**COLLECTION DUE PROCESS (CDP)**

I. Introduction to CDP

A. Added by Tax Reform Act of 1998 to correct IRS collection abuses

B. Applies to collection actions after Jan. 19, 1999

C. Applies to levies and notice of tax lien filings

II. Notice of tax lien filing § 6320

1. Written notification to taxpayer of tax lien filing and right to a CDP hearing must be given within five business days after lien is filed
2. Letter 3172, “Notice of Tax Lien Filing and Your Right to a Hearing under I.R.C. § 6320”, is issued

III. Notice of Intent to Levy and Right to Hearing § 6330

A, Written notice to taxpayer of intent to levy on any property or right to property and the right to request a CDP hearing must be given at least 30 days before levy can occur

B. Letter 1058,“Final Notice , Notice of Intent to Levy and Notice to Right to a Hearing” is issued

1. Notice requirement does not apply to levies on state tax refunds or jeopardy levies

IV. Notices under § 6320 and § 6330

1. Must be given in person, left at taxpayer’s dwelling or usual place of business, or delivered to taxpayer’s last known address by certified or registered mail
2. A nominee or person holding property of a taxpayer, such as an alter ego, is not entitled to CDP rights

V. Requesting a CDP hearing

A. Taxpayer is entitled to only one CDP hearing before the Office of Appeals with respect to a tax and tax period covered by a CDP notice; thus, taxpayer is entitled to one CDP hearing for a levy notice and one CDP hearing for lien notice per tax per taxable period.

B. Form 12152, “Request for a Collection Due Process or Equivalent Hearing” , is used to request a lien or levy CDP hearing with Appeals

C. Form 12152 includes basic information including type of tax and period, type of notice, and reason why taxpayer disagrees with proposed action—This form must also state grounds for requesting a CDP hearing

D. The CDP request must be submitted no later than 30 days after expiration of 5 days after the date the tax lien is filed or 30 days from date of intent to levy notice is issued

1. If CDP request is postmarked within 30 day period, it will be timely even if received after 30 day period by IRS-§7502 applies

E. If a hearing request is untimely, taxpayer is given an equivalent hearing with Appeals but such a hearing does not create any right to have judicial review

F. The statute of limitations on collection is suspended beginning on the date that a timely CDP request is received and ends when there is a written withdrawal of such request, the determination from the CDP hearing becomes final and all appeals have expired or the time to appeal has lapsed. The collection statute is suspended for this period plus 90 days under § 6330(e)(1).

G. CDP hearings do not prevent the initiation of judicial proceedings for such taxable periods such as suit to foreclose or reduce tax liabilities to judgment

VI. Conduct of a CDP Hearing

1. CDP hearings are informal; taxpayers have no right to subpoena or examine witnesses
2. No time deadline to hold CDP hearings although appeals tries to conduct as soon as possible
3. Face to face conference is not required; usually done by telephone
4. Hearing must be conducted by officer or employee of Appeals Office with no prior involvement with the same type of tax and period

VII. Issues Considered at CDP hearing

1. Appeals must verify that requirements of applicable law or administrative procedure have been met, that is, verify there was a proper assessment of the liability, the liability has not been paid, and there was a proper CDP notice given
2. Taxpayer may raise at hearing any relevant issue relating to unpaid liability or proposed levy. Such issues can include:
3. Innocent spouse relief
4. Collection action not appropriate if it causes economic hardship
5. Taxes were discharged in bankruptcy
6. Collection alternatives such as installment agreement, offer in compromise, or currently not collectible status
7. Taxpayer must submit financial information for a collection alternative to be considered—Taxpayer must meet reasonable deadlines for the submission of requested information
8. Challenges to Liability
9. Taxpayer may challenge the liability if he or she did not receive a notice of deficiency or otherwise have an opportunity to dispute the tax liability
10. A taxpayer can challenge the amount of tax reported on a self filed tax return
11. Appeals must determine that a notice of deficiency was received, not merely issued, to determine if a challenge to the liability is prohibited
12. Other opportunities to dispute with appeals include the opportunity to have conference with appeals prior to or after assessment—eg.TFRP assessments, § 6707A assessments(Keller Tank Services)
13. If taxpayer signs a Form 870 or 4549 consenting to the immediate assessment, he has waived right to a SD and cannot challenge liability in CDP case

VIII. Notices of Determination

1. Final decision by appeals is embodied in the Notice of Determination
2. The notice of determination must be based on:
3. Appeals verified that assessment was properly made and has not been paid
4. Any relevant issues raised at hearing were considered
5. Does collection action balance efficient collection against need not to be no more intrusive than necessary
6. Notice is sent by registered or certified mail and provides the right of judicial review by Tax Court if taxpayer disagrees

IX. Judicial Review of Notice of Determination

1. Taxpayer has 30 days from date of notice of determination to appeal to Tax Court—Tax Court now has exclusive jurisdiction over CDP cases
2. No jurisdiction to determine an overpayment or credit in a CDP case
3. Taxpayer may only raise issues that were properly raised in CDP hearing—if taxpayer did not address issue in appeals or fails to present any evidence on such issue after a reasonable time cannot consider issue in TC
4. A Notice of Determination letter is needed to go to Tax Court—decision letter on equivalent hearing will not allow entrance to Tax Court
5. Timely mailing timely filing rule applies to petition and designated private delivery services under § 7502
6. If the underlying liability is properly in issue, the court reviews the issue de novo ( anew) but all other administrative decisions are reviewed for an abuse of discretion by appeals
7. If abuse of discretion standard, then only the administrative record should be considered (IRS and 3 circuits position but TC disagrees)
8. Burden of proof on taxpayer to show appeals abused its discretion – was determination arbitrary, capricious, clearly unlawful, or without sound basis in law or fact.
9. If collection alternative is in issue, the court will not second guess the IRS judgment on whether offer is acceptable but whether rejection was an abuse of discretion
10. Review of innocent spouse relief requests are reviewed de novo

X. Tax Court procedures

1. Generally will only consider issues raised at CDP hearing
2. Court will consider whether appeals verified compliance with applicable procedures
3. If the liability has been paid or credited away, the case will be dismissed as moot
4. Unlike deficiency cases, a taxpayer can voluntarily dismiss a CDP case
5. If appeals abused its discretion, a proper hearing was not given, or the administrative record was insufficient to make a decision, the court may remand the case back to appeals for further proceedings which will result in the issuance of a supplemental notice of determination
6. Remand can occur where reasons for rejection of OIC are not clear, insufficient effort to contact taxpayer on scheduled date of hearing , material change in facts from time to hearing to time of trial
7. Summary judgment frequently filed by IRS
8. Common cases include liability disputes where stat notice is received, collection alternatives requested but failure to provide requested financial information or behind in filing or paying current taxes, failing to attend scheduled meetings, etc.