



*Additional Improvements Are Needed
in the Office of Appeals Collection
Due Process Program to Ensure
Statutory Requirements Are Met*

August 15, 2011

Reference Number 2011-10-062

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

ADDITIONAL IMPROVEMENTS ARE NEEDED IN THE OFFICE OF APPEALS COLLECTION DUE PROCESS PROGRAM TO ENSURE STATUTORY REQUIREMENTS ARE MET

Highlights

Final Report issued on August 15, 2011

Highlights of Reference Number: 2011-10-062 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 Internal Revenue Service (IRS) files a lien or a Notice of Intent to Levy for unpaid taxes. TIGTA identified areas in which Appeals can improve its processing of Collection Due Process cases. Appeals did not always classify taxpayer requests properly, which affects the taxpayer's right to petition the United States Tax Court and the time allowed for the IRS to collect any balances owed. On some taxpayer accounts, TIGTA found errors with the Collection Statute Expiration Dates (CSED), which can potentially violate taxpayer rights. Further, hearing officers did not always document their case files with all required information, increasing the risk that the IRS had not met all the requirements of applicable laws or administrative procedures with respect to the proposed levy or lien.

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 right 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 this review, TIGTA identified areas in which Appeals can improve its processing of Collection Due Process cases. Specifically, Appeals did

not always grant taxpayers the correct type of hearing. TIGTA determined that four cases were misclassified, which is an increase from our prior audit. TIGTA also found significantly more errors related to the CSEDs on taxpayer accounts than during prior audits. Specifically, 15 cases from our sample of 70 Collection Due Process cases had incorrect CSEDs, a 50-percent increase from the prior review which had identified 10 cases with incorrect CSEDs. TIGTA found that Appeals properly ensured that nearly all Determination and Decision Letters issued to taxpayers documented their impartiality in the case and verified that applicable laws and administrative procedures were followed, as required by statute. However, Appeals personnel are still not always recording these issues in their case files as required by Appeals' procedures.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, correct the inaccurate CSEDs identified in the audit and develop a job aid for processing employees to assist in more accurately determining the correct CSEDs. TIGTA also recommended the Chief, Appeals, determine whether the impartiality statement generated by the systemic prompt should be reevaluated so that it cannot be overwritten and evaluate what documentation should be maintained in the Case Activity Records to support the hearing officer's conclusions that the IRS followed applicable laws and procedures.

Appeals management agreed with all of our recommendations. Appeals agreed to: 1) verify that the inaccurate CSEDs identified in this review are corrected, 2) revise the Internal Revenue Manual to incorporate a job aid to assist processing employees with determining correct CSEDs, 3) request a computer enhancement that would result in a "read only" case activity record affirming each hearing officer's impartiality, and 4) remove the requirement to document the verification of the legal and administrative procedures in the case activity record.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 15, 2011

MEMORANDUM FOR CHIEF, APPEALS

FROM: *Michael R. Phillips*
Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met (Audit # 201110008)

This report presents the results of our review of the statutory review of 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 of our Fiscal Year 2011 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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*Additional Improvements Are Needed in the
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Abbreviations

| | |
|--------|-------------------------------------|
| ACDS | Appeals Centralized Database System |
| CDP | |
| CSED | Collection Statute Expiration Date |
| EH | Equivalent Hearing |
| FY | Fiscal Year |
| IRM | Internal Revenue Manual |
| 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 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 under the Collection Due Process (CDP)⁵ provisions. The Office of Appeals (Appeals) is independent of other IRS offices, and its mission is to resolve tax controversies, without litigation, on a basis that 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 period, usually within 30 calendar days, the taxpayer, at the discretion of Appeals, might be granted an Equivalent Hearing (EH).

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) 2010, Appeals closed 37,289 CDP cases and 9,653 EH cases. Taxpayers have the right to petition the United States Tax Court if they disagree with Appeals' decision on a CDP hearing but cannot petition an EH decision.⁶

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

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

² 26 U.S.C. § 6331 (Supp. III 2000).

³ Taxpayer Bill of Rights 2 (Pub. L. 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.

⁶ CDP hearings allow taxpayers the right to petition the United States Tax Court if they disagree with Appeals' final determination or decision. Additionally, the IRS usually stops collection activity during the Appeals CDP hearing by suspending the Collection Statute Expiration Date.



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of Intent to Levy and the right of the taxpayer to appeal.⁷ This is our eleventh annual audit of taxpayer appeal rights.

In previous audits, we had concerns that relevant information was not always retained in the case files, which made it difficult to evaluate whether the CDP requirements were met.⁸ In this audit, we confirmed that Appeals developed and initiated additional procedures in December 2009 to better ensure that proper records are retained in its case files. Because many of the cases in our samples were opened before Appeals implemented this change, we plan to evaluate this during future audits.

The scope for this year's audit covered CDP and EH cases closed between October 1, 2009, and September 30, 2010. This review was performed by contacting Appeals personnel in San Francisco, California; Denver, Colorado; and Syracuse, New York, during the period November 2010 through May 2011. 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.

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

⁸ *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Reference Number 2009-10-126, dated September 17, 2009), and *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (Reference Number 2010-10-075, dated July 15, 2010).



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Results of Review

We identified areas in which Appeals can improve its processing of CDP cases. Specifically, Appeals did not always grant taxpayers the correct type of hearing. 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 United States Tax Court and the time allowed for the IRS to collect any balances owed. During this review, we determined four cases were misclassified, an increase from our prior audit which identified *****1*****.

We also found significantly more errors related to the Collection Statute Expiration Dates (CSED)⁹ on taxpayer accounts than during prior audits. In this review, we identified 15 cases from our sample of 70 CDP cases with incorrect CSEDs, a 50-percent increase from the prior review which identified 10 cases with incorrect CSEDs. When CSED dates are extended in error, the IRS is provided 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 the IRS a potential loss of revenue.

Overall, we found that Appeals properly ensured that nearly all Determination and Decision Letters issued to taxpayers documented their impartiality in the case and verified that applicable laws and administrative procedures were followed, as required by statute.¹⁰ However, Appeals personnel are still not always recording these issues in their case files, as required by the Appeals' Internal Revenue Manual (IRM). For example, hearing officers did not always document their impartiality or the legal verification statement in the Case Activity Records.¹¹

Taxpayers Did Not Always Receive the Appropriate Type of Hearing

When taxpayers request an Appeals hearing regarding the filing of a lien or the issuance of a Notice of Intent to Levy, the taxpayer may receive a CDP hearing or an EH. If granted a CDP hearing by Appeals, the taxpayer has the right to seek judicial review of the final determination and the collection activity is suspended during the hearing. If an EH is granted, the taxpayer cannot petition the United States Tax Court if he or she disagrees with Appeals' decision. In addition, the collection activity is not suspended during an EH.

⁹ 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.

¹⁰ 26 U.S.C. §§ 6320 and 6330 (2010).

¹¹ The Case Activity Record is a subsystem of the Appeals Centralized Database System that allows the hearing officer to electronically record his or her actions taken during the course of the hearing with the taxpayer.



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To receive a CDP hearing, the taxpayer must timely submit a written request for a levy hearing within a specified 30-day period. For a CDP lien hearing, the written request must be submitted on or before the “must file by” date on the IRS Notice of Federal Tax Lien. To receive an EH, taxpayers must generally submit a request in writing and file this request within a 1-year period following notification by the IRS of the lien or levy.

For this review, we identified four cases *****1***** where the taxpayer did not receive the appropriate type of hearing. This is an increase from our prior review which identified only *****1*****.¹²

*****1*****

*****1*****

Appeals management agreed with our analysis and indicated that the errors were due to incorrect judgment on the part of the case hearing officers. Appeals also indicated that they would make the appropriate corrections to the CSED on these taxpayers’ accounts. Based on the errors we identified, we estimated that a total of 533 taxpayer cases may have received a CDP hearing during FY 2010 instead of an EH as required, 276 taxpayer cases may have received an EH hearing during FY 2010 instead of a CDP as required, and 138 taxpayer cases may have been incorrectly granted an EH hearing even though the request was made more than 1 year after the notice.

Recommendation

Recommendation 1: The Chief, Appeals, should ensure the CSEDs are corrected for the taxpayer accounts that we identified as misclassified.

Management’s Response: Management agreed with this recommendation and stated they plan to verify that the inaccurate CSEDs identified in this review are corrected.

¹² *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (Reference Number 2010-10-075, dated July 15, 2010).



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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 IRS receives the taxpayer's request to withdraw.

The statute suspension is systemically controlled on the Integrated Data Retrieval System.¹³ One code is entered to start the suspension and another is entered to stop the suspension and restart the statute period. 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).

However, in 15 (21 percent) of the 70 CDP cases sampled, the CSEDs were inaccurate. We identified that these taxpayer accounts had inaccurate CSEDs that ranged between 1 and 285 days from the correct CSEDs. The IRS input an incorrect date in nine of the 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 six CDP cases, the IRS incorrectly adjusted the collection time to decrease the time the IRS would 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. As a result, the IRS has less time to collect delinquent taxes, which could cause the IRS a potential loss of revenue. We estimate 7,990 of the 37,289 CDP cases closed in FY 2010 had an incorrect CSED (3,196 taxpayers had their collection time shortened, and 4,794 taxpayers had their time extended in error).

Appeals management informed us that due to the different hearing request circumstances and the variation in the IRM rules, Appeals processing employees inputting the suspension codes sometimes have difficulty identifying the correct dates for CSED suspension. Appeals management also informed us that a job aid CSED summary sheet is under consideration to help processing employees to more accurately assess the CSED suspension circumstances and input the correct dates of suspension.

¹³ 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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Collection dates in taxpayer records need to be monitored regularly and when errors are identified, they should be corrected immediately. 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.

Recommendations

Recommendation 2: The Chief, Appeals, should ensure a job aid for processing employees is developed to more accurately determine the correct suspension dates.

Management's Response: Management agreed with this recommendation and stated that they plan to revise the Internal Revenue Manual to incorporate a job aid to assist processing employees with determining correct CSEDs.

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

Management's Response: Management agreed with this recommendation and stated they plan to verify that the inaccurate CSEDs identified in this review are corrected.

Hearing Officers Did Not Always Document Their Impartiality

The law requires that a CDP hearing be conducted by an impartial hearing officer who has had no prior involvement with the unpaid tax.¹⁴ 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. Hearing officers are also required to document their impartiality in the letters issued to taxpayers at the conclusion of the appeal. However, a lack of this statement does not mean that hearing officers were not impartial or that taxpayers received an unfair hearing.

In this review, we found that all of the CDP Determination Letters issued to taxpayers at the end of the appeals hearing contained the impartiality statement.¹⁵ However, we identified nine cases (three CDP and six EH) without an impartiality statement in the Case Activity Record or the EH Decision Letters.¹⁶ Figure 1 shows the impartiality errors in our samples of CDP and EH cases.

¹⁴ Per U.S.C. §§ 6320 and 6330, a taxpayer may waive this requirement.

¹⁵ The IRS is required by statute to issue a form Letter 3193 – *Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330* at the conclusion of a CDP hearing.

¹⁶ A Decision Letter is issued to a taxpayer at the conclusion of an EH. The IRS issues a form Letter 3210 – *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330 of the Internal Revenue Code* at the conclusion of an EH hearing which serves the same purpose as the CDP Notice of Determination.



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Figure 1: Impartiality Not Documented

| | |
|--|----------|
| *****1***** | 9 |
| *****1***** | |
| *****1***** | |
| *****1***** | |
| *****1***** | |
| Total Impartiality Errors on CDP and EH Cases | 9 |

Source: Treasury Inspector General for Tax Administration Review of CDP and EH cases.

Specifically, 3 (4.29 percent) of the 70 CDP cases did not include the impartiality statement in the Case Activity Record. In addition, 6 (8.57 percent) of the 70 EH cases did not have an impartiality statement in either the Case Activity Record *****1***** or the Decision Letter ***1****. Based on the cases we reviewed, we estimated that 1,598 of the 37,289 CDP cases and 827 of the 9,653 EH cases closed in FY 2010 did not contain the required impartiality statement. The errors we identified represent a slight increase from our prior review, which found eight cases without an impartiality statement.¹⁷

In some instances, a hearing officer may start working a case but, due to the complexity of the case or inventory considerations, management may transfer the case to another hearing officer. All hearing officers are required to document their impartiality even if they do not work the taxpayer’s case to completion. This situation impacted four cases in our samples because both hearing officers assigned to the cases did not document his or her impartiality.

The issue of impartiality has been brought to the attention of Appeals management in prior reports.¹⁸ In response to one of our previous recommendations, Appeals implemented a computer programming enhancement to their Appeals Centralized Database System (ACDS)¹⁹ on April 24, 2008. When a hearing officer makes his or her first entry on a new case, a pop-up box asks whether the hearing officer had any prior involvement with the taxpayer for the type of tax and tax years associated with the CDP. After the hearing officer responds, an impartiality statement is systemically entered into the Case Activity Record. The pop-up box is also activated if the taxpayer’s case is reassigned to a new hearing officer.

¹⁷ The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed (Reference Number 2010-10-075, dated July 15, 2010).

¹⁸ The Office of Appeals Continues to Show Improvement in Processing Collection Due Process Cases (Reference Number 2008-10-160, dated September 12, 2008), and The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements (Reference Number 2009-10-126, dated September 17, 2009).

¹⁹ The ACDS is a computerized case control system used to control and track cases throughout the appeals process.



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We previously recommended that Appeals ensure the ACDS programming was working properly.²⁰ In response, Appeals management submitted a request to evaluate the effectiveness of the ACDS systemic prompt. In January 2011, Appeals advised us the ACDS program code was recently tested and reported to be free of programming errors. However, management stated it is possible for hearing officers to overwrite the impartiality statement when they make new entries within the same Case Activity Record. This is an indication that the new systemic control may not always be working as intended.

Appeals posted a memo on its web site advising employees to be careful to not overwrite the impartiality statement on the Case Activity Record; however, hearing officers may not be aware this can happen because the ACDS does not issue a warning when the impartiality statement is deleted or overwritten.

We believe it is important for each hearing officer to ensure the impartiality statement is not overwritten or unintentionally deleted on the Case Activity Record. If the impartiality statement is not documented in the Case Activity Record, there is a risk the hearing officer had prior involvement in the taxpayer's case and a potential lack of independence. This could impact the taxpayer's right to a fair and impartial hearing.

Recommendation

Recommendation 4: The Chief, Appeals, should determine whether the impartiality statement generated by the systemic prompt should be moved to a separate field so it cannot be overwritten or if a warning message should be generated when hearing officers overwrite the impartiality statement.

Management's Response: Management agreed with this recommendation and stated they plan to request a computer enhancement that would result in a "read only" case activity record affirming each hearing officer's impartiality.

Hearing Officers Did Not Always Document Verification That All Applicable Laws and Administrative Procedures Were Followed

By law, hearing officers are required to verify that the IRS followed the applicable laws or administrative procedures with respect to the proposed lien or levy.²¹ The Appeals IRM requires that the verification statement be documented in the Determination and Decision Letters issued to taxpayers as well as the Case Activity Records. If a hearing officer does not document the Case Activity Record with a statement of his or her verification, there is a risk that the IRS has

²⁰ *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (Reference Number 2010-10-075, dated July 15, 2010).

²¹ U.S.C. § 6330(c)(1) 2010.



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not met all the requirements of applicable laws or administrative procedures with respect to the proposed levy or lien. However, a lack of this documentation in the Appeals case file does not necessarily mean the IRS Collection function failed to meet the legal and administrative requirements for liens and levies.

In this review, we found that hearing officers were in compliance with the law by documenting the verification statement in the Determination and Decision Letters issued to taxpayers. However, we identified 24 CDP and EH cases without a verification statement in the Case Activity Records. Specifically, 12 (17.14 percent) of the 70 CDP cases and 12 (17.14 percent) of the 70 EH cases did not have adequate documentation to support that all applicable procedures were followed. As a result, we estimated that 6,392 of the 37,289 CDP cases and 1,655 of the 9,653 EH cases closed in FY 2010 did not contain this information in the Case Activity Records.

Unlike the impartiality statement requirement, if more than one hearing officer works the taxpayer's appeal, it is not a requirement that each hearing officer document their verification in the Case Activity Record. However, in 3 of the 24 cases with errors, more than one hearing officer was assigned to the taxpayer's case and none of the hearing officers in these 3 cases documented their verification in the Case Activity Record.

Since October 2007, Appeals management has required that hearing officers document their verification in the Case Activity Record during their initial analysis of the taxpayer's case. However, Appeals management stated this guideline was not always followed because some hearing officers may have believed it was sufficient if the Determination or Decision letters contained the required verification that applicable laws and procedures were followed. As a result, they did not always document the Case Activity Records as required.

Appeals management informed us they are conducting a study to determine whether they should revise their IRM to no longer require hearing officers to document in the Case Activity Record the steps taken to verify all legal and administrative procedures were followed. They indicated that it may not be an effective use of time and resources to document the Case Activity Record because a verification statement is required to be included in the Determination and Decision Letters. However, we believe Appeals should ensure that adequate evidence is maintained in the case file to support the hearing officer's conclusion that the IRS followed the applicable laws or administrative procedures with respect to the proposed levy or lien.

Recommendation

Recommendation 5: The Chief, Appeals, should evaluate what documentation should be maintained in the Case Activity Records to support hearing officers' conclusions that applicable laws and procedures were followed by the IRS.



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Management's Response: Management agreed with this recommendation and stated that they plan to remove the requirement to document the verification of the legal and administrative procedures in the case activity record.



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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 U.S.C. §§ 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 37,289 CDP and 9,653 EH cases closed during FY 2010 (October 1, 2009, through September 30, 2010). We validated the extract by reviewing the appropriateness of data within the 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 37,289) and 70 EH cases (population of 9,653). 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 closed during FY 2010.
 - C. Determined whether the 70 CDP and 70 EH sampled case files contained adequate documentation and, if applicable, determined the cause of and confirmed any potential exceptions with Appeals officials. In addition, we 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.

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



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- 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:
- 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 hearing officer obtained verification that the requirements of all applicable laws or administrative procedures were met [26 U.S.C. §§ 6330(I)(1)].
- V. Determined whether the CSEDs² for CDP and EH accounts were accurate on the Integrated Data Retrieval System.³

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 and ensuring hearing officers meet the criteria specified in 26 U.S.C. §§ 6320 and 6330. We evaluated these controls by reviewing a sample of CDP and EH cases, reviewing applicable computer codes on the Integrated Data Retrieval System for CDP and EH cases, and reviewing potential exception cases with Appeals officials.

² 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.

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

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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; 533 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:

For the CDP sample, we used a computer extract from the ACDS¹ and identified a population of 37,289 CDP cases that were closed in FY 2010. *****1*****
 *****1*****
 *****1*****. Using a 90 percent confidence level and a precision rate of ± 2.35 percent, we estimate that 1.43 percent of the cases in the population (533 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 actual exception rate is between 0.07 percent and 6.60 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 276 EH case files contain hearing requests that were received timely and were not properly classified as a CDP case (see page 3).

Methodology Used to Measure the Reported Benefit:

For the EH sample, we used a computer extract from the ACDS and identified 9,653 EH cases that were closed in FY 2010. *****1*****
 *****1*****.
 Using a 90 percent confidence level and a precision rate of ± 3.29 percent, we estimate that 2.86 percent of the cases in the population (276 EH case files) may have contained misclassified taxpayer requests. When EH cases are misclassified, taxpayers do not receive hearing rights to

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



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which they are legally entitled. Using the Exact Binomial Method, we are 90 percent confident that the actual exception rate is between 0.51 percent and 8.80 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 138 EH case files contain hearing requests that were received more than 1 year after the Notice of Intent to Levy and the taxpayers were inappropriately provided an EH (see page 3).

Methodology Used to Measure the Reported Benefit:

For the EH sample, we used a computer extract from the ACDS and identified 9,653 EH cases that were closed in FY 2010. *****1*****
*****1*****.

Using a 90 percent confidence level and a precision rate of ± 2.34 percent, we estimate that 1.43 percent of the cases in the population (138 EH case files) may have contained misclassified taxpayer requests. We estimate that Appeals may have improperly provided an EH hearing to 138 taxpayers. Using the Exact Binomial Method, we are 90 percent confident that the actual exception rate is between 0.07 percent and 6.60 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 4,794 CDP case files in which taxpayers had CSEDs² that were inappropriately extended longer than the length of the hearing (see page 5).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the ACDS and identified a population of 37,289 CDP cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 CDP cases and found 9 of these CDP case files contained instances in which the taxpayer's CSED had been suspended longer than the length of the CDP hearing. Using a 90 percent confidence level and a precision rate of ± 6.62 percent, we estimate that 12.86 percent of the cases in the population (4,794 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 allowed to collect the delinquent taxes. Using the Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 6.24 percent and 19.48 percent.

² 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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Type and Value of Outcome Measure:

- Increased Revenue – Potential; 3,196 CDP case files in which taxpayers had CSEDs that were not correctly extended for the length of the CDP hearing (see page 5).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the ACDS, we identified a population of 37,289 CDP cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 CDP cases and found that 6 of these CDP case files contained instances in which the taxpayer's CSED was not correctly extended for the length of the CDP hearing. Using a 90 percent confidence level and a precision rate of ± 5.54 percent, we estimate that 8.57 percent of the cases in the population (3,196 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 allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 3.03 percent and 14.11 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 1,598 CDP cases files did not contain the impartiality statement by the hearing officer (see page 6).
- Taxpayer Rights and Entitlements – Potential; 827 EH case files did not contain the impartiality statement by the hearing officer (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 37,289 CDP cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 CDP cases and found that 3 of these CDP case files did not contain the required impartiality statement by the hearing officer. Using a 90 percent confidence level and a precision rate of ± 4.01 percent, we estimate that 4.29 percent of the cases in the population (1,598 CDP case files) 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 Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 0.28 percent and 8.29 percent.

For the EH sample, we used a computer extract from the ACDS and identified 9,653 EH cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 EH cases and found that 6 of these EH case files did not contain the required impartiality statement by the hearing officer. Using a 90 percent confidence level and a precision rate of ± 5.52 percent, we estimate that 8.57 percent of the cases in the population (827 EH case files) did not contain the



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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 Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 3.05 percent and 14.09 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 6,392 CDP cases files did not contain the verification statement by the hearing officer (see page 8).
- Taxpayer Rights and Entitlements – Potential; 1,655 EH case files did not contain the verification statement by the hearing officer (see page 8).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the ACDS and identified a population of 37,289 CDP cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 CDP cases and found that 12 of these CDP case files did not contain the required verification statement by the hearing officer. Using a 90 percent confidence level and a precision rate of ± 7.46 percent, we estimate that 17.14 percent of the cases in the population (6,392 CDP case files) did not contain the required verification statement. If a hearing officer does not document the case file with a statement of his or her verification, taxpayer rights may be affected because there is a potential risk that all applicable laws, regulations, and or administrative procedures have not be followed. Using the Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 9.69 percent and 24.60 percent.

For the EH sample, we used a computer extract from the ACDS and identified 9,653 EH cases that were closed in FY 2010. We reviewed a statistical attribute sample of 70 EH cases and found that 12 of these EH case files did not contain the required verification statement by the hearing officer. Using a 90 percent confidence level and a precision rate of ± 7.44 percent, we estimate that 17.14 percent of the cases in the population (1,655 EH case files) did not contain the required verification 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 potential risk that all applicable laws, regulations, and or administrative procedures have not be followed. Using the Normal Approximation Method, we are 90 percent confident that the actual exception rate is between 9.71 percent and 24.58 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;¹ determine if collection actions were appropriate; and decide if other collection alternatives would facilitate the payment of the tax.² The hearing officer must determine whether any proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concerns, such as financial hardship. 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 issues the taxpayer a Determination Letter for a CDP hearing or a Decision Letter for an EH. These letters describe the hearing officer's findings, agreements reached with the taxpayer, any relief provided to the taxpayer, and any actions the taxpayer and the IRS are required to take. If the taxpayer disagrees with Appeals' decision

¹ A taxpayer can be relieved of responsibility for paying tax, interest, and penalties if his or her spouse (or former spouse) improperly reported items or omitted items on their tax return.

² Collection alternatives are available to taxpayers during their Appeals hearing request. These may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise.



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during a CDP, he or she may petition the courts. However, taxpayers who agree with Appeals' decision may waive their right to a judicial review.³

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.

³ Appeals will issue these taxpayers a Summary Notice of Determination. Taxpayers also agree to waive the suspension of collection activity.



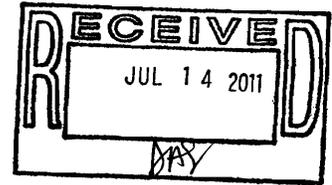
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Appendix VI

Management's Response to the Draft Report¹



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



JUL 13 2011

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Christopher Wagner
Chief, Appeals

SUBJECT: Draft Audit Report - Additional Improvements Are Needed in the
Office of Appeals Collection Due Process Program to Ensure Statutory
Requirements Are Met (Audit 2011-10-008)

We share your interest in enhancing tax administration while protecting taxpayer rights and entitlements. Appeals has worked and will continue to work diligently to protect taxpayer rights, enhance the final work product, and ensure accurate computer coding on taxpayer accounts. We accept your recommendations. Attached are our corrective actions in response to your recommendations.

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

Attachment: Recommendations

¹ Where used in various sections of management's response, TC stands for "transaction code." Transaction codes are three digit codes used to identify actions taken on a taxpayer's account.



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Recommendation 1: The Chief, Appeals, should ensure the CSEDs are corrected for the taxpayer accounts that we identified as misclassified.

Proposed Corrective Action: Appeals Tax Policy and Procedures-Collection and Processing Analyst will verify that TC 520, 521 and 522 corrective actions have properly posted to the affected modules on IDRS for which an unpaid balance remains to ensure the accuracy of the Collection Statute Expiration Date (CSED).

Implementation Date: October 31, 2011

Responsible Official: Director, Appeals Tax Policy and Valuation

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

Recommendation 2: The Chief, Appeals, should ensure a job-aid for processing employees is developed to more accurately determine the correct suspension dates.

Proposed Corrective Action: The job-aid will be incorporated into the next revision of IRM 8.22.3 as an Exhibit.

Implementation Date: December 31, 2011

Responsible Official: Director, Appeals Tax Policy and Valuation

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



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

Proposed Corrective Action: Appeals Tax Policy and Procedures-Collection & Processing will verify that TC 520 and TC 521 corrective actions have properly posted to the affected modules on IDRS for which an unpaid balance remains to ensure the accuracy of the Collection Statute Expiration Date (CSED).

Implementation Date: October 31, 2011

Responsible Official: Director, Appeals Tax Policy and Valuation

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

Recommendation 4: The Chief, Appeals, should determine whether the impartiality statement generated by the systemic prompt should be moved to a separate field so it cannot be overwritten or if a warning message should be generated when hearing officers overwrite the impartiality statement.

Proposed Corrective Action: Appeals will submit a work request to Modernization and Information Technology Services (MITS) to request the programming services to implement an enhancement to ACDS that would result in a "read-only" case activity record entry affirming each technical employee's impartiality. Appeals will submit this work request by July 31, 2011. The actual deployment/ implementation date is subject to MITS priorities which are not within Appeals' control.

Implementation Date: June 30, 2012

Responsible Official: Director, Appeals Tax Policy and Valuation

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

Attachment



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Recommendation 5: The Chief, Appeals, should evaluate what documentation should be maintained in the Case Activity Records to support hearing officers' conclusions that applicable laws and procedures were followed by the IRS.

Proposed Corrective Action: Appeals will remove the requirement to document the verification of the legal and administrative in the case activity record (CAR) in the next IRM 8.22.2 revision.

Implementation Date: April 30, 2012

Responsible Official: Director, Appeals Tax Policy and Valuation

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