



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

**September 5, 2018**

**Reference Number: 2018-10-054**

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

**Redaction Legend:**

1 = Tax Return/Return Information

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## HIGHLIGHTS

### REVIEW OF THE OFFICE OF APPEALS COLLECTION DUE PROCESS PROGRAM

# Highlights

**Final Report issued on  
September 5, 2018**

Highlights of Reference Number: 2018-10-054  
to the Commissioner of Internal Revenue.

#### IMPACT ON TAXPAYERS

The Collection Due Process (CDP) 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 required procedures under 26 United States Code Sections 6320 and 6330 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 CDP 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. From two statistically valid samples, TIGTA identified eight taxpayer cases that were misclassified. This is a slight increase from the six misclassified taxpayer cases that were identified in the prior year's review.

TIGTA also identified an issue involving taxpayers that mail or fax their hearing request to the wrong IRS location. When taxpayers mail or fax their hearing request to other than the required IRS location, Compliance function guidance requires employees to fax the taxpayer's request to the CDP Coordinator at

the correct Compliance function site on the same day. TIGTA determined that the IRS Compliance function did not timely process the hearing requests for an additional eight taxpayers. These taxpayers were not granted a CDP hearing but properly requested an Equivalent Hearing, and Appeals appropriately provided the hearing per guidelines. However, the IRS Compliance function did not follow procedures and may not have adequately protected taxpayer rights by the untimely processing of the misdirected hearing requests.

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 nine taxpayer cases that had an incorrect CSED. For the nine taxpayer cases identified, the IRS incorrectly extended the time period in seven of the taxpayer cases, allowing the IRS additional time it should not have had to collect the delinquent taxes. \*\*\*\*\*1\*\*\*\*\*

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\*\*1\*\*. Overall, this is a slight decrease from the 11 taxpayer accounts with CSED errors that were identified in the prior year's review.

#### WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, update the taxpayer accounts identified with CSED errors and coordinate with the proper IRS function to resolve any systemic issues causing incorrect CSEDs.

In their response, IRS management agreed with our recommendation.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 5, 2018

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Review of the Office of Appeals Collection Due Process Program (Audit # 201810001)

This report presents the results of our review to determine whether the Internal Revenue Service complied with 26 United States Code Sections 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy. This audit is part of our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendation. If you have any questions, please contact me or Troy Paterson, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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

*Table of Contents*

Background.....Page 1

Results of Review .....Page 4

Some Taxpayers Did Not Receive the Appropriate  
    Type of Hearing .....Page 4

The Collection Statute Expiration Date Was Not  
    Always Computed Correctly.....Page 6

Recommendation 1:.....Page 8

**Appendices**

Appendix I – Detailed Objective, Scope, and Methodology .....Page 9

Appendix II – Major Contributors to This Report .....Page 11

Appendix III – Report Distribution List .....Page 12

Appendix IV – Outcome Measures.....Page 13

Appendix V – Collection Due Process Procedures.....Page 17

Appendix VI – Time Periods for Collection Due Process  
    and Equivalent Hearings .....Page 20

Appendix VII – Prior Mandatory Collection Due Process  
    Audit Reports .....Page 21

Appendix VIII – Management’s Response to the Draft Report .....Page 22



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

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

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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 (lien)<sup>1</sup> by filing a Notice of Federal Tax Lien (NFTL).<sup>2</sup> Along with the filing of an NFTL, the IRS is 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.*<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Further, Congress enacted legislation to protect taxpayers' rights in the IRS Restructuring and Reform Act of 1998,<sup>6</sup> which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP)<sup>7</sup> 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 an NFTL or the issuance of a Notice of Intent to Levy, the taxpayer is granted a CDP hearing. However, if the taxpayer's request for a CDP hearing is not received within the allotted time, usually within 30 calendar days, the taxpayer, at the discretion of Appeals, might be granted an Equivalent Hearing (EH). The taxpayer must request an EH within one year of the issuance of the Notice of

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<sup>1</sup> 26 United States Code (U.S.C.) Section (§) 6321.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 26 U.S.C. § 6331.

<sup>5</sup> 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.).

<sup>6</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>7</sup> See Appendix V for an explanation of the CDP and Equivalent Hearing procedures.



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

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Intent to Levy and one year plus five business days after the filing date of the NFTL. 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, Appeals will contact the taxpayer and generally issue the following acknowledgement letter:

- **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.<sup>8</sup>

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 by Appeals only in EH cases advising taxpayers who have appealed a collection action of the decision of Appeals.
- **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 12257 was submitted by the taxpayer indicating agreement to waiving the right to judicial review and the suspension of levy action under Section 6330(e)(1).<sup>9</sup>
- **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's request to withdraw from the CDP or EH.

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<sup>8</sup> On August 11, 2017, Letter 4837, *Substantive Contact Uniform Acknowledgement Letter*, replaced Letter 4836, *Substantive Contact Letter*.

<sup>9</sup> 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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*Review of the Office of Appeals  
Collection Due Process Program*

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- **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)<sup>10</sup> 2017, Appeals closed 33,626 CDP cases and 6,050 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 an NFTL or a Notice of Intent to Levy and the right of the taxpayer to appeal these actions.<sup>11</sup> This is our eighteenth annual audit of taxpayer appeal rights.

The scope for this year's audit covered CDP and EH cases closed between October 1, 2016, and September 30, 2017. This review was performed by contacting Appeals personnel in Los Angeles, California; Washington, D.C.; Cleveland, Ohio; and Richmond, Virginia, during the period October 2017 through May 2018. 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.

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<sup>10</sup> 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.

<sup>11</sup> 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv).



Review of the Office of Appeals  
Collection Due Process Program

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 an NFTL; however, taxpayers must comply with specific time frames to qualify for a CDP hearing or an EH.<sup>12</sup>

During this review, we identified eight taxpayer cases (four CDP and four EH) that were misclassified in our two statistically valid samples of 70 CDP and 70 EH taxpayer cases. This is a slight increase from the six misclassified taxpayer cases that we identified in our prior review.<sup>13</sup>

In four misclassified CDP taxpayer cases, we determined that the taxpayer should not have been granted a CDP hearing based on when the IRS received the taxpayer’s appeals request:

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<sup>12</sup> See Appendix VI for more information about the time periods for CDP hearings and EH requests.  
<sup>13</sup> TIGTA, Ref. No. 2017-10-055, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2017).  
<sup>14</sup> The CDP levy hearing request must be postmarked or received within the 30-calendar-day period commencing the day after the date of the CDP levy notice.  
<sup>15</sup> 26 U.S.C. §§ 6320 and 6330(b)(2).  
<sup>16</sup> 26 Code of Federal Regulations 301.6330-1(c)(2) Q&A-C6.



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

Based on the four errors identified in the 70 CDP taxpayer cases we reviewed, we estimate that 1,921 of 33,626 CDP taxpayer cases closed by Appeals in FY 2017 may have incorrectly received a CDP hearing due to incorrect processing or untimely filing dates.<sup>17</sup>

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Based on the timeliness or processing errors in four of the 70 EH taxpayer cases, we estimate that 346 of 6,050 taxpayer cases may have been incorrectly processed for or granted an EH.<sup>19</sup>

Appeals management agreed with our analysis and indicated that taxpayer cases were generally misclassified due to incorrect judgment on the part of hearing officers. In previous reviews, we have recommended that Appeals management provide refresher training, 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

<sup>17</sup> 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 663 taxpayers and 4,233 taxpayers.

<sup>18</sup> 26 C.F.R. 301.6330-1(i)(2) Q&A-A17 – A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under Section 6330.

<sup>19</sup> 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 119 taxpayers and 758 taxpayers.



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

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correctly.<sup>20</sup> In September 2013, Appeals developed a refresher course on the topic of determining 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. As such, we are not making a recommendation for this finding.

Additionally, during this review, we identified a separate issue potentially involving taxpayers who mail or fax their hearing request to the wrong IRS location. When taxpayers mail or fax their hearing request to other than the required IRS location,<sup>21</sup> Compliance function guidance requires employees to fax the taxpayer's request to the CDP Coordinator at the correct Compliance function site on the same day.<sup>22</sup> We identified eight taxpayers who mistakenly sent their CDP hearing request to the wrong IRS address. The IRS Compliance function did not timely forward the hearing request to the correct location until after the CDP due date. 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. These eight taxpayers were not granted a CDP hearing but properly requested an EH and Appeals appropriately provided the hearing per guidelines. However, the IRS Compliance function did not follow procedures and may not have adequately protected taxpayer rights because of the untimely processing of the misdirected requests. Appeals may want to pursue this issue with the Collection Division to ensure that the IRS is adequately protecting taxpayer rights in the future.

By law, taxpayers are entitled to a CDP hearing in Appeals conducted by an impartial officer with no prior involvement with the tax or tax periods covered by the hearing. We determined that Appeals adequately informed the taxpayers about the impartiality issue through initial and/or final correspondence and properly documented impartiality in the case activity records in all of the 140 taxpayer sample cases we reviewed.

### **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 a total of nine taxpayer cases (\*\*\*\*\*1\*\*\*\*\*) that had an incorrect CSED from our two statistical samples. In seven of the CDP cases, the IRS incorrectly exceeded the CSED time period, allowing the IRS additional time it should not have had to collect the delinquent taxes. Based on

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<sup>20</sup> TIGTA, Ref. No. 2014-10-049, *Review of the Office of Appeals Collection Due Process Program* (Aug. 2014).

<sup>21</sup> The taxpayer must file the request for the appeal with the office initiating the action (the address shown on the lien or levy notice). Per Treasury Regulations, 26 C.F.R. 301.6320 and 6330-1(c)(2) Q&A-C6, the taxpayer is required to submit a written request for a CDP hearing, and that request must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice.

<sup>22</sup> Per the Internal Revenue Manual, if a Form 12153 is received at an incorrect IRS Compliance function site, employees must immediately forward, by EEFax, the form including all supporting documents and envelope, the same day to the CDP Coordinator at the correct site.



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

our review of a sample of CDP cases, we estimate that 3,363 of 33,626 CDP taxpayer cases closed in FY 2017 may have an incorrect CSED, and taxpayer cases had collection time extended in error.<sup>23</sup>

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\*\*\*\*\*1\*\*\*\*\*. Based on our review of a sample of CDP cases and a sample of EH cases, we estimate that 480 of 33,626 CDP cases and 86 of 6,050 EH taxpayer cases closed in FY 2017 had an incorrect CSED, and the collection time was inappropriately shortened.<sup>24</sup> Overall, the number of CSED errors has slightly decreased from the last review, in which we identified a total of 11 CSED errors.<sup>25</sup>

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.<sup>26</sup>

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 by transaction codes on the Integrated Data Retrieval System (IDRS).<sup>27</sup> 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

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<sup>23</sup> 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 1,608 taxpayers and 6,034 taxpayers.

<sup>24</sup> 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 25 taxpayers and 2,216 taxpayers (CDP) and four taxpayers and 397 taxpayers (EH).

<sup>25</sup> TIGTA, Ref. No. 2016-10-064, *The Office of Appeals Has Improved Compliance Within the Collection Due Process Program* (Aug. 2016).

<sup>26</sup> 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.

<sup>27</sup> IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.



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

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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 or the exhaustion of any rights to appeal following judicial review).

Appeals management agreed with the CSED exceptions and stated that they would update the inaccurate suspension start or stop dates on the IDRS within their purview for the accounts of those taxpayers with incorrect CSEDs. 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 the authority of the Appeals function to correct.

### ***Recommendation***

**Recommendation 1:** The Chief, Appeals, should update the inaccurate suspension start or stop dates for the nine taxpayer accounts that we identified with CSED errors. In addition, for those taxpayer accounts with systemic issues related to the CSED, Appeals should coordinate with the proper IRS function for correction.

**Management's Response:** IRS management agreed with this recommendation. Appeals has reviewed the nine taxpayer accounts identified in this report and has initiated the necessary corrective actions. Also, for those accounts with systemic issues related to the CSED, Appeals will coordinate with the proper IRS function for correction.



## **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 rights to appeal the filing of a Notice of Federal Tax Lien or the 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.<sup>1</sup> The file is maintained at TIGTA's Data Center Warehouse.<sup>2</sup> We identified that 33,626 CDP and 6,050 EH taxpayer cases were closed during FY<sup>3</sup> 2017 (October 1, 2016, through September 30, 2017). 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. We determined that the data were sufficiently reliable for the purposes of this report.
  - B. Selected and secured closed CDP and EH taxpayer cases for our statistical samples.<sup>4</sup> We reviewed statistical samples of 70 CDP randomly selected taxpayer cases (49 sample cases from a population of 23,373 campus<sup>5</sup> refiled cases and 21 sample cases from a population of 10,214 Federal Record Center stored cases). We also reviewed statistical samples of 70 EH randomly selected taxpayer cases (47 sample cases from a population of 4,077 campus refiled cases and 23 sample cases from a population of 1,963 Federal Record Center stored cases). We used a confidence level

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

<sup>2</sup> 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.

<sup>3</sup> 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.

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

<sup>5</sup> The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.



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

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of 90 percent, a precision level of  $\pm 6$  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 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 IDRS<sup>6</sup> 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 that 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.

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<sup>6</sup> IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.





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

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**Appendix II**

*Major Contributors to This Report*

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

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**Appendix III**

*Report Distribution List*

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; 1,921 taxpayer cases contain CDP hearing requests that were not timely submitted to or were incorrectly processed by the IRS. These taxpayers failed to timely request the CDP hearing within statutory or regulatory guidelines or had requests misprocessed by the Office of Appeals (Appeals) (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 System<sup>1</sup> and identified a population of 33,626 CDP taxpayer cases that were closed in FY<sup>2</sup> 2017. We further stratified the population by location of closed case file and identified populations of 23,373 cases that were returned to campus<sup>3</sup> locations and 10,214 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center.<sup>4</sup>

We reviewed a statistically valid sample of 70 CDP taxpayer cases (49 cases from campuses and 21 cases from a Federal Records Center). We found that four of these CDP taxpayer case files contained a CDP request that was misclassified. We estimate that 5.7 percent of the taxpayer cases in the population (1,921 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 point estimate is between 663 taxpayers and 4,233 taxpayers and the true exception rate is between 2.0 percent and 12.6 percent.

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

<sup>2</sup> 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.

<sup>3</sup> The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.

<sup>4</sup> In FY 2017, Appeals closed 33,626 CDP cases. Per the Appeals Centralized Database System, 23,373 closed cases were returned to campuses, 10,214 cases were returned to Collection function revenue officers and refiled in a Federal Records Center, and 39 cases were returned to IRS Examination function and Exempt Organizations function employees.



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

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**Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 346 taxpayer cases contain EH requests that were received timely and were not properly classified as a CDP case 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 6,050 EH taxpayer cases that were closed in FY 2017. We further stratified the population by location of closed case file and identified populations of 4,077 cases that were closed and refiled to campus locations and 1,963 cases that were returned to Collection function revenue officers and refiled in a Federal Records Center.<sup>5</sup>

We reviewed a statistically valid sample of 70 EH taxpayer cases (47 cases from campuses and 23 cases from a Federal Records Center). We found that four of these EH taxpayer case files contained an EH request that was misclassified based on timeliness or misprocessing. We estimate that 5.7 percent of the taxpayer cases in the population (346 taxpayer cases) 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 119 taxpayers and 758 taxpayers and the true exception rate is between 2.0 percent and 12.5 percent.

**Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 3,363 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 33,626 CDP taxpayer cases that were closed in FY 2017. We further stratified the population by location of closed case file and identified populations of 23,373 cases that were returned to campus locations and 10,214 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 (49 cases from campuses and 21 cases from a Federal Records Center). We found that seven of these CDP taxpayer case files contained an incorrectly applied CSED that inappropriately suspended the taxpayer's CSED. We estimate that 10 percent of the taxpayer cases in the population (3,363 taxpayer cases) had an

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<sup>5</sup> In FY 2017, Appeals closed 6,050 EH cases. Per the Appeals Centralized Database System, 4,077 closed cases were returned to Campuses, 1,963 cases were returned to Collection function revenue officers and refiled in a Federal Records Center, and 10 cases were returned to IRS Examination function and Exempt Organizations function employees.



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

incorrect CSED posted to taxpayer records. A CSED extended in 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 1,608 taxpayers and 6,034 taxpayers, and the true exception rate is between 4.8 percent and 17.9 percent.

**Type and Value of Outcome Measure:**

- Increased Revenue – Potential; 480 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 33,626 CDP taxpayer cases that were closed in FY 2017. We further stratified the population by location of closed case file and identified populations of 23,373 cases that were returned to campus locations and 10,214 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 (49 cases from campuses and 21 cases from a Federal Records Center). \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. We estimate that 1.4 percent of the taxpayer cases in the population (480 taxpayer cases) 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 25 taxpayers and 2,216 taxpayers, and the true exception rate is between 0.1 percent and 6.6 percent.

**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 6,050 EH taxpayer cases that were closed in FY 2017. We further stratified the population by location of closed case file and identified populations of 4,077 cases that were closed and refiled to campus locations and 1,963 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 (47 cases from campuses and 23 cases from a Federal Records Center). \*\*\*\*\*1\*\*\*\*\*  
\*\*\*\*\*1\*\*\*\*\*. We estimate that 1.4 percent of the taxpayer cases in the population (86 taxpayer cases) had an incorrect CSED posted to



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

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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 four taxpayers and 397 taxpayers, and the true exception rate is between 0.1 percent and 6.6 percent.<sup>6</sup>

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<sup>6</sup> Figures estimated in outcome measures are the result of projections based on the expanded statistical percentages of calculated errors and thus may not exactly match the result of calculations made by rounded percentages presented in the summary above.



## **Appendix V**

### *Collection Due Process Procedures*

The IRS is required to notify taxpayers in writing when an NFTL<sup>1</sup> 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**

The hearing request must be received:<sup>2</sup>

- Within 30 calendar days plus five business days of the filing of the 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 an 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.

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<sup>1</sup> The NFTL 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.

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



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

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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 Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, 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 Internal Revenue Code 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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*Review of the Office of Appeals  
Collection Due Process Program*

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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.<sup>3</sup>
- 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.<sup>4</sup>

### **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.

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<sup>3</sup> As of August 2013, Appeals created Letter 5145 to be used for EH cases for which the taxpayer and Appeals reach an agreement.

<sup>4</sup> 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.<sup>1</sup>

#### **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).*

<sup>1</sup> 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).



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

**Appendix VII**

*Prior Mandatory Collection  
Due Process Audit Reports*

Prior TIGTA audits of the Appeals CDP performed during FYs 2013 through 2017:

- **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).
- **FY 2017** – TIGTA, Ref. No. 2017-10-055, *Review of the Office of Appeals Collection Due Process Program* (Sept. 2017).



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

**Appendix VIII**

*Management's Response to the Draft Report*



CHIEF, APPEALS

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

August 13, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Donna C. Hansberry  
Chief, Appeals

SUBJECT: Draft Report – Fiscal Year 2018 – Review of the Office of  
Appeals Collection Due Process Program (Audit #201810001)

Thank you for the opportunity to review and comment on the draft report of the Collections Due Process program audit. We agree with your recommendations and outcome measures. Please see our attached response.

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



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

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Attachment

Recommendation 1:

The Chief, Appeals, should update the inaccurate suspension start or stop dates for the nine taxpayer accounts that we identified with CSED errors. In addition, for those taxpayer accounts with systemic issues related to the CSED, Appeals should coordinate with the proper IRS function for correction.

Proposed Corrective Action:

Appeals agrees with this recommendation. Appeals has reviewed the nine taxpayer accounts identified in this report and has initiated the necessary corrective actions. Also, for those accounts with systemic issues related to the CSED, Appeals will coordinate with the proper IRS function for correction.

Implementation Date: December 15, 2018

Responsible Official: Director, Case and Operations Support

Outcome Measure 1:

Taxpayer Rights and Entitlements – Potential; 1,921 taxpayer cases contain CDP hearing requests that were not timely submitted to or were incorrectly processed by the IRS. These taxpayers failed to timely request the CDP hearing within statutory or regulatory guidelines or had requests misprocessed by the Office of Appeals (Appeals).

Appeals Response:

We agree with this outcome measure.

Outcome Measure 2:

Taxpayer Rights and Entitlements – Potential; 346 taxpayer cases contain EH requests that were received timely and were not properly classified as a CDP case or were misprocessed by Appeals.

Appeals Response:



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

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We agree with this outcome measure.

Outcome Measure 3:

Taxpayer Rights and Entitlements – Potential; 3,363 taxpayer cases in which CDP taxpayers had an incorrect CSED posted to their taxpayer account.

Appeals Response:

We agree with this outcome measure.

Outcome Measure 4:

Increased Revenue – Potential; 480 taxpayer cases in which CDP taxpayers had an incorrect CSED posted to their taxpayer accounts.

Appeals Response:

We agree with this outcome measure.

Outcome Measure 5:

Increased Revenue – Potential; 86 taxpayer cases in which EH taxpayers had an incorrect CSED posted to their taxpayer accounts.

Appeals Response:

We agree with this outcome measure.