
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Office of Appeals Errors in the
Handling of Collection Due Process
Cases Continue to Exist***

July 26, 2012

Reference Number: 2012-10-077

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend: 1 = Tax Return/Return Information

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HIGHLIGHTS

OFFICE OF APPEALS ERRORS IN THE HANDLING OF COLLECTION DUE PROCESS CASES CONTINUE TO EXIST

Highlights

Final Report issued on July 26, 2012

Highlights of Reference Number: 2012-10-077 to the Internal Revenue Service Chief of Appeals.

IMPACT ON TAXPAYERS

The Collection Due Process Program was designed to allow taxpayers a process for exercising their right to appeal when the IRS files a Notice of Federal Tax Lien or a Notice of Intent to Levy against them. Additional improvements are needed to ensure statutory requirements are met. Misclassified hearing requests, inaccurate collection action suspensions, and inconsistent documentation of impartiality may result in taxpayers not receiving their full rights during an appeal hearing.

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is statutorily required to determine whether the IRS complied with the provisions of 26 United States Code Sections 6320 (b) and (c) and 6330 (b) and (c) 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.

WHAT TIGTA FOUND

Compared to our previous reviews, this year's audit continues to identify the same deficiencies in the IRS's processing of Collection Due Process cases as previously reported. Our review identified that the Office of Appeals did not always classify taxpayer requests properly and, as a result, some taxpayers received the wrong type of hearing. In addition, TIGTA also identified an increase in errors relating to the determination of the Collection Statute Expiration Date on taxpayer accounts compared to that identified during prior audits. TIGTA also found that Appeals personnel continue to not always document their impartiality in the Form 12257, *Waiver of Appeals Notice of*

Determination in a Collection Due Process Hearing (Form 12257 Waiver) issued to taxpayers.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, provide refresher training to Appeals personnel to reemphasize the process to follow when determining whether a taxpayer is entitled to a Collection Due Process hearing or an Equivalent Hearing. TIGTA also recommended that Appeals request written guidance from Chief Counsel that specifies what constitutes a timely receipt of a taxpayer's request for a Collection Due Process hearing to ensure taxpayer requests for Collection Due Process hearings are processed consistently. Finally, TIGTA recommended that Appeals review and correct the taxpayer accounts that were identified with Collection Statute Expiration Date errors and revise its guidelines to ensure impartiality is properly documented in the Form 12257 Waiver issued to the taxpayer.

In their response, Appeals Management agreed with all of our recommendations. Appeals plans to develop a refresher class on the topic of determining timeliness of the Collection Statute Expiration Date and Equivalent Hearing requests as well as request a written advisory opinion from Chief Counsel on what constitutes a timely receipt of a taxpayer's appeal request for a Collection Due Process hearing. In addition, Appeals corrected all Collection Statute Expiration Date errors made on the taxpayer accounts that TIGTA identified during this audit and revised its guidelines to require that hearing officers include the impartiality statement in the Letter 4382, *Closing Letter For Form 12257*, that accompanies the approved Form 12257 Waiver.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 26, 2012

MEMORANDUM FOR CHIEF, APPEALS

FROM:

Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist (Audit # 201210010)

This report presents the results of our statutory review of the Appeals' Collection Due Process Program. The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with 26 United States Code Sections 6320 (b) and (c) and 6330 (b) and (c) when taxpayers exercised their right to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. This audit is included in our Fiscal Year 2012 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VIII.

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 Russell P. Martin, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.



**Office of Appeals Errors in the Handling of
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***Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist***

Abbreviations

CDP	Collection Due Process
CSSED	Collection Statute Expiration Date
EH	Equivalent Hearing
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

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 to a taxpayer's assets with a Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320* (lien).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 However, before a levy can be placed on a taxpayer's account, the IRS must issue the taxpayer a Letter 11 or Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy).

Under Collection Due Process provisions, taxpayers have the right to a hearing with the IRS's Office of Appeals to appeal the filing of a lien and/or levy.

In January 1996, Congress modified collection activity provisions that allowed taxpayers to appeal the filing of a lien and proposed or actual levies.³ Further, Congress enacted legislation to protect taxpayers' rights in the IRS Restructuring and Reform Act of 1998,⁴ which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP) provisions.⁵ Appeals is independent of other IRS offices, and its mission is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Federal Government and the taxpayer.

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. However, if the taxpayer's request for a CDP hearing is not received within the allotted time, usually within 30 calendar days, the taxpayer, at the discretion of Appeals, might be granted an Equivalent Hearing (EH). The taxpayer must request an EH within one year of the issuance of the Notice of Intent to Levy or the filing of a lien. Taxpayers have the right to petition the U.S. Tax Court if they disagree with Appeals' decision on a CDP hearing, which is not afforded to those taxpayers who are granted an EH.

When Appeals makes a final decision on a taxpayer's case, the hearing officer will issue a Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, a Letter 3210, *Decision Letter Concerning Equivalent Hearing Under Section 6320*

¹ Internal Revenue Code (I.R.C.) § 6321.

² I.R.C. § 6331.

³ Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

⁴ 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.).

⁵ See Appendix V for an explanation of the CDP and Equivalent Hearing procedures.



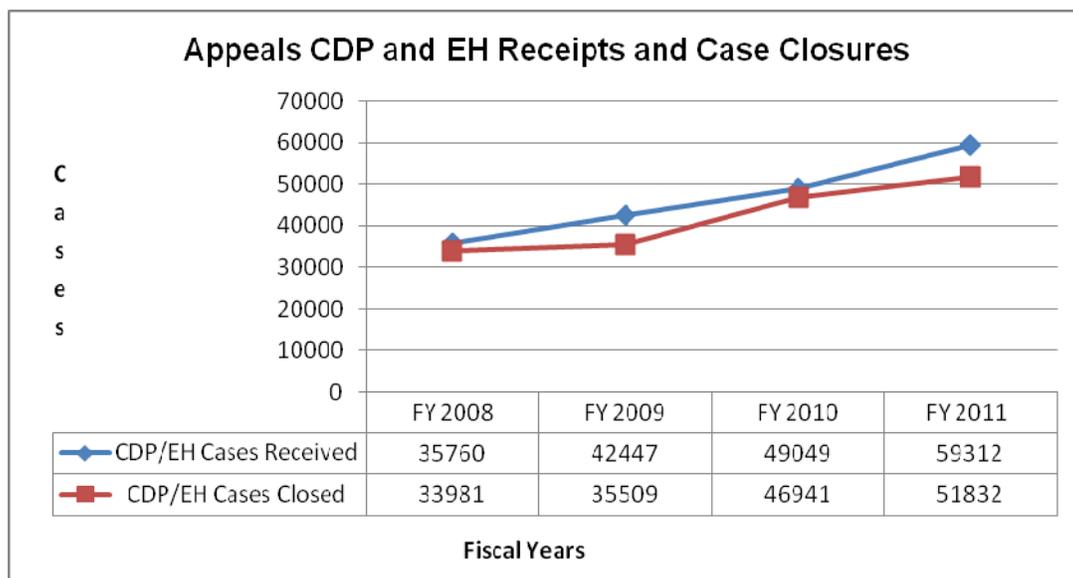
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and/or 6330, or a Letter 4382, *Closing Letter For Form 12257*, on closed CDP and EH cases. The Form 12257, *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing* (Form 12257 Waiver), is used when the taxpayer and the IRS agree on a viable collection alternative.⁶ During Fiscal Year (FY) 2011, Appeals closed 41,343 CDP cases and 10,489 EH cases.

The inventory of CDP and EH cases worked by Appeals continues to increase

Since FY 2008, Appeals has faced the challenge of rising inventories because more taxpayers are requesting CDP hearings and EHs.⁷ While Appeals has closed a greater number of cases each year, new receipts have outpaced closures since FY 2008. Case receipts for CDP/EH increased by 65.9 percent over the four-year period with case closures increasing by 52.5 percent over the same period. Figure 1 shows that Appeals CDP/EH receipts and closures have steadily risen from FY 2008 through FY 2011.

Figure 1: Appeals Receipts and Closures



Source: Appeals Commissioner’s Balanced Measures Report (FY 2008 through FY 2011).

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

⁶ A Form 12257 Waiver is a signed agreement between the taxpayer and the IRS where the taxpayer waives the right to a judicial review, and waives the suspension of collection action. For example, these taxpayers may have agreed to an installment agreement, offer in compromise, or other collection alternative.

⁷ For reporting purposes, Appeals combines the EH closed cases and CDP closed cases together.



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of Intent to Levy and the right of the taxpayer to appeal these actions.⁸ This is our twelfth annual audit of taxpayer appeal rights.

The period for this year's audit covered CDP and EH cases closed between October 1, 2010, and September 30, 2011. This review was performed by contacting Appeals personnel in San Francisco, California; Denver, Colorado; and Syracuse, New York, during the period November 2011 through April 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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



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Results of Review

Our review identified continued errors relating to hearing misclassifications and proper determination of the Collection Statute Expiration Date (CSED).⁹ In addition, we identified errors by Appeals in fully documenting its impartiality relating to CDP hearings as required. Compared to our previous reviews,¹⁰ this year's audit found a similar number of taxpayer requests that were misclassified. It is important that Appeals accurately determine whether the taxpayer receives a CDP hearing or an EH because it affects the taxpayer's right to petition the U.S. Tax Court and the time allowed for the IRS to collect any balances owed.

There was an increase in errors relating to the proper determination of the CSED and documentation of impartiality. When CSED dates are extended in error, the IRS is allowed additional time to collect any balances owed by these taxpayers, which is a potential violation of taxpayer rights. Conversely, when CSEDs are incorrectly shortened, the IRS has less time to collect delinquent taxes, which could cause a potential loss of revenue. Finally, it is important that a hearing officer document the statement of impartiality as required. The law requires that taxpayers be afforded a hearing with an impartial officer who has had no prior involvement with the tax liability.¹¹

Taxpayers Did Not Always Receive the Appropriate Type of Hearing

Our review of two statistically valid samples of 70 CDP and 70 EH cases identified three CDP cases (4 percent) and ***1*** (1 percent) where the IRS misclassified the type of hearing provided to the taxpayer. This is the same number of errors that we identified in our prior review. We project an estimated 1,772 taxpayer cases may have incorrectly received a CDP hearing during FY 2011 instead of an EH as required. In addition, we project an estimated 150 taxpayer cases may have been incorrectly granted an EH even though the request was made more than one year after the notice was issued.

For the three CDP cases, the taxpayer either did not timely file the request for a hearing at the IRS address listed on the taxpayer's correspondence within the required 30-day period **1**
*****1*****
1.¹² Treasury Regulations require that the written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the

⁹ The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The final date to collect is referred to as the CSED.

¹⁰ See Appendix VII for a list of our prior audits for FY 2008 through FY 2011.

¹¹ I.R.C. § 6320 and 6330(b)(3).

¹² See Appendix VI, which describes the time periods to qualify for a CDP hearing and an EH.



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CDP notice.¹³ In addition, the Form 12153, *Request for Collection Due Process or Equivalent Hearing*, also directs taxpayers to send their appeal to the address shown on their lien or levy notice, which is generally to the collection employee initially working with the taxpayer to resolve their outstanding tax liability. Additionally, Appeals is required to return the Form 12153 request back to Collection as a premature referral if the taxpayer or his or her representative fails to sign the Form 12153 request.

Because the request was mailed to the incorrect address, Collection did not receive the request for a CDP hearing *****1***** within the required time period. Although these requests were not timely received, Appeals granted these taxpayers a CDP hearing instead of an EH. This provided these taxpayers with inappropriate rights and considerations, as CDP hearings allow taxpayers the right to petition the U.S. Tax Court if they disagree with Appeals' final determination or decision, whereas an EH does not provide this right. Further, since these three cases were misclassified, the IRS incorrectly extended the CSEDs on the taxpayers' accounts. The IRS suspends collection activity during the CDP hearing along with the CSED on the taxpayer's account. In contrast, an EH hearing does not result in the CSED being suspended during the appeals process.

IRS guidelines state that upon receipt of the taxpayer's request for a hearing, the collection employee evaluates the timeliness of the request, performs initial case actions, builds a case file, and then forwards the taxpayer's request to the appropriate Appeals office. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. When Appeals receives the taxpayer's request, the hearing officer is required to confirm the accuracy of the request information and make the final determination as to whether the request was timely received and if the taxpayer is eligible for a CDP or EH.

*****1*****
1**.¹⁴ Treasury Regulations require that all taxpayers who want an EH must request the hearing within the one-year period commencing the day after the date of the CDP notice issued under Section 6330 and that the written request for an EH must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP notice.¹⁵ ****1*****
*****1*****
*****1*****

Appeals management agreed with our analysis of the ***1*** cases and indicated that the cases were misclassified due to incorrect judgment on the part of hearing officers. Appeals also indicated that they would make the appropriate corrections to the CSEDs on these taxpayers' accounts.

¹³ Treas. Reg. § 301.6330-1- Notice and opportunity for hearing prior to levy.

¹⁴ A taxpayer must submit a written request for an EH within the one-year period starting the day after the date of the CDP Notice of Levy.

¹⁵ Treas. Reg. § 301.6330-1.



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

Recommendation 2: Request written guidance from Chief Counsel that specifies what constitutes timely receipt of a taxpayer's appeal request for a CDP hearing. After Appeals receives this guidance, it should share this information with both Appeals personnel and Collection employees to ensure taxpayer requests for CDP hearings are processed consistently.

Management's Response: Appeals management agreed with this recommendation and will request a written advisory opinion from Chief Counsel. Upon receipt, Appeals plans to share the advice within Appeals and the Collection function.

The Collection Statute Expiration Date Was Not Always Computed Correctly

Our review of a statistically valid sample of 70 CDP cases identified 16 (23 percent) cases had an inaccurate CSED. In the previous review, we identified a total of 15 CSED errors.¹⁶ For the 16 cases we identified, the IRS incorrectly increased the CSED time period in 13 of the CDP cases, allowing the IRS additional time it should not have had to collect the delinquent taxes. In the remaining three cases, the IRS incorrectly decreased the time the IRS had to collect the delinquent taxes. We project a total of 9,450 of the 41,343 CDP cases closed in FY 2011 may have an incorrect CSED (7,678 taxpayers had their time extended in error and 1,772 taxpayers had their collection time shortened).

The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The final date to collect is referred to as the CSED. Because the IRS usually stops collection activity during the Appeals process, the CSED is temporarily suspended during a CDP hearing. Specifically, 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 the date the IRS receives the taxpayer withdrawal request. When the IRS suspends the collection statute for a period longer than its policy allows, it potentially violates taxpayer rights. Conversely, when CSEDs are incorrectly shortened, the IRS has less time to collect delinquent taxes, which could cause the IRS a potential loss of revenue.

Incorrect CSED dates resulted from IRS employees incorrectly calculating the suspension start date.¹⁷ Our review identified that the code needed to designate the end of the collection statute suspension was not input or the suspension end date was incorrect. The statute suspension is systemically controlled on the Integrated Data Retrieval System.¹⁸ One code is entered to start

¹⁶ Treasury Inspector General for Tax Administration, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).

¹⁷ The statute of limitations is suspended from the date the IRS receives a timely filed request for a CDP hearing to the date the taxpayer's withdrawal is received by the IRS or the date the determination from Appeals becomes final, including any court appeals.

¹⁸ 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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the suspension and another is entered to stop the suspension and restart the statute period. Generally, the code input to suspend the collection statute is 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 CSED 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).

Appeals management informed us they developed a job aid exhibit to assist its processing employees in more accurately determining the correct CSEDs on taxpayer accounts. We confirmed that the Appeals' IRM was revised with the new job aid exhibit on December 27, 2011, which was after the cases we identified were closed by Appeals personnel.

Recommendation

Recommendation 3: The Chief, Appeals, should review and correct the 16 taxpayer accounts that we identified with CSED errors.

Management's Response: Appeals management agreed with this recommendation. Appeals corrected the CSED errors made on the 16 taxpayer accounts that we identified during this audit.

Hearing Officers Did Not Always Document Their Impartiality As Required

Our review of two statistically valid samples of 70 CDP and 70 EH cases identified that Appeals hearing officers documented impartiality in the CDP Notices of Determination and EH Decision Letters issued to the taxpayers as required for all of the cases we reviewed.¹⁹ However, we did identify seven (10 percent) of the 70 CDP sample cases where the impartiality statement was not also included on the Form 12257 Waiver. In addition, we identified three EH cases (4 percent) where the required impartiality statement was not also included ***** I *****
***** I *****

We project an estimated 4,134 of the 41,343 CDP cases and 450 of the 10,489 EH cases closed in FY 2011 may not contain the required impartiality statement. When the impartiality statement is not documented as required, there is a risk the hearing officer had prior involvement in the taxpayer's case and a potential lack of independence. The 10 errors we identified represent an increase from our prior review, which identified nine cases without an impartiality statement

¹⁹ The IRS is required by statute to issue a Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, at the conclusion of a CDP hearing.



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

fully documented as required.²⁰ Omitting this statement does not mean that hearing officers were not impartial or that taxpayers received an unfair hearing.

The law requires that a CDP hearing be conducted by an impartial hearing officer who has had no prior involvement with the unpaid tax.²¹ In addition, the Appeals IRM extends this requirement to all hearing officers, including those working EHs. The IRM specifies that each hearing officer must document “no prior involvement” in the Case Activity Record during the initial analysis of the taxpayer’s appeal. In addition to documenting the Case Activity Record, hearing officers are also required to document their impartiality in the letters and waivers issued to taxpayers at the conclusion of the appeal:

- *Notice of Determination* – issued at the conclusion of a CDP hearing.
- *Decision Letter* – issued at the conclusion of an EH.
- *Form 12257 Waiver* – issued at the conclusion of a CDP or EH hearing when agreement was reached with the taxpayer and the taxpayer waived judicial review rights.

In response to a previous audit, Appeals implemented a computer programming enhancement to its Appeals Centralized Database System that prompts employees to document impartiality in the Case Activity Records.²² In last year’s audit, we identified this systemic control may not always be working as intended and recommended an additional programming change to correct potential deficiencies. This programming change was not in place during the period applicable to the cases we reviewed because Appeals management agreed to complete this programming change by June 2012.

Additionally, Appeals revised its IRM in December 2010 requiring hearing officers to document the impartiality statement on the Form 12257 Waiver. For example, if the taxpayer agrees to an installment agreement during an appeal, the hearing officer may ask the taxpayer to sign a Form 12257 Waiver. Previously, the Appeals IRM stated that if a hearing officer secured a Form 12257 Waiver from the taxpayer, the impartiality statement was only required in the Case Activity Record. However, we found that Appeals’ procedures in effect during the review contained inconsistent guidance about the requirement to document impartiality when the taxpayer signs a Form 12257 Waiver. In one section of the IRM, hearing officers are directed to document the impartiality statement on the Form 12257 Waiver. However, in another section, the IRM states that the hearing officer only needs to document the impartiality statement in the Case Activity Record when a Form 12257 Waiver is secured.

²⁰ Treasury Inspector General for Tax Administration, Ref. No. 2010-10-075, *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (July 2010).

²¹ Per I.R.C. §§ 6320 and 6330, a taxpayer may waive this requirement.

²² The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

Appeals management informed us of their plan to modify the closing letter that accompanies the Form 12257 Waiver to include an impartiality statement for future notices. At the end of our fieldwork, Appeals Management also informed us of their plan to review their IRM to ensure consistency for impartiality statements and Form 12257 Waivers.

Recommendation

Recommendation 4: The Chief, Appeals, should revise Appeals internal guidelines to ensure impartiality is properly documented on the Form 12257 Waiver.

Management's Response: Appeals management agreed with this recommendation. On March 29, 2012, Appeals published a revised IRM that now requires hearing officers to include the impartiality statement in the cover Letter 4382 that accompanies the approved Form 12257 Waiver.

Errors Relating to Misclassified Cases, Impartiality, and Collection Statute Expiration Dates Have Increased Over Time

Trending analysis of the results of our current and past reviews of CDP case processing during the period FY 2008 through FY 2012 identified an increase in misclassified cases, incorrect CSEDs, and impartiality errors.

Misclassified cases have increased since FY 2009

In FY 2008 and FY 2009, we found that Appeals properly determined whether taxpayers should receive either a CDP hearing or an EH in the sample of cases we reviewed. However, we have identified more misclassified cases during our audits since FY 2009. Figure 2 shows the number of errors and the estimated number of taxpayer cases that may have been misclassified in FY 2010 through FY 2012.



**Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist**

**Figure 2: Misclassified Cases and Potential Taxpayer
Cases Affected FY 2008 Through 2012**

Fiscal Year of Audit	Number of Misclassified Cases Identified	Potential Taxpayer Cases
2008	0	0
2009	0	0
2010	**1**	410
2011	4	947
2012	4	1,922

Source: Our review of 140 cases each year during FY 2008 through FY 2012.

Similar to the explanation provided this year relating to the misclassification errors we identified, Appeals management indicated in last year's audit²³ that the misclassification was generally due to incorrect judgment on the part of the case hearing officers. We will continue to monitor this situation in future audits to determine whether our recommendations this year will result in less misclassified cases by Appeals personnel.

Incorrect computation of Collection Statute Expiration Dates continues to increase

During our review in FY 2008, we found that Appeals properly computed the CSEDs for all of the cases we reviewed. However, we have identified an increasing number of cases with incorrect CSEDs since FY 2008. Figure 3 shows that the number of cases with incorrect CSEDs has increased from ***1*** to 16 cases from FY 2009 to FY 2012. Accordingly, the number of taxpayers potentially affected by the CSED errors has also grown.

²³ Treasury Inspector General for Tax Administration, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

**Figure 3: Cases Identified With Incorrect CSEDs
FY 2008 Through FY 2012**

Fiscal Year of Audit	Cases With Overstated CSEDs	Cases With Understated CSEDs	Potential Taxpayer Cases
2008	0	0	0
2009	**1**	0	100
2010	5	5	3,784
2011	9	6	7,990
2012	13	3	9,450

Source: Our review of 140 cases each year during FY 2008 through FY 2012.

In response to our FY 2008 report,²⁴ Appeals management agreed to revise their written guidance, update templates, provide training to hearing officers, and develop and implement a procedure to immediately correct taxpayer accounts when hearing officers identify missing computer codes for suspension of collection activity. In addition, Appeals management agreed in FY 2011 to develop a job aid to assist processing employees in more accurately determining the correct suspension dates. This job aid was not prepared until after the cases selected during this audit were closed by Appeals personnel.²⁵

Inconsistency of documenting impartiality continues to increase

During the past five reviews, we have identified several cases without the required impartiality statements documented in Case Activity Records and in the letters and waivers sent to taxpayers. During FY 2009, we identified ***1*** without the required impartiality statement. However, the number of impartiality errors doubled in FY 2012 (from five to 10 cases) compared to FY 2008. Figure 4 shows the number of impartiality errors and the potential number of taxpayer cases affected from FY 2008 through FY 2012.

²⁴ Treasury Inspector General for Tax Administration, Ref. No. 2008-10-160, *The Office of Appeals Continues to Show Improvement in Processing Collection Due Process Cases* (Sept. 2008).

²⁵ Treasury Inspector General for Tax Administration, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).



**Office of Appeals Errors in the Handling of
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Figure 4: Impartiality Errors and Potential Taxpayer Cases Affected FY 2008 Through FY 2012

Fiscal Year of Audit	Impartiality Errors Identified	Potential Taxpayer Cases
2008	5	1,351
2009	**1**	386
2010	8	2,029
2011	9	2,426
2012	10	4,584

Source: Our review of 140 cases each year during FY 2008 through FY 2012.

In response to our FY 2007 report,²⁶ Appeals management agreed to revise written guidance and provide training to hearing officers for documenting impartiality. In our FY 2010 report,²⁷ we recommended that Appeals management ensure that a programming enhancement implemented on the Appeals Centralized Database System is effective in assisting employees working CDP cases to document prior involvement with taxpayers. In last year's audit, we identified this systemic control may not always be working as intended and recommended an additional programming change to correct potential deficiencies. Appeals management agreed to complete this revised programming change by June 2012.

²⁶ Treasury Inspector General for Tax Administration, Ref. No. 2007-10-139, *The Office of Appeals Has Improved Its Processing of Collection Due Process Cases* (Sept. 2007).

²⁷ Treasury Inspector General for Tax Administration, Ref. No. 2010-10-075, *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (July 2010).



**Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist**

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with 26 United States Code Sections (§§) 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their right to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. To accomplish this objective, we:

- I. Determined whether any new procedures or processes have been developed since the prior Treasury Inspector General for Tax Administration statutory review.
- II. Selected a statistically valid sample of closed CDP and EH cases, obtained the Appeals case file and administrative files, and determined if Appeals had completed case files.
 - A. Obtained an extract of the Appeals Centralized Database System¹ file maintained at the Treasury Inspector General for Tax Administration Data Center Warehouse² of 41,343 CDP and 10,489 EH cases closed during FY 2011 (October 1, 2010, through September 30, 2011). We validated the extract by reviewing the appropriateness of data within fields requested and comparing population totals to information obtained from Appeals officials.
 - B. Selected and secured CDP and EH cases for our two samples. We selected statistical attribute samples of 70 CDP cases (population of 41,343) and 70 EH cases (population of 10,489). We used a confidence level of 90 percent, a precision level of ± 6 percent, and an expected error rate of 10 percent to determine these sample sizes. We selected statistical samples because we wanted to project our results to the entire population of CDP and EH cases.
 - C. Determined whether the Appeals case files and/or administrative files contained the required documentation per internal guidelines.
- III. Determined whether Appeals' CDP and EH cases were classified correctly using the CDP and the EH samples selected in Step II.B.

¹ The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.

² The Data Center Warehouse is an architecture used to maintain critical historical data that has been extracted from operational data storage and transformed into formats accessible to the Treasury Inspector General for Tax Administration analytical community.



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- A. Determined if the CSED was calculated correctly on the taxpayer's account on the Integrated Data Retrieval System³ based on the type of hearing granted.
- IV. Determined whether Appeals was in compliance with 26 United States Code §§ 6320(b) and (c) and 6330(b) and (c) using the CDP and the EH samples selected in Step II.B. by reviewing case file information to determine whether Appeals documented that the taxpayer was provided with an impartial hearing officer or waived this requirement [26 United States Code §§ 6320(b)(3) and 6330(b)(3)].
- V. Determined whether CDP and EH accounts were properly coded on the Integrated Data Retrieval System.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: IRS policies and procedures for classifying CDP and EH cases, ensuring hearing officers met the criteria specified in 26 United States Code §§ 6320 and 6330, and reviewing applicable computer codes on the Integrated Data Retrieval System for CDP and EH cases. We evaluated these controls by selecting a sample of CDP and EH cases, reviewing case documentation, and discussing potential exception cases with Appeals officials.

³ 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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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Chief, Appeals AP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Chief, Appeals AP:TP:SS



**Office of Appeals Errors in the Handling of
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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; 1,772 CDP case files contain hearing requests that were received late and were not properly classified as an EH case (see page 4).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the Appeals Centralized Database System¹ and identified a population of 41,343 CDP cases that were closed in FY 2011. We selected a simple random sample of 70 CDP cases and found that three of these CDP case files contained a taxpayer CDP request that was misclassified. We estimate that 4.29 percent of the cases in the population (1,772 CDP case files) may have contained misclassified CDP taxpayer requests. When CDP cases are misclassified, taxpayers receive hearing rights to which they are not legally entitled. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.98 percent and 12.60 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 150 EH case files contain hearing requests that were received more than one year after the Notice of Intent to Levy and were inappropriately provided an EH (see page 4).

Methodology Used to Measure the Reported Benefit:

For the EH sample, we used a computer extract from the Appeals Centralized Database System and identified 10,489 EH cases that were closed in FY 2011. We selected a simple random sample of 70 EH cases and found that *****1*****. We estimate that 1.43 percent of the cases in the population (150 EH case files) may have contained misclassified taxpayer requests for which Appeals may have

¹ The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

improperly provided an EH. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.07 percent and 6.60 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 7,678 CDP case files in which taxpayers had CSEDs that were inappropriately extended longer than the length of the hearing (see page 7).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 41,343 CDP cases that were closed in FY 2011. We selected a simple random sample of 70 CDP cases and found 13 of these CDP case files contained instances in which the taxpayer's CSED had been suspended longer than the length of the CDP hearing. We estimate that 18.57 percent of the cases in the population (7,678 CDP case files) had an incorrect CSED posted to taxpayer records. A CSED extended in error to a taxpayer account provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Normal Approximation Method, we are 90 percent confident that the true exception rate is between 10.88 percent and 26.27 percent.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; 1,772 CDP case files indicated taxpayers had CSEDs that were not correctly extended for the length of the CDP hearing (see page 7).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the Appeals Centralized Database System, we identified a population of 41,343 CDP cases that were closed in FY 2011. We selected a simple random sample of 70 CDP cases and found three of these CDP case files contained instances in which the taxpayer's CSED was not correctly extended for the length of the CDP hearing. We estimate that 4.29 percent of the cases in the population (1,772 CDP case files) had an incorrect CSED posted to taxpayer records. A CSED shortened in error to a taxpayer account provides the IRS less time than legally allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.18 percent and 10.71 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 4,134 CDP case files did not contain the impartiality statement documented on the Form 12257 Waiver issued to the taxpayer (see page 8).



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

- Taxpayer Rights and Entitlements – Potential; 450 EH case files did not contain the impartiality statement documented on the Form 12257 Waiver issued to the taxpayer or in the Case Activity Record (see page 8).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 41,343 CDP cases that were closed in FY 2011. We selected a simple random sample of 70 CDP cases and found that seven of these CDP case files did not contain the required impartiality statement on the Form 12257 Waiver. We estimate that 10 percent of the cases in the population (4,134 CDP case files) did not contain the required impartiality statement. If a hearing officer does not document the determination notice with a statement of his or her impartiality, taxpayer rights may be affected because there is a risk of prior involvement and a potential lack of independence. Using the Normal Approximation Method, we are 90 percent confident that the true exception rate is between 4.06 percent and 15.94 percent.

For the EH sample, we used a computer extract from the Appeals Centralized Database System and identified 10,489 EH cases that were closed in FY 2011. We selected a simple random sample of 70 EH cases and found that three of these EH case files did not contain the required impartiality statement on the Form 12257 Waiver or Case Activity Record. We estimate that 4.29 percent of the cases in the population (450 EH case files) did not contain the required impartiality statement. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.18 percent and 10.71 percent.



Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist

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. A taxpayer is allowed to appeal the filing of the lien or proposed levy action through the CDP by filing a hearing request. This hearing request must be received within 30 calendar days plus five business days of the filing of the lien or within 30 calendar days of the date of the Notice of Intent to Levy. 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 a taxpayer's hearing request is not submitted timely, Appeals has discretionary authority to 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. 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 a Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, which provides an explanation of the right to a judicial review. If the taxpayer disagrees with the Appeals decision, he or she may petition the courts. For an EH case, the taxpayer receives a Letter 3210, *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330*. If the taxpayer disagrees with the Appeals decision in an EH, he or she may not petition the courts. For both applicable CDP and EH cases, the taxpayer may receive a Form 12257, *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing*, when the taxpayer agrees with Appeals, waives the right to a judicial review, and waives the suspension of collection action.



***Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist***

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.

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.



**Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist**

Appendix VI

***Time Periods for Collection Due Process and
Equivalent Hearings***

Taxpayers must appeal within certain deadlines to qualify for either a CDP hearing or an EH, depending on whether the taxpayer is appealing a proposed levy or a tax lien.¹

Collection Due Process Deadlines

- Lien Notice – A request for a CDP hearing for a Federal tax lien filing must be postmarked by the date indicated in the Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320* (lien notice).
- Levy Notice – A request for a CDP hearing for a levy must be postmarked within 30 days after the date of the Letter 11/1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy notice).

Equivalent Hearing Deadlines

Taxpayers that miss the deadline for a CDP hearing may request an EH within the following time periods:

- Lien Notice – one year plus five business days from the filing date of the Notice of Federal Tax Lien.
- Levy Notice – one year from the date of the levy notice.

Timeliness Considerations

Any written request for a CDP hearing should be filed at the address indicated on the notice. If the request is not sent to the correct address, it must be received by the correct office within the 30-day period in order to be timely.

¹ Form 12153, *Request for a Collection Due Process Hearing* (Rev. 3-2011), explains the deadlines for requesting a CDP hearing or an EH. Regulations also specify that the written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice (26 CFR § 301.6330-1, Q C-6, April 1, 2011).



***Office of Appeals Errors in the Handling of
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Appendix VII

***Prior Mandatory Collection
Due Process Audit Reports***

Below is a list of the prior Treasury Inspector General for Tax Administration audits of the Appeals' Collection Due Process performed during FY 2008 through FY 2011:

- **FY 2008** – Treasury Inspector General for Tax Administration, Ref. No. 2008-10-160, *The Office of Appeals Continues to Show Improvement in Processing Collection Due Process Cases* (Sept. 2008).

- **FY 2009** – Treasury Inspector General for Tax Administration, Ref. No. 2009-10-126, *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Sept. 2009).

- **FY 2010** – Treasury Inspector General for Tax Administration, Ref. No. 2010-10-075, *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (July 2010).

- **FY 2011** – Treasury Inspector General for Tax Administration, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).



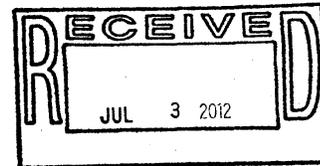
**Office of Appeals Errors in the Handling of
Collection Due Process Cases Continue to Exist**

Appendix VIII

Management's Response to the Draft Report



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



JUL - 3 2012

MEMORANDUM FOR MICHAEL E. MCKENNEY
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

From: Christopher Wagner
Chief, Appeals

Subject: Draft Audit Report - The Office of Appeals Errors in the Handling
Of Collection Due Process Cases Continue to Exist
(Audit 2012-10-010)

Thank you for the opportunity to review and comment on the subject draft audit report. We concur that your recommendations will provide measurable benefits to tax administration by enhancing the protection of taxpayer rights and potentially increasing tax revenue. We agree with recommendations 1 through 3, as written. In response to recommendation 4, we agree with TIGTA that the taxpayer should be informed of the hearing officer's impartiality at closing. Our guidance requires hearing officers to include the impartiality language in the closing letter that accompanies Form 12257, rather than in the form itself, as recommended.

Appeals has worked and will continue to work diligently to protect taxpayer rights and to enhance the final work product. Your recommendations will assist us in our efforts. Attached are our corrective actions in response to your recommendations.

If you have any questions, please have a member of your staff contact Susan L. Latham, Director, Appeals Tax Policy & Valuation, at (202) 435-5659.

Attachment



***Office of Appeals Errors in the Handling of
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Attachment

Recommendation 1:

The Chief, Appeals should provide refresher training to Appeals personnel to reemphasize the process to follow when determining whether a taxpayer is entitled to a CDP hearing or an EH.

Proposed Corrective Action:

Appeals management agrees with this recommendation. Appeals will develop a refresher class on the topic of determining timeliness of collection due process and equivalent hearings requests. The class will be made available as a CPE topic to Appeals technical employees who work CDP cases.

Implementation Date: September 15, 2013

Responsible Official: Director, Appeals Tax Policy & Valuation

Corrective Action Monitoring Plan: The Director, Tax Policy and Procedure (Collection and Processing) will inform the Director, Appeals Tax Policy & Valuation of any delays in implementing this action.

Recommendation 2:

The Chief, Appeals should request written guidance from Chief Counsel that specifies what constitutes a timely receipt of a taxpayer's appeal request for a CDP hearing. After Appeals receives this guidance, it should share this information with both Appeals personnel and Collection employees to ensure taxpayer requests for CDP hearings are processed consistently.

Proposed Corrective Action:

Appeals management agrees with this recommendation. Appeals requested a written advisory opinion from Chief Counsel, which it will share within Appeals and with Collection Policy.

Implementation Date: December 15, 2012

Responsible Official: Director, Appeals Tax Policy & Valuation

Corrective Action Monitoring Plan: The Director, Tax Policy and Procedure (Collection and Processing) will inform the Director, Appeals Tax Policy & Valuation of any delays in implementing this action



***Office of Appeals Errors in the Handling of
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Recommendation 3:

The Chief, Appeals should review and correct the 16 taxpayer accounts that we identified with CSED errors.

Proposed Corrective Action:

Appeals management agrees with this recommendation. All Transaction Code (TC) 520 and 521 errors on the taxpayers' accounts identified in this audit have been corrected.

Implementation Date: Implemented

Responsible Official: Director, Appeals Tax Policy & Valuation

Recommendation 4

The Chief, Appeals should revise Appeals internal guidelines to ensure impartiality is properly documented on the Form 12257 Waiver.

Proposed Corrective Action:

Appeals management agrees that the hearing officer should inform the taxpayer and properly document the impartiality statement. IRM 8.22.5.4.3, published March 29, 2012, requires hearing officers to include the impartiality statement in Letter 4382, which accompanies the approved Form 12257 to the taxpayer. Appeals' alternate approach complies with TIGTA's intent that the taxpayer be informed of the hearing officer's impartiality at closing.

Implementation Date: Implemented

Responsible Official: Director, Appeals Tax Policy & Valuation