportunity to supply the missing information or documentation before it denies a face-to-face conference. Similarly, if a taxpayer submits financial or other information, or documentation, on or before requesting a face-to-face conference, and the submission lacks information or documentation necessary for a productive conference, Appeals should give the taxpayer reasonable opportunity to supplement.

Conditioning face-to-face conferences on the submission of financial or other information, or documentation, is not reasonable in all CNC-hardship cases. If a taxpayer wishes to discuss CNC-hardship status and one or more other relevant issues, Appeals cannot deny a face-to-face conference solely because the taxpayer fails to submit adequate, requested financial or other information, or documentation, for the CNC determination.⁴ Likewise, Appeals should not deny a face-to-face conference if it determines that a face-to-face conference is necessary to explain the requirements for obtaining CNC-hardship status. Cf. Sections 301.6320-1(d)(2) Q&A-D8, 301.6330-1(d)(2) Q&A (D8). For example, if a taxpayer has difficulty understanding telephone communications, Appeals may determine that a face-to-face conference is necessary to explain how to fill out a collection information statement. Also, Appeals may not deny a face-to-face conference solely because financial information indicates a taxpayer can pay the liabilities in full. *Id.*

Based on the foregoing analysis, if a taxpayer is seeking a face-to-face conference to discuss only CNC hardship, Appeals may require a taxpayer to submit financial information as a condition to granting the face-to-face conference if it needs the information to consider whether reporting the account as CNC hardship is appropriate.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-3600 if you have any further questions.

Attachment (1): National Office Program Manager Technical Advice, PMTA-2010-06 (March 23, 2010).

⁴ If the other relevant issue is a collection alternative such as an offer in compromise, and Appeals needs financial information to consider both CNC-hardship and the collection alternative, then Appeals may condition granting a face-to-face conference on the submission of adequate financial information.