



*Review of the Office of Appeals
Collection Due Process Program*

September 11, 2017

Reference Number: 2017-10-055

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HIGHLIGHTS

REVIEW OF THE OFFICE OF APPEALS COLLECTION DUE PROCESS PROGRAM

Highlights

**Final Report issued on
September 11, 2017**

Highlights of Reference Number: 2017-10-055
to the Internal Revenue Service Chief, Appeals.

IMPACT ON TAXPAYERS

The Collection Due Process Program was designed to give taxpayers an opportunity for an independent review to ensure that a levy action that has been proposed or a lien that has been filed is warranted and appropriate. An effective process is necessary to ensure that statutory requirements are met and taxpayers' rights are protected.

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

During this year's audit, TIGTA identified similar 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. In two statistically valid samples, TIGTA identified six taxpayer cases that were misclassified. This is a slight increase from the five misclassified taxpayer cases that were identified in the prior year's review.

In addition, TIGTA continued to identify errors related to the determination of the Collection Statute Expiration Date (CSED) on taxpayer accounts. From two statistically valid samples, TIGTA identified 11 taxpayer cases that had an incorrect CSED. For the 11 taxpayer cases identified, the IRS incorrectly extended the time

period in five of the 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 to collect the delinquent taxes. Overall, this is a slight increase from the 10 taxpayer accounts with CSED errors that were identified in the prior year's review.

Additionally, TIGTA determined that from the prior three audit reports, the IRS had not properly updated a total of nine of the 41 taxpayer accounts identified with CSED errors. According to Appeals management, processing errors or systemic errors may have resulted in the CSEDs not being updated.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, update this year's taxpayer accounts that were identified with CSED errors. TIGTA also recommended that the Chief, Appeals evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure the corrections update to the IRS Master File, and should update the taxpayer accounts for the CSED errors identified in prior TIGTA reports.

IRS management agreed with all of our recommendations. The IRS stated that it is reviewing the 11 taxpayer accounts identified with CSED errors and initiating the necessary corrective actions. Additionally, the IRS is investigating whether the inaccurate suspension start or stop dates for the 11 taxpayer accounts were the results of input errors or some other cause. The IRS also plans to evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure that the corrections are updated to the IRS Master File. In addition, the IRS is reviewing the nine taxpayer accounts identified with CSED errors during Calendar Years 2014 through 2016 that were not updated on the IRS Master File and initiating the necessary corrective actions.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 11, 2017

MEMORANDUM FOR CHIEF, APPEALS

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Review of the Office of Appeals Collection Due Process Program (Audit # 201710001)

This report presents the result of our Review of the Office 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 rights to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. This audit is part of our Fiscal Year 2017 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
IDRS	Integrated Data Retrieval System
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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Background

By law,¹ when initial contacts by the Internal Revenue Service (IRS) to taxpayers do not result in the successful collection of unpaid tax, a Federal tax lien may be established.² The Federal tax lien arises when the taxpayer liability has been assessed, a demand is made for its payment, and the taxpayer does not pay it. The IRS then may file a Notice of Federal Tax Lien (NFTL).³ Along with the filing of a NFTL, the IRS is also required to notify the taxpayer with a Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under I.R.C.*⁴ 6320. 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.⁵ However, before a levy can be placed on a taxpayer's account, the IRS must issue the taxpayer a Letter 11 or Letter 1058, *Final Notice – Notice of Intent to Levy and Notice of Your Right to a Hearing*.

In January 1996, Congress modified collection activity provisions that allowed taxpayers additional rights under lien and levy actions by the IRS.⁶ Further, Congress enacted legislation to protect taxpayers' rights in the IRS Restructuring and Reform Act of 1998,⁷ which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP)⁸ provisions. An effective process is necessary to ensure that statutory requirements are met and taxpayers' rights are protected.

The CDP Program was designed to give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the NFTL that has been filed is warranted and appropriate. 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 NFTL or the issuance of a Notice of Intent to Levy, the taxpayer is granted a CDP hearing. However, if the

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

² A Federal tax lien gives the IRS a legal claim to all of the taxpayer's property for the amount of the tax liability.

³ The Notice of Federal Tax Lien is a public notification filed with designated State and local jurisdictions. The purpose of filing the NFTL publicly is to inform certain third parties and establish the Government's right of priority against taxpayer creditors.

⁴ The Internal Revenue Code (I.R.C.) is the body of law that codifies all Federal tax laws, including income, estate, gift, excise, alcohol, tobacco, and employment taxes. These laws constitute Title 26 of the U.S.C. and are implemented by the IRS through its Treasury Regulations and Revenue Rulings.

⁵ 26 U.S.C. § 6331.

⁶ 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.).

⁷ Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685.

⁸ See Appendix V for an explanation of the CDP and Equivalent Hearing procedures.



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

When Appeals receives the taxpayer's hearing request, it will generally issue one of the following acknowledgement or contact letters:

- **Acknowledgement Letter 4141** – *Case Received in Appeals – Acknowledgement Letter*, issued to the taxpayer documenting that the case has been received in Appeals and identifying the Appeals employee who is assigned to the case.⁹
- **Substantive Contact Uniform Acknowledgement Letter 4837** – *Appeals Received Your Request for a Collection Due Process Hearing*, issued to the taxpayer documenting that the case has been received in Appeals and providing an opportunity to discuss the reasons for disagreement with the collection action or to discuss alternatives to the collection action.¹⁰

When Appeals makes a final decision on a taxpayer's case, the hearing officer will issue one of the following final notification letters:

- **Determination Letter 3193** – *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, provides a taxpayer with the determination in his or her case and the right to appeal the determination in tax court.
- **Decision Letter 3210** – *Decision Letter on Equivalent Hearing Under I.R.C. Section 6320 and/or 6330*, issued to the taxpayer for only EH cases advising the taxpayer of the decision by Appeals and the matters and conclusions considered at the hearing.
- **Closing Letter 4382 With Form 12257** – *Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, Waiver of Suspension of Levy Action, and Waiver of Periods of Limitation in Section 6330(e)(1)*, issued to the taxpayer documenting that Appeals has concluded the CDP hearing and that during the hearing a signed Form 12257¹¹ was submitted by the taxpayer indicating

⁹ Letter 4141 was used by Appeals throughout our review; however, Appeals stated that this letter became obsolete on June 9, 2015.

¹⁰ On June 9, 2015, Letter 4837, *Substantive Contact Uniform Acknowledgement Letter*, replaced Letter 4836, *Substantive Contact Letter*.

¹¹ A Form 12257 waiver is a signed agreement between the taxpayer and the IRS in which 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.



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agreement to waiving the right to judicial review and the suspension of levy action under Section 6330(e)(1).

- **CDP/EH Hearing Withdrawal Acknowledgement Letter 4383 With Form 12256** – *Withdrawal of Request for Collection Due Process or Equivalent Hearing*, issued to the taxpayer documenting that Appeals received the taxpayer request to withdraw from the CDP or EH.
- **Closing Letter 5145** – *Agreed Equivalent Hearing Closing Letter*, issued to the taxpayer documenting his or her agreement with the EH case decision.

Closing Letter 4382 is used when the taxpayer and the IRS agree on a viable collection alternative. Closing 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. Closing Letter 5145 is used only for agreed EH cases when taxpayers agree with the decision and the case is to be returned to the IRS Collection function for actions consistent with the Appeals decision. During Fiscal Year (FY)¹² 2016, Appeals closed 34,229 CDP cases and 7,151 EH 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 NFTL or a Notice of Intent to Levy and the right of the taxpayer to appeal these actions.¹³ This is our seventeenth annual audit of taxpayer appeal rights.

The scope for this year's audit covered CDP and EH cases closed between October 1, 2015, and September 30, 2016. This review was performed by contacting Appeals personnel in Los Angeles, California; Holtsville, New York; and Richmond, Virginia, during the period October 2016 through June 2017. 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.

¹² Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

¹³ 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv).



Results of Review

Some Taxpayers Did Not Receive the Appropriate Type of Hearing

During this year’s audit, we identified similar issues in the IRS’s processing of CDP cases as previously reported. Specifically, Appeals did not always classify taxpayer requests properly, and, as a result, some taxpayers received the wrong type of hearing. The law allows taxpayers the right to appeal a proposed levy or the filing of a Notice of Federal tax lien; however, taxpayers must comply with specific time frames to qualify for a CDP hearing or an EH.¹⁴

During this review, we identified six taxpayer cases (*****1*****) that were misclassified in our two statistically valid samples of 70 CDP and 70 EH taxpayer cases. This is a slight increase from the five misclassified taxpayer cases that we identified in our prior review.¹⁵

*****1*****
*****1*****;

- *****1*****
*****1*****.¹⁶ *****
*****1*****
*****1*****. By law,¹⁷ a person shall be entitled to only one hearing with respect to the taxable period to which the unpaid tax is specified.
- *****1*****
1. To receive a CDP hearing, a written hearing request must be submitted to the IRS office specified in the CDP Notice within the required time frame.¹⁸ *****1*****
*****1*****
1.

¹⁴ See Appendix VI for more specific information on the time periods for CDP hearings and EH requests.
¹⁵ TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).

¹⁶ *****1*****
*****1*****.

¹⁷ 26 U.S.C. §§ 6320 and 6330(b)(2).

¹⁸ 26 C.F.R. § 301.6330-1(c)(2) Q&A-C6.



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Based on *****1***** in the 70 CDP taxpayer cases we reviewed, we project from the total population that an estimated *1* of 34,229 taxpayer cases may have incorrectly received a CDP hearing due to incorrect processing or untimely filing dates during FY 2016.¹⁹

During the review, we also identified *****1*****
*****1*****
*****1*****:

- *****1*****
*****1*****
*****1*****
*****1*****.
- *****1*****
*****1*****
*****1*****. Per guidance from the IRS Office of Chief Counsel, a CDP hearing request that is not received by the proper processing office before the statutory deadline is not timely.²⁰ *****1*****
*****1*****.²¹

Based on *****1***** the 70 EH taxpayer cases, we project from the total population that *1* of 7,151 taxpayer cases may have been incorrectly processed and/or granted an EH.²²

Appeals management agreed with our analysis and indicated that taxpayer cases were generally misclassified due to incorrect judgment on the part of hearing officers. We are not making a recommendation for this finding. In previous reviews, we have recommended that Appeals management provide refresher training and review previously identified misclassified cases, and determine if there are process improvements or additional training areas that can be emphasized to ensure that taxpayer CDP and EH cases are classified correctly.²³ In September 2013, Appeals developed a refresher course on the topic of determining the timeliness of CDP cases and EH requests. The class is available as a Continuing Professional Education topic to Appeals technical employees who work CDP cases.

¹⁹ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between *****1***** taxpayers.

²⁰ Office of Internal Revenue Service Chief Counsel Memorandum - POSTN-112206-13 (June 2013).

²¹ *****1*****

²² The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between *****1***** taxpayers.

²³ TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014).



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The Collection Statute Expiration Date Was Not Always Computed Correctly

We continued to identify errors related to the determination of the Collection Statute Expiration Date (CSED) on taxpayer accounts. During this review, we identified 11 taxpayer cases (*****1*****) that had an incorrect CSED from our two statistical samples. In five of the CDP cases, the IRS incorrectly expanded the CSED time period, allowing the IRS additional time it should not have had to collect the delinquent taxes. Therefore, we project a total of **1** of the 34,229 CDP taxpayer cases closed in FY 2016 may have an incorrect CSED, and taxpayer cases had time extended in error.²⁴

Additionally, we identified six taxpayer cases (*****1*****) with an incorrect CSED that reduced the IRS's time to collect any outstanding balance from the taxpayer. Therefore, we project a total of **1** of the 34,229 CDP cases and **1** of the 7,151 EH taxpayer cases closed in FY 2016 had an incorrect CSED and the collection time was inappropriately shortened.²⁵ Overall, the number of CSED errors has slightly increased from the last review in which we identified a total of 10 CSED errors.²⁶

The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The CSED is the expiration of the time period established by law to collect taxes. Once the IRS receives the taxpayer request for a CDP hearing, the CSED is temporarily suspended. 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 that the IRS receives the taxpayer's withdrawal request. However, the CSED should not be suspended for an EH.

When the IRS suspends the collection statute for a period longer than its policy allows, it potentially violates taxpayer rights. Conversely, when the CSEDs are incorrectly shortened, the IRS has less time to collect delinquent taxes, which could cause a potential loss of tax revenue. Incorrect CSED dates resulted from IRS employees incorrectly identifying or determining the actual suspension start or stop date.²⁷

²⁴ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between *****1***** taxpayers.

²⁵ The point estimate projections are based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between *****1***** taxpayers (CDP) and *****1***** taxpayers (EH).

²⁶ TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).

²⁷ 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.



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Our reviews have identified that the code needed to designate the start of the collection statute suspension was not always input correctly or the suspension end date was incorrect. The statute suspension is systemically controlled on the Integrated Data Retrieval System (IDRS).²⁸ One code is entered to start the suspension, and another code 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 IDRS will systemically recalculate the CSED based on the dates entered for the two codes (which generally reflect the length of the Appeals hearing and/or the exhaustion of any rights to appeal following judicial review).

Appeals management agreed with the number of CSED exceptions and stated that they would update the inaccurate suspension start or stop dates on IDRS for the accounts of those taxpayers with incorrect CSEDs.

Recommendation

Recommendation 1: The Chief, Appeals, should update the inaccurate suspension start or stop dates for the 11 taxpayer accounts that we identified with CSED errors.

Management's Response: Appeals management agreed with this recommendation. Appeals is reviewing the 11 taxpayer accounts identified in this report and initiating the necessary corrective actions. In addition, Appeals is investigating whether the inaccurate suspension start or stop dates for the 11 taxpayer accounts were the result of input errors or some other cause.

Some Corrected Collection Statute Expiration Dates Did Not Always Update to the Internal Revenue Service Master File

We have continued to identify errors related to CSEDs on taxpayer accounts. We identified a total of 41 taxpayer accounts with CSED errors in previous audit reports issued between Calendar Years 2014 and 2016.²⁹ Appeals reported, per the Joint Audit Management Enterprise

²⁸ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

²⁹ TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014), TIGTA, Ref. No. 2015-10-068, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2015), and TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).



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System database,³⁰ that all 41 of the affected taxpayer accounts with CSED errors had been corrected. However, we reviewed the IDRS to determine whether the prior CSED errors were updated on the IRS Master File and found a total of nine of the 41 taxpayer accounts had inaccurate or unresolved CSED errors.

It appears that, although Appeals personnel input the CSED corrections for the suspension start or stop dates on the IDRS, these dates did not systemically update to the IRS Master File.³¹ The IDRS will systemically compute the CSED on a taxpayer's account when a particular closing code is input. Because the statute of limitations is computed by the IDRS, it is vital that the correct beginning and ending codes and dates are entered. Appeals management stated that technical employees use an IDRS input form to request the correction of CSED errors.³² The IDRS input form for the correction process also involves an Appeals Account and Processing Support function operator for input.³³ Appeals management also stated that in Calendar Years 2014, 2015, and 2016, the CSED corrections for the suspension start or stop dates input on IDRS were fully processed on the affected taxpayer accounts.

Appeals management agreed with the number of unresolved CSED corrections for the suspension start or stop dates that did not systemically update on the IRS Master File. Appeals management also agreed that Appeals personnel processing errors or the inconsistency of CSED correction for the suspension start or stop dates input on IDRS could be the cause for the corrections not updating on the IRS Master File. However, Appeals management also stated that some CSED corrections for suspension start or stop dates that did not update to the IRS Master File could possibly be due to an IRS systemic issue of multiple overlapping CSED suspensions which would be outside of the Appeals function to correct.

Recommendations

The Chief, Appeals, should:

Recommendation 2: Evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure that the corrections update to the IRS Master File.

³⁰ The Joint Audit Management Enterprise System is the Department of the Treasury's web-based audit tracking system. It tracks issues, findings, and recommendations extracted from the Office of the Inspector General, Government Accountability Office, and TIGTA audit reports. The information contained in the Joint Audit Management Enterprise System is used by the Treasury Department to assess the effectiveness and progress of bureaus in correcting their internal control deficiencies and implementing audit recommendations.

³¹ The IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

³² Form 4844 is a multipurpose request form used primarily to either input or extract IDRS data.

³³ The Account and Processing Support function provides technical assistance and support for controlling and processing tax cases for Appeals and the Office of Chief Counsel.



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Management's Response: Appeals management agreed with this recommendation. Appeals plans to evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure that the corrections are updated to the IRS Master File.

Recommendation 3: Update the nine unresolved taxpayer accounts identified with CSED errors during Calendar Years 2014 through 2016.

Management's Response: Appeals management agreed with this recommendation. Appeals is reviewing the nine taxpayer accounts identified in this report and initiating the necessary corrective actions. In addition, Appeals is reviewing why corrections previously made to these accounts did not systemically update to the IRS Master File.



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. 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 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 the Office of Appeals (Appeals) had completed case files.
 - A. Obtained an extract of the Appeals Centralized Database System.¹ The file is maintained at TIGTA's Data Center Warehouse.² We identified that 34,229 CDP and 7,151 EH taxpayer cases were closed during FY³ 2016 (October 1, 2015, through September 30, 2016). 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 statistical samples.⁴ We reviewed statistical samples of 70 CDP randomly selected taxpayer cases (48 sample cases from a population of 23,513 Service Center refiled cases and 22 sample cases from a population of 10,689 Federal Record Center stored cases). We also reviewed statistical samples of 70 EH randomly selected taxpayer cases (49 sample cases from a population of 5,020 Service Center refiled cases and 21 sample cases from a population of 2,124 Federal Record Center stored cases). We used a confidence level of 90 percent, a precision level of ± 6 percent, and an expected

¹ A computerized case control system used to control and track cases throughout the appeals process.

² A secured centralized storage of IRS database files used to maintain critical historical data that have been extracted from operational data storage and transformed into formats accessible to TIGTA employees.

³ Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

⁴ TIGTA used a stratified sampling methodology to select four statistical samples based on type and location of CDP and EH closed case files.



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- error rate of 10 percent to determine these sample sizes. We discussed our sampling methodology with our contracted statistician, who reviewed our projections.
- III. Determined whether Appeals CDP and EH taxpayer cases were classified correctly using the CDP and the EH statistical samples reviewed in Step II.B. We also determined whether the CSED was calculated correctly on the taxpayer's account on the IDRS⁵ based on the type of hearing granted for the 140 sample cases 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 statistical 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)].

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 that the following internal controls were relevant to our audit objective: the status of policies and procedures in the CDP Program and 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 IDRS for CDP and EH taxpayer cases. We evaluated these controls by selecting a statistical sample of CDP and EH taxpayer cases, reviewing closed case file documentation, and discussing potential exceptions with Appeals officials.

⁵ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.



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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Chief, Appeals
Director, Office of Audit Coordination



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** taxpayer cases contain CDP hearing requests that were not timely submitted to or incorrectly processed by the IRS. **1**
 *****1*****
 *****1***** (see page 4).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System¹ and identified a population of 34,229 CDP taxpayer cases that were closed in FY² 2016. We further stratified the population by location of closed case file and identified populations of 23,513 cases that were returned to Service Center locations and 10,689 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center.³ We reviewed a statistically valid sample of 70 CDP taxpayer cases (48 cases from the Service Centers and 22 cases from the Federal Records Center). *****1*****
 *****1*****. We estimate that *1* percent of the taxpayer cases in the population (*****1*****) 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 point estimate is between *****1***** taxpayers and the true exception rate is between *****1***** percent.

¹ A computerized case control system used to control and track cases throughout the appeals process.
² Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government’s fiscal year begins on October 1 and ends on September 30.
³ In FY 2016, Appeals closed a total of 34,229 CDP only cases. Per the Appeals Centralized Database System, a total of 23,513 closed cases were returned to Service Centers, 10,689 cases were returned to Collection function revenue officers and refiled in a Federal Records Center, and 27 cases were returned to IRS Examination function and Exempt Organizations employees.



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Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; *1* taxpayer cases contain EH requests that were received timely and were not properly classified as a CDP case and/or were misprocessed by Appeals (see page 4).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 7,151 EH taxpayer cases that were closed in FY 2016. We further stratified the population by location of closed case file and identified populations of 5,020 cases that were closed and refiled to Service Center locations and 2,124 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center.⁴ We reviewed a statistically valid sample of 70 EH taxpayer cases (49 cases from the Service Centers and 21 cases from the Federal Records Center). *****1*****. We estimate that *1* percent of the taxpayer cases in the population (*****1*****) may have contained misclassified EH taxpayer requests. When EH taxpayer cases are misclassified, taxpayers do not receive hearing rights to which they are legally entitled. Using the Exact Binomial Method, we are 90 percent confident that the point estimate is between *****1***** and the true exception rate is between *****1*****.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; **1** taxpayer cases in which CDP taxpayers had an incorrect CSED posted to their taxpayer account (see page 6).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 34,229 CDP taxpayer cases that were closed in FY 2016. We further stratified the population by location of closed case file and identified populations of 23,513 cases that were returned to Service Center locations and 10,689 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center. We reviewed a statistically valid sample of 70 CDP taxpayer cases (48 cases from the Service Centers and 22 cases from the Federal Records Center). We found that five of these CDP taxpayer case files contained an incorrectly applied CSED that inappropriately suspended the taxpayer's CSED. We estimate that *1* percent of the taxpayer cases in the population (*****1*****) had an incorrect CSED posted to taxpayer records. A CSED extended in

⁴ In FY 2016, Appeals closed a total of 7,151 EH-only cases. Per the Appeals Centralized Database System, a total of 5,020 closed cases were returned to Service Centers, 2,124 cases were returned to Collection function revenue officers and refiled in a Federal Records Center, and seven cases were returned to IRS Examination function and Exempt Organizations employees.



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error for a taxpayer case provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Exact Binomial Method, we are 90 percent confident that the point estimate is between *****1*****, and the true exception rate is between *****1*****.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; **1** taxpayer cases in which CDP taxpayers had an incorrect CSED posted to their taxpayer accounts (see page 6).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 34,229 CDP taxpayer cases that were closed in FY 2016. We further stratified the population by location of closed case file and identified populations of 23,513 cases that were returned to Service Center locations and 10,689 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center. We reviewed a statistically valid sample of 70 CDP taxpayer cases (48 cases from the Service Centers and 22 cases from the Federal Records Center). *****1*****

*****1*****
1. We estimate that *1* percent of the taxpayer cases in the population (*****1***** **1**) had an incorrect CSED posted to taxpayer records. A CSED shortened in error for 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 Exact Binomial Method, we are 90 percent confident that the point estimate is between *****1*****, and the true exception rate is between *****1*****.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; *1* taxpayer cases in which EH taxpayers had an incorrect CSED posted to their taxpayer accounts (see page 6).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 7,151 EH taxpayer cases that were closed in FY 2016. We further stratified the population by location of closed case file and identified populations of 5,020 cases that were closed and refiled to Service Center locations and 2,124 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center. We reviewed a statistically valid sample of 70 EH taxpayer cases (49 cases from the Service Centers and 21 cases from the Federal Records Center). *****1*****

*****1*****
We estimate that *1* percent of the taxpayer cases in the population (*****1*****) had an incorrect CSED posted to taxpayer records. A CSED shortened in error for a taxpayer case



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provides the IRS less time than legally allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Exact Binomial Method, we are 90 percent confident that the point estimate is between *****1*****, and the true exception rate is between *****1*****.



Appendix V

Collection Due Process Procedures

The IRS is required to notify taxpayers in writing when a Notice of Federal Tax Lien (NFTL)¹ has been filed or when it intends to levy. A taxpayer is allowed to appeal the filing of the NFTL or proposed levy action through the CDP by filing a hearing request.

The Hearing Request

This hearing request must be received:²

- Within 30 calendar days plus five business days of the filing of a NFTL.
- Within 30 calendar days of the date of the Notice of Intent to Levy.
- Within 30 calendar days of the date of the first CDP Notice provided for that tax and tax period.

If a taxpayer's hearing request is submitted on time, the IRS will:

- Suspend the CSED.
- Provide the taxpayer with a CDP hearing by the Office of Appeals (Appeals).

If a taxpayer's hearing request is not submitted timely, the IRS has authority to:

- Provide the taxpayer with an EH that follows the same procedures as in a CDP hearing for both liens and levies.
- Prevent suspension of collection action.
- Prohibit the taxpayer from petitioning the right to a judicial review.

Conducting the Hearing

Taxpayers are entitled to one hearing per tax period for which a NFTL 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.

¹ The Notice of Federal Tax Lien is a public notification filed with designated State and local jurisdictions. The purpose of filing the NFTL publicly is to inform certain third parties and establish the Government's right of priority against taxpayer creditors.

² See Appendix VI for more specific information on the time periods for CDP hearings and EH requests.



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During the hearing, the hearing officer must:

- Verify whether the requirements of all applicable laws or administrative procedures related to the NFTL or Notice of Intent to Levy were met.
- Address any issues the taxpayer may raise relevant to the unpaid tax, the filing of the NFTL, or the proposed levy, such as whether the taxpayer is an innocent spouse.
- Determine if collection actions were appropriate.
- Decide if other collection alternatives would facilitate the payment of the tax.
- 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.

Hearing Decisions

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 Section 6320 and/or 6330 of the I.R.C.*, which provides an explanation of the right to a judicial review. If the taxpayer disagrees with the Appeals decision, he or she may petition the courts.
- For an EH case, the taxpayer receives a Letter 3210, *Decision Letter on Equivalent Hearing Under I.R.C. Sections 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:
 - Form 12257, *Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, Waiver of Suspension of Levy Action, and Waiver of Periods of Limitation in Section 6330(e)(1)*. Form 12257 and Closing Letter 4382 are applicable when the taxpayer:
 - Agrees with Appeals;
 - Waives the right to a judicial review; and
 - Waives the suspension of collection action.



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- Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*. Form 12256 and Closing Letter 4383 are applicable when the taxpayer:
 - Has reached a resolution with the IRS regarding the tax and tax periods; and
 - Is otherwise satisfied that a hearing with Appeals is no longer needed.
- Letter 5145, *Agreed Equivalent Hearing Closing Letter*, is applicable when the taxpayer:
 - Has agreed with the EH case decision; and
 - Has not raised any issues with the timeliness of the hearing request.³
- 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's case actions were complete, accurate, and resulted in a quality decision.⁴

Jurisdiction

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 As of December 2014, Appeals created Letter 5145 to be used for EH cases for which the taxpayer and Appeals reach an agreement.

⁴ 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 the filing of a Notice of Federal Tax Lien.¹

CDP Deadlines

- Lien Notice – A request for a CDP hearing for a Notice of 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 I.R.C. 6320*.
- Levy Notice – A request for a CDP hearing for a levy must be postmarked within 30 calendar days after the date of the Letter 11/1058, *Final Notice – Notice of Intent to Levy and Notice of Your Right to a Hearing*.

EH 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 calendar day period in order to be timely.

Source: Publication 1660, *Collection Appeal Rights* (Rev. 02-2014).

¹ Form 12153, *Request for a Collection Due Process or Equivalent Hearing* (Rev. 3-2012), 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 C.F.R. § 301.6330-1, Q C-6, Nov. 16, 2006).



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Appendix VII

*Prior Mandatory Collection
Due Process Audit Reports*

Prior TIGTA audits of the Appeals CDP performed during FYs 2012 through 2016:

- **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).
- **FY 2013** – TIGTA, Ref. No. 2013-10-103, *The Office of Appeals Continues to Experience Difficulties in the Handling of Collection Due Process Cases* (Sept. 2013).
- **FY 2014** – TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014).
- **FY 2015** – TIGTA, Ref. No. 2015-10-068, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2015).
- **FY 2016** – TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).



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Appendix VIII

Management's Response to the Draft Report



APPEALS

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

AUG - 2 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Donna C. Hansberry
Chief, Appeals 

SUBJECT: Draft Report – Fiscal Year 2017 – Review of the Office of
Appeals Collection Due Process Program (Audit #201710001)

Thank you for the opportunity to review and comment on the draft report of the Collection Due Process program audit.

Your report identifies 11 taxpayer accounts where input or other processing errors resulted in incorrect Collection Statute Expiration Dates (CSED) entered into our system, and nine taxpayer accounts where previously corrected CSEDs did not systemically update to the IRS Master File. We appreciate you identifying these errors. The accuracy of our CSEDs is crucial to maintaining a Collection Due Process program that protects taxpayer rights. As indicated in the attachment, we agree with all of your recommendations, and will evaluate our processes to ensure that CSED dates are timely and accurately reflected in our systems.

If you have any questions, please have a member of your staff contact Anita M. Hill, Director, Case and Operations Support at (901) 546-2041.

Attachment



*Review of the Office of Appeals
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Attachment

Recommendation 1:

The Chief, Appeals, should update the inaccurate suspension start or stop dates for the 11 taxpayer accounts that we identified with CSED errors.

Proposed Corrective Action:

Appeals agrees with this recommendation. Appeals is reviewing the 11 taxpayer accounts identified in this report and initiating the necessary corrective actions. In addition, Appeals is investigating whether the inaccurate suspension start or stop dates for the 11 taxpayer accounts were the result of input errors or some other cause.

Implementation Date: November 15, 2017

Responsible Official: Director, Case and Operations Support

Recommendation 2:

The Chief, Appeals, should evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure the corrections update to the IRS Master File.

Proposed Corrective Action:

Appeals agrees with this recommendation. Appeals will evaluate the process used by Appeals personnel to input CSED corrections for the suspension start or stop dates to ensure the corrections update to the IRS Master File.

Implementation Date: March 31, 2018

Responsible Official: Director, Case and Operations Support

Recommendation 3:

The Chief, Appeals, should update the nine unresolved taxpayer accounts identified with CSED errors during calendar years 2014 through 2016.

Proposed Corrective Action:

Appeals agrees with this recommendation. Appeals is reviewing the nine taxpayer accounts identified in this report and initiating the necessary corrective actions. In addition, Appeals is reviewing why corrections previously made to these accounts did not systemically update to the IRS Master File.



*Review of the Office of Appeals
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Implementation Date: November 15, 2017

Responsible Official: Director, Case and Operations Support

Outcome Measures:

Outcome measures described in the report could result in enhanced protection of taxpayer rights and entitlements for potentially 3,832 taxpayers and potential increased revenue for 2,547 cases.

Proposed Corrective Action:

Appeals concurs with these described benefits.