Collection Due Process Summit
CDP - Beyond the Weeping and Gnashing of Teeth.
What Can Be Done to Fulfill CDP’s Beneficial Intent?

American Bar Association Section of Taxation
Individual and Family Taxation Committee
2019 May Tax Meeting - May 10, 2019
Panelists

- Carolyn Lee (Moderator) - Morgan, Lewis & Bockius LLP - San Francisco, CA
- Keith Fogg - Harvard Law School - Cambridge, MA
- Honorable David Gustafson - U.S. Tax Court - Washington, D.C.
- Mitch Hyman - IRS Office of Chief Counsel - Washington, D.C.
- William Schmidt - Kansas Legal Services LITC - Kansas City, KS
- Erin Stearns - University of Denver Low Income Tax Clinic - Denver, CO
Presentation Outline

- Overview of Collection Due Process (CDP)
- Opportunities for feasible solutions:
  - Administrative Phase
  - Judicial Phase
  - Remedies
Collection Due Process - Overview

- 20 Years of CDP
  What works and what does not?

- Purpose of Summit - Seeking solutions through dialog
  CDP is an essential tool for establishing sustainable collection alternatives to full payment of liabilities. Over time as applied, CDP revealed imperfections. What are the opportunities to effectively and efficiently achieve CDP’s beneficial intent?
Collection Due Process - Overview

- Statutory notices when the taxpayer has a right to request a CDP hearing using Form 12153 within 30 days after:
  - The issuance of the notice of filing of the federal tax lien (see IRM 8.22.5.3.1.5(6),(7)) for important details), or
  - The issuance of the final notice of intent to levy.

- Equivalent Hearing - 1 year and 5 business days from lien filing or 1 year from levy notice. No right to petition for Tax Court protections.

- For reference, IRC §§ 6320, 6330; Internal Revenue Manual (IRM) 8.22
Collection Due Process - Overview

- CDP hearing with IRS Appeals division
  - Collection-focused administrative proceeding
  - Taxpayer must be current on tax filings
  - Key stage to ensure the taxpayer’s record for subsequent review is robust, reflecting taxpayer efforts and IRS response
  - Not a court proceeding; no transcript available unless taxpayer records the exchanges

- Notice of Determination issued by Appeals provides statutory 30-day window to petition Tax Court
Collection Due Process - Overview

- Tax Court petition takes taxpayer to judicial phase
- Burden of proof rests with petitioner taxpayer
- IRS often files Motion for Summary Judgment (MSJ) before seeking other resolution; MSJ based on (typically weak) record/Administrative File
- Standard of review is Abuse of Discretion
- Remand is a return to the IRS, which may lead to the Tax Court, etc. Objective: A sustainable collection alternative established under the Court’s protection.
Administrative Phase

- CDP best practices -
  What is the best route for a taxpayer to take?
  - When to request a CDP hearing, with a Notice of Lien? Only upon receipt of the Final Notice of Intent to Levy? What about the offer to follow a CAP (Collection Appeals Program) path, included in IRS notices? What are the risks present at every decision point?

- 30-Day deadlines
  - Do taxpayers understand the deadlines for CDP and Tax Court? Is there proper notice?

- Potential challenges:
  - Is the process easy to understand and taxpayer accessible?
  - Are CDP delays resulting from the procedures as applied and a stretched IRS workforce too much for the IRS and taxpayers?
Judicial Phase

- Standard of Review
  - Is the abuse of discretion standard too harsh? If yes, how can an effective, correct and/or fair result to achieved within the standard’s constraints?

- Motions for Summary Judgment (MSJ)
  - What alternatives to MSJs exist?
Alternative Remedies

- **Remand**
  - Do taxpayers get stuck in a loop between the IRS and Tax Court? Is that loop one of CDP’s protections against harsh effects of a burdened administrative system?

- **Mediation**
  - Can mediation have an improved or expanded role in the CDP process?

- **Taxpayer Bill of Rights (TBOR)**
  - How can applying the TBOR inform and improve the CDP process, during both the Administrative and Judicial phases.
Questions? Proposed Solutions?