IRC § 6320 & § 6330.
Collection Due Process (CDP) Procedures and Protections.
Opportunities for CDP Improvement.

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Improving Procedures for Taxpayers to Arrange Sustainable Plans to Collect the Correct Amount of Tax Owed.

ABA Low Income Taxpayer Representative Workshop
December 3, 2019 – 8:30 a.m. - Noon
Washington D.C.
1. IRC sections 6320, 6330 – collection due process (CDP) – and their legislative intent.
2. CDP as applied.
3. Opportunities to improve CDP, consistent with its legislative intent.
   a. Improving CDP notices and communications.
   b. Improving CDP administrative proceedings, working with Appeals.
   c. Exploring CDP rights and procedures within judicial proceedings to improve effectiveness and efficiency for all participants in Tax Court matters.
CDP was enacted to give taxpayers an independent forum within the IRS (the Office of Appeals) to resolve all issues involving collection of a tax liability, and to give taxpayers the right to judicial review of Appeals’ determination. Congress “believes that taxpayers are entitled to protections in dealing with the IRS that are similar to those they would have in dealing with any other creditor.”

Committee Reports, IRS Restructuring and Reform Act of 1998, PL 105-206, 7/22/98.
Legislative Reasons for §§ 6320, 6330.

“The IRS should afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property.”

Section 6320 and 6330 procedures “designed to afford taxpayers due process in collections will increase fairness to taxpayers.”

Committee Reports, IRS Restructuring and Reform Act of 1998, PL 105-206, 7/22/98.
IRC § 6320 & § 6330.
Policy Makers, Implementers, Adjudicators.

Primary participants and influencers in the interpretation and application of IRC § 6320 & § 6330:
- IRS Office of Chief Counsel, Procedure and Administration Branches 3 and 4.
- IRS Collections.
- IRS Office of Appeals.
- IRS SBSE counsel (litigation) and SBSE Division Counsel.
- Taxpayers and their representatives (*pro bono* and fee-based; limited and full scope)
- United States Tax Court.
The IRS must send notice of a lien filing 5 business days after the filing of the lien in the state recording office.

Taxpayers have 30 calendar days after this period to request an Appeals hearing.
“In general. –No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under [§ 6330] before such levy is made.” § 6330(a)(1).

Notice shall be given “not less than 30 days before the day of the first levy with respect to amount of the unpaid tax for the taxable period.” § 6330(a)(2) flush language.
“The 30-day period in which a taxpayer may timely request an Appeals Office hearing begins on the day after the date of mailing” of the levy notice pursuant to § 6330(a). Newsome v. Commissioner, T.C. Memo. 2007-111; § 301.6330-1(a)(3), A10.

Most levies are prohibited until after the hearing before the Office of Appeals, and any judicial review, is no longer pending.
The Lien or Levy CDP Hearing Request.

Taxpayers must make their requests for a CDP hearing in writing. § 301.6320-1(c)(2), Q&A A-C1(i); § 301.6330-1(c)(2), Q&A A-C6.

Taxpayers “are encouraged to use Form 12153, ‘Request for a Collection Due Process Hearing,’ in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals.” § 301.6320-1(c)(2), Q&A A-C1(iv); § 301.6330-1(c)(2), Q&A A-C1(iv).
Where to Send the Lien or Levy Hearing Request.

“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.” § 301.6320-1(c)(2), Q&A A-C6; § 301.6330-1(c)(2), Q&A A-C6.

Timeliness of a taxpayer’s written request for a CDP hearing will be determined by application of the rules and regulations under §§ 7502-7503 [i.e., timely mailed is timely filed], “if properly transmitted and addressed as provided in A-C6.” § 301.6320-1(c)(2), Q&A A-C4; § 301.6330-1(c)(2), Q&A A-C4.
In general, if the person receiving a notice of lien filing under § 6320(a)(3)(B) requests a hearing in writing, such hearing shall be heard by the IRS Office of Appeals. § 6320(b)(1).

A person shall be entitled to only one hearing under § 6320 with respect to the taxable period to which the unpaid taxes giving rise to the filed lien. § 6320(b)(2). To the extent practicable, a § 6320 hearing shall be held in conjunction with a hearing under § 6330. § 6320(b)(4).

Regarding the conduct of the hearing, review and suspensions, for purposes of § 6320, the provisions of § 6330(c), (d), (e) and (g) apply. § 6320(c).
In general, if the taxpayer requests a hearing in writing within 30 days as specified by § 6330(a)(3)(B), such hearing shall be heard by the IRS Office of Appeals. § 6330(b)(1).

A person shall be entitled to only one hearing under § 6330 with respect to the taxable period to which the unpaid taxes giving rise to the filed lien. § 6330(b)(2).

Because both the lien and proposed levy give rise to hearing rights, the taxpayer has the opportunity for two hearings for the same taxable period.
Matters considered at the hearing include:
- Verification by the Appeals Officer that the requirements of any applicable law or administrative procedure have been met (valid assessment? Supervisory approval of penalty?). § 6330(c)(1).
- Issues – Any relevant issue relating to the unpaid tax or the proposed levy, including appropriate spousal defenses, challenges to the appropriateness of collection actions and other collection alternatives (offers in compromise, installment agreements, currently not collectible status). § 6330(c)(2)(A).
- Challenges to the underlying liability, in limited circumstances. § 6330(c)(2)(B).
- Whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be nor more intrusive than necessary. § 6330(c)(3)(C).
Right to a Fair Hearing and Conduct of Hearing.
Applicable to Lien and Levy CDP Proceedings.

- Proceeding after the hearing:
  - Petition for review by the Tax Court, within 30 days of a determination under § 6330. § 6330(d)(1).
  - Appeals retains jurisdiction with respect to any determination made under § 6330, including subsequent hearings requested by the taxpayer who requested the original hearing on issues regarding:
    - Collection actions taken or proposed with respect to such determinations. § 6330(d)(3), (3)(A).
  - Collection of tax generally is suspended, and the statute of limitations for collection of tax is tolled while the CDP proceedings are pending until at least the 90th day after the date on which there is a final determination of the CDP proceedings. § 6330(e)(1).
Challenging the Underlying Liability.

“The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.” § 6330(c)(2)(B).
“An issue may not be raised at the hearing if—
(A)(i) the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding; and
(ii) the person seeking to raise the issue participated meaningfully in such hearing or proceeding;”
Issues Precluded from CDP Hearings.
Select Internal Revenue Manual Sections.

• Section 8.22.8. Liability Issues and Relief from Liability.
  • IRM 8.22.8.3, When a Liability is Raised.
    • Provides guidance to Appeals on what and what is not a prior opportunity under section 6330(c)(2)(B) that will prevent the taxpayer from having liability determined as part of the CDP hearing.

• IRM 8.22.8.4, Issues Precluded from CDP Under IRC 6330(c)(4).
  • Provides guidance when a previous determination of the liability by Appeals or a court will prevent the taxpayer from having the liability determined as part of the CDP hearing.
Opportunities for Improving § 6320 and § 6330 as Interpreted and Applied.
ABA Section of Taxation 2019 Meetings

May Meeting:
CDP - Beyond the Weeping & Gnashing of Teeth

Fall Meeting:
• What Is CDP? A Practical Introduction to the Stages of CDP
• Collection Due Process Notices
• Prior Opportunities to Dispute Liability in Collection Due Process
CDP Summit Initiative History - Membership

- Private Practitioners
- Educators
- LITC Clinicians
- IRS Counsel
- Taxpayer Advocate Service
CDP Summit Initiative History - Communications

- Procedurally Taxing website
- ABA Tax Times
- LITC Toolkit
- Tax Justice Warriors podcast
CDP Summit Initiative History - Methodology

- Core Group
- Steering Committee – Selection of Opportunity Recommendations
- Working Groups
- Data and Technology Group
1. Improving CDP Notices and Communications.

1. Improvements to CDP Publications and IRS website for taxpayer awareness.
2. CDP notice changes – pivot from a billing statement to informing taxpayers of CDP rights.
3. Revisions to Form 12153 – greater clarity of CDP process in choices listed on the form.
2. Improving CDP Administrative Proceedings, Working with Appeals.

1. Splitting the Appeals process at the beginning so simple collection alternatives can be resolved faster and reduce IRS workload.
2. Promote LITC availability earlier in the process.
3. Explain to taxpayers regarding doubt as to liability and their ability to contest liability.

1. Regarding CDP motions for summary judgment, schedule hearings regarding unrepresented petitioners to allow access to pro bono representation.
2. Study use of remand to determine its effectiveness and fairness for the IRS and taxpayers.
3. Develop a judicial working group with the Tax Court to address issues needing input from Tax Court judges.
Please stay right there for:
Approaching Change With the IRS.