



*The Office of Appeals Has Improved
Compliance Within Its Collection Due
Process Program; However, Some
Improvement Is Still Needed*

July 15, 2010

Reference Number 2010-10-075

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



HIGHLIGHTS

THE OFFICE OF APPEALS HAS IMPROVED COMPLIANCE WITHIN ITS COLLECTION DUE PROCESS PROGRAM; HOWEVER, SOME IMPROVEMENT IS STILL NEEDED

Highlights

Final Report issued on July 15, 2010

Highlights of Reference Number: 2010-10-075 to the Internal Revenue Service Chief of Appeals.

IMPACT ON TAXPAYERS

The Office of Appeals (Appeals) continues to show improvement in complying with the statutory requirements for its Collection Due Process (CDP) program. TIGTA determined that Appeals classified most taxpayer requests properly; as a result, these taxpayers received the appropriate type of hearing. Also, in most cases, Appeals personnel input the proper computer coding to identify that taxpayer requests were received and completed.

However, hearing officers did not always document their impartiality as required. As a result, there is a risk of prior involvement in the taxpayer's case and a potential lack of independence. Finally, on some taxpayer accounts, the Collection Statute Expiration Date was extended longer than the length of the CDP hearing, a potential violation of taxpayer rights.

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is statutorily required to determine whether the Internal Revenue Service 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

In response to our previous audit, Appeals developed additional CDP procedures in December 2009 to better ensure that proper documentation is retained in its case files.

During this review, Appeals located and provided office case files containing complete documentation for our CDP and Equivalent Hearing samples, an issue that was a concern in prior years.

However, some cases in our samples did not include an impartiality statement. Appeals personnel informed us that on April 29, 2008, a programming enhancement was implemented on their Appeals Centralized Database System. It assists employees working CDP cases to document prior involvement with taxpayers. However, TIGTA identified some cases that were closed after the enhancement date where hearing officers did not document their impartiality in the case files or in the Decision Letters as required.

Finally, our case reviews identified 10 taxpayer accounts with incorrect Collection Statute Expiration Dates. On five taxpayer accounts, the Collection Statute Expiration Date was extended in error, allowing the Internal Revenue Service additional time to collect any balances owed by these taxpayers, a potential violation of taxpayer rights. Conversely, the Collection Statute Expiration Date on the other five taxpayer accounts was too short, which could cause the Internal Revenue Service a potential loss of revenue.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, determine whether the Appeals Centralized Database System enhancement, which requires hearing officers to document their impartiality, is functioning properly and cannot be bypassed. TIGTA also recommended that Appeals management review and correct the taxpayer accounts with Collection Statute Expiration Date errors identified by the audit team.

Appeals management agreed with both recommendations. Appeals will contact the Modernization and Information Technology Services organization to verify that the coding for the Appeals Centralized Database System enhancement is functioning properly. If any problems are identified, Appeals will take actions to correct the error. Appeals also indicated it corrected the erroneous Collection Statute Expiration Dates identified in this review.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

July 15, 2010

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 Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed (Audit # 201010004)

This report presents the results of our review of to determine whether the Internal Revenue Service 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 part of our Fiscal Year 2010 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 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 A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.



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Abbreviations

ACDS	Appeals Centralized Database System
CDP	Collection Due Process
CSED	Collection Statute Expiration Date
EH	Equivalent Hearing
FY	Fiscal Year
IRS	Internal Revenue Service
U.S.C.	United States Code



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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. Congress 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 provisions. 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). In addition, the taxpayer must request an EH hearing within 1 year of the issuance of the notices of intent to levy or to file a lien.

Taxpayers have the right to petition the United States Tax Court if they disagree with Appeals' decision on a CDP hearing. When Appeals makes a final decision on a taxpayer's case, the hearing officer issues a Determination Letter on CDP cases or a Decision Letter on EH cases. During Fiscal Year (FY) 2009, Appeals closed 28,670 CDP cases and 6,840 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 This is our tenth annual audit of taxpayer appeal rights.

¹ 26 United States Code (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 See Appendix V for an explanation of the CDP and Equivalent Hearing procedures.

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



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Our previous audit report on the Appeals process was issued in September 2009,⁶ and the related corrective action was planned for implementation by February 15, 2010.

The scope period for this year's audit covered CDP and EH cases closed between October 1, 2008, and September 30, 2009, which was prior to the planned implementation date for last year's corrective action. Where applicable, we did not make recommendations in this report for findings repeated from the previous audit if the recommendation and the suggested corrective action was still deemed sufficient in correcting future errors.

This review was performed by contacting Appeals personnel in San Francisco, California, and Syracuse, New York, during the period November 2009 through May 2010. 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.

⁶ *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Reference Number 2009-10-126, dated September 17, 2009).



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Results of Review

Appeals continues to show improvement in complying with the CDP requirements. In response to our previous audit, Appeals developed additional CDP procedures in December 2009 to better ensure that proper documentation is retained in its case files. During this review, Appeals located and provided office case files containing complete documentation for our CDP and EH samples, an issue that was a concern in prior years.⁷

In our prior two audits, we identified concerns related to Appeals providing taxpayers with the proper hearing as well as ensuring the appropriate computer coding was input to taxpayers' accounts. In this audit, we determined that Appeals classified most taxpayer requests properly; as a result, these taxpayers received the appropriate type of hearing. We also found during this review that in most cases, Appeals personnel input the proper computer coding to identify that taxpayer requests were received and completed.

However, Appeals/Settlement officers (hearing officers)⁸ did not always document their impartiality in the case files or in the Decision Letters as required.⁹ If hearing officers do not document their impartiality, there is a risk of prior involvement in the taxpayer's case and a potential lack of independence.

Finally, we identified 10 taxpayer accounts from our sample of 140 CDP and EH cases where the Collection Statute Expiration Date (CSED) was incorrect.¹⁰ On five taxpayer accounts, the CSED date was extended in error, allowing the IRS additional time to collect any balances owed by these taxpayers, a potential violation of taxpayer rights. Conversely, the CSED on the other five taxpayer accounts was too short, which could cause the IRS a potential loss of revenue.

Most Case Files Contained Sufficient Documentation to Verify That Appeals Properly Classified Taxpayers' Requests

During this review, we found that Appeals has made progress in retaining relevant documentation in the case files, which allowed us to independently verify that most taxpayers received the proper type of hearing. Ninety-nine percent of the case files we reviewed contained

⁷ *****1***** Request for a Collection Due Process or Equivalent Hearing (Form 12153).

⁸ For the purpose of this report, Appeals officers and/or Settlement officers will be referred to as hearing officers.

⁹ CDP Determination Letters, CDP Summary Notices of Determination (waivers), and EH Decision Letters all must include an impartiality statement.

¹⁰ The CSED is the date the statute expires for collection of tax, penalty, or interest. The CSED is 10 years from the assessment date of the posting of the original return.



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If a hearing officer does not document the case file with a statement of his or her impartiality, there is a risk of prior involvement in the taxpayer's case and a potential lack of independence. To comply with IRS procedures, Determination and Decision Letters and waivers sent to taxpayers must also include an impartiality statement. However, a lack of this statement does not mean that hearing officers were not impartial or that taxpayers received an unfair hearing.

We identified eight cases in our sample which did not include an impartiality statement. This is a significant increase from our prior review *****1*****
****1****.¹⁴ In 4 (6 percent) of the 70 CDP sample cases, the hearing officer did not include the impartiality statement in the case activity record. *****1*****
*****1*****
*****1*****.

Also, 4 (6 percent) of the 70 EH sample cases did not have the impartiality statement. ***1*****
*****1*****
*****1*****
*****1*****.

We estimate 1,638 of the 28,670 CDP cases and 391 of the 6,840 EH cases closed in FY 2009 did not contain the required impartiality statements. As a result, we could not determine whether taxpayer rights were potentially violated.

This issue has been brought to the attention of Appeals management in prior reports. In response to our FY 2007¹⁵ and FY 2008¹⁶ reports, Appeals management agreed to revise written guidance and provide training to hearing officers for documenting impartiality. During this review, we confirmed that Appeals revised and updated its Internal Revenue Manual in March 2009, which requires hearing officers to include an impartiality statement in the case activity record during their initial analysis of the case.

Appeals personnel informed us that, beginning on April 29, 2008, a programming enhancement change was implemented on the Appeals Centralized Database System (ACDS).¹⁷ It assists employees working CDP cases to document prior involvement with taxpayers. When a hearing officer makes his or her first entry on a new case, he or she will be prompted by a pop-up box to ask if there has been any prior involvement with the taxpayer for the type of tax and tax years associated with the CDP. After the hearing officer responds, a systemic entry is made to the case

¹⁴ *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Reference Number 2009-10-126, dated September 17, 2009).

¹⁵ *The Office of Appeals Has Improved Its Processing of Collection Due Process Cases* (Reference Number 2007-10-139, dated September 21, 2007).

¹⁶ *The Office of Appeals Continues to Show Improvement in Processing Collection Due Process Cases* (Reference Number 2008-10-160, dated September 12, 2008).

¹⁷ The ACDS is a computerized case control system used to control and track cases throughout the appeals process.



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activity record. The pop-up box will also be activated if the taxpayer's case is reassigned or transferred to a new hearing officer.

However, four of the eight cases without an impartiality statement were assigned after Appeals implemented the enhancement to its ACDS. Because omissions of the impartiality statement have continued to occur after the update of the ACDS, this is an indication that the new systemic control may not always be working as intended.

Recommendation

Recommendation 1: The Chief, Appeals, should determine whether the ACDS enhancement, which requires hearing officers to document their impartiality, is functioning properly and cannot be bypassed.

Management's Response: Appeals management agreed with our recommendation. Appeals will consult with the Modernization and Information Technology Services organization to verify that the coding for the ACDS enhancement that it implemented in April 2008 will in all cases prompt the hearing officer for the impartiality statement upon assignment or reassignment of a CDP case. If Appeals identifies a problem with the coding, it will initiate a work request to correct the error. Appeals also will post an article to its web site cautioning employees that the impartiality statement prompt may not always appear in certain circumstances. The article will explain that employees must still document their impartiality, even if not prompted.

The Collection Statute Expiration Date Was Not Always Correct

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. 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 taxpayer withdraws the request in writing.

The statute suspension is systemically controlled on the Integrated Data Retrieval System.¹⁸ One code is entered to start 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

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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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).

However, in 9 (13 percent) of the 70 CDP cases *****1*****
*****. The IRS incorrectly adjusted the collection date in four of the nine CDP cases, which allowed the IRS additional time to collect the delinquent taxes. When the IRS suspends the collection statute for a period longer than its policy allows, it potentially violates taxpayer rights.

In the remaining five CDP cases, the IRS adjusted the collection time to decrease the time the IRS should have had to collect the delinquent taxes. The dates calculated by IRS employees as the suspension start date were incorrect. Similarly, the code needed to designate the end of the collection statute suspension was not input or the suspension end date was incorrect. We estimate 3,686 of the 28,670 CDP cases closed in FY 2009 have an incorrect CSED (2,048 taxpayers had their collection time shortened and 1,638 taxpayers had their time extended in error).

When the taxpayer is given an EH, the collection statute is not suspended. *****1*****

*****. We estimate that 98 of the 6,840 taxpayers with EH cases closed in FY 2009 had their collection statute inappropriately extended, resulting in potential violation of taxpayer rights.

This issue has been brought to the attention of Appeals management in prior reports.¹⁹ In response to our FY 2008 report,²⁰ Appeals management agreed to revise their written guidance, update templates, and provide training to hearing officers. At that time, Appeals also stated that 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 May 15, 2009. As a result, we are making no further recommendations in this report, but we will continue to monitor this issue during future audits.

¹⁹ *The Office of Appeals Has Improved Its Processing of Collection Due Process Cases* (Reference Number 2007-10-139, dated September 21, 2007) and *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).

²⁰ *The Office of Appeals Continues to Show Improvement in Processing Collection Due Process Cases* (Reference Number 2008-10-160, dated September 12, 2008).



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Inaccurate collection dates in taxpayer records need to be constantly monitored and, when necessary, corrected immediately. Hearing officers should thoroughly review collection dates and initiate corrective actions as part of their case processing responsibilities. Failing to correct this vital part of the taxpayer's record will continue to affect taxpayer rights and potentially result in lost revenue to the IRS.

Recommendation

Recommendation 2: The Chief, Appeals, should review and correct the taxpayer accounts with CSED errors that we identified.

Management's Response: Appeals management agreed with our recommendation and indicated they have corrected all CSED errors on the taxpayers' accounts identified during this audit.



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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 (U.S.C.) 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. Determined whether Appeals' CDP and EH case files contained required documentation for a hearing and if the hearing officers followed requirements of 26 U.S.C. §§ 6320 and 6330.
 - A. Obtained an extract of the ACDS¹ file maintained at the Treasury Inspector General for Tax Administration Data Center Warehouse of 28,670 CDP and 6,840 EH cases closed during FY 2009 (October 1, 2008, through September 30, 2009). We validated the extract by reviewing appropriateness of data within fields requested and compared 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 28,670) and 70 EH cases (population of 6,840). 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 70 CDP and 70 EH sampled case files contained adequate documentation and, if applicable, determined the cause and confirmed any potential exceptions with Appeals officials and projected the number of exceptions within each population.
- III. Determined whether Appeals' CDP and EH cases were classified correctly using the CDP and the EH samples selected in Step II.B.
- IV. Determined whether Appeals was in compliance with 26 U.S.C. §§ 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 the following:

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



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- A. The taxpayer was provided with an impartial hearing officer or waived this requirement [26 U.S.C. §§ 6320(b)(3) and 6330(b)(3)].
 - B. The taxpayer was allowed to raise issues at the hearing relating to the unpaid tax or the proposed lien or levy action, including appropriate spousal defenses, challenges to the appropriateness of collection activities, offers of collection alternatives, or the underlying liability [26 U.S.C. §§ 6330(c)(2)].
- V. Determined whether CDP and EH accounts were being properly coded on the Integrated Data Retrieval System.²

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 U.S.C. §§ 6320 and 6330, and reviewing applicable computer codes on the Integrated Data Retrieval System for CDP and EH cases. We evaluated these controls by reviewing a sample of CDP and EH cases and reviewing potential exception cases with Appeals officials.

² 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
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Director, Office of Legislative Affairs CL:LA
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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 – Potential; 410 CDP case files contain hearing requests that were received late and were not properly classified as an EH case (see page 3).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified a population of 28,670 CDP cases that were closed in FY 2009. We selected a statistical attribute sample of 70 CDP cases *****1*****. We estimate that 1.43 percent of the cases in the population (410 taxpayers) were not properly classified. 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 0.07 percent and 6.60 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 98 EH case files did not contain the taxpayer’s written hearing request. As a result, we could not determine if Appeals addressed what the taxpayer’s appeal request covered or whether Appeals addressed all the issue(s) presented (see page 3).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified 6,840 EH cases that were closed in FY 2009. We selected a statistical attribute sample of 70 EH cases *****1*****. We estimate that 1.43 percent of the cases in the population (98 taxpayers) did not contain a taxpayer’s hearing request. Without the hearing request, we could not determine what the taxpayer’s appeal request covered or whether Appeals addressed all the issue(s) presented. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.07 percent and 6.60 percent.



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Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 1,638 CDP case files did not contain the impartiality statement by the hearing officer (see page 4).
- Taxpayer Rights – Potential; 391 EH case files did not contain the impartiality statement by the hearing officer (see page 4).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the ACDS and identified a population of 28,670 CDP cases that were closed in FY 2009. We selected a statistical attribute sample of 70 CDP cases and found that 4 of these CDP case files did not contain the required impartiality statement by the hearing officer. We estimate that 5.71 percent of the cases in the population (1,638 taxpayers) did not contain the required impartiality statement. If a hearing officer does not document the case file 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 Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.97 percent and 12.60 percent.

For the EH sample, we used a computer extract from the ACDS and identified 6,840 EH cases that were closed in FY 2009. We selected a statistical attribute sample of 70 EH cases and found that 4 of these EH case files did not contain the required impartiality statement by the hearing officer. We estimate that 5.71 percent of the cases in the population (391 taxpayers) did not contain the required impartiality statement. If a hearing officer does not document the case file 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 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 – Potential; 1,638 CDP case files in which taxpayers had CSEDs that were inappropriately extended longer than the length of the hearing (see page 6).
- Taxpayer Rights – Potential; 98 EH case files in which taxpayers had CSED that were inappropriately extended (see page 6).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the ACDS and identified a population of 28,670 CDP cases that were closed in FY 2009. We selected a statistical attribute sample of 70 CDP cases and found 4 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



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5.71 percent of the cases in the population (1,638 taxpayers) had an incorrect CSED posted to taxpayer records. A CSED extended in error to a taxpayer account provides the IRS more time than allowed to collect the delinquent taxes. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.98 percent and 12.60 percent.

For the EH sample, we used a computer extract from the ACDS and identified a population of 6,840 EH cases that were closed in FY 2009. We selected a statistical attribute sample of 70 EH cases *****1*****. We estimate that 1.43 percent of the cases in the population (98 taxpayers) had an incorrect CSED posted to taxpayer records. A CSED extended in error to a taxpayer account provides the IRS more time than allowed to collect the delinquent taxes. 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:

- Increased Revenue – Potential; 2,048 CDP case files indicated taxpayers had CSEDs that were not correctly extended for the length of the CDP hearing (see page 6).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified a population of 28,670 CDP cases that were closed in FY 2009. We selected a statistical attribute sample of 70 CDP cases and found 5 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 7.14 percent of the cases in the population (2,048 taxpayers) had an incorrect CSED posted to taxpayer records. A CSED shortened in error to a taxpayer account provides the IRS less time than 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 2.86 percent and 14.43 percent.



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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. 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 5 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 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 collection action. If the taxpayer disagrees with the Appeals decision, he or she may petition the courts. 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.



*The Office of Appeals Has Improved Compliance
Within Its Collection Due Process Program;
However, Some Improvement Is Still Needed*

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.



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Appendix VI

Management's Response to the Draft Report



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

RECEIVED
JUN 30 2010
BY: *DAS*

JUN 29 2010

MEMORANDUM FOR MICHAEL R. PHILLIP
TREASURY INSPECTOR GENERAL FOR TAX
ADMINISTRATION

FROM: Diane S. Ryan *Diane S. Ryan*
Chief, Appeals

SUBJECT: Draft Audit Report – The Office of Appeals Has Improved
Compliance Within Its Collection Due Process Program;
However, Some Improvement Is Still Needed (Audit 2010-10-
004)

I have reviewed the subject draft audit report. I appreciate your recognition of our continued improvement in the processing of Collection Due Process (CDP) cases and value your recommendations to help us improve our processes. Appeals has worked and will continue to work aggressively and diligently to protect taxpayer rights, enhance the final work product, and ensure accurate computer coding on taxpayer accounts. Your recommendations have furthered our efforts on these fronts. Attached are our corrective actions in response to your recommendations.

We agree there is a need to ensure that the impartiality statement is documented in all cases when a collection due process or an equivalent hearing case is assigned or reassigned to a hearing officer. We will review the coding for the Appeals Centralized Database System (ACDS) enhancement deployed in April 2008 to ensure that the hearing officer is prompted for this statement as the initial entry into the case activity record in every instance. We will reemphasize with our employees the importance of documenting the impartiality statement both in the case activity record and in the closing letter.

Finally, Appeals will continue to review its policies and procedures to ensure appropriate computer coding is entered and incorrect coding is timely corrected on the Integrated Data Retrieval System (IDRS) as part of both front-end and back-end processing. We have taken corrective actions with respect to the cases cited in the audit.

If you have any questions, please have a member of your staff contact Beverly Ortega Babers, Director, Appeals Policy & Valuation, at (202) 435-5659.



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2

Attachment

Recommendation 1:

The Chief, Appeals should determine whether the ACDS enhancement, which requires hearing officers to document their impartiality, is functioning properly and cannot be bypassed.

Proposed Corrective Action:

Appeals will consult with Modernization and Information Technology Services (MITS) to verify that the coding for the ACDS enhancement that we implemented in April 2008 will in all cases prompt the hearing officer for the impartiality statement upon assignment or reassignment of a CDP case. If we identify a problem with the coding, we will initiate a work request to correct the error. In the interim, Appeals will post an article to the Appeals web site cautioning employees that situations could exist where they may not be prompted for the impartiality statement; and that employees must still document their impartiality, even if not prompted.

Implementation Date: October 15, 2010

Responsible Official: Director, Appeals Policy & Valuation

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

Recommendation 2:

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

Proposed Corrective Action:

We have corrected all CSED errors on the taxpayer's accounts identified during this audit.

Implementation Date: Implemented

Responsible Official: Director, Appeals Policy & Valuation