May 22, 2003

Representative Amo Houghton, Jr.
Chairman
Ways and Means Subcommittee on Oversight
U.S. House of Representatives
1136 Longworth House Office Building
Washington, DC  20515

Representative Earl Pomeroy
Ranking Member
Ways and Means Subcommittee on Oversight
U.S. House of Representatives
1106 Longworth House Office Building
Washington, DC  20515

Re:  Collection Due Process Hearings

Dear Messrs. Houghton and Pomeroy:

On behalf of the Section of Taxation of the American Bar Association, this responds to a request for comments regarding the criteria under which taxpayer requests for collection due process (“CDP”) hearings under sections 6320 and 6330 of the Internal Revenue Code should be considered "frivolous."

CDP hearings are designed to provide a meaningful forum for taxpayers who believe that they are being unfairly treated by the IRS in connection with collection matters. Most taxpayers who request such hearings are unrepresented by counsel and unsophisticated in tax matters. As a result, they are prone to advance arguments or positions, albeit in good faith, that are either erroneous as a matter of law or otherwise not well founded.

In these circumstances, the requesting taxpayer should not be viewed as acting in a patently improper or otherwise frivolous manner. Rather, the Section believes that frivolous conduct penalties should be imposed upon taxpayers requesting CDP hearings only (i) where the request is based on arguments or positions that the IRS has specifically identified as frivolous in published pronouncements, and (ii) after the taxpayer has been afforded an opportunity to withdraw the request or to supplement it with information which would render the relevant published pronouncement inapplicable.

Clear examples of situations where a taxpayer may properly be considered to have submitted a frivolous CDP request would include (i) challenges to the amount, existence or collectibility of the assessed tax liability based on the constitutionality of the income tax; (ii) efforts to delay or impede administration of the tax laws with submissions substantially similar to previous submissions and with no material change in taxpayer circumstances; or (iii) legal arguments that are contrary to well-established precedents in cases involving the same or substantially similar facts and circumstances. Again, we think it important that notice of these and any other clearly frivolous scenarios be given through explicit published administrative guidance. Taxpayer requests involving circumstances and arguments falling outside the parameters of any such guidance should not be penalized as frivolous absent clear evidence of bad faith (e.g., the furnishing of incorrect, incomplete or misleading information).

The Section appreciates the opportunity to submit these comments and commends the Oversight Subcommittee of the Committee on Ways and Means for their interest in this important aspect of tax administration. Representatives of the Section would be pleased to discuss in further detail the views expressed in this letter. Please contact Bill Wilkins, the Section’s Vice-Chair for Government Relations (202/662-6304), if that might be helpful.

Very truly yours,

[Signature]

Herbert N. Beller
Chair, Section of Taxation

cc: Payson Peabody, Professional Staff, Subcommittee on Oversight Democratic Staff
Bob Winters, Republican Chief Tax Counsel, House Ways & Means Committee Staff
John Buckley, Democratic Chief Counsel, House Ways & Means Committee Staff
Mark A. Prater, Republican Chief Tax Counsel, Senate Finance Committee Staff
Russell Sullivan, Democratic Chief Tax Counsel, Senate Finance Committee Staff
George Yin, Chief of Staff, Joint Committee on Taxation
Pamela F. Olson, Assistant Secretary, Tax Policy, Department of Treasury
Helen M. Hubbard, Tax Legislative Counsel, Department of Treasury

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This “repeat submission” scenario would be an appropriate indication of frivolous conduct only if the initial or other earlier request were rejected by IRS after full consideration (as opposed to only cursory or no review).