
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



*The Office of Appeals Has Improved Its
Processing of Collection Due Process Cases*

September 21, 2007

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 21, 2007

MEMORANDUM FOR CHIEF, APPEALS

FROM:

Michael R. Phillips

Michael R. Phillips

Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – The Office of Appeals Has Improved Its
Processing of Collection Due Process Cases (Audit # 200710014)

This report presents the results of our review of the Collection Due Process (CDP).¹ The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with the provisions of 26 U.S.C. Sections 6320 and 6330 when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a notice of intent to levy.² The Treasury Inspector General for Tax Administration is required to determine annually whether the IRS complied with the legal guidelines and procedures for the filing of a Notice of Federal Tax Lien or the issuance of a notice of intent to levy and the right of the taxpayer to appeal.³

Impact on the Taxpayer

Overall, the Office of Appeals (Appeals) has made improvements to the CDP by properly classifying most taxpayer requests to give taxpayers the Appeals review they are entitled to and by revising letters to taxpayers to make them more descriptive. However, Appeals hearing officers⁴ were still not consistently including an impartiality statement in the case files, which

¹ A detailed explanation of the CDP and Equivalent Hearing procedures is included in Appendix V.

² 26 U.S.C. Sections (§§) 6320 and 6330 (Supp. III 2000).

³ 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv) (Supp. III 2000).

⁴ Hearing officers are either Appeals officers or Settlement officers.



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presents a risk of prior involvement in the taxpayer's case and lack of independence. Also, Appeals hearing officers were not always documenting whether the Collection function met all legal and administrative requirements, potentially impacting the actions taken by Appeals. In addition, the Collection Statute Expiration Dates for some taxpayers were incorrectly lengthened,⁵ which is a potential violation of taxpayer rights.

Synopsis

Appeals has improved its handling of CDP cases when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a notice of intent to levy. In our prior review,⁶ we reported that some of the CDP and Equivalent Hearing (EH) case files could not be located; however, for this review, we received 69 of the 70 CDP cases and all 70 EH cases sampled. This is important because having the files available allows Appeals to determine if all actions were appropriate and if the Collection function properly carried out the Appeals determination. In addition, nearly all requests for a CDP hearing and an EH were properly classified, ensuring taxpayers received the right type of hearing. The CDP hearing and EH closing letters to taxpayers included descriptive information relating to the issues raised by the taxpayer as well as the Appeals determination of whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

While Appeals has improved its processing of CDP cases, we identified a small portion of CDP and EH cases in which the hearing officers did not include the impartiality statement or document whether the Collection function met all legal and administrative requirements when filing a Notice of Federal Tax Lien or issuing a notice of intent to levy. Most of the instances occurred because the taxpayers withdrew their CDP or EH requests. Consequently, Appeals was not required to send a closing letter, which typically contains an impartiality statement and would have satisfied this requirement. However, in almost all of the cases for which taxpayers did not withdraw their requests for a hearing, there was adequate documentation to support these requirements. Subsequent to our review, Appeals revised its written guidance to require that hearing officers document the case activity records (case histories) for these requirements. Prior to Appeals revising its guidance, the only requirement for hearing officers to document their impartiality and whether legal and administrative requirements were met was in closing letters. Even when a taxpayer withdraws his or her CDP or EH request, all requirements should have been met and documented in the case activity record during the initial analysis of the case.

⁵ The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The end of the 10-year period is the Collection Statute Expiration Date.

⁶ *The Office of Appeals Should Continue to Strengthen and Reinforce Procedures for Collection Due Process Cases* (Reference Number 2006-10-123, dated September 20, 2006).



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In addition, a significant number of CDP and EH cases in our samples contained errors with the Collection Statute Expiration Dates. In some CDP cases, the collection statute was extended for too long a period, improperly allowing the IRS too much time to collect from the taxpayers; conversely, other collection statutes were not extended long enough or at all, reducing the time the Federal Government has to collect the delinquent taxes. We also identified EH cases for which the collection statute date had been inappropriately suspended, thus improperly allowing the IRS additional time to collect from these taxpayers.

Recommendations

We recommended the Chief, Appeals, revise procedures to require, during the initial analysis of the case, hearing officers verify and document whether the Collection function met all legal and administrative requirements when filing a Notice of Federal Tax Lien or issuing a notice of intent to levy. In addition, the Chief, Appeals, should ensure the Collection Statute Expiration Dates are corrected on the taxpayer accounts identified during this audit.

Response

IRS management agreed with both of our recommendations. Appeals will revise their written guidance by January 15, 2008, to include a requirement that hearing officers verify and document that legal and administrative requirements were met during the initial analysis of the case. Also, Appeals stated they have reviewed and corrected the incorrect Collection Statute Expiration Dates on taxpayer accounts identified during the audit. Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Nancy Nakamura, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.



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Abbreviations

ACDS	Appeals Centralized Database System
CDP	Collection Due Process
EH	Equivalent Hearing
IRS	Internal Revenue Service



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Background

When initial contacts by the Internal Revenue Service (IRS) do not result in the successful collection of unpaid tax, the IRS has the authority to attach a claim, a Notice of Federal Tax Lien (lien), to a taxpayer's assets.¹ The IRS also has the authority to seize or levy a taxpayer's property, such as wages or bank accounts, to satisfy a taxpayer's debt.²

In February 1996, the IRS established procedures that allowed taxpayers to appeal the filing of a lien and proposed or actual levies. However, this protection was not mandated by law and there was no remedy available to the taxpayer if the IRS did not follow its procedures. Collection actions such as levies and liens often have a significant effect on taxpayers and need to be handled correctly, in accordance with procedures and controls. Congress was concerned that taxpayers were not always afforded adequate appeal rights during the collection process and enacted legislation to protect taxpayers' rights in the IRS Restructuring and Reform Act of 1998.³ Taxpayers now have the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP).⁴ Taxpayers also have the right to a judicial review if they disagree with the Appeals decision.

When a taxpayer timely requests an Appeals hearing regarding the filing of a lien or the issuance of a notice of intent to levy, the taxpayer is granted a CDP hearing. If the IRS does not receive the taxpayer's request within the required period (generally 30 calendar days), the taxpayer is granted an Equivalent Hearing (EH). During Fiscal Year 2006, Appeals closed 23,048 CDP cases and 9,314 EH cases.

The Treasury Inspector General for Tax Administration is required to determine annually whether the IRS complied with legal guidelines and procedures for the filing of a lien or a notice of intent to levy and the right of the taxpayer to appeal.⁵ We have divided this requirement into three statutory audits: one to review the filing of a lien;⁶ one to review the intent to levy;⁷ and one to review the rights of taxpayers to appeal these issues,⁸ which is the focus of this report. This is the seventh annual audit of taxpayer appeal rights we have conducted.

¹ 26 U.S.C. Section (§) 6321 (Supp. III 2000).

² 26 U.S.C. § 6331 (Supp. III 2000).

³ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

⁴ A detailed explanation of the CDP and Equivalent Hearing procedures is included in Appendix V.

⁵ 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv) (Supp. III 2000).

⁶ 26 U.S.C. § 6320(a) (Supp. III 2000).

⁷ 26 U.S.C. § 6330(a) (Supp. III 2000).

⁸ 26 U.S.C. §§ 6320(b) and (c) (Supp. III 2000); 26 U.S.C. §§ 6330(b) and (c) (Supp. III 2000).



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Our previous audit report on the Appeals process was issued in September 2006, and the related corrective actions were planned for implementation by January 15, 2007.⁹ The scope period for this year's audit covered CDP and EH cases closed between October 1, 2005, and September 30, 2006, which was earlier than the planned implementation date for the corrective actions. Because the cases in this audit were closed prior to the completion of corrective actions by the IRS, we did not make recommendations for findings repeated from the previous audit.

This review was performed at the Appeals offices in Detroit, Michigan, and San Francisco, California, during the period December 2006 through June 2007. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

⁹ *The Office of Appeals Should Continue to Strengthen and Reinforce Procedures for Collection Due Process Cases* (Reference Number 2006-10-123, dated September 20, 2006).



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Results of Review

Appeals has made improvements to the CDP as a whole by properly classifying most taxpayer requests, locating and providing case files, and by revising letters to taxpayers to make them more descriptive. Although the Appeals CDP has improved, hearing officers were still not consistently documenting their impartiality and whether the Collection function met all legal and administrative requirements for the filing of the lien or issuance of the notice of intent to levy. In addition, the Collection Statute Expiration Dates for some taxpayer accounts were incorrect because the proper codes were not input correctly, which resulted in either shortened or lengthened statute dates that affected the time the IRS has to collect the unpaid balances.¹⁰

***Appeals Made Improvements in Classifying Hearing Requests,
Locating Files, and Communicating the Basis of Appeals Decisions to
Taxpayers***

Appeals improved its classification of most taxpayer requests and worked them properly as a CDP or an EH. In the prior review, we reported Appeals did not always correctly determine which requests were received timely and should be worked as a CDP hearing rather than as an EH. However, Appeals was largely compliant with that requirement in this review.

We selected a statistical sample of 70 EH cases closed in Fiscal Year 2006 to determine whether any of these cases were misclassified and the taxpayers should have been granted a CDP hearing. Appeals properly classified 68 of the 69 cases as an EH. ¹

This issue of misclassifying requests was brought to the attention of Appeals management in our prior report. In response, Appeals management agreed to revise written guidance, update templates, and provide training to hearing officers. These corrective actions were scheduled to be completed by January 15, 2007, which was subsequent to the scope of this year's audit.

¹ we are making no further recommendations for this issue.

¹⁰ The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The end of the 10-year period is the Collection Statute Expiration Date.



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In addition, in our prior reviews, we reported that some of the CDP and EH case files could not be located or were incomplete. However, for this review, we received 69 of the 70 CDP cases and all 70 EH cases sampled. In addition, all 69 of the CDP and 69 of the 70 EH case files secured contained the taxpayer's request for a hearing. Further, all 69 CDP and 70 EH case files contained the Appeals hearing results. Having the applicable case files with the relevant documents available is essential for Appeals to determine if all actions were appropriate and if the Collection function properly carried out the Appeals determination.

Appeals has also made improvements to the requirement that Determination and Decision Letters contain a clear and detailed explanation for the basis of the Appeals hearing officer's decision.¹¹ More specifically, Appeals must document the following:

- Issues raised by the taxpayer.
- Whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

In our samples, some taxpayers had withdrawn their requests for an Appeals hearing, so hearing officers did not issue Determination and Decision Letters in these 13 of 69 CDP cases and 9 of 70 EH cases. All of the 61 EH Decision Letters and [REDACTED] CDP Determination or Summary Notice of Determination Letters sent to taxpayers met the Appeals minimum standard for documentation of these items. [REDACTED]

Hearing Officers Did Not Always Document Their Impartiality and Whether All Legal and Administrative Requirements Were Met

A CDP hearing or an EH must be conducted by a hearing officer who has had no prior involvement with respect to the unpaid tax; however, the taxpayer may waive this requirement. To comply with this requirement, CDP Determination Letters and Summary Notices of Determination and EH Decision Letters (issued when the case is closed) must include an impartiality statement. In December 2006, Appeals revised its procedures to require that, during the initial analysis of the case, the hearing officer must document in the case activity record that he or she had no prior involvement with the taxpayer's relevant type of tax and tax periods.

Case files for 10 (14 percent) of the 69 CDP cases and 3 (4 percent) of the 70 EH cases we reviewed did not include an impartiality statement by the hearing officer. We estimate 3,293¹² of

¹¹ Hearing officers are either Appeals officers or Settlement officers. For a CDP case, the taxpayer receives either a Determination Letter, which provides an explanation of the right to a judicial review, or a Summary Notice of Determination, which is used when the taxpayer agrees with Appeals, waives the right to a judicial review, and waives the suspension of levy action. For an EH case, the taxpayer receives a Decision Letter.

¹² Based on a 90 percent confidence level and a precision of ± 6.87 percent.



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the 23,048 CDP cases and 400¹³ of the 9,314 EH cases closed in Fiscal Year 2006 did not contain the impartiality statement and resulted in a potential violation of taxpayer rights.

If a hearing officer does not document the case files with a statement of his or her impartiality, there is a risk of prior involvement in the taxpayer's case and lack of independence. However, a lack of this documentation does not mean the hearing officers were not impartial or that taxpayers received an unfair hearing.

On another required element, Appeals revised its procedures to require that hearing officers document in the case activity record whether the Collection function met all applicable laws and administrative procedures for the filing of the lien or issuance of the notice of intent to levy. Case files for 11 (16 percent) of the 69 CDP and 6 (9 percent) of the 70 EH cases we reviewed did not contain this required documentation. Therefore, we estimate 3,622¹⁴ of the 23,048 CDP cases and 799¹⁵ of the 9,314 EH cases closed in Fiscal Year 2006 did not meet this Appeals procedural requirement. However, a lack of this documentation in a case file does not mean the Collection function failed to meet the legal and administrative requirements pertaining to the filing of the lien and/or the issuance of a notice of intent to levy.

Most of the instances in which the case file did not contain documentation occurred because the taxpayer withdrew his or her request for a hearing. Consequently, Appeals was not required to issue a Determination Letter or Decision Letter, which contributed to the lack of documentation in the case file. The Determination and Decision Letters are required to include specific language related to impartiality and the meeting of legal and administrative requirements. Issuance of one of these Letters satisfies the need to document the case file. However, if one of these Letters is not issued, the hearing officer must include the required documentation somewhere else in the file, such as the case activity record (case history).

These issues have been brought to the attention of Appeals management in prior reports. In response to the most recent report, Appeals management agreed to revise written guidance and provide training to hearing officers for documenting impartiality. Appeals revised its Internal Revenue Manual in December 2006, requiring that hearing officers include an impartiality statement in the case activity record during the initial analysis of the case. Because these corrective actions were implemented subsequent to this year's review and should improve this condition, we are making no further recommendations regarding impartiality.

Appeals also revised its Manual to require that hearing officers document in the case activity records whether the Collection function met all legal and administrative requirements for the filing of the lien or issuance of the notice of intent to levy. Although this corrective action was implemented during the scope of our review and should improve the identified condition, it does

¹³ Based on a 90 percent confidence level and a precision of ± 3.97 percent.

¹⁴ Based on a 90 percent confidence level and a precision of ± 7.14 percent.

¹⁵ Based on a 90 percent confidence level and a precision of ± 5.48 percent.



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not address when the review should occur. We believe verifying and documenting whether all legal and administrative requirements were met should occur during the initial analysis of the case, to ensure these requirements were met regardless of how the CDP case is ultimately closed. Collection function deficiencies identified upfront could affect how the case is worked by Appeals.

Recommendation

Recommendation 1: The Chief, Appeals, should revise current procedures to require that, during the initial analysis of a case, hearing officers verify and document in the case activity record whether the Collection function met all legal and administrative requirements when filing a lien or issuing a notice of intent to levy.

Management's Response: IRS management agreed with the recommendation. They will revise their written guidance to require that hearing officers verify and document that legal and administrative requirements were met during the initial analysis of the case.

The Collection Statute Expiration Date on Taxpayer Accounts Was Not Always Correct

The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. This is referred to as the Collection Statute Expiration Date. Because the IRS usually stops collection activity during the Appeals process, the Collection Statute Expiration Date is temporarily postponed or suspended during a CDP hearing. The IRS suspends the 10-year statute of limitations from the date of the CDP hearing request until the date the Appeals determination is made final or to the date on which the taxpayer withdraws the request in writing.¹⁶

The statute suspension is systemically controlled on the Integrated Data Retrieval System.¹⁷ One code is entered to start the suspension and another is entered to stop the suspension and restart the statute period. Currently, the code input to suspend the collection statute is usually entered by the Collection function; however, in certain instances, Appeals is responsible for the input. Upon completion of each CDP hearing, Appeals is responsible for entering the code to remove the suspension of the statute period. The Integrated Data Retrieval System will systemically recalculate the Collection Statute Expiration Date based on the dates entered for the two codes (which reflect the length of the Appeals hearing plus expiration of the time period for seeking judicial review, or the exhaustion of any rights to appeal following judicial review).

¹⁶ C.F.R. §§ 301.6320-1(g) and 301.6330-1(g) (2002). The Appeals determination is final upon expiration of the time period for seeking judicial review, or the exhaustion of any rights to appeal following judicial review.

¹⁷ The IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.



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However, in 16 (23 percent) of the 69 CDP cases sampled, the collection statute dates were inaccurate. For nine of the cases, the IRS had received too much time to collect the delinquent taxes. In the remaining seven cases, the IRS was not allowed the proper length of time to collect any unpaid balances. The dates were incorrect because either (1) the code needed to indicate the start of the collection statute suspension was not input or (2) the suspension start date input was incorrect. Similarly, the code needed to indicate the end of the collection statute suspension was not input or the suspension end date input was incorrect. We estimate 5,269 of the 23,048 CDP cases closed in Fiscal Year 2006 have an incorrect Collection Statute Expiration Date.¹⁸

When the taxpayer is given an EH, the collection statute is not suspended. However, in 2 (3 percent) of the 70 EH cases sampled, the collection statute was inappropriately suspended, which allowed the IRS additional time to collect from the taxpayers. We estimate 267 of the 9,314 taxpayers with EH cases closed in Fiscal Year 2006 had the collection statute inappropriately extended, resulting in potential violation of taxpayer rights.¹⁹

When the IRS suspends the collection statute for a period longer than that allowed, it is a potential violation of taxpayer rights. This issue has been brought to the attention of Appeals management in prior reports. In response to the most recent report, Appeals management agreed to revise written guidance, update templates, and provide training to hearing officers. Appeals also stated it would develop and implement a procedure to immediately correct taxpayer accounts when hearing officers identify missing computer codes for suspension of collection activity. These corrective actions were scheduled to be completed by January 15, 2007, which was subsequent to the scope of this year's audit. As a result, we are making no further recommendations to correct this condition.

Recommendation

Recommendation 2: The Chief, Appeals, should review and correct the Collection Statute Expiration Dates on the taxpayer accounts identified in our samples.

Management's Response: IRS management agreed with the recommendation. Appeals has reviewed and corrected all of the incorrect Collection Statute Expiration Dates on the taxpayer accounts identified during the audit.

¹⁸ Based on a 90 percent confidence level and a precision of ± 8.24 percent. See Appendix IV for more information.

¹⁹ Based on a 90 percent confidence level and a precision of ± 3.26 percent.



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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to determine whether the IRS complied with the provisions of 26 U.S.C. §§ 6320 and 6330 when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien (lien) or the issuance of a notice of intent to levy.¹ To accomplish this objective, we:

- I. Determined whether any new procedures or processes had been developed since completion of the prior Treasury Inspector General for Tax Administration statutory review.² This involved requesting documentation from Office of Appeals (Appeals) personnel supporting the implementation of corrective actions to our prior audit reports and other procedural or process changes.
- II. Determined whether Appeals CDP³ and EH office and administrative case files could be secured and contained minimum documentation for a hearing.
 - A. Obtained from the Appeals Centralized Database System (ACDS)⁴ file maintained at the Treasury Inspector General for Tax Administration Data Center Warehouse⁵ a computer extract of CDP and EH cases closed between October 1, 2005, and September 30, 2006. We validated the computer extract using information from the Data Center Warehouse, reviewed the appropriateness of data within fields requested, and compared population totals to information obtained from Appeals personnel.
 - B. Selected samples of 70 CDP and 70 EH case files.
 1. Selected statistical attribute samples of 70 CDP cases (from a population of 23,048 CDP cases) and 70 EH cases (from a population of 9,314 EH cases) based on a confidence level of 90 percent, a precision rate of ± 6 percent, and an expected error rate of 10 percent. We selected a statistical sample because we wanted to project results to the entire universe.
 2. Requested and determined whether Appeals could provide the sampled office files and whether we could secure the sampled administrative files.

¹ 26 U.S.C. §§ 6320 and 6330 (Supp. III 2000).

² *The Office of Appeals Should Continue to Strengthen and Reinforce Procedures for Collection Due Process Cases* (Reference Number 2006-10-123, dated September 20, 2006).

³ A detailed explanation of the CDP and EH procedures is included in Appendix V.

⁴ The ACDS is a computerized case control system used to control and track cases throughout the Appeals process.

⁵ The Treasury Inspector General for Tax Administration Data Center Warehouse stores taxpayer data and allows auditors to query and download data needed for audit work.



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3. For each sample case file received, determined whether the file contained the minimum documentation required to support a CDP hearing or an EH, which included Notice of Intent to Levy (Letter 1058/LT11) and/or Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Letter 3172); Request for a Collection Due Process Hearing or Equivalent Hearing (Form 12153) or similar taxpayer request; ACDS Case Summary Card; ACDS Case Activity Record; Appeals Transmittal and Case Memo (Form 5402); Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (Letter 3193/3194); Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, and Waiver of Suspension of Levy Action (Form 12257); Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 of the Internal Revenue Code (IRC) (Letter 3210); transcript of the taxpayer's account; and Collection case history. We discussed exceptions with Appeals personnel.
- III. Determined whether CDP and EH cases were misclassified (should have been an EH or a CDP case, respectively).
- A. Using the samples selected in Step II.B.1., reviewed the ACDS, case file, and tax account transcript information to determine whether the taxpayers' hearing requests were received timely or late and were properly classified.
 - B. Discussed exceptions with Appeals personnel.
- IV. Determined whether Appeals was in compliance with 26 U.S.C. §§ 6320 and 6330 when handling CDP and EH requests.
- A. Using the samples selected in Step II.B.1., determined whether the following items were addressed by the hearing officer.⁶
 1. The taxpayer was provided only one hearing for the tax period related to the unpaid tax specified in the lien/levy notice. [26 U.S.C. §§ 6320(b)(2) and 6330(b)(2)]
 2. The taxpayer was provided with an impartial hearing officer or waived this requirement. [26 U.S.C. §§ 6320(b)(3) and 6330(b)(3)]
 3. The hearing officer obtained verification that the requirements of any applicable law or administrative procedure were met. [26 U.S.C. § 6330(c)(1)]
 4. The taxpayer was allowed to raise issues at the hearing relating to the unpaid tax, the filing of the lien, or the proposed levy action. This could include appropriate spousal defenses, challenges to the appropriateness of collection activities, offers

⁶ Hearing officers are either Appeals officers or Settlement officers.



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of collection alternatives, or questions about the underlying liability. [26 U.S.C. § 6330(c)(2)]

5. The hearing officer made a determination after considering whether any proposed collection action balances efficient tax collection with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. [26 U.S.C. § 6330(c)(3)]

- B. Discussed exception cases with Appeals personnel to confirm and determine causes. After confirmation, we estimated the number of potential exceptions within the population.

- V. Determined whether the collection statutes were properly suspended.

- A. Using the samples selected in Step II.B.1., determined whether the collection statutes had been properly suspended for CDP cases and not suspended for EH cases.
 - B. Discussed exception cases with Appeals personnel to confirm and determine causes. After confirmation, we estimated the number of potential exceptions within the population.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Acting Commissioner C
Office of the Commissioner – Attn: Acting Chief of Staff C
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Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 6,256 closed CDP case files did not contain 1 or more of the following: sufficient documentation of impartiality, sufficient documentation whether the Collection function met all legal and administrative requirements, and/or verification of the suspension of the collection statute.

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS,¹ we identified a population of 23,048 CDP cases closed in Fiscal Year 2006.² We selected a statistical attribute sample of 70 CDP cases and found 19 (27 percent) case files did not contain 1 or more of the following: sufficient documentation of impartiality, sufficient documentation whether the Collection function met all legal and administrative requirements, and/or verification of the suspension of the collection statute.³ Using a 90 percent confidence level and a precision rate of ± 8.73 percent, we estimated 6,256 CDP case files could affect taxpayer rights and entitlements.⁴ The 19 CDP case files are comprised of the following:

- There were 10 CDP case files (14 percent) that did not contain documentation the hearing officer was impartial (see page 4). Using a 90 percent confidence level and a precision of ± 6.87 percent, we estimate 3,293 CDP case files did not contain documentation of impartiality.
- There were 11 CDP case files (16 percent) that did not contain documentation the hearing officer verified whether the Collection function met all legal and

¹ The ACDS is a computerized case control system used to control and track cases throughout the Appeals process.

² A detailed explanation of the CDP and EH procedures is included in Appendix V.

³ There are more individual CDP case files presented in the bullets that follow because a single case file can contain more than one of the three errors identified. The total amount was reduced because 10 cases contained more than 1 error.

⁴ The sum of the projections of the 3 errors in the bullets is 9,879, but includes cases with multiple errors. Our projected estimate of 6,256 CDP case files is based on the 19 case files that had 1 or more of the errors identified to avoid duplication in the projection.



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- administrative requirements when filing a lien or issuing a notice of intent to levy (see page 4). Using a 90 percent confidence level and a precision of ± 7.14 percent, we estimate 3,622 CDP case files did not contain documentation whether all legal and administrative requirements were met.
- There were 9 CDP cases (13 percent) for which the taxpayer's Collection Statute Expiration Date had been suspended longer than the length of the CDP hearing (see page 6).⁵ Using a 90 percent confidence level and a precision rate of ± 6.57 percent, we estimated 2,964 CDP case files had the Collection Statute Expiration Date suspended longer than the length of the CDP hearing, resulting in a potential violation of taxpayer rights.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 1,065 closed EH case files did not contain 1 or more of the following: Sufficient documentation of impartiality, sufficient documentation whether the Collection function met all legal and administrative requirements, and/or verification of the suspension of the collection statute.

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified a population of 9,314 EH cases closed in Fiscal Year 2006. We selected a statistical attribute sample of 70 EH cases and found 8 (11 percent) case files did not contain 1 or more of the following: sufficient documentation of impartiality, sufficient documentation whether the Collection function met all legal and administrative requirements, and/or verification of the suspension of the collection statute.⁶ Using a 90 percent confidence level and a precision rate of ± 6.23 percent, we estimated 1,065 EH case files could affect taxpayer rights and entitlements.⁷ The 8 EH case files are comprised of the following:

- There were 3 EH case files (4 percent) that did not contain documentation the hearing officer was impartial (see page 4). Using a 90 percent confidence level and a precision of ± 3.97 percent, we estimate 400 EH case files did not contain documentation of impartiality.

⁵ The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The end of the 10-year period is the Collection Statute Expiration Date.

⁶ There are more individual EH case files presented in the bullets that follow because a single case file can contain more than one of the three errors identified. The total amount was reduced because three cases contained more than one error.

⁷ The sum of the projections of the 3 errors in the bullets is 1,466, but includes cases with multiple errors. Our projected estimate of 1,065 EH case files is based on the 8 case files that had 1 or more of the errors identified to avoid duplication in the projection.



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- There were 6 EH case files (9 percent) that did not contain documentation the hearing officer verified whether the Collection function met all legal and administrative requirements when filing a lien or issuing a notice of intent to levy (see page 4). Using a 90 percent confidence level and a precision of ± 5.48 percent, we estimate 799 EH case files did not contain documentation whether all legal and administrative requirements were met.
- There were 2 EH case files (3 percent) in which the taxpayer's Collection Statute Expiration Date was inappropriately suspended (see page 6). Using a 90 percent confidence level and a precision rate of ± 3.26 percent, we estimated 267 EH cases had the Collection Statute Expiration Date inappropriately suspended resulting in a potential violation of taxpayer rights.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; 2,305 taxpayer accounts affected (see page 6).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified a population of 23,048 CDP cases closed in Fiscal Year 2006. We selected a statistical attribute sample of 70 CDP cases and found 7 (10 percent) for which the taxpayer's Collection Statute Expiration Date had not been suspended for the length of the CDP hearing. Using a 90 percent confidence level and a precision rate of ± 5.89 percent, we estimated 2,305 CDP cases had not had the Collection Statute Expiration Date suspended for the length of the CDP hearing.



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Appendix V

Collection Due Process Procedures

The IRS is required to notify taxpayers in writing that a lien has been filed or when it intends to levy.¹ A taxpayer is allowed to appeal the filing of the lien or proposed levy action through the CDP by filing a hearing request.² This hearing request must be received within 30 calendar days plus 5 business days of the filing of the lien or within 30 calendar days of the date of the notice of intent to levy.³ If a taxpayer's hearing request is submitted on time, the IRS will suspend all collection efforts and the Office of Appeals (Appeals) will provide the taxpayer a CDP hearing.

If the taxpayer disagrees with the Appeals decision, he or she may petition the courts. If a taxpayer's hearing request is not submitted timely, Appeals will provide the taxpayer an EH and consider the same issues as in a CDP hearing; however, the IRS is not required to suspend collection action and the taxpayer does not have the right to a judicial review.

Taxpayers are entitled to one hearing per tax period for which a lien or notice of intent to levy has been issued. The hearing is conducted by an Appeals officer or Settlement officer (hearing officer) who has had no prior involvement with the unpaid tax.⁴ During the hearing, the hearing officer must verify whether the requirements of all applicable laws or administrative procedures related to the lien or notice of intent to levy were met. The hearing officer must also address any issues the taxpayer may raise relevant to the unpaid tax, the filing of the lien, or the proposed levy, such as whether the taxpayer is an innocent spouse; determine if collection actions were appropriate; and decide if other collection alternatives would facilitate the payment of the tax. The hearing officer must determine whether any proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concerns. The taxpayer may not raise an issue that was considered at a prior administrative or judicial hearing if the taxpayer participated meaningfully in the prior proceeding.

At the conclusion of a hearing, Appeals provides the taxpayer a letter with the hearing officer's findings, agreements reached with the taxpayer, any relief provided to the taxpayer, and any actions the taxpayer and/or the IRS are required to take. For a CDP case, the taxpayer receives either a Determination Letter, which provides an explanation of the right to a judicial review, or a Summary Notice of Determination, which is used when the taxpayer agrees with Appeals,

¹ 26 U.S.C. Sections (§§) 6320(a) and 6330(a) (Supp. III 2000).

² Taxpayers can use Request for a Collection Due Process or Equivalent Hearing (Form 12153) or other similar written communication to request a CDP hearing.

³ 26 U.S.C. §§ 6320 and 6330 (Supp. III 2000).

⁴ The taxpayer may waive this requirement.



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waives the right to a judicial review, and waives the suspension of collection action. For an EH case, the taxpayer receives a Decision Letter.

The CDP or EH case is reviewed by the hearing officer's manager at the completion of the case to evaluate whether the hearing officer followed all requirements and procedures. In addition, the Appeals Quality Measurement System reported a 79 percent and 80 percent overall compliance rate for CDP and EH cases, respectively, completed in Fiscal Year 2006. This is down from 81 percent for both CDP and EH cases completed in Fiscal Year 2005.⁵

After Appeals has made a determination on a case, if the taxpayer has a change in circumstances that affects the Appeals determination or if the Collection function does not carry out the determination, the taxpayer has the right to return to Appeals. The Appeals office that made the original determination generally retains jurisdiction over the case.

⁵ The Appeals Quality Measurement System scoring methodology was changed for Fiscal Year 2006; Appeals restated the Fiscal Year 2005 scoring based on the same methodology for comparison.



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Appendix VI

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224
AUG 21 2007

RECEIVED
AUG 29 2007

MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR
TAX ADMINISTRATION

From:


Sarah Hall Ingram
Chief, Appeals

Subject:

Response to Draft Report, Audit 2007-10-014
The Office of Appeals Has Improved Its Processing of Collection
Due Process Cases

I have reviewed the subject draft audit report and I appreciate your continuing efforts to help us improve the processing of Collection Due Process (CDP) cases. Since the inception of CDP, Appeals has been working aggressively and diligently to streamline the process and to enhance the final work product. Your recommendations have furthered our efforts on both fronts.

We agree with your recommendation to revise our current procedures to include the requirement to verify and document, during our initial analysis, that all legal and administrative requirements were met. We also agree that it is important to have accurate Collection Statute Expiration Dates for CDP cases.

Appeals will continue its efforts to improve its process and is committed to work with the Operating Divisions to implement consistent service wide policy. Attached are our corrective actions in response to your recommendations.

If you have any questions, please have a member of your staff contact Diane Ryan, Director, Technical Services, at (314) 612-4640.

Attachment



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Attachment

Recommendation 1

The Chief, Appeals, should revise current procedures to require that, during the initial analysis of a case, hearing officers verify and document in the case activity record whether the Collection function met all legal and administrative requirements when filing a lien or issuing a notice of intent to levy.

Proposed Corrective Action:

Appeals will revise and publish IRM 8.22.2 to require that hearing officers verify and document that legal and administrative requirements were met during the initial analysis.

Implementation Date: January 15, 2008

Responsible Official: Director, Technical Services

Corrective Action Monitoring Plan: The Director, Tax Policy and Procedure (Collection and Processing), will inform the Director, Technical Services of any delays in implementing this corrective action, and will also conduct follow-up case reviews and brief the Director, Technical Services on the progress made by the hearing officers to consistently document their case activity records. Appeals will also use the results of the Appeals Quality Measurement System sample review to determine if this guidance is being adhered to.

Recommendation 2

The Chief, Appeals, should review and correct the Collection Statute Expiration Dates on the taxpayer accounts identified in our samples.

Proposed Corrective Action:

Implemented – By August 20, 2007, Appeals reviewed and corrected all of the incorrect Collection Statute Expiration Dates on the taxpayer accounts identified during the audit.

Implementation Date: Implemented

Responsible Official: Director, Technical Services