WHAT IS COLLECTION DUE PROCESS? A PRACTICAL INTRODUCTION TO THE STAGES OF CDP

American Bar Association Section of Taxation
Tax Bridge to Practice
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PANELISTS

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TOPICS WE WILL COVER

- Quick history of and legal authority for Collection Due Process
- When is there a right to CDP?
  - Pre-levy and Post-Notice of Federal Tax Lien filing rights
- Mechanics of requesting CDP
  - Completing and mailing Form 12153; effect on statute of limitations
- How best to work with Appeals Settlement Officers
- Opportunities for Judicial review of CDP hearings
  - Standard of review and potential remedies/outcomes
- Tips for success and pitfalls to avoid when pursuing CDP
HISTORY OF COLLECTION DUE PROCESS: CODE AND REGULATIONS

- Created by the Revenue Restructuring Act of 1998
  - Established formal procedures to provide due process protections to taxpayers facing IRS levy and lien actions
  - See Code sections 6320 and 6330
  - Also see Treasury Regulations at sections 301.6330-1 (pre-levy) and 301.6320-1 (post-filing Notice of Federal Tax Lien)
HIGH POINTS OF COLLECTION DUE PROCESS

- CDP takes place after assessment of tax
  - A taxpayer’s opportunity to raise challenges to liability is limited
- Allows taxpayers to propose collection alternatives to full payment of liabilities.
- CDP hearings issued pre-levy and soon after filing of Notice of Federal Tax Lien
- CDP hearings are held by IRS Independent Office of Appeals
- Right to judicial review of unfavorable CDP hearing outcomes
LIFE CYCLE OF A CASE INVOLVING CDP

Assessment of tax

Tax Court

Collections

Taxpayer receives Notice of Determination giving 30 days to petition Tax Court

CDP Hearing (Appeals)

Taxpayer receives levy or lien notice giving right to request a CDP hearing within 30 days
COLLECTION DUE PROCESS – PRE-LEVY NOTICE

- See IRC §§ 6330, Notice and opportunity for hearing before levy
- IRS issues “Final Notice of Intent to Levy” (Notice LT 11)
- Allows right to request CDP before IRS initiates levy
  - Taxpayer must request CDP hearing within 30 days
  - Taxpayer may request a collection alternative through a CDP hearing
  - Timely CDP requests toll collection statute of limitations, but also bar IRS from levying
- Some exceptions to pre-levy notice requirement include jeopardy and federal contractor levies
COLLECTION DUE PROCESS – POST-NOTICE OF FEDERAL TAX LIEN

- See IRC §§ 6320
- IRS files Notice of Federal Tax Lien (NFTL) with county in state where Taxpayer resides or has principal place of business
  - May file in county where Taxpayer owns real estate
  - Credit reporting agencies stopped listing NFTL on credit reports in 2018
- Within 5 business days after filing the NFTL, IRS must send taxpayer a notice giving right to a CDP hearing
  - IRS will provide the due date for requesting the CDP hearing on the CDP notice
- Taxpayer may use CDP hearing to seek withdrawal, subordination or discharge of lien filing
- Taxpayer may also submit a collection alternative, even though NFTL will likely remain in place after the hearing
REQUESTING CDP – FORM 12153

- Use Form 12153, Request for a Collection Due Process or Equivalent Hearing
  - Send by certified mail to prove timely mailing
- Identify years for which right to CDP exists (Section 5)
  - Note: taxpayer may owe for additional years not covered by the CDP hearing
  - These years/periods must nonetheless be included in any proposed collection alternatives such as an installment agreement or offer in compromise
- Identify whether proposed levy or filing of NFTL gave right to request CDP hearing (Section 6)
- When might you want an Equivalent Hearing if CDP hearing is unavailable? (Section 7)
REQUESTING CDP – FORM 12153

- What is the basis for the disagreement/request for CDP? (Section 8)
  - Consider what type of collection alternative your client wants (if any)
    - What if you do not yet know?
  - If requesting CDP in response to a NFTL, which IRS action are you seeking?
  - Consider Innocent Spouse or another reason for requesting CDP
- Generally, avoid challenging liability, now that assessment has taken place
THE CDP HEARING: WORKING WITH APPEALS

- Held by a Settlement Officer at IRS Independent Office of Appeals
  - Rarely held as face-to-face hearings
  - Taxpayers and representatives receive notice of hearing in advance with instructions on what documents to provide
    - Taxpayer must be current on tax filings
    - Taxpayers seeking collection alternatives should complete financial forms as requested by Settlement Officers
    - How soon may these be sent?
Consider taxpayer’s interest in developing the administrative file/record for subsequent Tax Court review.

If a collection alternative is not proposed and/or agreed to through the hearing, Settlement Officer will issue a Notice of Determination:

• **Gives 30-days to petition Tax Court**
JUDICIAL REVIEW OF CDP HEARINGS

- Taxpayers should use same forms to petition the Tax Court as are required in deficiency cases
- Petitioner-taxpayer has burden of proof
- CDP differs from deficiency cases in that:
  - Standard of review in CDP cases is Abuse of Discretion
    - Note: where liability is at issue, *de novo* standard of review applies
  - Taxpayer or IRS may seek remand of case to IRS Appeals for additional review of proposed collection alternative
    - Court may order remand *sua sponte*
JUDICIAL REVIEW OF CDP HEARINGS

- IRS Counsel often files Motion for Summary Judgment seeking to dismiss case where record evidence is weak, e.g., where Taxpayer did not participate in CDP hearing.
  - Note: Counsel may also be open to settling cases by having Collection consider an installment agreement or offer in compromise.
TIPS FOR SUCCESS WITH CDP

For CDP hearings:
- Understand process involved, timing rules and issues, and purpose (i.e., to request a collection alternative)
- Understand potential consequences to Taxpayers
  - Tolling statute of limitations on collection
  - Possible impact on bankruptcy timing rules

When requesting Tax Court review of CDP hearing outcomes:
- Understand high abuse of discretion standard of review
- Review possible outcomes including dismissal on Motion for Summary Judgment, remand to Appeals, and assess whether taxpayer may or should propose a new collection alternative
Do not miss out on requesting a CDP hearing: it’s use it or lose it.
- Taxpayer only receives one CDP hearing per tax period for levies and one for liens.

Do not request for purposes of delay.

Be prepared and organized and able to respond timely to requests from Settlement Officers.
- Complete financial forms early in process.
- Assess whether your client has filed all required returns and will owe for current tax year/period.

Understand what CDP hearings can achieve and potential benefits and consequences of review by Tax Court.
ADDITIONAL OPPORTUNITIES TO LEARN ABOUT CDP

Friday, October 4: Collection Due Process Notices: Much Needed Works in Progress
- Sponsored by the Individual and Family Taxation Committee, 8:15 am

Saturday, October 5: Prior Opportunities to Dispute Liability in Collection Due Process: An Oversized Reaction to Insufficient Action
- Sponsored by the Pro Bono & Tax Clinics Committee, 8:00 am

Tuesday, December 3: Low Income Taxpayer Representation Workshop: Collection Due Process Summit
- Sponsored by Pro Bono & Tax Clinics Committee
- Washington, DC - 8:30 am to 12 pm
Thank you for coming!