

Understanding IRS Collection Procedures

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Unit One- Assessment

Learning Objectives

After completing this Unit you should have an understanding of:

- What an “Assessment” is
- The procedure required by the IRC for making an Assessment
 - The effect of the IRS making an Assessment
 - The different types of Assessments

I. Collection Begins with Assessment

A. Overview

1. Definition - An assessment is the formal recording of a taxpayer's tax liability, fixing the amount payable.

2. Procedure –

a. Under Code Sec. 6203, an assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary.

1. For the average taxpayer, the assessment process begins when he files a return stating his tax liability with the appropriate regional Service center.

2. When the Service center receives the return, it is inspected to determine whether it has been signed and properly executed, and whether the required schedules have been attached.

3. The Service will also check the return for mathematical accuracy. If the return is complete and correct on its face, the tax liability that the taxpayer reported on the return is entered on an assessment list with the taxpayer's name, identifying number, the taxable period, and the type of tax.

4. On any date, the total tax liability of all taxpayers for each type of tax to be assessed at the Service center on that day is summarized on Form 23C (Assessment Certificate).

5. When an assessment officer in the Service center signs this summary list, the official act of assessment has occurred for purposes of the Code.

6. The date of an assessment is the date the assessment officer signed the summary record.

b. Under the Regulations an assessment is made by an assessment officer signing a summary record of assessment.

c. The summary record, through supporting records, provides identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment.

d. The amount of the assessment is, in the case of tax shown on a return by the taxpayer, the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record.

e. The date of the assessment is the date the summary record is signed by an assessment officer.

f. If the taxpayer requests a copy of the record of assessment, he will be furnished a copy of the pertinent parts of the assessment on Form 4340 which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

3. When a Tax Return is Filed

a. When a taxpayer files a return showing that a tax is due, the Service may take one of three possible actions:

(1) If no error was made, the tax reported on the return is summarily assessed;

(2) If full payment is remitted with the return, the assessment is satisfied, and the result is a zero balance on the Service's records; or

(3) If only partial payment is enclosed with the return, the tax reported is assessed and the taxpayer is billed for the balance.

b. The notice sent to a taxpayer after partial payment is a demand for payment, not a notice of deficiency that would entitle the taxpayer to Tax Court review before payment.

c. Where a taxpayer has made a mathematical or clerical error, the return is treated as though it were a partially paid return, and the tax is assessed.

(1) The taxpayer is entitled to receive information of the error and an explanation of the adjustment.

(2) After the Service sends the taxpayer a notice of the error, the taxpayer has sixty days to request that the Service abate the assessment based on the alleged mathematical or clerical error.⁶⁶

d. A taxpayer must admit liability for a tax before it may be summarily assessed. If the taxpayer shows a tax on his return, but denies liability for the tax (e.g., by attaching a letter refusing to pay the tax because it is unconstitutional or by a protest that the tax laws are not applicable to him), the amount of tax shown on the return is considered to be zero. Although the taxpayer has shown an amount on the return, he has not admitted that that amount is due and collectible.

e. In short, a tax determined to be due may not be summarily assessed; rather, the normal deficiency procedures apply.

4. Assessment When No Tax Return is Filed

a. If a taxpayer fails to file a tax return or executes a fraudulent return, the Service is authorized to "execute" a return on the taxpayer's behalf using available information.

b. The return made and executed for the taxpayer is “sufficient for all legal purposes except insofar as any Federal statute expressly provides otherwise.” Although Section 6020(b) authorizes the Service to prepare and execute a return on the taxpayer's behalf, it does not require the Service to do so.

c. If the Service does elect to prepare a return, it is not necessary for the taxpayer to consent to disclose all necessary information or to sign the return.

d. The deficiency in this scenario is the difference between the amount of tax the Service determines the taxpayer owes and the amount of tax liability the taxpayer subsequently denies.

For example, where a taxpayer did not file a return, and the Service filed one for him and sent the taxpayer a notice of the amount due, the Board of Tax Appeals held that “to the extent the tax and penalty determined by [the Commissioner] exceed the amount [admitted to be due by the taxpayer], the Commissioner has determined a deficiency...”

e. Alternatively, if the Service chooses not to prepare a return, it may still make a deficiency assessment. The Service can determine the deficiency as if a return had been made showing the amount of tax to be zero.

B. Effect of Assessments

1. Enforces the Tax Statute

a. An assessment enforces the tax statute.

b. Provisions in the Internal Revenue Code (the Code) are not self-enforcing and do not themselves create a collectible liability.

c. An assessment does this by establishing a taxpayer's liability under the tax statute for the amount of tax due and unpaid.

2. Force of a Judgment

a. The assessment has “the force of a judgment.”

b. The assessment has the same force as the judgment an ordinary creditor obtains after the creditor has successfully prosecuted an action on a debt.

c. There is a difference between assessment-as-judgment and the ordinary creditor's judgment, however.

(1) Where assessment of tax is involved, “the usual procedure of debts is reversed... payment precedes defense, and the burden normally on the claimant [the Service] is shifted to the taxpayer.

(2) The assessment precedes the pleading, proof and judgment necessary in an action at law [by a creditor], and has the force of such a judgment.

3. Collection Procedures

a. An assessment is the foundation of the Internal Revenue Service's (the Service's) administrative collection procedures.

b. Because the assessment is effectively a judgment, the Service may collect its assessment-as-judgment by using the same types of collection action the ordinary judgment creditor uses to collect a judgment against the debtor.

c. Collection procedures reflect the judgment like character of an assessment. Before the Service may place a charge on a taxpayer's property by lien or seize a taxpayer's property by levy, the Service must give the taxpayer notice of the assessment and demand its payment.

d. The Service records a notice of its assessment lien, in the same manner as the judgment creditor records its judgment.

e. The Service levies on its assessment lien to seize the property of the taxpayer, in the same way as the judgment creditor levies on its judgment to seize property of the judgment debtor.

4. Assessment Starts the Clock on Collection

a. General rule. In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, *within 10 years after the date of assessment.*

b. Agreement to extend the period of limitations on collection.

The Secretary may enter into an agreement with a taxpayer to extend the period of limitations on collection in the following circumstances:

(1) Extension agreement entered into in connection with an installment agreement.

(a) If the Secretary and the taxpayer enter into an installment agreement for the tax liability prior to the expiration of the period of limitations on collection, the Secretary and the taxpayer, at the time the installment agreement is entered into, *may enter into a written agreement to extend the period of limitations on collection to a date certain.*

(b) A written extension agreement entered into extends the period of limitations on collection until the 89th day after the date agreed upon in the written agreement.

(2) Extension agreement entered into in connection with the release of a levy under section 6343.

(a) If the Secretary has levied on any part of the taxpayer's property prior to the expiration of the period of limitations on collection and the levy is subsequently released pursuant to section 6343 after the expiration of the period of limitations on collection, the Secretary and the taxpayer, prior to the release of the levy, may enter into a written agreement to extend the period of limitations on collection to a date certain.

(b) Such a written extension agreement entered into under shall extend the period of limitations on collection until the date agreed upon in the extension agreement.

(3) Proceeding in court for the collection of the tax.

If a proceeding in court for the collection of a tax is begun within the normal assessment period, the period during which the tax may be collected by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

(4) Effect of statutory suspensions of the period of limitations on collection if executed collection extension agreement is in effect.

(a) Any statutory suspension of the period of limitations on collection tolls the running of the period of limitations on collection, as extended pursuant to an executed extension agreement, for the amount of time set forth in the relevant statute.

(b) The following example illustrates the principle set forth in this paragraph.

Example. In June of 2003, the Internal Revenue Service (IRS) enters into an installment agreement with the taxpayer to provide for periodic payments of the taxpayer's timely assessed tax liabilities. At the time the installment agreement is entered into, the taxpayer and the IRS execute a written agreement to extend the period of limitations on collection. The extension agreement executed in connection with the installment agreement operates to extend the period of limitations on collection to the date agreed upon in the extension agreement, plus 89 days. Subsequently, and prior to the expiration of the extended period of limitations on collection, the taxpayer files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge from bankruptcy a few months later. Assuming the tax is not discharged in the bankruptcy, section 6503(h) of the Internal Revenue Code operates to suspend the running of the previously extended period of limitations on collection for the period of time the IRS is prohibited from collecting due to the bankruptcy proceeding, and for 6 months thereafter. The new expiration date for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(5) Date when levy is considered made. The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

c. Suspension of Assessment Period. Issuance of statutory notice of deficiency.

(1) General rule. The running of the period of limitations is generally suspended for the period during which the Secretary is prohibited from making the

assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) Corporation joining in consolidated income tax return. If a deficiency notice in respect to a deficiency is mailed to a corporation, the suspension of the running of the period of limitations shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

C. Types of Assessments

1. In General – The two most common types of assessments are: (a) the summary assessment, and (b) a deficiency assessment

2. Summary Assessment –

a. A summary assessment is made for the tax shown on the taxpayer's tax return. Under Code Sec. 6201 (a)(1), the IRS is required to assess all taxes determined by the taxpayer.

b. A summary assessment can be made upon filing of the tax return.

3. Deficiency Assessment

a. A "deficiency assessment" means an assessment of the excess of the tax, (income, estate, gift, or excise tax as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) . *In other words, and increase in the tax after an audit by the IRS.*

b. "Deficiency" is a term of art in the tax law. It not only refers to the additional tax that is due (the deficiency), but also signifies the cornerstone of procedures intended to assure taxpayers that they have a right to prepayment judicial review of the Service's administrative determination that additional tax (the deficiency) is due before the Service is permitted to assess and collect the tax.

b. If no return is made, or if the return (except a return of income tax pursuant to sec. 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero.

c. A deficiency assessment can only be after the taxpayer has been given the opportunity for a prepayment review of the tax determination in the Tax Court.

d. Under deficiency procedures, the Service is required to (1) give the taxpayer notice of the proposed assessment, and (2) wait the statutorily prescribed period of 90 days (150 days for taxpayers outside the country) before assessing the tax and taking collection action.

e. Section 6213(a) states that no assessment of a deficiency in respect of any tax imposed...and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice [of deficiency] has been mailed to the taxpayer, nor until the expiration of such 90-day period [for petitioning the Tax Court thereafter]...nor, if a

petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

f. It is this delay in the taxpayer's obligation to pay (if any) that distinguishes deficiency procedures from refund procedures.

g. Prepayment judicial review is not permitted for all taxes. Prepayment judicial review is limited to income, estate and gift, and certain excise taxes on foundations and pension plans.

h. Prepayment judicial review is also limited to the U.S. Tax Court.

i. The U.S. District Courts and the U.S. Court of Federal Claims are without jurisdiction to grant taxpayers prepayment judicial review of a proposed deficiency over which the Tax Court has jurisdiction. In short, the U.S. Tax Court is a specialized court Congress established under Article I of the Constitution to provide prepayment judicial review of deficiencies.

j. If a deficiency is found to exist in income, estate, or gift tax, or a miscellaneous excise tax on pensions and foundations, the Service is required to send a notice of the deficiency by certified or registered mail to the "taxpayer's last known address." A statutory notice of deficiency consists of a letter stating the amount of the deficiency and a summary statement showing how the deficiency was computed

4. Jeopardy Assessments

a. If a district director or director of a service center believes that the assessment or collection of a deficiency in income, estate, gift, or chapter 41, 42, 43, or 44 tax will be jeopardized by delay, then the director is required to assess such deficiency immediately, together with the interest, additional amounts, and additions to the tax provided by law.

b. The IRS will make a jeopardy assessment under this section if collection is determined to be in jeopardy because at least one of the following conditions exists:

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(2) The taxpayer is or appears to be designing quickly to place his, her, or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be imperiled.

5. Termination Assessments

The district director shall immediately authorize a termination assessment of the income tax for the current or preceding taxable year if the district director finds that a taxpayer designs to do an act which would tend to prejudice proceedings to collect the income tax for such year or years unless such proceedings are brought without delay, or the conditions provided in IB4b are determined to exist.

Review Question 1

Which of the following is not an effect which follows from an assessment?

- A. An assessment enforces the tax statute.
- B. An assessment has “the force of a judgment.”
- C. An assessment allows the Service to seize the taxpayer’s property without prior notice.
- D. An Assessment starts the clock on collection

A is Incorrect - Provisions in the Internal Revenue Code are not self-enforcing and do not themselves create a collectible liability. An assessment does this by establishing a taxpayer's liability under the tax statute for the amount of tax due and unpaid.

B is Incorrect - The assessment has the same force as the judgment an ordinary creditor obtains after the creditor has successfully prosecuted an action on a debt.

C is Correct - The Service must give the taxpayer notice of the assessment and demand its payment before the Service may place a charge on a taxpayer's property by lien or seize a taxpayer's property by levy.

D is Incorrect - In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, within 10 years after the date of assessment.

Unit Two – Collection Actions

Learning Objectives

After Completing this Unit you should have an understanding of:

- The steps the IRS takes in collecting unpaid tax
- The effect of a Federal Tax Lien being filed against a taxpayer
 - The nature of the IRS Levy procedure

I. In General

A. Once an assessment has been made the process of collecting unpaid tax begins with a demand for payment.

B. Code Sec. 6303 provides that the IRS must within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to the taxpayer for the unpaid tax, stating the amount and demanding payment.

C. If the taxpayer persists in non-payment of the taxes due, a lien is created by law which attaches to the taxpayer's property, as well as any current and future rights the taxpayer has to property.

D. This will be followed by a Notice of Federal Tax Lien which notifies the public that there is a federal tax lien and establishes the priority of the IRS's claim versus the claims of other creditors.

E. Finally, the IRS may legally seize ("levy") the taxpayer's property in order to satisfy the tax due.

II. The Demand for Payment

A. Code Sec. 6303 provides that the IRS must within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to the taxpayer for the unpaid tax, stating the amount and demanding payment.

B. When an assessment is made and a balance is due on the account, the IRS service center computers are programmed to send a series of notices to taxpayers who are individual or business taxpayers.

C. Individual taxpayers receive notices as follows:

1. A first notice is generated when a balance due is entered on the taxpayer's account or master file. This notice represents the notice of the assessment and demand for payment of the amount assessed within sixty days, required by Section 6303.

2. Five weeks later, a first follow-up balance due notice is mailed. This "Reminder of Unpaid Tax" includes a late payment penalty and requests payment within ten days to avoid additional interest and penalty charges.

3. A second follow-up letter is mailed after five weeks. This follow-up notice states "Overdue Tax," and again requests payment within ten days so as to avoid interest and penalty charges.

4. A third follow-up balance due notice is mailed after another five weeks. This notice is headed "Urgent—Payment Required."

5. A final follow-up notice is mailed in another five weeks. This notice warns that it is a final notice (Form 8126) before enforcement action is taken.

6. If the taxpayer still does not pay the balance due within five weeks after the mailing of the Form 8126, a taxpayer delinquent account ("TDA") is automatically generated by the computer for processing by the local office.

D. The Taxpayer Bill of Rights 2 added a new notice the Service is required to send to taxpayers with assessed but unpaid liabilities.

1. At least annually, the Service is required to send a written notice to a taxpayer who has a delinquent account, setting out the amount of the tax delinquency as of the date of the notice.

2. As a matter of law, the Service is required to send to the taxpayer a notice stating the amount and demanding payment (called the notice and demand).

III. Federal Tax Lien

A. Overview

1. A Federal Tax Lien is a legal claim against all the taxpayer's current and future property, such as a house or car, and rights to property, such as wages and bank accounts. The lien automatically comes into existence if the taxpayer doesn't pay the taxpayer's amount due after receiving the taxpayer's first bill.

2. When the taxpayer doesn't pay the taxpayer's first bill for taxes due, a lien is created by law and attaches to the taxpayer's property. It applies to property (such as the taxpayer's home and car) and to any current and future rights the taxpayer has to property.

3. A general tax lien (the lien attaches to all property and rights to property) arises by operation of law where (a) the Service has made an assessment of a tax assessment; (b) the Service has sent the taxpayer a notice of the assessment stating the amount and demanding its payment; but (c) the taxpayer has failed to pay the amount assessed within ten days after the notice and demand.

4. The assessment lien comes into existence automatically (on the expiration of 10 days without payment). Nothing more needs to be done to establish the government's interest in the taxpayer's property as against other creditors of the taxpayer and persons having dealings with or claims against the taxpayer.

B. Notice of Federal Tax Lien

1. A *Notice of Federal Tax Lien* gives public notice to creditors.

2. It notifies them that there is a federal tax lien that attaches to all the taxpayer's current and future property and rights to property.

3. The IRS files the Notice of Federal Tax Lien so the IRS can establish the priority of the IRS's claim versus the claims of other creditors.

4. The Notice of Federal Tax Lien is filed with local or state authorities, such as county recorder of deeds or the Secretary of State offices. If a Notice of Federal Tax Lien is filed against the taxpayer, it's often reported by consumer credit reporting agencies.

5. This can have a negative effect on the taxpayer's credit rating and make it difficult for the taxpayer to receive credit (such as a loan or credit card).

6. Employers, landlords and others may also use this information and not favorably view the fact that a Notice of Federal Tax Lien has been filed against the taxpayer.

7. However by law, there will be no filing of the Notice of Federal Tax Lien or enforcement action taken to collect an individual shared responsibility payment associated with the Affordable Care Act

C. If a Notice of Federal Tax Lien is filed Against the Taxpayer

1. The taxpayer should pay the full amount the taxpayer owes immediately.

2. The Notice of Federal Tax Lien only shows the taxpayer's assessed balance as of the date of the notice. It doesn't show the taxpayer's payoff balance or include the IRS's charges for filing and releasing the lien.

3. To find out the full amount the taxpayer must pay to have the lien released, the taxpayer should call 1-800-913-6050 or 859-669-4811 if the taxpayer is calling from outside of the United States.

4. If the taxpayer has questions, call the number on the taxpayer's lien notice or 1-800-829-1040 or visit www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Understanding-a-Federal-Tax-Lien, or view instructional videos at <http://www.irsvideos.gov/Individual/IRSLiens>.

D. How to Appeal a Notice of Federal Tax Lien

1. Within five business days of the first filing of the Notice of Federal Tax Lien for a specific debt, the IRS will send the taxpayer a Notice of Federal Tax Lien Filing and Your Right to a Collection Due Process hearing.

2. The taxpayer will have until the date shown on the notice to request a Collection Due Process hearing with the Office of Appeals.

3. The taxpayer's Collection Due Process hearing request should be sent to the address on the notice. For more information, see Form 12153, Request for Collection Due Process or Equivalent Hearing.

4. The person affected by the filed lien is entitled to a fair hearing, as long as that person requests the hearing *within the thirty-day period after the five-day period following the filing of the notice of lien*. The hearing will be conducted by an Appeals officer who has had no prior involvement with the unpaid tax that gave rise to the filing of the lien. Only one hearing before this impartial official is permitted.

5. After the taxpayer's Collection Due Process hearing, the Office of Appeals will issue a determination on whether the Notice of Federal Tax Lien should remain filed, or whether it should be withdrawn, released, discharged or subordinated.

6. If the taxpayer disagrees with the determination, the taxpayer has 30 days after it's made to seek a review in the U.S. Tax Court.

7. In addition to any Collection Due Process rights the taxpayer may have, the taxpayer may also appeal a proposed or actual filing of a Notice of Federal Tax Lien under the Collection Appeals Program.

E. Reasons the IRS Will “Release” A Federal Tax Lien

1. A “release” of a federal tax lien means that the IRS has cleared both the lien for the taxpayer’s debt and the public Notice of Federal Tax Lien.
2. The IRS does this by filing a Certificate of Release of Federal Tax Lien with the same state and local authorities with whom the IRS filed the taxpayer’s Notice of Federal Tax Lien.
3. The IRS will release the taxpayer’s lien if:
 - a. The taxpayer’s debt is fully paid,
 - b. Payment of the taxpayer’s debt is guaranteed by a bond, or
 - c. The taxpayer has met the payment terms of an Offer in Compromise which the IRS has accepted, or
 - d. The period for collection has ended. (In this case, the release is automatic.)
4. For more information, see Publication 1450, Instructions on How to Request a Certificate of Release of Federal Tax Lien.

F. Reasons the IRS may “Withdraw” a Notice of Federal Tax Lien

1. A “withdrawal” removes the Notice of Federal Tax Lien from public record.
2. The withdrawal tells other creditors that the IRS is abandoning the IRS’s lien priority.
3. This doesn’t mean that the federal tax lien is released or that the taxpayer is no longer liable for the amount due.
4. The IRS may withdraw a Notice of Federal Tax Lien if:
 - a. The taxpayer entered into an Installment Agreement to satisfy the tax liability, unless the Agreement provides otherwise. For certain types of taxes, the IRS will routinely withdraw a Notice of Federal Tax Lien if the taxpayer entered into a direct debit installment agreement and meet certain other conditions,
 - b. It will help the taxpayer pay the taxpayer’s taxes more quickly,
 - c. The IRS didn’t follow IRS procedures,
 - d. It was filed during a bankruptcy automatic stay period, or
 - e. It’s in the taxpayer’s best interest and in the best interest of the government. For example, this could include when the taxpayer’s debt has been satisfied and the taxpayer request a withdrawal.
5. For more information, see Form 12277, Application for Withdrawal of Filed Notice of Federal Tax Lien.

G. How to Apply for A “Discharge” of a Federal Tax Lien from Property

1. A “discharge” removes the lien from specific property.
2. There are several circumstances under which the federal tax lien can be discharged.

3. For example, the IRS may issue a Certificate of Discharge if the taxpayer is selling property and a Notice of Federal Tax Lien has been filed; the taxpayer may be able to remove or discharge the lien from that property if the government receives its interest through the sale.

4. For more information on whether the taxpayer qualify for a discharge, see Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien.

H. How to Make the Federal Tax Lien Secondary to Other Creditors (“Subordination”)

1. *What is It?*

a. “Subordination” is where a creditor is allowed to move ahead of the government’s priority position.

b. For example, if the taxpayer is trying to refinance a mortgage on the taxpayer’s home, but aren’t able to because the federal tax lien has priority over the new mortgage, the taxpayer may request that the IRS subordinate the IRS’s lien to the new mortgage.

c. For more information on whether the taxpayer qualifies for a subordination, see Publication 784, How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien. To watch an instructional video about Publication 784, visit <http://irsvideos.gov/Individual/IRSLiens>.

2. *Appeal Rights For Withdrawal, Discharge Or Subordination*

a. If the taxpayer’s application is denied the taxpayer will receive Form 9423, Collection Appeal Request and Publication 1660, Collection Appeal Rights, with an explanation of why the taxpayer’s application was denied.

b. If the IRS denies the taxpayer’s request for a withdrawal, discharge, or subordination, the taxpayer may appeal under the Collections Appeals Program.

IV. Levies

A. Levy: A Seizure of Property

1. While a federal tax lien is a legal claim against the taxpayer’s property, a levy is a legal seizure that actually takes the taxpayer’s property (such as the taxpayer’s house or car) or the taxpayer’s rights to property (such as the taxpayer’s income, bank account, or Social Security payments) to satisfy the taxpayer’s tax debt.

2. The IRS can’t seize the taxpayer’s property if the taxpayer has a current or pending Installment Agreement, Offer in Compromise, or if the IRS agrees that the taxpayer is unable to pay due to economic hardship, meaning seizing the taxpayer’s property would result in the taxpayer’s inability to meet basic, reasonable living expenses.

B. Reasons the IRS May Seize (“Levy”) the Taxpayer’s Property or Rights to Property

1. If the taxpayer doesn’t pay the taxpayer’s taxes, or make arrangements to settle the taxpayer’s debt, the IRS could seize and sell the taxpayer’s property.

2. The IRS will not seize the taxpayer’s property to collect an individual shared responsibility payment.

3. The IRS usually seize only after the following things have occurred.
 - The IRS assessed the tax and sent the taxpayer a bill,
 - The taxpayer neglected or refused to pay the tax, and
 - The IRS sent the taxpayer a Final Notice of Intent to Levy and Notice of the Taxpayer's Right to a Hearing at least 30 days before the seizure.
4. However, there are exceptions for when the IRS doesn't have to offer the taxpayer a hearing at least 30 days before seizing the taxpayer's property. These include situations when:
 - The collection of the tax is in jeopardy,
 - A levy is served to collect tax from a state tax refund,
 - A levy is served to collect the tax debt of a federal contractor, or
 - A Disqualified Employment Tax Levy (DETL) is served. A DETL is the seizure of unpaid employment taxes and can be served when a taxpayer previously requested a Collection Due Process appeal on employment taxes for other periods within the past two years.
5. If the IRS serves a levy under one of these exceptions, the IRS will send the taxpayer a letter explaining the seizure and the taxpayer's appeal rights after the levy are issued.
6. If the taxpayer's property is seized ("levied"), the taxpayer should call the number on the taxpayer's levy notice or 1-800-829-1040. If the taxpayer is already working with an IRS employee, call him or her for assistance.

C. Examples of Property the IRS Can Seize ("Levy")

- *Wages, salary, or commission held by someone else*

If the IRS seizes the taxpayer's rights to wages, salary, commissions, or similar payments that are held by someone else, the IRS will serve a levy once, not each time the taxpayer is paid. The one levy continues until the taxpayer's debt is fully paid, other arrangements are made, or the collection period ends. Other payments the taxpayer receive, such as dividends and payments on promissory notes are also subject to seizure. However, the seizure only reaches the payments due or the right to future payments as of the date of the levy.

- *The taxpayer's bank account*

Seizure of the funds in the taxpayer's bank account will include funds available for withdrawal up to the amount of the seizure. After the levy is issued, the bank will hold the available funds and give the taxpayer 21 days to resolve any disputes about who owns the account before sending the IRS the money. After 21 days, the bank will send the IRS the taxpayer's money, and any interest earned on that amount, unless the taxpayer have resolved the issue in another way.

- *The taxpayer's federal payments*

As an alternative to the levy procedure used for other payments such as dividends and promissory notes, certain federal payments may be systemically seized through the Federal Payment Levy Program in order to pay the taxpayer's tax debt. Under this

program, the IRS can generally seize up to 15% of the taxpayer's federal payments (up to 100% of payments due to a vendor for goods or services sold or leased to the federal government).

The IRS will serve the levy once, not each time the taxpayer is paid. The levy continues until the taxpayer's debt is fully paid, other arrangements are made, the collection period ends, or the IRS releases the levy. The federal payments that can be seized in this program include, but aren't limited to, federal retirement annuity income from the Office of Personnel Management, Social Security benefits under Title II of the Social Security Act (OASDI), and federal contractor/vendor payments.

- *The taxpayer's house, car, or other property*

If the IRS seizes the taxpayer's house or other property, the IRS will sell the taxpayer's interest in the property and apply the proceeds (after the costs of the sale) to the taxpayer's tax debt. Prior to selling the taxpayer's property, the IRS will calculate a minimum bid price. The IRS will also provide the taxpayer with a copy of the calculation and give the taxpayer an opportunity to challenge the fair market value determination.

The IRS will then provide the taxpayer with the notice of sale and announce the pending sale to the public, usually through local newspapers or flyers posted in public places. After giving public notice, the IRS will generally wait 10 days before selling the taxpayer's property. Money from the sale pays for the cost of seizing and selling the property and, finally, the taxpayer's tax debt. If there's money left over from the sale after paying off the taxpayer's tax debt, the IRS will tell the taxpayer how to get a refund.

- *Retirement plan payments*

With minor exceptions, Individual Retirement Accounts, pension plan and profit-sharing plan benefits payable to the taxpayer are subject to attachment by the federal tax lien even if such payments are exempt from attachment under state law.

- *Joint Accounts*

Generally, the federal tax lien attaches to all real property owned by the taxpayer in fee simple. If the taxpayer co-owns property as a joint tenant or tenant in common, the federal tax lien attaches to only the taxpayer's interest in the property

- *Tenancy by the Entireties*

The Supreme Court in *Craft v. United States*, 140 F 3rd 638, held that the right to use the property, to receive the property's income, and to exclude others from the property might be enough sticks in the bundle to subject the taxpayer's interest in the entireties property to the federal tax lien.

- *Cash Value of Life Insurance*

If a taxpayer is the owner of a life insurance policy and possesses incidents of ownership (such as the right to change the beneficiary or borrow against the policy), the policy is considered property subject to attachment by the federal tax lien, whether or not the taxpayer is also the insured. The federal tax lien attaches to the policy's cash surrender value.

- *Social Security Benefits*

Social Security benefits can be attached by the federal tax lien, but certain federal entitlements are exempt from levy under §6334(a)(6), (10) and (11). The IRS may levy against Social Security retirement benefit payments but not against Supplemental Security Income (SSI) benefit payments, since SSI is not based on a person's work or self-employment but is a program which makes payments to needy people who are elderly, blind, or disabled.

D. Property That Can't Be Seized ("Levied")

1. Certain property is exempt from seizure. For example, the IRS can't seize the following: unemployment benefits, certain annuity and pension benefits, certain service-connected disability payments, workers compensation, certain public assistance payments, minimum weekly exempt income, assistance under the Job Training Partnership Act, and income for court-ordered child support payments.

2. The IRS also can't seize necessary schoolbooks and clothing, undelivered mail, certain amounts worth of fuel, provisions, furniture, personal effects for a household, and certain amounts worth of books and tools for trade, business, or professions. There are also limitations on the IRS's ability to seize a primary residence and certain business assets.

3. Lastly, the IRS can't seize the taxpayer's property unless the IRS expect net proceeds to help pay off the taxpayer's tax debt.

E. How to Appeal a Proposed Seizure ("Levy")

1. In General

a. The taxpayer can request a Collection Due Process hearing within 30 days from the date of the taxpayer's Notice of Intent to Levy and Notice of the Taxpayer's Right to a Hearing.

b. At the conclusion of the taxpayer's hearing, the Office of Appeals will provide a determination.

c. The taxpayer will have 30 days after the determination to challenge it in the U.S. Tax Court.

d. If Collection Due Process rights aren't available for the taxpayer's case, the taxpayer may have other appeal options, such as the Collection Appeals Program.

2. Reasons the IRS will "Release" A Levy

a. The Internal Revenue Code specifically provides that the IRS must release a levy if the IRS determines that:

- (1) The taxpayer paid the amount the taxpayer owe,
- (2) The period for collection ended prior to the levy being issued,
- (3) It will help the taxpayer pay the taxpayer's taxes,

(4) The taxpayer enters into an Installment Agreement and the terms of the agreement don't allow for the levy to continue, 7 Publication 594 the IRS Collection Process

(5) The levy creates an economic hardship, meaning the IRS determined the levy prevents the taxpayer from meeting basic, reasonable living expenses, or

(6) The value of the property is more than the amount owed and releasing the levy won't hinder the IRS's ability to collect the amount owed.

b. The IRS will also release a levy if it was issued improperly. For example, the IRS will release a levy if it was issued:

(1) Against property exempt from seizure,

(2) Prematurely, before the IRS sent the taxpayer the required notice,

(3) While the taxpayer was in bankruptcy and an automatic stay was in effect,

(4) Where the expenses of seizing and selling the levied property would be greater than the fair market value of the property,

(5) While an Installment Agreement request, Innocent Spouse Relief request, or Offer in Compromise was being considered or had been accepted and was in effect, or

(6) While the Office of Appeals or Tax Court was considering a collection due process case and the levy wasn't a Disqualified Employment Tax Levy to collect employment taxes, a state refund, a jeopardy levy, or to collect the tax debt of federal contractor.

(7) While the Office of Appeals or Tax Court is considering an appeal of the denial of innocent spouse relief.

3. Reasons the IRS May Return Seized ("Levied") Property

a. The IRS may return the taxpayer's property if:

(1) Its seizure was premature,

(2) Its seizure was in violation of the law,

(3) Returning the seized property will help the IRS's collection of the taxpayer's debt,

(4) The taxpayer enters into an Installment Agreement to satisfy the liability for which the levy was made, unless the Agreement does not allow for the return of previously levied upon property.

(5) The IRS didn't follow IRS procedures, or

(6) It's in the taxpayer's best interest and in the best interest of the government.

b. The IRS may return property at any time if the property has not been sold. If the IRS decided to return the taxpayer's property, but it's already sold, the IRS will give the taxpayer the money the IRS received from the sale.

c. The taxpayer can file a request for return of seized money or money from the sale of seized property, generally up to 9 months after the seizure.

V. How to Recover Seized (“Levied”) Property that’s Been Sold

A. In General

To recover the taxpayer’s real estate, the taxpayer (and anyone with interest in the property) may recoup it within 180 days of the sale by paying the purchaser what they paid, plus interest at 20% annually.

B. If the Taxpayer’s Property has been seized (“levied”) to Collect Tax Owed by Someone Else.

1. The taxpayer may appeal the seizure under the Collection Appeals Program or file a claim under Internal Revenue Code section 6343(b), generally within 9 months of the seizure, or the taxpayer may file a suit under Internal Revenue Code section 7426 for the return of the wrongfully seized property, generally within 9 months of the seizure.

2. The taxpayer may also appeal the denial of the request to return the wrongfully seized property under the Collection Appeals Program. For more information, see Publication 4528, Making an Administrative Wrongful Levy Claim under Internal Revenue Code section 6343(b).

C. How to Recover Economic Damages

1. If the IRS wrongfully seized the taxpayer’s property, the IRS lost or misplaced the taxpayer’s payment, or there was a direct debit Installment Agreement processing error and the taxpayer incurred bank charges, the IRS may reimburse the taxpayer for charges the taxpayer paid.

2. For more information, see Form 8546, Claim for Reimbursement of Bank Charges. If the taxpayer’s claim is denied, the taxpayer can sue the federal government for economic damages.

3. If the IRS intentionally or negligently didn’t follow Internal Revenue law while collecting the taxpayer’s taxes or the taxpayer is not the taxpayer and the IRS wrongfully seized the taxpayer’s property, the taxpayer may be entitled to recover economic damages.

4. Mail the taxpayer’s written administrative claim to the attention of the Advisory Group Manager for the taxpayer’s area at the address listed in Publication 4235, Collection Advisory Group Addresses.

5. If the taxpayer has filed a claim and the taxpayer’s claim is denied, the taxpayer can sue the federal government, but not the IRS employee, for economic damages.

Review Question 2

Which of the following is the proper definition of a “federal tax levy”?

- A. A legal claim against the taxpayer’s property
- B. A legal seizure that actually takes the taxpayer’s property to satisfy the taxpayer’s tax debt.
- C. The formal recording of a taxpayer's tax liability, fixing the amount payable.
- D. Where a creditor is allowed to move ahead of the government’s priority position.

A is Incorrect - A “federal tax lien” is a legal claim against the taxpayer’s property

B is Correct - A “levy” is a legal seizure that actually takes the taxpayer’s property to satisfy the taxpayer’s tax debt.

C is Incorrect - An “Assessment” is the formal recording of a taxpayer's tax liability, fixing the amount payable.

D is Incorrect - “Subordination” is where a creditor is allowed to move ahead of the government’s priority position.

Unit Three - Defensive Measures

Learning Objectives

After completing this Unit you should have an understanding of certain defensive measures against the IRS collection procedures:

- Payment options
- Bankruptcy
- Spousal Relief

I. Overview

A. The Collection Division has the authority to either proceed with collection activity or work with the taxpayer to resolve their liability issues by alternative means.

B. It is important for the taxpayer's representative to interact with the Revenue Officer in a manner which will produce the best possible result for the taxpayer.

C. It is the IRS's stated policy that a Notice of Lien should not be filed, except in jeopardy assessment cases, until reasonable efforts have been made to contact the taxpayer in person, by telephone or by a notice sent by mail, delivered in person or left at the taxpayer's last known address, to afford him/her the opportunity to make payment.

D. Further, the policy of the Service is that all pertinent facts should be carefully considered as the filing of the Notice of Lien may adversely affect the taxpayer's ability to pay and thereby hamper or retard the collection process.

II. Contact with the Collections Division

A. Primary Objective

1. It is important for both the taxpayer's representative and the taxpayer to have an appreciation of the Revenue Officer ("RO") objectives in interacting with the taxpayer.

2. First and foremost it is the RO's first priority to obtain full an immediate payment of all delinquent accounts, and to cause the taxpayer to file all delinquent returns.

3. Administratively, the RO it is also interested in bringing the case to a timely resolution.

B. If the Taxpayer is Unable to Comply

1. If the taxpayer is unable to comply with the above, the RO will generally proceed as follows:

a. If tax is due the RO will request the maximum amount payable that day to avoid additional penalty and interest.

b. If returns are due or the taxpayer is unable to provide proof of filing, the RO will attempt to secure sufficient information so that if the taxpayer fails to file by the specified date an accurate return can be prepared on behalf of the taxpayer by the Service.

- c. Such information might include the following:
 - (1) income amounts
 - (2) income sources
 - (3) filing status
 - (4) gross wages paid
 - (5) withholding amounts
 - (6) bank accounts
 - (7) merchant accounts
- 2. If tax is due and the taxpayer is unable to pay in full or provide proof of full payment
 - a. If the taxpayer does not qualify for a guaranteed, streamlined, or in-business trust fund express installment agreement, or such an agreement cannot be established on initial contact, the RO will attempt to secure a complete Collection Information Statement (“CIS”) and discuss other collection alternatives.
 - b. If a complete CIS cannot be secured, the RO will set a deadline for providing required information.
 - c. At a minimum, the RO will want to secure basic asset information, e.g., bank accounts, credit card processor and the location of the merchant account, primary accounts receivable, employer and wage information, real and personal property owned.
- 3. If the case is not resolved during the initial contact, the RO will want to discuss a realistic plan for case resolution with the taxpayer, establish and document a plan for resolving the case, e.g., full pay (“FP”) by a specified date, installment agreement, etc.
 - a. This plan may be updated when it changes. For example, a plan to resolve a case as CNC may change to FP when significant assets and/or income are discovered.
 - b. When the taxpayer is required to take action such as file returns, provide information, pay the balance, the RO will generally explain and document what action is expected and the deadline for completing the action.
 - c. Also what specific type of enforcement action may result for failure to comply (not necessarily the particular asset, bank account, etc.)
- 4. The RO will routinely keep taxpayers informed of the status and resolution of their cases, and advise them that they will receive annual notices of taxes still owing until all taxes are paid in full, even if they are currently working with a Service employee.
- 5. Form 9297, Summary of Taxpayer Contact is used in face-to-face meetings to list the information/documents required and the deadline date for receipt.
 - a. The taxpayer will receive the original and the RO will retain a copy in the case file.

b. There may be some instances when the Form 9297 will not be used, for example, in potential fraud cases.

c. The Form 9297 will be used for any subsequent deadlines set in face-to-face meeting.

II. Is the Tax Actually Due?

A. Overview.

1. The determination of the taxpayer's actual tax liability, except for computational errors and misapplication of payments, is not the function of a collection officer.

2. In point of fact once an assessment has been made the opportunity for the taxpayer to argue the tax determination is severally limited.

B. Questions which can be Addressed - There are several issues which can still be addressed, they include the following:

1. Was the tax properly assessed?
2. Were payments properly posted?
3. Has the statute of limitations expired
4. Can liability be reduced through new audit?
5. Can liability be reduced by penalty abatement?

III. Payment Options

A. Overview

1. The question of payment alternatives may be raised by the taxpayer at just about any stage of the Collection process.

2. This may include:
 - a. Collateral Agreements;
 - b. Bonds;
 - c. Installment Agreements;
 - d. Offer in Compromise.

B. Currently Not Collectible

1. If the taxpayer can't pay any of the amount due because payment would prevent the taxpayer from meeting basic living expenses, the taxpayer can request that the IRS delay collection until the taxpayer is able to pay ("economic hardship").

2. Be aware that in many cases as part of agreeing to place an account in Currently Not Collectible ("CNC"), the IRS may file a Notice of Federal Tax Lien. This is more likely to be done for cases with a balance due over \$10,000.

3. Upon a determination of CNC status, the Service will however immediately release any levies on wages or salary.

4. Please remember that even if the IRS delays collection, the IRS will still charge applicable penalties and interest until the taxpayer pay the full amount, and the IRS may file a Notice of Federal Tax Lien.

5. The IRS may also request updated financial information during this temporary delay to review the taxpayer's ability to pay (IRS Form 433-A or 433-F).

6. In most cases, the IRS will not cease collection action until the taxpayer is in compliance; i.e., the taxpayer must file any missing tax returns and must address any ongoing underpayment situation. For example, if the reason the taxpayer owes delinquent taxes is because the taxpayer does not have sufficient income tax withheld from his or her paycheck, the IRS will not close the case as CNC (and will not suspend enforced collection action) until the taxpayer adjusts his or her withholding.

7. If the IRS allows a case to be closed CNC, the case will usually automatically be re-opened and returned to active collection status if the taxpayer fails to file a tax return in the future, accrues a new tax liability, or the taxpayer's financial situation changes sufficiently to allow payments to be made against the back tax debt. For example, when the IRS closes a case CNC, they close it CNC at \$35,000. If the taxpayer's annual income exceeds \$35,000 in the future, the case will be reactivated and sent back to collection.

8. Also, in some cases, the IRS places a follow-up date on any particular case. When that date arrives, the IRS reactivates the case and sends it back to collection. For example, the IRS may close a case CNC with a two year follow-up. After two years, regardless of any other fact, the case is sent back to collection.

9. Be aware that CNC status is usually a temporary solution the tax is not forgiven or compromised, and interest and penalties continue to accrue.

C. Collateral Agreement

1. A collateral agreement is executed by the taxpayer and "collateral security" ensures that the taxpayer performs the terms of the agreement.

2. A collateral agreement is a pledge, guaranteed by security, for the performance of a certain act, i.e., payment of a delinquency or the filing of a return

D. Bond

A bond for the purpose of securing payment of internal revenue taxes is collateral security offered by the taxpayer, his/her representative or a third party, which satisfies the provisions of IRC section 7101 and Treas. Reg. section 301-7101-1.

E. Installment Agreements

1. Overview

An Installment Agreement with the IRS means that the IRS will allow the taxpayer to make smaller periodic payments over time if the taxpayer can't pay the full amount at once.

2. Ways to Apply for an Installment Agreement

There are several ways to apply for an Installment Agreement:

a. Streamlined Installment Agreements

(1) Streamlined installment agreements may be approved for taxpayers under the following circumstances:

(a) The aggregate unpaid balance of assessments is \$50,000 or less. The unpaid balance of assessments includes tax, assessed penalty and interest, and all other assessments. It does not include accrued penalty and interest.

(b) The minimum payment amount is determined by dividing the aggregate unpaid balance of assessments due by 72

(2) Streamlined installment agreements with a balance between \$25,001 and \$50,000 must be established as a Direct Debit or a Payroll Deduction.

b. Guaranteed Installment Agreement.

The taxpayer is eligible for a guaranteed installment agreement if

(1) The tax the taxpayer owes is not more than \$10,000;

(2) During the past 5 tax years, the taxpayer (and his or her spouse if filing a joint return) has timely filed all income tax returns and paid any income tax due, and has not entered into an installment agreement for payment of income tax;

(3) The taxpayer agrees to pay the full amount he or she owes within 3 years and to comply with the tax laws while the agreement is in effect; and

(4) The taxpayer is financially unable to pay the liability in full when due.

Note: It is the practice of the Internal Revenue Service to grant these installment agreements even if the taxpayer can pay their liability in full if the tax owed is not more than \$10,000 and the taxpayer meets the other criteria.

c. Apply Online

(1) Online, using the Online Payment Agreement application at <http://www.irs.gov/Individuals/Online-Payment-Agreement-Application>.

(2) Apply online if the taxpayer owes \$50,000 or less in the combined balance total of individual income tax, penalties and interest.

(3) If the taxpayer owns a business and owes \$25,000 or less in combined payroll taxes, penalty and interest for the current and prior calendar year, the taxpayer can also use the Online Payment Agreement to request a payment agreement.

(4) To view an instructional video on the Online Payment Agreement application, visit <http://www.irsvideos.gov/Individual/PayingTaxes/OPA>.

d. Apply by Phone

Please call the number on the taxpayer's bill or 1-800-829-1040.

e. Apply by Mail

- (1) Complete Form 9465, Installment Agreement Request.
- (2) In addition to Form 9465, if the taxpayer wants to make the taxpayer's payments by payroll deduction, complete Form 2159, Payroll Deduction Agreement.
- (3) If the taxpayer owes more than \$50,000, the taxpayer will also need to complete Form 433F, Collection Information Statement. Mail the taxpayer's form to the address on the taxpayer's bill.

f. Apply In Person at the Taxpayer's Local IRS Office Near the Taxpayer,

- (1) Visit www.irs.gov/localcontacts to locate an office.
- (2) If the taxpayer requests a payment plan, the taxpayer can reduce the accrual of penalties and interest by making voluntary payments according to the proposed plan's terms until the taxpayer is notified whether the IRS accepted the taxpayer's payment plan request.
 - (a) The IRS's acceptance of the taxpayer's interim payments doesn't mean the IRS approved the taxpayer's request.
 - (b) The IRS will notify the taxpayer in writing once the IRS has made their decision.

g. Payment Options.

- (1) With an Installment Agreement, the taxpayer can pay by direct debit, through payroll deductions, electronic funds transfer or check.
- (2) There's a user fee for Installment Agreements.
- (3) If the taxpayer meets the IRS's low-income guidelines, the taxpayer can pay a reduced user fee. For more information, see Form 13844, Application for Reduced User Fee for Installment Agreements.
- (4) The taxpayer does not need to submit the user fee for an installment agreement with the application. The fee can be taken from the initial payments made once the installment agreement is accepted.

h. Eligibility -To be eligible for an Installment Agreement, the taxpayer must file all required tax returns.

- (1) Prior to approving the taxpayer's Installment Agreement request, the IRS may ask the taxpayer to complete a Collection Information Statement (Form 433F, 433-A and/or Form 433-B) and provide proof of the taxpayer's financial status.

- (2) The taxpayer should have financial information available if the taxpayer applies over the phone or at an IRS office. For more information, see Publication 1854, How to Complete a Collection Information Statement (Form 433-A).

i. IRS Approval - If the IRS approves the taxpayer's request, the IRS will still charge applicable interest and penalties until the taxpayer pay the amount or balance due in full, and may file a Notice of Federal Tax Lien.

j. Rejection - If the IRS rejects the taxpayer's Installment Agreement request, the taxpayer may request that the Office of Appeals review the taxpayer's case. For more information, see Publication 1660, Collection Appeal Rights.

k. Unable to Meet the Terms- If the taxpayer is unable to meet the terms of the taxpayer's approved Installment Agreement, contact the IRS immediately.

F. Offer in Compromise

1. Overview - The taxpayer may be eligible for an Offer in Compromise if the taxpayer can't pay the amount the taxpayer owe in full or through installments. By requesting an Offer in Compromise, the taxpayer is asking to settle unpaid taxes for less than the full amount the taxpayer owe, based upon the taxpayer's reasonable collection potential ("RCP"),

2. IRS Acceptance - The IRS may accept an Offer in Compromise if:

a. The IRS agrees that the taxpayer's tax debt may not be accurate ("Doubt of Liability"),

b. The taxpayer has insufficient assets and income to pay the amount due ("Doubt of Collectability"), or

c. Because of the taxpayer's exceptional circumstances, paying the amount due would cause an economic hardship or would be unjust ("Promotes Effective Tax Administration")

3. Application Fee - For an Offer in Compromise to be considered, the taxpayer must pay an application fee and make an initial or periodic payment.

a. However, low income taxpayers may qualify for a waiver of the application fee and initial or periodic payment. For more information, please see the Low Income Certification on Form 656, Offer in Compromise.

b. This form is contained in Form 656-B, Offer in Compromise Booklet.

c. The taxpayer can use the Offer in Compromise Pre-Qualifier tool at http://irs.treasury.gov/oic_pre_qualifier/ to explore the possibility that the Offer in Compromise program may be a realistic option to resolve the taxpayer's balance due.

4. Pre-qualification - In order to pre-qualify the taxpayer must:

a. Not be involved in an open bankruptcy proceeding;

b. Have filed all required federal tax returns;

c. Have made all required estimated payments; and

d. If self-employed and has employees, has the taxpayer submitted all required federal tax deposits?

5. Application - To apply for an Offer in Compromise, complete one of the following forms:

a. Form 656-L, Offer in Compromise (Doubt as to Liability) Complete this form if the taxpayer think the taxpayer's tax debt isn't accurate.

b. Form 656, Offer in Compromise Complete this form if the taxpayer is unable to pay the amount due, or has an economic hardship, or has another special circumstance that would cause paying the amount due to be unjust. For more information, see Form 656-B, Offer in Compromise Booklet or visit www.irs.gov/Individuals/Offer-in-Compromise-1.

6. Formula for an Acceptable Offer

a. Overview

(1) The IRS will consider a settlement based Doubt of Collectability. In determining whether an offer made by the taxpayer is acceptable the IRS will attempt to access the RCP of the taxpayer

(2) The taxpayer's RCP is based on the following formula:

SETTLEMENT AMOUNT = THE AMOUNT WHICH CAN BE COLLECTED FROM FUTURE INCOME + THE NET REALIZABLE EQUITY OF THE TAXPAYER'S ASSETS.

b. Net Realizable Equity

(1) For offer purposes, assets are valued at net realizable equity.

(2) "Net realizable equity" is defined as quick sale value ("QSV") less amounts owed to secured lien holders with priority over the federal tax lien, if applicable, and applicable exemption amounts.

(3) QSV is defined as an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less.

(a) Generally, QSV is an amount less than fair market value ("FMV").

(b) For purposes of determining the taxpayer's reasonable collection potential ("RCP"), information provided by the taxpayer and third party sources available to the IRS should be reviewed to arrive at an appropriate FMV of the property.

(4) Normally, QSV is calculated at 80% of FMV.

(a) A higher or lower percentage may be applied in determining QSV when appropriate, depending on the type of asset and current market conditions.

(b) If, based on the current market and area economic conditions, it is believed that the property would quickly sell at full FMV, and then it may be appropriate to consider QSV to be the same as FMV.

(c) This is occasionally found to be true in real estate markets where real estate is selling quickly at or above the listing price.

(d) As long as the value chosen represents a fair estimate of the price a seller could get for the asset in a situation where the asset must be sold quickly (usually 90 calendar days or less) then it would be appropriate to use a percentage other than 80%.

(e) Generally, it is the policy of the Service to apply QSV in valuing property for offer purposes.

(5) When a particular asset has been sold (or a sale is pending) in order to fund the offer, no reduction for QSV should be made.

c. Future Income Factor

(1) Generally, the amount to be collected from future income is calculated by taking the projected gross monthly income, less allowable expenses, and multiplying the difference by the number of months applicable to the terms of offer.

(2) The deferred payment option which allows payment over the life of the statute is no longer available. With implementation of the 12 and 24 month multipliers, the maximum number of months for a periodic payment offer cannot exceed 24 months.

(3) For lump sum cash and periodic payment offers, when there are less than 12 or 24 months remaining on the statutory period for collection, use the number of months remaining on the statutory period for collection.

(4) "Future income" is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer.

(5) There are three types of allowable expenses: (i) "allowable living expenses", (ii) "other necessary" expenses, and (iii) "other conditional" expenses.

(a) In determining allowable living expenses the amount shown in the expense standard schedules is used unless that amount would result in the taxpayer not having adequate means to provide for basic living expenses.

(b) National and Local Expense standards serve as guidelines to provide accuracy and consistency in determining a taxpayer's basic living expenses. The standards are available on the IRS web site and are periodically updated.

(c) Taxpayers are allowed the National Standard Expense amount for their family size, without questioning the amount actually spent. If the total amount claimed is more than the total allowed by the National Standards, the taxpayer must provide documentation to substantiate and justify that the allowed expenses are inadequate to provide basic living expenses. All deviations from the national standards must be verified, reasonable and documented in the case history.

(d) A "necessary expense" is one that is necessary for the production of income or for the health and welfare of the taxpayer's family. Such expenses are normally allowed.

(e) A “conditional expenses” is an expense that expenses, which may not meet the necessary expense test, but may be allowable, based on the circumstances of an individual case. These expenses may be allowed when the tax will be paid in full by an installment agreement within 6 years. For offer purposes, the full amount of the tax will not be collected, therefore, the rules for conditional expenses do not apply. (

(f) The one year rule which allows time for a taxpayer to adjust current expenses to meet the terms of an installment agreement is not allowed for Offers in Compromise.

d. The Amount of the Offer

(1) If the offer will be paid in 5 months or less and 5 or fewer payments the amount of an acceptable offer must equal: (i) the realizable value of assets, plus (ii) the amount that could be collected in 12 months.

(2) If the offer is payable in six to 24 months the amount of an acceptable offer must equal= (i) the realizable value of assets, plus (ii) the amount that could be collected in 24 months.

7. Acceptable Payment Terms

a. Payment terms are negotiable, but should provide for payment of the offered amount in the least time possible. If a taxpayer is planning to sell asset(s) to fund all or a portion of the offer, the payment terms for the offer should provide for immediate payment of the amounts received from the sale.

b. If the taxpayer is planning to borrow a portion of the money, the OE/OS should determine when the loan will be received and the payment terms of the offer should provide for payment of the borrowed portion at the time the funds are received.

c. For those taxpayers who agree to shorter payment terms, fewer months of future income are required:

Payment Type	Payment Terms	Number of Months Future Income Required
Lump Sum Cash	5 or less installments within 5 months	12 months or the remaining statutory period, whichever is less
Periodic Payment	Within 6 to 24 months	24 months or the remaining statutory period, whichever is less

d. While a periodic payment offer is being evaluated by the Service, the taxpayer must make subsequent proposed installment payments as they become due. There is no requirement that the payments be made monthly or in equal amounts. However, the Service is not bound by either the offer amount or the terms.

e. While the calculation of RCP and consideration of any special circumstances will assist in determining an acceptable offer amount, in situations where the OE/OS determines that the proposed offer payment terms are too protracted to recommend acceptance, the OE/OS should discuss with the taxpayer what may be appropriate payment terms based on the taxpayer's circumstances.

Example: A taxpayer submits an offer for \$10,000. The IRS received date is January 1, 2011. The taxpayer's offer of \$10,000 was accepted in November 2011, and the taxpayer remained current on all required payments during the investigation. During the investigation, the taxpayer paid \$500. The taxpayer has 24 months from the date of submission to complete the terms of the offer. The terms of the offer were \$100 every other month for a total of 23 months and the balance would be due on the 24th month. On the 24th month, January 2013, the taxpayer would then be required to pay the balance of \$8,300 (\$10,000 less \$1,700 [\$1,200 in installments plus \$500 in installments paid during the investigation]). No adjustments to the terms would be required.

f. A third party source of funds may be required to make the portion of the monthly payment that is greater than we determined the taxpayer can afford from future income. Document the case history with source of the funds, if relevant to the case decision.

G. Bankruptcy

1. When is a Tax Debt Dischargeable in Bankruptcy

A taxpayer can discharge debts for federal income taxes in Chapter 7 bankruptcy only if *all* of the following conditions are true:

a. The taxes are "income taxes" - Taxes other than income, such as payroll taxes or fraud penalties, can never be eliminated in bankruptcy.

b. The taxpayer did not commit fraud or willful evasion - If the taxpayer filed a fraudulent tax return or otherwise willfully attempted to evade paying taxes, such as using a false Social Security number on the Taxpayer's tax return, bankruptcy can't help.

c. The debt is at least three years old - To eliminate a tax debt, the tax return must have been originally due at least three years before the taxpayer filed for bankruptcy.

d. The taxpayer filed a tax return - The taxpayer must have filed a tax return for the debt the taxpayer wish to discharge at least two years before filing for bankruptcy. If the IRS filed a substitute return on the taxpayer's behalf, the taxpayer have not filed a "return" and cannot discharge the tax. In some courts, the taxpayer can discharge tax debt that is the subject of a late return as long as the taxpayer meet the other criteria.

e. The taxpayer passes the "240-day rule." - The income tax debt must have been assessed by the IRS at least 240 days before the taxpayer file the taxpayer's bankruptcy petition, or must not have been assessed yet. This time limit may be extended if the IRS suspended collection activity because of an offer in compromise or a previous bankruptcy filing.

2. The Taxpayer Can't Discharge a Federal Tax Lien

a. Even if the taxpayer's taxes qualify for discharge in a Chapter 7 bankruptcy case, bankruptcy will not wipe out prior recorded tax liens.

b. A Chapter 7 bankruptcy will wipe out the taxpayer's personal obligation to pay the debt, and prevent the IRS from going after the taxpayer's bank account or wages, but if the IRS recorded a tax lien on the taxpayer's property before the taxpayer file for

bankruptcy, the lien will remain on the property. This means the taxpayer will have to pay off the tax lien in order to sell the property

3. Relief from Collection Activities

a. Overview

(1) Filing bankruptcy usually gives a debtor immediate relief from all demands for payment and collection enforcement actions.

(2) IRS employees, upon learning of a bankruptcy, generally should cease all demands and enforcement actions directed against the bankrupt taxpayer (debtor) and take prompt and appropriate corrective actions unless the court determines the automatic stay is not in effect.

(3) Failure to observe an automatic stay may result in the Service being sued for damages and attorney fees, although punitive damages cannot be awarded.

b. Prohibited Activity

The automatic stay may prohibit include the following:

(1) Starting or continuing judicial or administrative collection proceedings for pre-petition debts, such as making seizures (Form 668-B) or serving levies (Form 668-A or Form 668-W).

(2) Verbally requesting payment for tax periods ending before the bankruptcy petition date;

(3) Sending notices requesting payment or sending notices of intent to levy regarding pre-petition periods;

(4) Starting a lawsuit or serving or enforcing a summons to collect liabilities;

(5) Making a setoff of any debt (tax or otherwise) owed by the debtor that arose before the commencement of the case against any claim made against the debtor that arose before the commencement of the case;

(6) Attempting to recover a claim from the debtor that arose before the commencement of the case, including trying to enforce a judgment;

(7) Attempting to recover a claim for pre-petition debts from community property, even if the claim is against a non-debtor spouse;

(8) Creating, perfecting, or enforcing a lien on pre-petition periods); or

(9) Retaining pre-petition refunds indefinitely without requesting the automatic stay be lifted – other than temporary retention of refunds prior to Chapter 11 or Chapter 13 confirmation, or longer with written Chief Counsel Recommendation.

IV. Spousal Relief

A. Overview

1. Generally, both the taxpayer and the taxpayer's spouse are responsible, jointly and individually, for paying any tax, interest, or penalties on the taxpayer's joint return.

2. If the taxpayer believes the taxpayer's current or former spouse should be solely responsible for an incorrect item or an underpayment of tax on the taxpayer's joint tax return, the taxpayer may be eligible for Innocent Spouse Relief.

3. When the taxpayer file a joint income tax return, the law makes both the taxpayer and the taxpayer's spouse responsible for the entire tax liability, i.e., joint and several liability.

4. Joint and several liability applies not only to the tax liability the taxpayer shows on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to income, deductions, or credits of the taxpayer's spouse or former spouse.

5. The taxpayer remain jointly and severally liable for taxes, and the IRS can still collect them from the taxpayer, even if the taxpayer later divorce and the divorce decree states that the taxpayer's former spouse will be solely responsible for the tax.

B. Relief

In some cases, a spouse (or former spouse) will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available to married persons who filed joint returns.

1. Innocent spouse relief.
2. Separation of liability relief.
3. Equitable relief.

C. Innocent Spouse Relief

1. Overview

a. By requesting innocent spouse relief, the taxpayer can be relieved of responsibility for paying tax, interest, and penalties if the taxpayer's spouse (or former spouse) improperly reported items or omitted items on the taxpayer's tax return.

b. Generally, the tax, interest, and penalties that qualify for relief can only be collected from the taxpayer's spouse (or former spouse). However, the taxpayer is jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief.

c. The IRS can collect these amounts from either the taxpayer or the taxpayer's spouse (or former spouse)

2. Conditions for Relief

a. The taxpayer must meet all of the following conditions to qualify for innocent spouse relief.

- (1) The taxpayer filed a joint return.
- (2) There is an understated tax on the return that is due to erroneous items of the taxpayer's spouse (or former spouse).

(3) The taxpayer can show that when the taxpayer signed the joint return the taxpayer did not know, and had no reason to know, that the understated tax existed (or the extent to which the un-restated tax existed).

(4) Taking into account all the facts and circumstances, it would be unfair to hold the taxpayer liable for the understated tax.

b. Innocent spouse relief will not be granted if the IRS proves that the taxpayer and the taxpayer's spouse (or former spouse) transferred property to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to de-fraud the IRS or another third party, such as a creditor, former spouse, or business partner.

3. Indications of Unfairness for Innocent Spouse Relief

a. The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold the taxpayer responsible for the understated tax.

b. The following are examples of factors the IRS will consider.

(1) Whether the taxpayer received a significant benefit, either directly or indirectly, from the understated tax.

(2) Whether the taxpayer's spouse (or former spouse) deserted the taxpayer.

(3) Whether the taxpayer and the taxpayer's spouse have been divorced or separated.

(4) Whether the taxpayer received a benefit on the return from the understated tax.

4. Erroneous Items

a. Erroneous items are either of the following.

(1) Unreported income. This is any gross income item received by the taxpayer's spouse (or former spouse) that is not reported.

(2) Incorrect deduction, credit, or basis. This is any improper deduction, credit, or property basis claimed by the taxpayer's spouse (or former spouse).

b. The following are examples of erroneous items.

(1) The expense for which the deduction is taken was never paid or incurred. For example, the taxpayer's spouse, a cash-basis taxpayer, deducted \$10,000 of advertising expenses on Schedule C of the taxpayer's joint Form 1040, but never paid for any advertising.

(2) The expense does not qualify as a deductible expense. For example, the taxpayer's spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines. Fines are not deductible.

(3) No factual argument can be made to support the deductibility of the expense. For example, the taxpayer's spouse claimed \$4,000 for security

costs related to a home office, which were actually veterinary and food costs for the taxpayer's family's two dogs.

D. Separation of Liability Relief

1. Overview

a. Under this type of relief, the understated tax (plus interest and penalties) on the taxpayer's joint return is allocated between the taxpayer and the taxpayer's spouse (or former spouse).

b. The understated tax allocated to the taxpayer is generally the amount the taxpayer is responsible for.

c. This type of relief is available for liabilities resulting from understated tax.

d. However, refunds are not allowed for any liabilities that have been paid.

2. Requirements.

To request separation of liability relief, the taxpayer must have filed a joint return and meet either of the following requirements at the time the taxpayer file Form 8857.

a. The taxpayer is no longer married to, or is legally separated from, the spouse with whom the taxpayer filed the joint return for which the taxpayer is requesting relief. (Under this rule, the taxpayer is no longer married if the taxpayer is widowed.)

b. The taxpayer were not a member of the same household (explained below) as the spouse with whom the taxpayer filed the joint return at any time during the 12-month period ending on the date the taxpayer file Form 8857

3. Burden of proof.

a. The taxpayer must be able to prove that the taxpayer meets all of the requirements for separation of liability relief (except actual knowledge) and that the taxpayer did not transfer property to avoid tax (discussed later).

b. The taxpayer must also establish the basis for allocating the erroneous items.

4. Limitations on Relief

a. Even if the taxpayer meets the requirements discussed previously, separation of liability relief will not be granted in the following situations.

b. The IRS proves that the taxpayer and the taxpayer's spouse (or former spouse) transferred assets to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.

c. The IRS proves that at the time the taxpayer signed the taxpayer's joint return, the taxpayer had actual knowledge (explained below) of any erroneous items giving rise to the deficiency that were allocable to the taxpayer's spouse (or former spouse). For the definition of erroneous items, see Erroneous Items earlier under Innocent Spouse Relief.

d. The taxpayer's spouse (or former spouse) transferred property to the taxpayer to avoid tax or the payment of the tax.

E. Equitable Relief

1. Conditions for Getting Equitable Relief

In order to be considered for equitable relief from joint and several liabilities, the taxpayer must meet all of the following thresh-old conditions.

a. The taxpayer is not eligible for innocent spouse relief or separation of liability relief.

b. The taxpayer filed a joint return

c. The taxpayer timely filed the taxpayer's claim for relief. See When To File Form 8857, earlier.

d. The taxpayer and the taxpayer's spouse (or former spouse) did not transfer assets to one another as a part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.

e. The taxpayer's spouse (or former spouse) did not transfer property to the taxpayer for the main purpose of avoiding tax or the payment of tax. See Transfers of Property To Avoid Tax, earlier, under Separation of Liability Relief.

f. The taxpayer did not knowingly participate in the filing of a fraudulent joint return.

g. The income tax liability from which the taxpayer seek relief is attributable (either in full or in part) to an item of the taxpayer's spouse (or former spouse) or an unpaid tax resulting from the taxpayer's spouse's (or former spouse's) income.

2. Grant Equitable Relief

a. If the taxpayer meets all the threshold conditions, the IRS will grant equitable relief if the taxpayer establish that it would be unfair to hold the taxpayer liable for the understated or unpaid tax.

b. The IRS will consider all facts and circumstances of the taxpayer's case in determining whether it is unfair to hold the taxpayer liable for all or part of the unpaid income tax liability or deficiency, and whether full or partial equitable relief should be granted.

c. The factors listed below are designed as guides and not intended to be an exclusive list. Other factors relevant to the taxpayer's case also may be considered.

d. In evaluating the taxpayer's claim for relief, no one factor or a majority of factors necessarily determines the outcome.

e. The degree of importance of each factor varies depending on the taxpayer's facts and circumstances. Abuse or the exercise of financial control by the taxpayer's spouse (or former spouse) is a factor that may impact the other factors, as described below.

- f. Factors the IRS will consider include the following.
- (1) Marital status;
 - (2) Economic hardship;
 - (3) Knowledge or reason to know;
 - (4) Legal obligation;
 - (5) Significant benefit;
 - (6) Compliance with tax laws;
 - (7) Mental and Physical health.

Unit Four – Collection Appeals Rights

Learning Objectives

After completing this Unit you should have an understanding of the Collection Appeal Rights available to a taxpayer, including a more detailed understanding:

- Collection Due Process Hearings
 - Equivalency Hearings
- The Collection Appeals Process
- Other Defensive Measures

I. Overview

A. Taxpayers may appeal many IRS collection actions. There are various appeal procedures available to them.

B. The two main procedures are Collection Due Process (“CDP”) and Collection Appeals Program (“CAP”).

C. This section discusses the rights taxpayers have to appeal collection actions under CDP and CAP.

II. Collection Due Process (CDP) Appeal Rights

A. Overview

1. The Collection Due Process hearing provisions give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the Notice of Federal Tax Lien (“NFTL”) that has been filed is warranted and appropriate.

2. Collection Due Process (CDP) rights are provided by statute:

a. IRC 6320 – Gives the taxpayer the right to appeal the filing of a Notice of Federal Tax Lien.

b. IRC 6330 — Gives the taxpayer the right to appeal before or after levy action is taken, depending on the type of levy.

B. Appeal of Filing of a Lien Notice

1. IRC § 6320 gives taxpayers the right to request a hearing during the 30-day period that begins on the day after the five-business-day period after the filing of a NFTL.

2. Letter 3172, Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC § 6320, will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail to the last known address not more than five business days after the day of the filing of the NFTL.

a. This notice is required only once for the taxable period and unpaid tax which is the subject of the NFTL filing.

b. A second notice is not required if a NFTL for the same tax liability is filed in other jurisdictions.

c. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice.

d. For a joint income tax liability, each spouse will individually be sent to his or her last known address a Letter 3172 explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.

C. Appeal of Levy

1. IRC § 6330 gives taxpayers the right to request a hearing during the 30-day period that begins the day after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing.

2. This Notice of Intent to Levy and Notice of Your Right to a Hearing will be given in person, left at the dwelling or usual place of business, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address not less than 30 days before the day of the first levy.

3. This notice is required only once for the taxable period and unpaid tax which is the subject of the pre-levy notice.

a. A second notice is required if levy action is planned to collect additional taxes that were assessed for the taxable period after the original notice was issued. An additional CDP notice is not required for new assessments of interest and penalty accruals for the tax previously included on a CDP notice.

b. For a joint income tax liability, when a Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, is issued in the field, each spouse will individually be given or sent, to his and her last known address, the letter explaining the right to a hearing. Two separately addressed notices are sent in separate envelopes even if both spouses are at the same address.

c. For a partnership employment or excise tax liability, the Letter 1058 is issued to the partnership when partnership assets are to be levied. If the Service intends to levy on the property of the individual general partners to collect the employment or excise taxes, then the Letter 1058 needs to be issued to the individual general partners.

4. There are exceptions to the pre-levy notice requirements of IRC § 6330. They are:

a. When the collection of tax is in jeopardy under IRC § 6331(a), or

b. A levy is served on a State to collect a Federal tax liability from a State tax refund, or

c. A disqualified employment tax levy is served, or

d. A Federal contractor levy is served.

D. Request for CDP Hearing

1. If contact is made with the taxpayer after the issuance of the CDP notice, the IRS will attempt to resolve the account or issue with the taxpayer. In some situations it may be useful to have the group manager intercede in discussions with the taxpayer in an effort to resolve the case.

2. If the taxpayer wants to file a request for a hearing,

- a. It must be in writing;
- b. It must be filed on or before the date that is 30 days after the date of the Notice of Intent to Levy and Notice of Your Right to a Hearing or on or before 30 days after the five-business-day period following the filing of the NFTL; and
- c. If the hearing request is filed late, the taxpayer may be entitled to an Equivalent Hearing (EH) but only if specifically requested.

3. Taxpayers generally use Form 12153, Request for Collection Due Process or Equivalent Hearing, to request the hearing. This form is included with the CDP notice. If this form is not used, the taxpayer may submit a written request for a CDP hearing signed by the taxpayer or authorized taxpayer representative.

4. The written request for a hearing must be dated and must include the following information:

- a. The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN, ITIN, or EIN).
- b. The type of tax involved.
- c. The tax period(s) at issue.
- d. A statement that the taxpayer requests a hearing concerning the proposed levy or in the case of post levy CDP requests, the actual levy action, or the filing of the NFTL.
- e. The reason(s) why the taxpayer disagrees with the action.

Note: The Service can disregard any portion of a hearing request that is based on a position identified as frivolous by the Service in a published list or reflects a "desire to delay" or impede the administration of federal tax laws. If the entire hearing request meets one or both of these criteria, the taxpayer may be denied a hearing entirely.

- f. The signature of the taxpayer or the taxpayer's authorized representative.

5. Timeliness of the CDP Hearing Request

- a. For a CDP levy hearing request to be timely, the taxpayer must submit a written request for a CDP levy hearing within the 30-day period commencing the day after the date of the CDP levy notice.
- b. The time frame for filing a timely CDP NFTL hearing request is different than for a CDP levy request.
- c. For a CDP NFTL hearing request to be timely, a taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five-business-day period following the filing of the NFTL.
- d. Any request filed during the five-business-day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period.

G. Relevant Issues and Appeals Determination

1. During the appeal process, the taxpayer or his or her representative may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:
 - Appropriate spousal defenses,
 - Challenges to the appropriateness of collection actions,
 - Offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an IA, or an offer-in-compromise,
 - Issues related to an economic hardship determination, and
 - Challenges to the existence or amount of the underlying tax liability including a liability reported on a self-filed return for any tax period specified on the CDP notice if he or she did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.
2. A non-liability issue may not be raised at the hearing if:
 - The issue was raised and considered at a previous hearing under IRC § 6320 or in any other previous administrative hearing before appeals or judicial proceeding; and
 - The person seeking to raise the issue participated meaningfully in such hearing or proceeding.
 - This prohibition does not apply to consideration of collection alternatives when there has been a significant change in the taxpayer's financial condition. In that situation, a taxpayer may continue to make new proposals for an OIC or IA, or other collection alternative, even if one was raised and rejected at a previous hearing or administrative proceeding.
3. The Appeals determination will take into consideration the following:
 - a. The verification that the requirements of the Internal Revenue Code and administrative procedure have been met;
 - b. The issues being raised; and,
 - c. Whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.
4. For a timely filed due process hearing, the taxpayer will receive a Notice of Determination letter that explains the taxpayer's right to petition Tax Court within 30 days of the date of the letter.
 - a. Appeals Processing ("APS") will suspend the case for 60 days after issuing the Notice of Determination to the taxpayer.
 - b. The suspension period will be longer if the CDP hearing included a spousal defense determination under IRC § 6015 or an interest abatement determination under IRC § 6404.
 - c. If no further appeals are filed, the Notice of Determination is final.
5. The CDP levy suspension remains in effect until the determination is final.

6. For an Equivalent Hearing (“EH”), discussed below, the taxpayer will receive a decision letter. In an EH, the decision by Appeals is final, and there is no appeal to court, except as it relates to certain spousal defenses under IRC § 6015 (if a petition is filed within 90 days after denial is issued), denial of a request for interest abatement (if a petition is filed within 180 days after denial), or if the taxpayer disagrees with Appeals' decision that the taxpayer's CDP hearing request was not timely.

7. In both the Notice of Determination letter and decision letter, Appeals will provide clear information regarding any agreement reached with the taxpayer, any relief given, and any necessary actions required by Collection. If the tax liability is upheld or the enforcement action is appropriate, the letter will so state, even if the appeals officer decides to provide the taxpayer a different collection alternative. The letter will also set forth specific ramifications should the taxpayer not comply with the terms of the agreement.

F. Tax Court Appeal

1. After Appeals makes its determination in a CDP hearing, the taxpayer may, within 30 days of the date of the determination letter, petition the Tax Court.

2. To allow time to be notified of any court petitions, Appeals will hold cases subject to Tax Court review for an additional 30 days (60 days after issuance of the Notice of Determination). If the taxpayer reaches an agreement with Appeals and does not wish to go to court, Form 12257 serves as a summary Notice of Determination, and waives the right to go to court and the suspension of levy action. If the taxpayer waives the right to judicial review, the determination is final and the case can be returned to collection.

3. Once Appeals issues the notice of determination, the taxpayer may raise collection alternatives with Collection.

4. In an Equivalent Hearing the decision is final when Appeals issues its decision letter, except as it relates to certain spousal defenses under IRC § 6015 and denials of interest abatement under IRC § 6404.

III. Equivalent Hearings and Timeliness of EH Requests

A. Overview.

1. If the taxpayer requests a CDP hearing after expiration of the time period for requesting a timely hearing, the taxpayer may request an administrative hearing with Appeals, which is referred to as an Equivalent Hearing (“EH”).

2. Appeals will hold the EH, generally following the same procedures for a timely CDP hearing. Appeals will not, however, issue a Notice of Determination. Instead,

3. Appeals will issue a Decision Letter, and the taxpayer is not entitled to judicial review.

B. Time Frame.

The time frame for requesting an EH is as follows:

1. Levy notice - Within the one-year period commencing the day after the date of the CDP levy notice.

2. NFTL notice - Within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

3. If the request is received or if mailed, postmarked after the one-year period, send the hearing request to Appeals for a separate timeliness determination. If Appeals agrees the request is late, notify the taxpayer of his or her available rights such as CAP or requesting assistance from TAS.

C. Request for EH.

1. Late CDP hearing requests are not automatically treated as EH requests. The taxpayer can request an EH either by:

a. Checking the Equivalent Hearing box on Form 12153,

b. Verbally confirming that he/she wants an untimely CDP hearing request to be treated as an EH when notified by Collection of an untimely CDP hearing request, or

c. Indicating in writing that the taxpayer wishes an EH, if the CDP hearing request is untimely.

2. For late filed CDP hearing requests where the taxpayer has not checked the box on Form 12153 or otherwise indicated in writing that the request is to be treated as a request for an EH, IRS will notify the taxpayer either verbally or in writing of the late filed request and advise the taxpayer of the right to request an EH (unless the CDP hearing request is postmarked after the expiration of the one-year period for requesting an EH).

3. The taxpayer can request an EH either orally or in writing. There is no need for the taxpayer to file a separate request for an EH.

D. Untimely Request.

An EH request is untimely:

1. When an EH request is not received within the one-year period or

2. When a timely but nonprocessable EH is made processable after the reasonable time period for perfection specified by Collection and after the one-year period for requesting an EH has expired.

E. Hearing Requests with Frivolous

1. If the taxpayer provides a frivolous basis for requesting a hearing, then that portion of the hearing request is to be treated as if the hearing request was not submitted.

2. In addition, IRC § 6702(b) provides for a penalty of \$5,000 if any portion of a request for a hearing is based on a "specified frivolous position," or reflects a "desire to delay" or impede the administration of federal tax laws.

IV. Levy Action During the Period of the CDP or EH

A. If the taxpayer files a timely request for a CDP hearing during the IRC § 6330 notice period, levy actions on the periods that are the subject of the CDP notice must be suspended during the appeal period and while any court proceedings are pending with the following exceptions:

1. Jeopardy levy situations,

2. Levies on state income tax refunds,
 3. Levies served on Federal contractors,
 4. Disqualified employment tax levies
- B. Levy action is generally suspended:
1. On tax periods not subject to the CDP levy hearing, unless all pre-levy notifications have been met,
 2. On tax periods subject to an equivalent hearing,
 3. On periods subject to a CDP NFTL hearing; unless Collection determines it to be appropriate in the situation.
- C. Levy action may be appropriate if:
1. Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
 2. Taxpayer raises only frivolous issues;
 3. Taxpayer is requesting an installment agreement or offer in compromise solely to delay the collection process.

V. CDP and Equivalent Hearing Fast Track Mediation (FTM)

A. FTM is available to taxpayers that qualify for a CDP or EH. A taxpayer can request FTM after a CDP notice is issued. Taxpayers requesting FTM during the time period for filing a CDP hearing request must also submit a hearing request to preserve their right to a hearing.

B. After a request for a hearing is filed, taxpayers can request FTM before the case is transferred to Appeals.

C. For a CDP case to qualify for FTM, the taxpayer must have filed all required returns and must be current with employment tax deposits (i.e., are not pyramiding additional employment tax liabilities).

1. In addition, the taxpayer must present complete information regarding the proposed resolution, such as complete financial information.
2. If the taxpayer meets the requirements, the IRS may offer the taxpayer the option of using FTM to expedite resolution of the case.

D. Prior to FTM the taxpayer may first request a conference with the manager. If resolution is not reached, the taxpayer can submit a request for FTM.

1. Both the taxpayer and the agent must sign an agreement to mediate prior to mediation being scheduled.
2. Collection does not have to agree to mediation.
3. However, denial of a mediation request requires approval of the group manager and concurrence by the second level manager. The basis for the denial will be communicated to the taxpayer and documented in the case history.

VI. Collection Appeals Program

A. Overview

1. CAP also is more expansive than the CDP appeal in that a CAP appeal can be filed by persons other than the taxpayer.
 - a. Third-party nominees or other persons holding property subject to a levy are not entitled to a CDP hearing.
 - b. However, such third parties may seek a hearing before the Appeals office under CAP.
 - c. Similarly, if the IRS files a notice of tax lien, a nominee or a person holding property of the taxpayer may seek a hearing before the Appeals office under CAP.

2. Collection Appeals Program (CAP) rights are provided by statute and administratively:

a. Statutorily:

- IRC 7122(e) - Gives the taxpayer the right to appeal the Service's rejection of an installment agreement request.
- Treas. Reg. section 301.6159-1(e)(5) - gives the taxpayer the right to appeal proposed modification or actual modification and to appeal proposed terminations of installment agreements or actual terminations of IAs.

b. Administratively: Taxpayers have the administrative right to appeal -

- Before or after the filing of a Notice of Federal Tax Lien (“NFTL”).
- Before or after the serving of a notice of levy.
- Before or after the seizure of property.
- After the denial of a request for property to be discharged from a lien.
- After the denial of the subordination of a lien.
- After the denial of the withdrawal of a NFTL.
- After the denial of the issuance of a certificate of non-attachment.
- After disallowance of a taxpayers request for return of levied property under IRC 6343(d).
- Filing of notice of lien against an alter ego or nominee's property.

B. Situations Where Taxpayers May Appeal under CAP

1. A taxpayer has a right to appeal under CAP when the taxpayer disagrees with:
 - An installment agreement is rejected
 - An installment agreement is proposed to be terminated or is actually terminated
 - An installment agreement is modified or proposed to be modified.

Note: CAP appeal requests involving these actions do not require a managerial conference.

2. A taxpayer also has the right to appeal under CAP when the taxpayer disagrees with the following actions:

- A NFTL will be or has been filed
- A levy will be or has been served
- A property will be or has been seized
- The request to discharge property from a lien has been denied
- The request for the subordination of a lien has been denied
- The issuance of a certificate of non-attachment of a lien has been denied
- The request for withdrawal of a NFTL has been denied
- A request for return of property under IRC 6343(d) has been rejected
- Filing of notice of lien against an alter-ego or nominee's property

Note: For these actions, the taxpayer must first discuss with the employees' manager before the CAP appeal request can be forwarded to Appeals

C. Exclusions from CAP

1. Several collection issues have separate appeal procedures in place.

2. Examples of such requests are:

- Pre or post assessment of Trust Fund Recovery Penalties
- Rejection of Offer in Compromise
- Penalty appeals
- Jeopardy levies: unless the time to appeal under IRC § 7429 has expired or the jeopardy levy is not subject to IRC § 7429 review and the taxpayer will not be given a CDP hearing (i.e., no hearing request was submitted within 30 days of the notice granting CDP rights or a prior CDP hearing was held for the liability at issue) For example, CAP may be available for a jeopardy levy issued during an IA, OIC, or on the date of a summons.
- Audit reconsideration
- Claims for refund or abatement
- Original requests for return of levied property
- Actions under the control of a court of competent jurisdiction.

2. CAP cannot be used to determine a taxpayer's liability including reopening examinations or claims for refund. Examination reconsiderations and claims are appealable under their own appeals procedures.

3. Cases that have been referred to the Department of Justice are excluded from CAP.

4. Cases on taxpayers under the control of Criminal Investigation (CI) where CI concurs with collection activity may be reviewed under a CAP. Follow CAP procedures. Appeals

will generally delay a CAP hearing during the pendency of criminal investigation and proceedings, unless the determination is made consistent with Policy Statement P-4-26 that the CAP hearing will not imperil prosecution.

5. CAP cannot be used to address issues not within the scope of Internal Revenue laws, i.e., moral, religious, solely frivolous requests, or requests that reflect a "desire to delay" or impede the administration of federal tax laws.

6. CAP cannot be used to address NFTL filing determinations made by Appeals employees in CDP resolutions, such as NFTL filing in connection with payment agreement, CNC and deferred payment OIC.

7. CAP cannot be used to address Collection's decision not to "release" a lien.

D. Limited Time Period for Appeal

1. Under CAP, taxpayers and IRS officials have limited time periods in which to act or respond. If the initial collection contact was through a notice, the taxpayer should contact the Collection manager by telephone. Collection managers have 24 hours in which to return telephone requests for review.

2. If the taxpayer and the Collection manager do not resolve the disagreement, the taxpayer has two business days to request Appeals office review of the Collection manager's decision on Form 9423, Collection Appeal Request.

a. In addition to requiring that the taxpayer state its reasons for disagreeing with the IRS collection action, Form 9423 requires the taxpayer to include solutions for resolving the tax problems. The discussion with the group manager on proposed termination, proposed modification, modified, terminated or rejected Installment Agreements ("IAs") is not mandatory due to the statutory right to appeal these actions.

b. These appeal requests can be forwarded directly to Appeals without prior group manager conference. However, holding a group manager conference for these types of cases is encouraged.

3. If agreement is not reached at the manager conference, the taxpayer or third-party that he or she can have the issue addressed by the Office of Appeals by filing a request in writing.

a. The taxpayer should use Form 9423, Collection Appeal Request. If the taxpayer intends to submit a Form 9423, the taxpayer needs to let the manager or RO know within two business days of the conference with the manager or collection action may resume (except for appeals related to IAs).

b. If the taxpayer mails the Form 9423, it must be postmarked within three business days after the date of the conference with the Collection manager to avoid collection action.

c. Due to the short time frame, taxpayers may want to submit the Form 9423 at the conference or via fax and should be advised accordingly.

4. While the stay of collection is no longer required if the taxpayer does not submit a Form 9423 postmarked within three business days after the conference, taxpayers are still entitled to a CAP appeal if their Form 9423 (or other written request) is received in a reasonable time after the manager conference, e.g., ten business days. Requests that come in after the time frame may

be the result of continuing collection action and may qualify as a new CAP request if new issues are raised.

5. Once a seizure action is taken, the taxpayer has 10 business days to appeal under CAP from the date the Notice of Seizure is provided to the taxpayer, or left at his or her usual abode or place of business. Publication 1660, Collection Appeal Rights, must be included with the Notice of Seizure.

a. The 10 business day limitation does not apply to other actions appealable under CAP.

b. Other than appeals relating to seizures which must be made in 10 business days as discussed above and installment agreement appeals discussed below, there is no deadline for requesting a CAP appeal.

c. However, a delay in requesting an appeal may in certain circumstances result in the taxpayer not being able to appeal the issue.

d. For example, if the taxpayer does not appeal a levy until after the Service receives the levy payments, the taxpayer cannot appeal the levy, but instead would need to file an administrative claim seeking return of the levied proceeds. If the Service denies the claim, the taxpayer could appeal the claim denial.

6. For IA appeals, the taxpayer generally has 30 days to appeal. During that time and during a timely requested appeal, levy action is prohibited by statute.

a. For rejected IAs — The taxpayer has 30 days from the date of the letter rejecting the proposed IA to appeal. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed.

b. For modified/proposed modification of an installment agreement - The taxpayer has 30 days from the date of the proposed modification of the installment agreement to submit an appeal. The taxpayer may also appeal prior to the expiration of the 30-day period commencing the day after the modification is to take effect.

c. For defaulted/proposed termination of an IA — The taxpayer has 30 days to request an appeal after termination of an IA is proposed. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed. Unless the taxpayer appeals within the 30 day period or cures the default, the IA will automatically terminate on the 46th day after the notice of proposed default is sent.

d. For terminated IAs — The taxpayer has 30 days to request an appeal after an IA is terminated. Thus, the taxpayer has 76 days from the date of notice of proposed default to request an appeal. Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed. If a taxpayer appeals prior to termination under (b) above, he or she may not appeal the decision again once the termination takes effect.

7. The appeal typically occurs in less than one month. The taxpayer may request a reasonable conference delay, usually not more than five business days. The Appeals office then has five days in which to decide the case.

8. The decision is binding on both the taxpayer and the IRS unless there is fraud, malfeasance, concealment, misrepresentation of material fact, an important mistake in mathematical calculation, or other circumstances that indicate that failure to reopen CAP decision would be a serious administrative omission.

E. CAP Process

1. The Appeals organization tries to resolve CAP cases within five business days of the receipt of the case by the Settlement Officer unless there are case complexities that require more time for quality case consideration.

a. The more complex cases should normally be resolved within 15 business days.

b. Appeals will attempt to hold a conference with the taxpayer within two days of receipt of the case.

c. However, if the taxpayer requests a conference delay, and it is warranted, then a reasonable delay will be allowed. Usually, such a delay will not exceed five business days. If the taxpayer does not elect a conference within the time limits given, Appeals will return the case to Collection as a premature referral.

2. The short time frames have been set to give taxpayers an almost immediate decision on lien issues, levies, seizures, and rejection or termination of IAs. It also helps to ensure that taxpayers do not appeal solely to delay collection.

3. If a taxpayer presents new information to Appeals that the revenue officer has not considered, Appeals may ask the revenue officer to review and comment on the information, in accordance with the ex parte requirements.

a. To the extent the revenue officer is expected to orally comment on the accuracy of the new information or the relative importance of the information to Appeals' decision, the taxpayer/representative must be given an opportunity to participate in any discussions with the revenue officer.

b. If comments on the information are in writing, the comments should be sent simultaneously to Appeals and the taxpayer.

4. When levy action is being appealed, further levy action is generally suspended.

5. However, levy action can be taken if it is determined to be appropriate in the situation.

6. Levy action may be appropriate if:

- Collection is at risk, e.g., dissipating assets, pyramiding additional liabilities;
- Taxpayer raises only frivolous issues;
- Taxpayer is seeking solely to delay the collection process.

- The group manager must concur with the planned action during the appeal. Prior to initiating levy action, check with Appeals to determine whether they have new information that may prohibit levy or may affect the decision.
7. Levy action during a CAP appeal will be suspended when required by law, for example, when the 30-day time period for rejection or termination of an IA is running or during the appeal.
 8. When the filing of the NFTL is the subject of the appeal, further NFTL action is generally withheld unless appropriate to protect the government's interests.
 - a. The group manager must concur with the planned action during the appeal.
 - b. Prior to taking further NFTL action, check with Appeals to determine if they have any new information from the taxpayer that may affect the decision.
 9. Appeals will review the case based on law, regulations, policy, and procedures (National and local), considering all the facts and circumstances. Local procedures will only be considered if they are written and in accordance with the IRM.
 10. Judgment is likely to be an issue on these types of cases, although they can also involve legal or procedural issues. Appeals may reverse Collection's action if evaluation of the taxpayer's history and current facts and circumstances indicate that the proposed or taken action is inappropriate.
 11. Appeals will inform both Collection and the taxpayer of their decision as soon as possible within the five business day time frame. Appeals will contact Collection immediately upon making a decision. A copy of the closing letter together with the Form 5402, Appeals Case Memo (if prepared) will be sent via encrypted email or fax to the revenue officer.
 12. If Appeals has sustained the collection action, enforcement action may resume upon receipt of the decision, unless otherwise prohibited.
 - a. For example, if the 30-day time period after rejection of an IA is still running, levy action is prohibited during that time. Otherwise, the decision made by Appeals will be implemented.
 - b. Appeals will give the closing letter to the taxpayer with a copy to Collection. The closing letter should clearly outline any agreement reached with the taxpayer.
 - c. In cases where a Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order), has been filed by the taxpayer, Appeals will give a copy of the closing letter to the controlling Taxpayer Advocate Office.
 13. Decisions by Appeals are binding on the taxpayer and Collection. Collection will take the actions directed by the Appeals decision.
 - a. However, if the taxpayer defaults on the decision directed by Appeals, Collection is released from the terms of the agreement.

b. The taxpayer may not appeal the same issue under CAP once Appeals has decided the issue on the same factual basis, e.g., a subsequent levy on the same asset.

14. Should taxpayers withhold pertinent information or frame a false representation, any agreement made on behalf of the Service by Appeals will be voidable. Before Collection declares an agreement void under this provision, the Collection group manager will confer with Appeals. Only if Appeals concurs with Collection's determination, may enforcement action resume immediately.

F. Considering the CAP Option

1. Unlike an appeal under the collection due process ("CDP") procedures, if the taxpayer disagrees with the determination made by the Appeals office, the taxpayer may not contest the determination in Tax Court.

2. Because CAP is available before a lien is filed or a levy issued, it can be used before the CDP notices are issued.

a. Filing a CAP should not be done without consideration of the consequences on a potential CDP hearing, however. If a CAP appeal is filed and a determination is made, the taxpayer will lose the right to contest that determination in a subsequent CDP hearing.

b. If the underlying liability is not considered in the CAP appeal, however, the taxpayer still may challenge the liability in a subsequent CDP hearing.

c. Therefore, while CAP may be a preferable remedy in certain cases (especially for liens) because it allows an appeal before the IRS collection action is taken, it may cause the loss of the right to judicial review that is available only with CDP.

3. A CAP appeal can be used to challenge the calculation of the tax liability, but the limited timeframe for a CAP appeal allows the challenges only to straightforward errors.

4. CAP is an excellent forum to contest the denial of an installment agreement, but there is no right under CAP to review adverse determinations for offers in compromise.

5. Filing a CAP appeal also can affect the timing for discharging taxes in bankruptcy.

IV. Other Defensive Measures

A. Taxpayer Assistance Order

1. If the taxpayer can show the IRS's collection activities have resulted or are about to result in significant hardship, the taxpayer can file Form 911 with the Taxpayer Advocate in the Area where the taxpayer resides and request the issuance of a Taxpayer Assistance Order (TAO). The order is issued by the Taxpayer Advocate and may require the IRS to release levied property or to cease its collection activities.

2. A significant hardship is deemed to exist if any one of the following four factors exist: (a) an immediate threat of adverse action; (b) a delay of less than 30 days is needed to resolve account; (b) the taxpayer will incur significant costs (including fees for professional services) if relief is not granted; or (c) irreparable injury, harm, or an adverse impact will be imposed on the taxpayer if relief is not granted.

3. The regulations under §7811 further define the term “significant hardship” as a serious privation caused or about to be caused to the taxpayer as a result of the particular manner in which the revenue laws are being administered by the IRS.

a. Mere economic or personal inconvenience to the taxpayer does not constitute significant hardship.

b. The Internal Revenue Manual provides that significant hardship may include, but is not limited to, extraordinary emotional distress or pending eviction or other situations of similar magnitude to the taxpayer.

c. A TAO cannot be issued to contest the merits of a tax liability, as a substitute for an administrative or judicial remedy, or to enjoin an act of the Office of Chief Counsel (other than Appeals).⁹⁰²

3. Once issued, a TAO is subject to modification or rescission only by the National Taxpayer Advocate, the Commissioner, or the Deputy Commissioner.

4. Once a TAO is submitted, the running of any applicable statute of limitations is suspended for the period beginning on the date of the taxpayer's application for the TAO and ending on the date specified in the TAO.

B. Injunctive Relief

1. Once it is determined that the collection of tax is not barred by the statute of limitations and administrative appeal rights are unavailing, other avenues may be explored to restrain the IRS's collection of the tax. However, trying to obtain an injunction will rarely be a viable option.

2. The so-called Anti-Injunction Act provides that, except as allowed under §6015(e), §6212(a) and (c), §6213(a), §6225(b), §6246(b), §6330(e)(1), §6331(i), §6672(c), §6694(c), §7426(a) and (b)(1), §7429(b), and §7436, the taxpayer and other persons cannot sue for the purpose of restraining the assessment or collection of any tax.

3. In addition, a fiduciary or a transferee of property cannot sue to restrain the assessment or collection of tax. The Anti-Injunction Act also extends to other activities, such as an audit to determine tax liability that may result in the assessment or collection of taxes.

4. Each specific Code section referred to in the Anti-Injunction Act contains a provision permitting an injunctive remedy.

C. Fair Tax Collection Practice

1. IRC 6304 imposes certain restrictions with respect to IRS communications with taxpayers regarding unpaid tax. This provision specifically prohibits the IRS from harassing or abusing taxpayers.

2. This law applies to communications with all taxpayers, including business entities.

3. Violations of IRC 6304 could subject the United States to civil action (IRC 7433) by the taxpayer. Violations of IRC 6304 could also subject Service employees to termination for misconduct.

Review Question 3

Which of the following is not a true statement in regard to the collection due process procedures:?

- A. If the taxpayer disagrees with the determination made by the Appeals office, the taxpayer may still contest the determination in Tax Court.
- B. Because CAP is available before a lien is filed or a levy issued, it can be used before the CDP notices are issued.
- C. If a CAP appeal is filed and a determination is made, the taxpayer will lose the right to contest that determination in a subsequent CDP hearing.
- D. If the underlying liability is not considered in the CAP appeal, however, the taxpayer still may challenge the liability in a subsequent CDP hearing.

A is Correct - If the taxpayer disagrees with the determination made by the Appeals office, the taxpayer may not contest the determination in Tax Court.

B is Incorrect - CAP is available before a lien is filed or a levy issued, and therefore can be used before the CDP notices are issued.

C is Incorrect - . If a CAP appeal is filed and a determination is made, the taxpayer will lose the right to contest that determination in a subsequent CDP hearing. While CAP may be a preferable remedy in certain cases (especially for liens) because it allows an appeal before the IRS collection action is taken, it may cause the loss of the right to judicial review that is available only with CDP.

D is Incorrect - . If an particular issue is not considered in the CAP appeal, the taxpayer still may challenge that issue in a subsequent CDP hearing.

APPENDIX

Collection Due Process Comparison to Collection Appeals Program

	Collection Due Process	Collection Appeals Program	Equivalent Hearing
1. When	<p>Upon Receipt of a:</p> <ul style="list-style-type: none"> >Letter 3172 - Notice of Federal Tax Lien >Letter 11, Final Notice – Notice of Levy and Right to A Hearing > CP 90 Final Notice of Intent to Levy > CP 92 and CP 242, Notice of Levy upon Your State Tax Refund > Notice of Jeopardy Levy and Right of Appeal > The taxpayer must request a CDP hearing within 30 days after the issuance of the CDP notice, to receive full CDP rights (including the opportunity for court review). 	<ol style="list-style-type: none"> 1. Before or After Notice of Federal Tax Lien 2. Before or After Levy 3. Before or After Seizure of Property 4. Denial or Termination of Installment Agreement 	<p>To obtain an equivalent hearing the taxpayer must make the request <i>“within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL”</i></p>
2. Issues Addressed	<p>The principal issues considered in a CDP hearing are:</p> <ul style="list-style-type: none"> > <i>Verification that collection procedures have been followed</i> – The taxpayer may raise any non-frivolous issue relating to the NFTL or the proposed levy. > <i>Challenges to the “underlying liability”</i> ; > <i>Requests for innocent spouse relief</i>; and > <i>Consideration of collection alternatives</i> 	<p>> Collection Actions which can be appealed:</p> <ol style="list-style-type: none"> 1. An NFTL that has or will be filed 2. Levy or seizure that has been or will be filed 3. Denials of request to issue lien certificates such as subordination, withdrawal, discharge, or non-attachment 4. Disallowance of taxpayer’s request to return levied property 5. Rejection, termination, or 	<p>Same as CDP</p>

	<p>- Appeals will balance the proposed collection action with taxpayer's legitimate concern of intrusiveness.</p> <p>The taxpayer may raise any non-frivolous issue relating to the NFTL or the proposed levy.</p>	<p>modification of installment Agreement</p> <p>>Cannot appeal liability</p> <p>> Appeals' review is for appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances. ¹</p> <p>> Appeals does NOT consider alternatives to the issue under appeal, but solely determines the appropriateness of the issue under appeal.</p>	
<p>2A Issues excluded</p>	<p>An issue may not be raised at the CDP lien or levy hearing if the taxpayer participated meaningfully in any previous administrative or judicial proceeding where the same issue was already raised and considered.</p>	<p>1. Several collection and examination issues have separate appeal procedures. Advise taxpayers who raise these issues under CAP to proceed with the appropriate appeal procedure. These include:</p> <p>>Trust fund recovery penalties</p> <p>>Offers in compromise</p> <p>>Penalty appeals</p> <p>>Jeopardy levies: unless the time to appeal under IRC 7429 has expired and the taxpayer will not be given a CDP hearing (e.g., no hearing request was submitted within 30 days of the notice granting CDP rights or a prior CDP</p>	

		<p>hearing was held for the liability at issue); or, unless the jeopardy levy was issued during an IA, OIC, or on the date of a summons. See IRM 5.11.3, Jeopardy Levy without a Jeopardy Assessment.</p> <p>>Audit reconsideration >Claims for refund or requests for abatement tax .</p> <p>Note: Third party wrongful levy claims under IRC 6343(b) that have been rejected are appealable under CAP. See Pub 4528.</p> <p>2. Also excluded from CAP:</p> <ul style="list-style-type: none"> •Actions under the control of a court. •Issues not within the scope of Internal Revenue laws, i.e., moral, religious or constitutional issues. •Challenges to the existence or amount of a liability (liability issues are addressed under CDP; see IRM 8.22.8, Liability Issues and Relief from Liability). •Collection's decision not to release a lien <p>3. Criminal Cases</p>	
<p>3. Procedure</p>	<p>> The taxpayer must request a CDP hearing within 30 days after the issuance of the CDP notice, to receive full CDP rights (including the opportunity for court</p>	<p><i>1. Call the IRS at the telephone number shown on your notice or identified by the IRS employee in a prior telephone contact. Be prepared to explain</i></p>	

	<p>review).</p> <ul style="list-style-type: none"> > The request must be filed in response to the first CDP notice for a tax period. If the request is not filed in response to the first notice, the taxpayer is entitled only to an equivalent hearing (as discussed further below). > The request also cannot be filed prematurely. If the request is filed before the CDP notice is issued, the request cannot be considered > Form 12153, Request for a Collection Due Process Hearing, should be used 	<p><i>which action(s) you disagree with and why you disagree. You must also offer a solution to your tax problem.</i></p> <p><i>2. If you can't reach an agreement with the employee, tell the employee that you want to appeal his or her decision. The employee must honor your request and will refer you to a manager. The manager will either speak with you then or will return your call within 24 hours.</i></p> <p><i>3. Explain to the manager which action(s) you disagree with and why. The manager will make a decision on the case. If you don't agree with the manager's decision, your case will be forwarded to Appeals for review. You do not have to submit the appeal request in writing</i></p> <p><i>4. Submit the Form 9423 to that Collection office – within two business days</i></p> <p><i>5. Appeals has 5 days to decide the case</i></p>	
<p>4. Conduct of the Hearing</p>	<p>A CDP hearing may consist of:</p> <ul style="list-style-type: none"> > A face-to-face meeting, > Written or oral communications between the Settlement Officer and the taxpayer 	<p>>Given the CAP program is an administrative appeal process, taxpayers are not entitled to a face-to-face hearing by statute.</p>	

	<p>or the taxpayer's representative, or</p> <ul style="list-style-type: none"> > Some combination of meetings and communications > If the taxpayer requests a face-to-face meeting, the IRS ordinarily will offer to conduct the hearing at the Appeals office closest to the taxpayer's residence or principal place of business. If that is not satisfactory to the taxpayer, the IRS will give the taxpayer an opportunity for a hearing by correspondence or by telephone. 	<ul style="list-style-type: none"> >However, there may be situations in which a face-to-face hearing request should be granted to reach account resolution. >These situations will more than likely be rare, but if requested, the employee and their manager should consider the facts and circumstances in making the determination to approve or deny the request. <p>Note: If a face-to-face hearing is not necessary to resolve the account or fully explain Appeals' determination to the taxpayer or representative, the conference should be held by telephone</p>	
5. Effect on Collections	Collection activity stayed until IRS Appeals issues determination	Collection Activity stayed	Case by Case
6. Judicial Appeal	<p>Yes - The Tax Court's standard of review for non-liability CDP determinations is to consider:</p> <ul style="list-style-type: none"> •Whether Appeals' factual and legal conclusions reached at a CDP hearing are reasonable, not whether they are correct •The reasonableness of Appeals ultimate decision 	No	<p>No - unless one or more of the following issues are raised:</p> <ul style="list-style-type: none"> > Spousal relief under IRC 6015 > Abatement of interest under IRC 6404(h) > Timeliness of the request for a CDP hearing
7. Prior Involvement Requirement	Yes	No	Yes
8. Advantages	> Liability may be challenged	>The goal is to provide a response with a 5-day	

	<p>>Judicial Appeal available</p> <p>> Filing a timely CDP appeal should be considered mandatory if the taxpayer is seeking an administrative resolution of a complicated collection matter.</p>	<p>turnaround.</p> <p>>Lien withdrawals or discharges, installment agreement, seizure, and claim issues may be quite complicated or require verification and will generally take longer than 5 business days to resolve. These cases should normally be resolved within 15 business days.</p>	
9. Disadvantages	<p>>Timing strictly adhered to;</p> <p>>Collection should only issue one CDP levy notice and one CDP lien notice per tax period, unless an additional amount of tax (other than interest and penalty accruals) is assessed.</p>	<p>Appeals determination is final</p>	
Note:	<p>If the taxpayer requests both a CDP and a CAP about the proposed levy or the NFTL filing, the taxpayer must choose one or the other. If the taxpayer chooses CAP, secure a withdrawal from the taxpayer for the CDP hearing to ensure that the taxpayer understands what rights are given up by withdrawing the CDP hearing request. If the taxpayer will not sign a withdrawal or cannot decide between a CDP and CAP, the taxpayer should be given the CDP hearing.</p>		

Notice Cycle

Assessment (1)	
60 Days After Assessment	
First Notice and Demand (2)	
Failure to pay in Ten (10) Days after Notice and Demand – Tax Lien arises by Operation of law (3)	
5 Weeks	
Reminder Unpaid Taxes	
5 Weeks	
Overdue Tax	
5 Weeks	
Urgent Payment Reminder	
5 Weeks	
Final Notice and Demand	Taxpayer Delinquent Account
5 Business Days to Notify taxpayer of recording of the lien	
Notice of Federal Tax Lien	
30 days to file for administrative relief	
Collection Due Process Appeals Hearing	
30 Days After Determination Letter to Appeal to the Tax Court	
Federal Tax Levy	
<p>Notice and Demand - The IRS cannot proceed to collect a tax liability until 10 days after the IRS serves notice and demand on the taxpayer for the payment of the tax liability</p>	
<p>Notice of Intent to Levy - In addition to the 10-day waiting period after notice and demand, §6331(d) requires that the IRS notify the taxpayer in writing of the IRS's intention to levy on the taxpayer's salary, wages, or other property at least 30 days before the date of the levy. The notice of intention to levy must be: (1) given in person; (2) left at the taxpayer's dwelling or usual place of business; or (3) sent by certified or registered mail to the taxpayer's last known address</p>	

Federal Tax Liens and Levys

Federal Tax Liens				
Creation	All that is required to create the federal tax lien is:	1. Assessment	2. Demand	3. Nonpayment
Attachment	Attaches to all property and property rights of the taxpayer			
Perfection	<ul style="list-style-type: none"> › The federal tax lien is automatically perfected following assessment, notice and demand, and nonpayment. Nothing further must be done to make the lien valid and choate against the taxpayer and certain other parties › A choate §6321 lien, however, is not perfected against purchasers, holders of security interests, mechanic's lienors or judgment lien creditors until the Notice of Federal Tax Lien (NFTL) is filed 			
Priority	Section 6323(a), however, provides that the §6321 "secret" lien is not valid against a purchaser, holder of a security interest, mechanic's lien or, or judgment lien creditor unless an NFTL is filed. The primary purpose of filing the NFTL is to obtain priority over these interests by giving constructive notice of the federal tax lien. The IRS obtains priority against these classes of persons through the general rule of first in time, first in right.			
When will the IRS File	<ul style="list-style-type: none"> > The Service will generally contact the taxpayer in order to work out alternatives means of settling the tax liability before filing a tax lien > The IRS will file a NFTL in the following situations: <ul style="list-style-type: none"> • The aggregate unpaid balance of assessments (UBA) is \$10,000 or more; • An installment agreement does not meet streamlined, guaranteed, or in-business trust fund express criteria; • An open account with an aggregate UBA of \$10,000 or more is being reported as currently not collectible; • A case involving both assessed and unassessed periods will be reported currently not collectible (file only for assessed periods); • There is property not being administered in a Federal bankruptcy or state insolvency proceeding; and • The taxpayer resides outside the U.S. and has known assets > Generally, the IRS will not file a NFTL when it may be more beneficial to use a collateral agreement, subordinate the lien (for loan financing situations), or discharge the property (i.e., remove a specific piece of property); 			
Relief	The following administrative devices can provide relief from a federal tax lien: <ul style="list-style-type: none"> • A post-filing administrative hearing; • A certificate of release of erroneously filed lien; • A certificate of nonattachment; • A certificate of discharge; • A certificate of subordination; and • A lien withdrawal. 			
Duration	By its own terms, the NFTL is "self-released" 10 years and 30 days after assessment of the tax or until the liability is satisfied or becomes unenforceable due to the lapse of time			
Enforcement	See Federal Tax Levy below			

Federal Tax Levy			
Sec. 6331 Definition	A levy is the exercise of the IRS's power to seize — i.e., a levy is used to describe the process of reaching property or amounts owed to the taxpayer by a third party, such as a bank. Since a levy is any forced taking of property, the IRS can be deemed to levy through an indirect exercise of its power to seize		
Prohibition Against	(1) The IRS may not levy during the pendency of any refund proceeding brought by the taxpayer in a proper federal trial court to recover any portion of a divisible tax		
	(2) The IRS is prohibited from levying: (a) during the period an offer-in-compromise is pending; (b) during a 30-day period following rejection of an offer; and (c) if such rejection is appealed, during the period the appeal is pending.		
	(3) The IRS is prohibited from levying: (a) during the period a request for an installment agreement is pending; (b) during a 30-day period following rejection of an agreement; and (c) if such rejection is appealed, during the period the appeal is pending.		
	(4) The IRS must complete a thorough investigation of the status of any property or right to property which is to be sold under §6335 before making levy		
	(5) The IRS may not levy on property if the amount of the expenses estimated by the IRS to be incurred with respect to the levy and sale of such property exceeds the fair market value of such property at the time of the levy.		
Procedural Requirements	(1) <u>Notice and Demand</u> - The IRS cannot proceed to collect a tax liability until 10 days after the IRS serves notice and demand on the taxpayer for the payment of the tax liability		
	(2) <u>Notice of Intent to Levy</u> - In addition to the 10-day waiting period after notice and demand, §6331(d) requires that the IRS notify the taxpayer in writing of the IRS's intention to levy on the taxpayer's salary, wages, or other property at least 30 days before the date of the levy. The notice of intention to levy must be: (1) given in person; (2) left at the taxpayer's dwelling or usual place of business; or (3) sent by certified or registered mail to the taxpayer's last known address		
Seizure	Under the IRS's levy authority, the IRS can seize property held by the taxpayer or a third party. A seizure is actually a form of levy and usually connotes a levy on tangible property		
	As soon as practicable after seizure, the IRS must give written notice of the seizure to the owner of real property or leave the notice at the owner's usual place of abode or business. If the IRS cannot locate the owner or if the owner has no dwelling or place of business in the IRS Territory in which seized property is located, the notice can be mailed to the owner's last known address		
Defenses	(1) <u>Release of Levy</u> - Appeal of the filing of a federal tax lien is made by written application to the Area Collection Enforcement in the small business/self-employed (SB/SE)	• The underlying liability is satisfied or is unenforceable due to the expiration of the statute of limitations for collection;	
		• The IRS determines that the release of the levy	The Area Director has the discretion to find that a

	<p>Division, but should be marked to the attention of the Chief (Special Procedures Function). The appeal must include identifying information (e.g., a copy of the lien), the grounds for the appeal, and substantiating data.</p>	<p>would facilitate collection;</p>	<p>release will facilitate collection where the taxpayer complies with conditions (other than immediate payment) such as the following:</p> <ul style="list-style-type: none"> • placing property in escrow to secure the payment of the tax liability; • providing an acceptable bond, conditioned upon payment of the liability (including the expenses of the levy); • paying an amount equal to the IRS's interest in the seized property; or • Collateral agreement • agreeing to extend the statute of limitations
		<ul style="list-style-type: none"> • An installment payment agreement has been executed (unless the agreement specifically allows a levy); 	
		<ul style="list-style-type: none"> • The IRS determines that the levy causes an undue financial hardship (an expedited review is available for a levy on tangible personal property essential in carrying on a trade or business); or 	<p>A levy that creates an economic hardship is one that prevents the taxpayer from meeting reasonable basic living expenses. Factors which the IRS considers in determining what constitutes a reasonable amount for the taxpayer's basic living expenses include:</p> <ul style="list-style-type: none"> • The taxpayer's age, employment history, earning capacity, and number of dependents; • An amount which is reasonable for food, clothing and housing; • The cost of living; • The amount of property exempt from levy; • Any extraordinary circumstances; and • Any other factors relating to economic hardship brought to

			the attention of the IRS by the taxpayer. 830
		<ul style="list-style-type: none"> • A partial release of levy is appropriate because the value of the levied property is greater than the tax liability and the partial release does not hinder collection 	
	(2) <u>Bankruptcy Petition</u>	One taxpayer defense which is generally effective against an IRS levy or seizure is the filing of a bankruptcy petition.	
	(3) <u>Collection Appeals Program</u>	<p>The notice of levy can be appealed under the Collection Appeals Program (CAP) before or after the levy is issued. The appeals under the collection due process rules generally occur before the levy is made</p> <p>This administrative procedure is intended to be used to correct erroneous filings, not to challenge the underlying assessment of deficiency giving rise to tax lien. Error in the filing of the lien exists only if (1) the tax liability that gave rise to the lien has been satisfied; (2) the liability had been assessed in violation of the Section 6213 restrictions on deficiency assessments; (3) the liability has been assessed in violation of the automatic stay on collection provided in the Bankruptcy Code; or (4) the lien was filed after the expiration of the limitation period on collection.</p>	
	(4) <u>Taxpayer Advocate</u>	<p>>The taxpayer may seek relief through the Taxpayer Advocate if the levy creates a significant hardship for the taxpayer, will cause the taxpayer to incur significant costs, or will result in irreparable injury or long-term adverse impact to the taxpayer.</p> <p>>A taxpayer assistance order is an administrative cease and desist order and, when issued in some situations, is similar to a mandatory injunction</p>	
	(5) <u>Return of Levied Property</u>	<p>The IRS has the authority to return levied property to taxpayers at the IRS's discretion if the IRS determines that:</p> <ul style="list-style-type: none"> • the levy was premature or otherwise not made according to IRS procedures; • the taxpayer has entered into an installment agreement for payment of the underlying tax liability, unless the agreement itself provides otherwise; • the return of the levied property will facilitate collection of the tax liability; or • with the consent of the taxpayer or the National Taxpayer Advocate, the property's return is in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the government. 	
	(6) <u>Informal Actions –</u>	Often in dealing with Collection, the best a taxpayer can	

	Contact Collections	hope to achieve is avoidance of some of the hampering effects of the tax lien and perhaps a portion of the liability attributable to penalties (e.g., the late payment penalty).
Sale of Levied Property	(1) <u>Notice of Sale</u> -	In addition to giving notice of seizure to the property owner, the IRS must also give the owner a notice of sale. Moreover, the notice of sale must be published in a newspaper of general circulation within the county where the seizure is made. If there is no such newspaper, the notice must be posted at the post office nearest the place where the seizure is made and in at least two other public places
	(2) <u>Time and Place</u> -	The sale must be held at the time and place stated in the notice of sale
	(3) <u>Right of Redemption</u> -	Section 6337(b) permits the owner, the owner's heirs, executors or administrators, or any person having an interest in or lien on the real property to redeem real property sold under §6335.973 No right of redemption exists for personal property sold. The right of redemption must be exercised within 180 days after the sale. The time limit is strictly construed

Defensive Measures

OPTIONS	Reduce or Contest	Pay	Minimize Impact of Lien or Levy	Delay – Collection Activity
1. Deficiency Judgment	a. Mangers Conference			
	b. Appeals			
	c. Judicial Appeal			
	(1) Tax Court			
	(2) Refund Suit			
2. Informal Contact w/ Collections	<p>During the notice cycle, efforts can be made to resolve the case by contacting the number on the notice.</p> <p>A representative with an IRS Form 2848, Power of Attorney and Declaration of Representative, on file can also deal with the IRS Practitioners' Hotline during the notice cycle.</p> <p>Comment: The taxpayer should make every attempt to resolve the collection issues administratively with the revenue officer or ACS. Administrative resolution — including installment payment agreements and offers in compromise — is much less</p>	<p>a. OIC b. Installment Agreement</p>		<p>Once it is determined that a tax liability is enforceable and that the taxpayer has no statutory basis for relief, the taxpayer is left with little leverage in the collection area. A taxpayer is in the strongest bargaining position if the taxpayer can convince the revenue officer or ACS that ultimate collection will be enhanced if the IRS delays enforced collection. This argument is persuasive if, for example, the taxpayer has little equity in existing assets but has good future income potential. By delaying enforced collection, the IRS may realize greater</p>

	<p>expensive, from a professional fees standpoint, than any form of judicial relief. Only when the administrative avenues for resolution have been exhausted should the taxpayer begin to consider filing a bankruptcy petition. The effects of bankruptcy on the collection of tax are well known to the IRS and, in some circumstances, may provide additional leverage in the negotiation of an administrative resolution.</p> <p>When the IRS becomes convinced that the taxpayer has no collectible assets and no future source of collection, the IRS can close the case by completing Form 53 (Report of Currently Not Collectible Taxes).</p> <p>When the IRS becomes convinced that the costs of administration and collection of an unpaid tax balance</p>			<p>collection from future payments²</p>
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² If a taxpayer plans on negotiating in this manner, the taxpayer must make sure that all tax returns for all periods subsequent to the years of the unpaid liabilities are filed. The IRS does not negotiate with a taxpayer whose current filing and payment obligations are not being satisfied. The taxpayer should also make sure that all financial information submitted is truthfully completed and that assets are not concealed. These actions afford the taxpayer the best opportunity to negotiate a successful offer in compromise or installment agreement.

	<p>outweigh the benefit of collection, the IRS also may choose to abate a small tax balance</p> <p>If the revenue officer or ACS appears to be taking an overly aggressive position, the taxpayer should consider requesting a review by the group manager or exercising appeal rights</p>			
3. Offer in Compromise	<p>a. <u>Doubt as to Collectability</u></p> <p>b. <u>Doubt of Liability</u> - The taxpayer can submit an offer in compromise to challenge the merits of the IRS assessment. An offer based only on doubt as to liability is submitted on IRS Form 656-L. This includes a challenge to the existence or amount of the liability owed. Doubt as to liability does not exist if the liability is correct or it has arisen from a final court decision.</p> <p>c. <u>To Promote Effective Tax Administration</u></p>			<p>>The IRS may not issue a levy while a taxpayer's offer in compromise is pending unless it determines that collection of the liability is in jeopardy.</p> <p>>A levy cannot be issued during the 30-day period following the rejection of an offer in compromise or, if a timely appeal is filed, while the appeal is pending³</p>

³ A frivolous offer in compromise (i.e., an offer is based on a position that the IRS has identified as frivolous or is designed merely to delay or impede tax administration) is subject to a \$5,000 penalty, applicable to submissions made and issues raised after the date on which the IRS first issues a list identifying frivolous positions.³⁸¹ No penalty applies if a taxpayer withdraws a frivolous submission within 30 days of being so notified.³⁸² The penalty also may be reduced at the IRS's discretion.³⁸³ A frivolous offer also may be treated as if it never were submitted, thus precluding further administrative or judicial review.

4. Installment Agreement		<ul style="list-style-type: none"> a. Guaranteed - \$10,000 or less b. Streamlined \$50,000, or less c. Over \$50,000 		<p>The IRS may not levy:</p> <ul style="list-style-type: none"> > during the period that a request for an installment agreement is pending; > during the 30-day period following rejection of the request; > during the period that an installment agreement is in effect; > during the 30-day period following termination of an agreement; and > if such rejection or termination is appealed, during the period the appeal is pending.⁴
5. CAP Hearing	<p>Cannot use CAP to challenge underlying tax assessment But can be used to challenge the liability; also will not consider trust fund recovery penalties, offers in compromise, or penalty abatement appeals</p>		<p>May contest before or after:</p> <ul style="list-style-type: none"> a. Notice of Federal Tax Lien b. Notice of Levy c. Seizure of Property d. Rejection of Termination of Installment Agreement e. Wrongful Levy f. Rejected OIC⁵ 	<p>Freezes Collection Activity</p>

⁴ A \$5,000 penalty may be imposed for submitting an installment agreement request that is frivolous or designed merely to impede or delay tax administration. See §6702(b). No penalty applies if a taxpayer withdraws a frivolous application within 30 days of being so notified. §6702(b)(3). The penalty also may be reduced at the IRS's discretion. §6702(d). A frivolous application also may be treated as if it never were submitted, thus precluding further administrative or judicial review

⁵ Levy and sale are authorized only if the Service has followed the provisions of the Code and the constitutional rights of the taxpayer have been respected. Although all of the potential issues that may arise where enforced collection action is taken cannot be anticipated, the following list identifies some of them.

6. CDP Hearing ⁶	The principal issues considered in a CDP hearing are: > verification that collection procedures have been followed; > challenges to the “underlying liability” ⁷ ; > requests for innocent spouse relief; and > consideration of collection		After filing of Notice of Federal Tax Lien Also will receive Notice before IRS levies on taxpayer’s property	Collection activity stayed until IRS Appeals issues determination
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1. A levy may be made only after there has been an assessment, notice and demand, and, in nonjeopardy situations, a notice of intention to levy given at least thirty days before the levy. If the taxpayer has not previously been given notice of a right to a CDP hearing with respect to the possibility that a levy may occur in connection with the tax liability in question, the Service must also give thirty days of this right. If the taxpayer requests a CDP hearing within the thirty days, the levy generally cannot be served until a final determination has been made.
2. The taxpayer does not have an offer-in-compromise or a request for an installment agreement pending for the tax in question, and does not have an installment agreement in effect.
3. The Service must have made a determination that the levy is economical; the estimated expenses of seizure and sale cannot exceed the fair market value of the property at the time the levy is made.
4. The manner of the levy must be effective to seize the property in question.
5. The levy must be served on the proper person.
6. The property purportedly seized must have been in the hands of the person served with the levy on the date of the levy. There is an exception to this with respect to salary or wages and federal benefit payments, and the Service may serve a levy, which is continuous from the date of the levy until it is released.
7. The levy must have been served within the statutory period of collection.
8. The seizure must not have violated the constitutional rights of the levied party.
9. The property purportedly seized must have been subject to levy.
10. An authorized revenue officer must have made the levy.
11. The levy cannot create an economic hardship for the taxpayer.
12. If the seizure is of the principal residence of the taxpayer, the taxpayer's spouse or former spouse, or the taxpayer's minor child, the Service must have obtained judicial approval of the seizure.
13. Seizure and sale must meet the requirements of the Code as to notice and date of sale.

⁶ An important disadvantage of the CDP is that the taxpayer must request a hearing within the 30-day period beginning on the day after the date he receives notice of his right to a hearing. This time limit cannot be waived, however, a written request submitted within the 30-day period that does not satisfy content requirements is considered timely if the request is perfected within a reasonable time. If the taxpayer's request for a CDP hearing is late, the IRS will offer the taxpayer an “equivalent hearing” in place of the CDP hearing. An equivalent hearing, however, does not suspend any collection action against the taxpayer and judicial review of the hearing determination is not available. In contrast, both the TAO and CAP are not subject to a time limit to appeal the notice of levy and are available both before and after a levy is imposed on property. Both the TAO and CAP are also generally quicker procedures than the CDP.

⁷ The taxpayer may challenge the underlying tax only if the taxpayer did not receive a statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute the tax liability. This statutory preclusion is triggered by the opportunity to contest the underlying liability, even if the opportunity is not pursued

	alternatives ⁸			
7. Equivalent Hearing	Same issues as CDP Hearing			Handled on a case by case basis
8. Bankruptcy		<p>> For taxes due within 3 or more years before Bankruptcy petition filed</p> <p>>Chapter 11, or 13 may allow for deferral of payment\</p>		The filing of a bankruptcy petition gives rise to an automatic stay. The automatic stay stops enforcement and the turnover order may allow the taxpayer to recover seized assets
9. Taxpayer Advocate				If the taxpayer can show the IRS's collection activities have resulted or are about to result in significant hardship, the taxpayer can file Form 911 with the Taxpayer Advocate in the Area where the taxpayer resides and request the issuance of a Taxpayer Assistance Order (TAO).897 The order is issued by the Taxpayer Advocate and may require the IRS to release levied

⁸ If the proper procedures were followed and the underlying liability is not challenged or is determined to be due, the final issue typically is whether the IRS considered available collection alternatives. Appeals must balance the need for efficient collection of the tax with the concern that the collection action be no more intrusive than necessary. The taxpayer can suggest collection alternatives, including an installment agreement, posting a bond, substitution of assets, or an offer in compromise. Taxpayer might consider suggesting (1) Currently not Collectible (2) Offer in Compromise (3) Installment Agreement (4) Other Collection Resolutions (i.e., Bond, substitution of other assets, forbearance to allow time to liquidate assets, withdrawal of NTTL in order to retain employment; also could argue for discharge or withdrawal of lien). These arguments could also be made in an informal interaction with collections; however although the advantages of using the CDP process for other requested collection relief also exist, including the opportunity to seek Tax Court review of the Service's administrative decision.

			property or to cease its collection ⁹ activities
10. Injunctive Relief	<p>Once it is determined that the collection of tax is not barred by the statute of limitations and administrative appeal rights are unavailing, other avenues may be explored to restrain the IRS's collection of the tax. However, trying to obtain an injunction will rarely be a viable option.</p> <p>The so-called Anti-Injunction Act⁹⁰⁵ provides that, except as allowed under §6015(e), §6212(a) and (c), §6213(a), §6225(b), §6246(b), §6330(e)(1), §6331(i), §6672(c), §6694(c), §7426(a) and (b)(1), §7429(b), and §7436, the taxpayer and other persons cannot sue for the purpose of restraining the assessment or collection of any tax.</p>		
11. Fair Tax Collections Practices	<p>Absent permission from the taxpayer or a court, the IRS is limited as to when it may communicate with a taxpayer in connection with the collection of any unpaid tax. It may not communicate with the taxpayer: (1) at an unusual time or place or one which the IRS should know is inconvenient to the taxpayer; (2) when it knows the taxpayer is represented by a person authorized to practice before the IRS with respect to the tax, unless the representative does not respond or consents to direct communication with the taxpayer;⁹³¹ and (3) at the taxpayer's place of employment if the IRS knows or has reason to know that the taxpayer's employer prohibits such communication. The IRS assumes that it is convenient to communicate with the taxpayer after 8 a.m. and before 9 p.m. local time at the taxpayer's location unless the IRS has knowledge of circumstances to the contrary.⁹³³ According to the IRS, statutorily required notices, such as the notice of intent to levy, are not within the purview of §6304(a)</p>		
13. Collateral Agreement			<p>The most common types of collateral agreements are:</p> <ul style="list-style-type: none"> > future income collateral agreements; > agreements reducing the basis of specific assets; > agreements to waive losses; and > agreements to waive deductions

⁹ A significant hardship is deemed to exist if any one of the following four factors exist: (1) an immediate threat of adverse action; (2) a delay of less than 30 days is needed to resolve account; (3) the taxpayer will incur significant costs (including fees for professional services) if relief is not granted; or (4) irreparable injury, harm, or an adverse impact will be imposed on the taxpayer if relief is not granted

