



*The Office of Appeals Continues to
Experience Difficulties in the Handling
of Collection Due Process Cases*

September 17, 2013

Reference Number: 2013-10-103

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.

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1 = Tax Return/Return Information

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HIGHLIGHTS

THE OFFICE OF APPEALS CONTINUES TO EXPERIENCE DIFFICULTIES IN THE HANDLING OF COLLECTION DUE PROCESS CASES

Highlights

Final Report issued on September 17, 2013

Highlights of Reference Number: 2013-10-103 to the Internal Revenue Service Chief of Appeals.

IMPACT ON TAXPAYERS

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

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is statutorily required to determine whether the IRS complied with the provisions of 26 United States Code Sections 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy.

WHAT TIGTA FOUND

In this year's audit, TIGTA continued to identify the same deficiencies in the IRS's processing of Collection Due Process cases as previously reported. Specifically, the Office of Appeals did not always classify taxpayer requests properly and, as a result, some taxpayers received the wrong type of hearing; errors continued relating to the determination of the Collection Statute Expiration Date on taxpayer accounts; and Appeals personnel did not always document their impartiality statement in hearing notification letters issued to taxpayers.

TIGTA also identified delays in the initial processing of requests for hearings prior to receipt by Office of Appeals personnel. Some taxpayer requests for a hearing took over 90 days to reach Office of Appeals personnel from the Compliance function, which could have affected the taxpayer's due process rights.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, correct the taxpayer accounts that were identified with Collection Statute Expiration Date errors.

In their response, IRS management agreed with our recommendation and stated that all errors on the taxpayers' accounts have been corrected.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 17, 2013

MEMORANDUM FOR CHIEF, APPEALS

FROM:

Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – The Office of Appeals Continues to Experience
Difficulties in the Handling of Collection Due Process Cases
(Audit # 201310001)

This report presents the results of our statutory review of the Appeals' Collection Due Process Program. The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with 26 United States Code Sections 6320 (b) and (c) and 6330 (b) and (c) when taxpayers exercised their right to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. This audit is included in our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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Abbreviations

CDP	Collection Due Process
CSED	Collection Statute Expiration Date
EH	Equivalent Hearing
FY	Fiscal Year
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
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 to a taxpayer's assets with a Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320* (lien).¹ The IRS also has the authority to seize or levy a taxpayer's property, such as wages or bank accounts, to satisfy a taxpayer's debt.² However, before a levy can be placed on a taxpayer's account, the IRS must issue the taxpayer a Letter 11 or Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy).

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, which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP)⁴ provisions.⁵ The Office of 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, usually within 30 calendar days, the taxpayer, at the discretion of Appeals, may be granted an Equivalent Hearing (EH). The taxpayer must request an EH within one year of the issuance of the Notice of Intent to Levy or the filing of a lien. Taxpayers have the right to petition the U.S. Tax Court if they disagree with Appeals' decision on a CDP hearing, a right which is not afforded to those taxpayers who are granted an EH.

When Appeals makes a final decision on a taxpayer's case, the hearing officer will issue a:

- Determination Letter 3193 – *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330.*

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

² 26 U.S.C. § 6331.

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

⁴ See Appendix V for an explanation of the CDP and EH procedures.

⁵ 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.).



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- Decision Letter 3210 – *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330.*
- Waiver Letter 4382 – *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing.*
- Withdrawal Letter 4383 – *Withdrawal of Request for Collection Due Process or Equivalent Hearing.*

Waiver Letter 4382 is used when the taxpayer and the IRS agree on a viable collection alternative. Withdrawal Letter 4383 is used when the taxpayer has reached a resolution with the IRS regarding the tax and tax periods and he or she is otherwise satisfied that a hearing with Appeals is no longer needed. During Fiscal Year (FY) 2012, Appeals closed 47,855 CDP and 11,615 EH taxpayer cases.

The Treasury Inspector General for Tax Administration (TIGTA) 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 these actions.⁶ This is our thirteenth annual audit of taxpayer appeal rights.

The period for this year's audit covered CDP and EH taxpayer cases closed between October 1, 2011, and September 30, 2012. This review was performed by contacting Appeals personnel in San Francisco, California; Baltimore, Maryland; St. Paul, Minnesota; and Syracuse, New York, during the period October 2012 through May 2013. 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 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv) (Supp. III 2000).



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Results of Review

Some Taxpayers Did Not Receive the Appropriate Type of Hearing

We identified six taxpayer cases (*****1*****) in our two statistically valid samples of 66 CDP and 66 EH taxpayer cases that were misclassified. This is an increase from the four misclassified taxpayer cases that we identified in our prior review.⁷

*****1*****⁸ *****⁹ Based on errors identified **1** **1** 66 CDP taxpayer cases we reviewed, we project from the total population that an estimated 1,450 of 47,855 taxpayer cases may have incorrectly received a CDP hearing during FY 2012 instead of an EH as required.

In addition, we identified four EH taxpayer cases where requests were filed late or were incorrectly processed.¹⁰ *****1***** Based on errors identified in **1** of the 66 EH taxpayer cases we reviewed, we project from the total population that an estimated 352 of 11,615 taxpayer cases may have been inappropriately granted an EH even though the request was made more than one year after the notice was issued.

*****1***** This is an issue because a taxpayer is entitled to only one hearing for the tax period related to the unpaid tax.¹¹ Finally, we identified *****1*****

⁷ TIGTA, Ref. No. 2012-10-077, Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist (Jul. 2012).

⁸ For more information on the time periods to file an appeal, see Appendix VI.

⁹ Determination Letter 3193 provides the taxpayer with the right to petition the U.S. Tax Court.

¹⁰ A taxpayer must submit a written request for an EH within the one-year period starting the day after the date of the CDP Notice of Levy.

¹¹ 26 U.S.C. §§6320(b)(2) and 6330(b)(2).



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*****1*****
*****1*****. Based on the errors in **1** of the 66 EH taxpayer cases, we project from the total population that 352 of 11,615 taxpayer cases were incorrectly processed and the taxpayers were inappropriately provided an EH.

Appeals management agreed with our analysis and indicated that the six taxpayer cases were misclassified due to incorrect judgment on the part of hearing officers. We are not making a recommendation for this finding at this time. In the previous review, we recommended that Appeals management provide refresher training to Appeals personnel to reemphasize the process to follow when determining whether a taxpayer is entitled to a CDP hearing or an EH. Appeals management agreed with our recommendation and planned to develop a refresher class on the topic of determining timeliness of CDP and EH requests. The class will be made available as a Continuing Professional Education topic to Appeals technical employees who work CDP cases. The due date for this corrective action is September 15, 2013.

The Collection Statute Expiration Date Was Not Always Computed Correctly

We also identified 14 taxpayer cases that had an incorrect Collection Statute Expiration Date (CSED) in our two statistically valid samples of CDP and EH taxpayer cases. For the 14 taxpayer cases we identified, the IRS incorrectly increased the CSED time period in eight of the CDP taxpayer cases, allowing the IRS additional time it should not have had to collect the delinquent taxes. In the remaining six taxpayer cases, the IRS incorrectly decreased the time the IRS had to collect the delinquent taxes. We project that a total of 10,151 of the 47,855 CDP taxpayer cases closed in FY 2012 may have an incorrect CSED (5,801 taxpayer cases had time extended in error and 4,350 taxpayer cases had collection time shortened). We also noted that the number of CSED errors has decreased from the last review, where we identified a total of 16 CSED errors.

The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The final date to collect is referred to as the CSED. Because the IRS usually stops collection activity during the Appeals process, the CSED is temporarily suspended during a CDP hearing. Specifically, the IRS suspends the 10-year statute of limitations from the date of the CDP hearing request until the date the Appeals determination is made final or the date the IRS receives the taxpayer's withdrawal request.

When the IRS suspends the collection statute for a period longer than its policy allows, it potentially violates taxpayer rights. Conversely, when CSEDs are incorrectly shortened, the IRS has less time to collect delinquent taxes, which could cause the IRS a potential loss of revenue. Incorrect CSED dates resulted from IRS employees incorrectly calculating the suspension start



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date.¹² Our review identified that the code needed to designate the end of the collection statute suspension was not input or the suspension end date was incorrect. The statute suspension is systemically controlled on the Integrated Data Retrieval System.¹³ 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 personnel are responsible for the input. Upon completion of each CDP hearing, Appeals is responsible for entering the code to remove the suspension of the statute period. The Integrated Data Retrieval System will systemically recalculate the CSED based on the dates entered for the two codes (which reflect the length of the Appeals hearing plus expiration of the time period for seeking judicial review or the exhaustion of any rights to appeal following judicial review).

Appeals management agreed with the number of CSED exceptions and informed us that they plan to correct the accounts of those taxpayers with incorrect CSEDs.

Recommendation

Recommendation 1: The Chief, Appeals, should review and correct the 14 taxpayer accounts that we identified with CSED errors.

Management's Response: IRS management agreed with this recommendation. Management indicated that they have corrected all errors on the taxpayers' accounts identified in this audit.

Hearing Officers Did Not Always Document Their Impartiality As Required

During this review, we identified that 13 of the 132 taxpayer cases in our two statistically valid samples did not have the required impartiality statement in the waiver and withdrawal letters sent to taxpayers:

- Seven taxpayer cases (****1****) did not include the impartiality statement on Waiver Letter 4382. This letter is issued at the conclusion of a CDP or EH hearing when an agreement is reached and the taxpayer waives the right to a judicial review.

¹² The statute of limitations is suspended from the date the IRS receives a timely filed request for a CDP hearing to the date the taxpayer's withdrawal is received by the IRS or the date the determination from Appeals becomes final, including any court appeals.

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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- Six taxpayer cases (*****1*****) did not include the impartiality statement on Withdrawal Letter 4383. This letter is issued when a taxpayer no longer wishes to participate in the CDP or EH hearing and withdraws his or her request for an appeal.

The 13 errors we identified represent an increase from our prior review, which identified 10 taxpayer cases without an impartiality statement documented as required.¹⁴ We estimate that 7,251 of the 47,855 CDP taxpayer cases and 528 of the 11,615 EH taxpayer cases closed in FY 2012 may not contain the required impartiality statement. However, we found that hearing officers properly documented the impartiality statement in the Case Activity Records as well as the CDP Notices of Determination and the EH Decision Letters issued to the taxpayers for all of the taxpayer cases we reviewed.¹⁵

The law requires that a CDP hearing be conducted by an impartial hearing officer who has had no prior involvement with the unpaid tax.¹⁶ In addition, the Appeals' Internal Revenue Manual extends this requirement to all hearing officers, including those working EHs cases. The Internal Revenue Manual specifies that each hearing officer must document "no prior involvement" in the Case Activity Record during the initial analysis of the taxpayer's appeal. In addition, hearing officers are also required to document their impartiality in the letters and waivers issued to taxpayers at the conclusion of the appeal. Including impartiality statements in Appeals closing correspondence ensures that taxpayers understand that their requests are reviewed by an impartial hearing officer. However, by not including the required statements in some of the notification letters, the IRS inadequately documented the assurance of impartiality to some taxpayers.

Appeals management agreed with the number of errors regarding documentation of impartiality. They also informed us that they disabled the old versions of the Waiver Letter (L4382) and the Withdrawal Letter (L4383) on their website. Appeals management also informed us that new letters with the appropriate documentation language have been published and an alert for the technical employees for the impartiality documentation will be made in the future.

Some Taxpayer Collection Due Process Hearing and Equivalent Hearing Requests Were Not Always Timely Referred to Appeals

We found that taxpayer requests were not consistently sent by the IRS's Collection function to Appeals in a timely manner. The IRS's Collection function initiates lien and levy actions that give rise to the CDP and EH appeals process. Taxpayers are instructed to file their appeal at a specific address (the location of the Collection employee) and the Collection function forwards

¹⁴ TIGTA, Ref. No. 2012-10-077, *Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist* (Jul. 2012).

¹⁵ The IRS is required by statute to make a determination and give notice of that determination to the taxpayer at the conclusion of a CDP hearing. The form of that notice is incorporated in a Letter 3193.

¹⁶ Under 26 U.S.C. §§ 6320(b)(3) and 6330(b)(3), a taxpayer may waive this requirement.



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the taxpayer's request to Appeals. During our review, we identified 58 taxpayer cases that exceeded the IRS target time of 90 days to initially resolve or forward the taxpayer request to Appeals. Twenty-nine of the taxpayer cases took more than 180 days to resolve or forward to Appeals. Delays in the initial forwarding to Appeals are important because IRS Collection function employees are required to promptly develop the Form 12153, *Request for Collection Due Process or Equivalent Hearing*, to effectively ensure that the taxpayers' due process rights are protected. For referrals that take an extended time to reach Appeals, the IRS is suspending the CSED from the IRS date received. This affects the taxpayer and increases the time allowed for the IRS to collect any balances owed.



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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 TIGTA statutory review.
- II. Selected a statistically valid sample of closed CDP and EH taxpayer cases, obtained the Appeals case and IRS Administrative files, and determined whether Appeals had completed case files.
 - A. Obtained an extract of the Appeals Centralized Database System¹ file maintained at the TIGTA's Data Center Warehouse² of 47,855 CDP and 11,615 EH taxpayer cases closed during FY 2012 (October 1, 2011, through September 30, 2012). We evaluated the sufficiency and reliability of the electronic data received from the IRS to ensure that the data field descriptions were accurately stated. We validated the extract by reviewing the appropriateness of data within fields requested and comparing population totals to information obtained from Appeals officials.
 - B. Selected and secured closed CDP and EH taxpayer cases for our two samples. We reviewed statistical attribute samples of 66 CDP taxpayer cases (population of 47,855) and 66 EH taxpayer cases (population of 11,615). 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 discussed our sampling methodology with our contracted statistician, who reviewed and agreed with our projections.
 - C. Determined the number of taxpayer cases in our samples for which TIGTA was unable to obtain an Administrative or Appeals case file to make a determination of whether Appeals complied with U.S.C. §§ 6320 and or 6330.³

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

² The TIGTA Data Center Warehouse is a secured centralized storage of IRS database files used to maintain critical historical data that has been extracted from operational data storage and transformed into formats accessible to TIGTA employees.

³ 26 U.S.C. §§ 6320 and 6330.



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- III. Determined whether Appeals CDP and EH taxpayer cases were classified correctly using the CDP and the EH samples reviewed in Step II.B. We also determined whether the CSED was calculated correctly on the taxpayer's account on the Integrated Data Retrieval System⁴ based on the type of hearing granted for the 132 sample items we reviewed.
- 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 that the taxpayer was provided with an impartial hearing officer or waived this requirement [26 U.S.C. §§ 6320(b)(3) and 6330(b)(3)].
- V. Determined whether CDP and EH accounts were properly coded on the Integrated Data Retrieval System.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the IRS policies and procedures for classifying CDP and EH taxpayer 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 taxpayer cases. We evaluated these controls by selecting a sample of CDP and EH taxpayer cases, reviewing documentation, and discussing potential exceptions with Appeals officials.

⁴ 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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Office of the Commissioner – Attn: Chief of Staff C
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Appendix IV

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 1,450 taxpayer cases contain CDP 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 Appeals Centralized Database System and identified a population of 47,855 CDP taxpayer cases that were closed in FY 2012. We reviewed a simple random sample of 66 CDP taxpayer cases and found that *****1*****. We estimate that 3.03 percent of the taxpayer cases in the population (1,450 taxpayer cases) may have contained misclassified CDP taxpayer requests. When CDP taxpayer 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 0.08 percent and 6.99 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 352 taxpayer cases contain EH hearing requests that were received more than one year after the Notice of Intent to Levy and 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 Appeals Centralized Database System and identified 11,615 EH taxpayer cases that were closed in FY 2012. We reviewed a simple random sample of 66 EH taxpayer cases and found that *****1*****. We estimate that 3.03 percent of the taxpayer cases in the population (352 taxpayer cases) may have contained misclassified taxpayer requests for which Appeals may have improperly provided an EH. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.54 percent and 9.23 percent.



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Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 352 taxpayer cases contain EH hearing requests that were incorrectly processed and 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 Appeals Centralized Database System and identified 11,615 EH taxpayer cases that were closed in FY 2012. We reviewed a simple random sample of 66 EH taxpayer cases and found that *****1*****. We estimate that 3.03 percent of the taxpayer cases in the population (352 taxpayer cases) may have contained misclassified taxpayer requests for which Appeals may have improperly provided an EH. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.54 percent and 9.23 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 5,801 taxpayer cases in which taxpayers had CDP CSEDs that were inappropriately extended longer than the length of the hearing (see page 4).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 47,855 CDP taxpayer cases that were closed in FY 2012. We reviewed a simple random sample of 66 CDP taxpayer cases and found that eight of these CDP taxpayer case files contained instances in which the taxpayer's CSED had been suspended longer than the length of the CDP hearing. We estimate that 12.12 percent of the taxpayer cases in the population (5,801 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED extended in error to a taxpayer case provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Normal Approximation Method, we are 90 percent confident that the true exception rate is between 5.47 percent and 18.78 percent.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; 4,350 taxpayer cases indicated taxpayers had CDP CSEDs that were not correctly extended for the length of the CDP hearing (see page 4).

Methodology Used to Measure the Reported Benefit:

Using a computer extract from the Appeals Centralized Database System, we identified a population of 47,855 CDP taxpayer cases that were closed in FY 2012. We reviewed a simple



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random sample of 66 CDP taxpayer cases and found that six of these CDP taxpayer case files contained instances in which the taxpayer's CSED was not correctly extended for the length of the CDP hearing. We estimate that 9.09 percent of the taxpayer cases in the population (4,350 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED shortened in error to a taxpayer case provides the IRS less time than legally allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Normal Approximation Method, we are 90 percent confident that the true exception rate is between 1.25 percent and 11.33 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 7,251 CDP taxpayer cases did not contain the impartiality statement documented on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer (see page 5).
- Taxpayer Rights and Entitlements – Potential; 528 EH taxpayer cases did not contain the impartiality statement documented on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer (see page 5).

Methodology Used to Measure the Reported Benefit:

For the CDP sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 47,855 CDP taxpayer cases that were closed in FY 2012. We reviewed a simple random sample of 66 CDP taxpayer cases and found that 10 of these CDP taxpayer case files did not contain the required impartiality statement on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer. We estimate that 15.15 percent of the taxpayer cases in the population (7,251 CDP taxpayer cases) did not contain the required impartiality statement. Using the Normal Approximation Method, we are 90 percent confident that the true exception rate is between 7.84 percent and 22.46 percent.

For the EH sample, we used a computer extract from the Appeals Centralized Database System and identified 11,615 EH taxpayer cases that were closed in FY2012. We reviewed a simple random sample of 66 EH taxpayer cases and found that three of these EH taxpayer case files did not contain the required impartiality statement on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer. We estimate that 4.55 percent of the taxpayer cases in the population (528 EH taxpayer cases) did not contain the required impartiality statement. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.25 percent and 11.33 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 five business days of the filing of the lien or within 30 calendar days of the date of the Notice of Intent to Levy. If a taxpayer's hearing request is submitted on time, the IRS will suspend all collection efforts and the Office of Appeals (Appeals) will provide the taxpayer a CDP hearing. If a taxpayer's hearing request is not submitted timely, Appeals has discretionary authority to provide the taxpayer an EH and consider the same issues as in a CDP hearing for both liens and levies; 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 or the IRS are required to take. For a CDP case, the taxpayer receives a Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, which provides an explanation of the right to a judicial review. If the taxpayer disagrees with the Appeals decision, he or she may petition the Tax Court. For an EH case, the taxpayer receives a Letter 3210, *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330*. If the taxpayer disagrees with the Appeals decision in an EH, he or she may not petition the courts. For both applicable CDP and EH cases, the taxpayer may receive a



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Form 12257, *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing*,¹ or a Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*. Waiver Form 12256 and Letter 4382 are applicable when the taxpayer agrees with Appeals, waives the right to a judicial review, and waives the suspension of collection action. Withdrawal Form 12257 and Letter 4383 are applicable when the taxpayer has reached a resolution with the IRS regarding the tax and tax periods and he or she is otherwise satisfied that a hearing with the Office of Appeals is no longer needed.

The CDP or EH case is generally reviewed by the hearing officer's manager at the completion of the case to evaluate whether the hearing officer followed all requirements and procedures.²

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.

¹ A Form 12257 Waiver is a signed agreement between the taxpayer and the IRS where the taxpayer waives the right to a judicial review and waives the suspension of collection action. For example, these taxpayers may have agreed to an installment agreement, offer in compromise, or other collection alternative.

² Per Appeals Delegation Order APP-193-1, managerial approval of a CDP determination is not required when the only issue raised is a collection alternative and that issue is resolved with a streamlined installment agreement.



Appendix VI

Time Periods for Collection Due Process and Equivalent Hearings

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

Collection Due Process Deadlines

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

Equivalent Hearing Deadlines

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

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

Timeliness Considerations

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

Source: Publication 1660, Collection Appeal Rights (Rev. 10-2012).

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



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Appendix VII

Prior Mandatory Collection Due Process Audit Reports

Below is a list of the prior TIGTA audits of the Appeals Collection Due Process performed during FY 2009 through FY 2012.

- **FY 2009** – TIGTA, Ref. No. 2009-10-126, *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Sept. 2009).
- **FY 2010** – TIGTA, Ref. No. 2010-10-075, *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (July 2010).
- **FY 2011** – TIGTA, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).
- **FY 2012** – TIGTA, Ref. No. 2012-10-077, *Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist* (July 2012).



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Appendix VIII

Management's Response to the Draft Report



CHIEF, APPEALS

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

SEP -5 2013

MEMORANDUM FOR GREGORY K. KUTZ
ASSISTANT INSPECTOR GENERAL FOR AUDIT
(MANAGEMENT SERVICES AND EXEMPT ORGANIZATIONS)

FROM: Kirsten B. Wieloch
Acting Chief, Appeals 

SUBJECT: Draft Audit Report – The Office of Appeals Continues to
Experience Difficulties in the Handling of Collection Due
Process Cases (Audit 2013-10-001)

Thank you for the opportunity to review and comment on the subject draft audit report. We concur that your recommendations will provide measurable benefits to tax administration by enhancing the protection of taxpayer rights and potentially increasing tax revenue. We agree with your recommendation, as written.

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

If you have any questions please have a member of your staff contact Susan L. Latham, Director, Appeals, Policy, Quality and Case Support, at (202) 317-8830.

Attachment



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Attachment

Recommendation 1:

The Chief, Appeals, should review and correct the 14 taxpayer accounts that we identified with CSED errors.

Proposed Corrective Action:

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

Implementation Date: 8/05/2013

Responsible Official: Director, Appeals Policy, Quality and Case Support