

Chapter 12: IRS Update

Issue 1: Abusive Tax Schemes	537	Issue 5: Practitioner Priority Services	543
Issue 2: Centralized Authorization File (CAF) Changes	538	Issue 6: Schedule K-1 Matching Program	545
Issue 3: Employer Identification Number (EIN)	539	Issue 7: Employment Tax Enforcement Program	545
Issue 4: Offer in Compromise	541	Issue 8: Earned Income Tax Credit (EITC)	546
		Issue 9: Collection Due Process Hearing	547

Corrections were made to this workbook through January of 2003. No subsequent modifications were made.

ISSUE 1: ABUSIVE TAX SCHEMES

IRS WARNS OF COMMON TAX SCAMS

Tax practitioners need to be alert to tax scams, so their clients do not fall victim to various tax scams. Tax scams take numerous forms, ranging from false claims of slavery reparations to illegal ways of “un-taxing” yourself.

To report suspected tax fraud to the IRS, contact them at 1-800-829-0433.

Below are common tax scams the IRS urges taxpayers to avoid.

TRUSTS

The IRS cautions taxpayers about the dangers of placing assets in abusive or illegal trusts, which taxpayers ultimately control. Trust arrangements of concern to the IRS are those which ignore the true ownership of assets or the substance of the transactions. Promoters of these arrangements claim the trusts allow the owner to retain full benefit of business or personal assets, while greatly reducing or eliminating taxes. Contrary to these claims, there are no additional benefits to be derived from placing assets in a trust. The substance of a transaction, not its form, controls for tax purposes.

Recognizing a Problem Trust

These common warning signs may reveal an unscrupulous trust promotion.

- A promise to reduce or eliminate income and self-employment tax
- Deductions for personal expenses paid by the trust
- Depreciation deductions on an owner’s personal residence and furnishings
- High fees for trust packages, to be offset by promised tax benefits
- Use of back-dated documents
- Unjustified replacement of trustee
- Lack of an independent trustee
- Use of post office boxes for trust addresses
- Use of terms such as “pure trust,” “constitutional trust,” “sovereign trust” or “unincorporated business organization”

HOME-BASED BUSINESS TAX AVOIDANCE

Most taxpayers with home-based businesses accurately report their income and expenses. However, in recent years, the IRS has uncovered a number of home-based business tax avoidance schemes. The promoters of these schemes claim individual taxpayers can deduct most, or all, of their personal expenses as business expenses by setting up a bogus home-based business. But, tax code firmly establishes that a clear business purpose and profit motive must exist in order to generate and claim allowable business expenses.

SLAVERY REPARATIONS TAX SCHEME

Thousands of African-Americans have been misled by people offering to file for tax credits or refunds related to reparations for slavery. There is no such provision in the tax law. Unscrupulous promoters have encouraged clients to pay them to prepare a claim for this refund. But the claims are a waste of money. Promoters of reparations tax schemes have been convicted and imprisoned. Taxpayers could face up to a \$500 penalty for filing such claims if they do not back away from the claim.

OTHER COMMON TAX SCAMS

No Taxes Being Withheld from Your Wages

Illegal schemes are being promoted that instruct employers not to withhold federal income tax or employment taxes from wages paid to their employees. These schemes are based on an incorrect interpretation of tax law and have been refuted in court.

“I Don’t Pay Taxes — Why Should You?”

Con artists may talk about how they do not file or pay taxes and then charge people a fee to share their “secret.” The real secret that these people do not reveal is that many of them actually do file and pay taxes — they just will not publicly admit it.

Untax Yourself for \$49.95

This one is as old as snake oil, but people continue to be taken in. Now it is on the Internet. The ads may say that paying taxes is “voluntary,” but this is absolutely wrong. The U.S. courts have continuously rejected this and other similar arguments. Unfortunately, hundreds of people across the country have bought “untax packages.” Then they find out that following the advice contained in these packages can result in civil and/or criminal tax penalties being assessed. Numerous sellers of these bogus packages have been convicted on criminal tax charges.

Share/Borrow EITC Dependents

Unscrupulous tax preparers “share” one client’s qualifying children with another client in order to allow both clients to claim the Earned Income Tax Credit. For example, if one client has four children they only need to list two for EITC purposes to get the maximum credit. The preparer will list two children on the first client’s return and list the other two on another client’s tax return. The preparer and the client “selling” the dependents split a fee. The IRS prosecutes the preparers of such fraudulent claims, and participating taxpayers could be subject to civil penalties.

Claim Disabled Access Credit for Pay Phones

Con artists sell expensive coin-operated pay telephones with volume controls to individuals, contending the taxpayer can claim a \$5,000 Disabled Access Credit on their tax return. In reality, the Disabled Access Credit is limited to bona fide businesses that are coming into compliance with the Americans with Disabilities Act.

ISSUE 2: CENTRALIZED AUTHORIZATION FILE (CAF) CHANGES

The Centralized Authorization File (CAF) contains information on third parties who are authorized to represent taxpayers before the IRS and/or receive and inspect confidential taxpayer information.

Effective January 2002, all requests for third-party authorization will be processed in two Small Business/Self Employed Accounts Management Centers (Memphis and Ogden). International third-party authorizations will continue to be processed in Philadelphia.

Prior to this change, the CAF program processed third-party authorization requests in all 10 service centers. Each service center maintained its own local Taxpayer Information File (TIF) and CAF information in stand-alone databases. In July 2001, the 10 CAF databases were consolidated into one database.

The centralized CAF process has the following benefits:

- Consistent customer service using one up-to-date database
- Simplified procedures for obtaining authorization
- Improved timeliness and accuracy
- Reduced processing problems
- Reduced unauthorized disclosures

Form 2848 or Form 8821 can still be sent via fax or mail. The IRS will update the Centralized Authorization File within 48 hours of receiving a fax. IRS will process a mailed form within five days from the date they receive a Power of Attorney.

To ensure that the Power of Attorney is processed quickly, fax Form 2848 or Form 8821 to the IRS at the appropriate fax number (Memphis, Ogden, or Philadelphia). The chart below has information for the Service Center that processes each state's Form 2848 or Form 8821.

Service Center	State
Memphis 5333 Getwell Road Stop 8324, Memphis, TN 37501 Fax # (901) 546-4115	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia
Ogden PO Box 9941 Stop 6737 Ogden, UT 84409 Fax # (801) 620-4249	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming
Philadelphia (International Only) 11601 Roosevelt Blvd. Philadelphia, PA 19255 Fax # (215) 516-1017	(International Only)

ISSUE 3: EMPLOYER IDENTIFICATION NUMBER (EIN)

New Processing, Telephone and Fax Numbers for Obtaining EIN's

Taxpayers can now call a single nationwide **toll-free telephone** number (866) 816-2065 to get an EIN. The IRS customer service representatives in three Service Centers will respond to taxpayer calls Monday through Friday from 7:30 a.m.–5:30 p.m. local time. Alaska and Hawaii will need to call from 7:30 a.m. – 5:30 p.m. Pacific Time for their calls. Taxpayers located outside the United States will continue to call the Philadelphia Service Center at (215) 516-6999.

2002 Workbook

Taxpayers can fax Form SS-4, *Application for Employer Identification Number*, 24 hours a day, 7 days a week to the location accepting their state's applications. The chart on the following page lists the mailing address and fax number by location.

Call 1-800-829-1040 to verify a number or to ask about the status of a Form SS-4 that was mailed to the service center.

If principal business, office, agency, or legal residence in the case of an individual, is located in:	Call Tele-TIN or Fax-TIN number shown below, or file with the "Internal Revenue Service Center" at:
Connecticut, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia	Attn: EIN Operation Holtsville, NY 00501 Tele-TIN (866) 816-2065 Fax-TIN (631) 447-8960
Illinois, Indiana, Kentucky, and Michigan	Attn: EIN Operation Cincinnati, OH 45999 Tele-TIN (866) 816-2065 Fax-TIN (859) 669-5760
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming	Attn: EIN Operation Philadelphia, PA 19255 Tele-TIN (866) 816-2065 Fax-TIN (215) 516-3990
If taxpayer has no legal residence, principal place of business, or principal office or agency in any state:	Attn: EIN Operation Philadelphia, PA 19255 Tele-TIN (215) 516-6999 Fax-TIN (215) 516-3990

The IRS no longer requires practitioners to file a Form 2848, *Power of Attorney* or Form 8821, *Tax Information Authorization* to get an EIN for their clients. As of December 1, 2001, tax practitioners can obtain an EIN on a client's behalf by completing the new "Third Party Designee" section and obtaining the client's signature on Form SS-4 (Revision December 2001), *Application for Employer Identification Number*.

In addition to the changes discussed above, the following telephone EIN procedural changes have been implemented.

- The IRS can now accept a telephone application for an EIN from a third party and fax the EIN back to the third party's client if they provide the client's fax number at the time of application.
- The taxpayer or their representative is no longer required to have a completed Form SS-4, *Application for Federal Employer Identification Number*, when they call applying for a number. The IRS employee will complete the form as they take the phone application.
- The IRS will accept an unlimited number of EIN requests during the same telephone application. Previously, we had a limit of five requests per phone call.
- The valid range of EIN prefixes have been expanded (01-99) excluding the prefixes 07, 08, 09, 17, 18, 19, 28, 29, 49, 78 and 79.

In the past, EINs were issued with a unique, state specific, two-digit numbers. As of January 2, 2002, the two-digit prefixes are no longer state specific. For example, in the past EINs in Nevada began with the prefix 88. A newly assigned EIN in Nevada could now be any valid prefix (i.e. 30, rather than 88).

What are the benefits of the centralized EIN process?

- Streamlined process for getting an EIN.
- Taxpayers only have to call one telephone or fax number.
- Practitioners won't have to file Form 2848 or Form 8821 to get an EIN for their clients.

ISSUE 4: OFFER IN COMPROMISE

An OIC is an agreement between a taxpayer and the IRS that resolves the taxpayer's tax liability. The IRS has the authority to settle (compromise) federal tax liabilities by accepting less than full payment under certain circumstances.

Beginning July 23, 2001, all OICs are processed at two sites. The sites are Brookhaven and Memphis, and taxpayer state of residency determines which site to use.

REASONS TO COMPROMISE

- **Doubt as to Liability** — Doubt exists that the assessed tax is correct.
- **Doubt as to Collectibility** — Doubt exists that the taxpayer could ever pay the full tax liability during the life of the statute, plus any extensions allowed by law.
- **Effective Tax Administration** — There is no doubt the tax is correct and no doubt the amount owed could be collected, but an exceptional circumstance exists that allows the IRS to consider the offer. The taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable.

ELIGIBILITY REQUIREMENTS

In order to be eligible to submit, a taxpayer must:

- not be a candidate for an installment agreement;
- have filed all required federal tax returns;
- not be involved in an open bankruptcy proceeding;
- if an entity, have filed and deposited all employment taxes on time for two quarters prior to filing the offer and be current for the quarter in which the offer is submitted; and
- if self-employed, have deposited all required estimated tax payments.

PAYMENT OPTIONS

- **Cash** — less than 90 days
- **Short-Term Deferred Payment** — more than 90 days, and up to 24 months
- **Deferred Payment** — offers with payment terms over the remaining statutory period for collecting the tax

REASONABLE COLLECTION POTENTIAL (RCP)

The IRS is observing a large upsurge of receipts in which the amount offered is clearly much lower than the reasonable collection potential illustrated on the taxpayer's financial statement. In a large number of these cases, the financial statement also shows that the taxpayer has a clear ability to satisfy the liability in full, or via an installment agreement, and there are no special circumstances cited by the taxpayer.

RCP is defined as the total of the taxpayer's realizable value in real and personal assets, plus a portion of their future income. Realizable value is the asset's quick sale value, minus the amount owed to a secured creditor. Future income

is determined by subtracting necessary living expenses from monthly income and spreading the amount over a set number of months.

Unless the taxpayer files an offer claiming special circumstances, the offered amount must equal or exceed the reasonable collection potential.

DISPOSITIONS OF OFFERS AS:

1. Returned without Investigation — Offers Not Processable

Offers are returned and considered non-processable if the taxpayer:

- has not filed all required federal tax returns;
- is involved in an open bankruptcy proceeding;
- is an entity and has not filed and deposited all employment taxes on time for the two quarters prior to filing the offer, and/or is not current for the quarter in which the offer was submitted;
- has not filed the offer application and financial statements on the required May 2001 version of forms; or
- is self-employed, and has not deposited all required estimated tax payments.

2. Returned without Investigation — Processable Offer

Offers are returned for the following reasons:

- A.** Financial verification documents are required.
- B.** The offer is determined to have been filed solely to delay and/or hinder collection.
 - 1.** An offer is re-submitted after a return/rejection and the offer is essentially the same as the prior offer.
 - 2.** The new offer fails to address identified problems or defects in the prior offer.
 - 3.** An offer is re-submitted after a prior offer has been accepted and it has been defaulted.
 - 4.** A collection determination has been made and the offer is clearly submitted to avoid a specific enforcement action.
 - 5.** An offer will be returned during the investigation if the taxpayer does not demonstrate compliance with estimated tax payments and fails and/or neglects to make the required estimated tax payment(s).

3. Rejections

All rejection recommendations must be reviewed by an independent reviewer prior to taxpayer notification. **The taxpayer is entitled to appeal all rejection determinations.**

A “Rejection with Options” letter will be provided when financial analysis demonstrates that the taxpayer:

- A.** Has an ability to full pay the liability either from equity in assets or via installment payments within the remaining time on the collection statute or a combination of both. The letter will provide the taxpayer with an opportunity to:
 - 1.** Withdraw the offer,
 - 2.** Pay the liability in full,
 - 3.** Enter into an installment agreement to full pay the liability via installment payments, or
 - 4.** Present evidence to support the existence of special circumstances that would prevent him/her from paying the full debt.

- B. Does not have the ability to fully pay the liability, but has not offered his/her reasonable collection potential. The letter will request the taxpayer increase the offer, or provide an explanation to support the existence of special circumstances. The taxpayer will also be allowed to withdraw the offer and set up an installment agreement.
- C. Submitted financial information that showed a discrepancy when compared with information secured through internal electronic sources. The letter will request the taxpayer explain the discrepancy and/or submit a timely appeal protest. Failure to respond to the letter and/or submit an adequate response to the discrepancy will cause the offer to be rejected with appeal rights as long as a timely protest is received.

4. Offers that Are Accepted

When the IRS determines that an acceptance is appropriate, the taxpayer may be requested to sign an additional agreement requiring him/her to pay a percentage of his/her future earnings, and/or waive certain present or future tax benefits.

When an offer is accepted:

- the taxpayer must pay the amount as quickly as possible, according to the acceptance agreement. Failure to pay the offer amount on time will result in the offering being declared in default;
- the IRS will keep any tax refund, including interest, through the calendar year in which the offer was accepted;
- a taxpayer may not designate a refund and/or overpayment to be applied to estimated tax payments for the following year, unless the offer is based on **Doubt as to Liability**;
- the taxpayer waives all rights to contest, in court or otherwise, the amount of the tax liability;
- the IRS will release a Notice of Federal Tax Lien when the taxpayer has satisfied the payment terms of the offer; and
- the taxpayer must file and pay all tax returns for a period of five years from the date the offer is accepted. Failure to timely file and pay all due taxes during the 5-year period will result in the offer being declared in default.

5. Offers in Default

When the IRS declares an offer is “in default,” there are several actions that may be taken:

- Disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the tax liability.
- File suit to collect the entire unpaid balance of the offer.
- File suit to collect an amount equal to the original tax liability as liquidating damages, minus any payment already received under the terms of this offer.
- File a Notice of Federal Tax Lien on any tax periods not previously covered by a Service lien.
- File suit or levy to collect the original amount of the tax liability, without further notice of any kind.

ISSUE 5: PRACTITIONER PRIORITY SERVICES

The Practitioner Priority Service is a new nationwide toll-free, accounts-related service, for all tax practitioners. It is the practitioners’ first point of contact for assistance regarding taxpayers’ account-related issues. This service was fully implemented on April 1, 2001. It replaces the former Practitioner Hotline.

The hours of service are 7:30 a.m. until 5:30 p.m. local time (with the exception of Alaska and Hawaii, which are 7:30 a.m. until 5:30 p.m. Pacific Time), weekdays. It operates out of five campus sites:

2002 Workbook

- Brookhaven, NY
- Cincinnati, OH
- Memphis, TN
- Ogden, UT
- Philadelphia, PA

The calls are routed to the designated campus sites based on the practitioner's geographic location.

New Nationwide Toll Free Number 866-860-4259

Site	States Assigned	Site	States Assigned
Brookhaven	Connecticut Delaware Maine Massachusetts Michigan New Hampshire New Jersey New York Rhode Island Vermont	Cincinnati	Illinois Indiana Iowa Kentucky Minnesota Montana Nebraska North Dakota Ohio South Dakota West Virginia Wisconsin Wyoming
Memphis	Alabama Arkansas Colorado Kansas Louisiana Mississippi Missouri New Mexico Oklahoma Tennessee Texas	Ogden	Alaska Arizona California Hawaii Idaho Nevada Oregon Utah Washington
Philadelphia	Florida Georgia Maryland North Carolina Pennsylvania South Carolina Virginia Washington, D.C.		

Practitioner Priority Service provides a number of benefits to practitioners:

- Toll-free service
- Improvement of overall consistency and quality of service to practitioners
- Higher level of service
- Improvement of accessibility to the system and reduction of wait times

ISSUE 6: SCHEDULE K-1 MATCHING PROGRAM

The IRS expanded its compliance effort to ensure that Schedule K-1 income and expense items are correctly reported. (IRS News Release 2002-83, dated June 28, 2002).

The expanded compliance program targets 2000 individual tax returns. It includes 2000 Schedule K-1s for Forms 1041, 1065 and 1120S. In 2000, approximately 18 million K-1s reported more than \$1.1 trillion of income to beneficiaries, partners, and shareholders. This year, about 65,000 notices have been issued in this matching program. The Schedule K-1 matching program is more complex and time consuming than other matching programs (W-2s and 1099s), since Schedule K-1 lists various types of income, deductions, and losses.

The IRS identified common reasons why mismatches may occur:

- Netting is a major cause of mismatches, including netting of gains and losses. Most of the mismatches are due to a combination of netting passive activity loss carryovers, at-risk carryovers, and unreimbursed expenses claimed.
- Carryovers of passive activity losses, at-risk limitations and basis adjustments which reduce reported income can cause a mismatch.
- K-1s are offset for related business expenses (i.e. unreimbursed partnership expenses).
- Failure to report an item reflected on a K-1 due to an oversight or other reason.
- K-1s are not provided timely, causing estimated numbers to be used on Form 1040.

According to the IRS, one of the major areas of noncompliance is the failure of taxpayers to properly apply the passive loss limitations. Many of these passive losses are shown on Schedule E, and some are incorrectly reported on Schedule C in order to avoid the limitation rules.

The IRS offers suggestions on how to minimize errors on K-1s.

- **Do not** combine offsets taken for items such as related business expenses, at-risk carryovers, or basis adjustments with current year figures reported on K-1 in order to arrive at a net amount. Instead, report them on a separate line of Schedule E as outlined in the Instructions to Schedule E.
- Form 8082 must be filed if treatment is inconsistent with the partnership, estate, trust or S corporation.
- To assist the IRS with the matching process, attach an explanation to the individual's return for reporting netted amounts, including passive activity loss carryovers. This may prevent notices being issued.
- Electronic filing by flow-through entities ensures accuracy of the data to be matched.

If the IRS notices are incorrect, a letter or phone call from the tax practitioner with an explanation will likely be sufficient to correct the notice or to abate incorrectly assessed tax.

Note. In August 2002, the IRS temporarily halted the K-1 matching program due to excessive incorrect notices. The program will resume when the IRS determines methods to avoid inaccuracies in its notices.

ISSUE 7: EMPLOYMENT TAX ENFORCEMENT PROGRAM

SOME COMMON EMPLOYMENT TAX EVASION SCHEMES

Employment tax evasion schemes take a variety of forms. Some of the more prevalent evasion methods are listed on the following page.

Pyramiding

“Pyramiding” of employment taxes occurs when a business withholds taxes from its employees, but fails to remit them to the IRS. If this failure is intentional, it may be fraudulent. Businesses involved in pyramiding frequently file for bankruptcy to avoid payment of tax liabilities accrued and then start a new business under a different name and begin the pyramiding process again.

Employment Leasing

Employee leasing is a legal business practice, which is sometimes subject to abuse. Employee leasing occurs when an outside business is contracted to handle all administrative, personnel, and payroll concerns for employees. In some instances, employee-leasing companies fail to pay the collected employment taxes to the IRS. This tax money is often spent by the owners on business or personal expenses. Often the company dissolves, leaving millions in employment taxes unpaid.

Paying Employees in Cash

Another common evasion method is paying employees in whole or partially in cash without including it in wages on the employees’ W-2s. Employment taxes are not withheld resulting in lost tax revenue to the government and loss or reduction of future Social Security or Medicare benefits for the employee.

Filing False Payroll Tax Returns or Failing to File Payroll Tax Returns

Understating wages on payroll tax returns, or failing to file employment tax returns are methods commonly used to evade employment taxes.

TIP INCOME UPDATE

In June 2002, the Supreme Court sided with the IRS in the *Fior D’Italia, Inc.* court case. This decision was eagerly awaited by the IRS, as well as the restaurant industry [*U.S. v. Fior D’Italia, Inc.*, 89 AFTR 2d 2002-2883 (Sup. Ct.)].

The issue was whether the IRS can use an “aggregate estimation method” to determine cash tips based on actual charged tips. The Supreme Court ruled that the IRS can use this method to assess additional FICA taxes on the employer based on tips employees may have received but did not report.

This decision gives the IRS more authority in enforcing this compliance issue. The ultimate result will be enhanced educational outreach efforts and more tip compliance examination projects.

Note. See Chapter 6: Rulings and Cases for more details.

ISSUE 8: EARNED INCOME TAX CREDIT (EITC)

The EITC is a tax credit for over 19 million lower-income working taxpayers. There are significant changes to the EITC tax law for the 2002 tax year.

IMPORTANT CHANGES FOR TAX YEAR 2002

1. **New definition of earned income.** For tax years beginning after 2001, earned income will no longer include nontaxable employee compensation.
2. **Elimination of modified adjusted gross income (AGI).** For tax years beginning after 2001, taxpayers will no longer need to figure modified AGI. The EITC will be figured using AGI, **not** modified AGI.

- 3. New rules for taxpayers claiming the same qualifying child (tie-breaker rule).** For tax years beginning after 2001, the tie-breaker rule **only** applies if more than one taxpayer claims the same qualifying child. New rules will be used to determine which person can claim the EITC using that child.
- 4. Reduction of EITC by Alternative Minimum Tax (AMT) eliminated.** For tax years beginning after 2001, the taxpayer's EITC will no longer be reduced by the amount of any AMT shown on the return.
- 5. New definition of eligible foster child.** For tax years after 2001, the definition of an eligible foster child will change. The child will have to live with you only for more than half of the year, instead of the whole year.

Note: See Chapter 2: Individual Taxpayer Problems for current information on EITC.

ISSUE 9: COLLECTION DUE PROCESS HEARING

To qualify for a Collection Due Process (CDP) hearing, the taxpayer must receive either a Notice of Federal Tax Lien Filing and Your Right to a Hearing under I.R.C. §6320 or Notice of Intent to Levy and Your Right to a Hearing under I.R.C. §6330.

The issuance of a notice under I.R.C. §6320 or §6330 entitles the taxpayer to an opportunity for an independent review conducted by the Office of Appeals. Lien and levy actions for CDP cases are required by statute to be suspended. However, if the taxpayer's appeal involves a levy issue only, a notice of lien may still be filed. The taxpayer would then be issued a Notice of Federal Tax Lien and afforded an opportunity to file a CDP appeal based on I.R.C. §6320.

There are two exceptions to the pre-levy notice requirements of I.R.C. §6330:

1. When the collection of tax is in jeopardy under I.R.C. §6331(a)
2. When a levy is served on a state to collect a Federal tax liability from a state tax refund

In both of these situations, the taxpayer will be given the opportunity for a Collection Due Process hearing within a reasonable period of time after the levy.

HOW TO REQUEST A HEARING

Taxpayers are requested to use Form 12153, Request for Collection Due Process (CDP) Hearing, to request the appeal.

The taxpayer should include a copy of the CDP notice with the CDP hearing request and should file the request for the hearing with the employee or function initiating the action. CDP notices issued by the field revenue officer will have the assigned revenue officer's name and address listed on the CDP hearing notice.

A written request for a CDP hearing signed by the taxpayer or authorized representative may be submitted if Form 12153 is not used. The request must be made in writing. If a Notice of Federal Tax Lien was issued, the taxpayer's request must be made within the 30 days beginning with the day after the five-business-day period of the lien filing. If a Notice of Intent to Levy was issued, the taxpayer's request must be made within 30 days of the date of the notice. The taxpayer(s) or the taxpayer(s)' authorized representative must sign the request. In the event the taxpayer's Form 12153 is received **after** the requisite 30-day period, the postmark date will be used to show that it was a timely filed CDP hearing request. The use of the postmark date for cases received after the "30-day" date should ensure that taxpayers are not unfairly deprived of a CDP hearing.

STATUTE OF LIMITATIONS

A timely filed request suspends the collection statute of limitations. A timely filed request for a hearing suspends the statutory period of limitations on collection, criminal prosecutions, and other suits for the tax period that is being appealed. If the taxpayer commences the appeal process to the Tax Court or to a federal district court, the statute of

limitations is suspended and the determination is not final until the taxpayer withdraws the CDP request or the determination becomes final, including any court appeals. If 90 days is not remaining on the statute of limitations when the determination becomes final, the statute of limitations is recomputed to allow for this 90-day period.

If the request for the hearing is received after the I.R.C. §6320 or §6330 notice period, the taxpayer is entitled to receive an equivalent hearing. The taxpayer is still afforded the opportunity for an independent review conducted by the Office of Appeals. Lien and levy actions are not required by statute to be suspended on equivalent hearings. However, as a general rule, even when not required by statute, levy action is suspended. In an equivalent hearing, the decision by Appeals is final. The taxpayer cannot appeal the decision to Tax Court or federal District Court, except as it relates to certain spousal defenses under I.R.C. §6015. The taxpayer is encouraged to work with the office that issued the CDP hearing notice in an effort to resolve the matter even after the taxpayer has requested a hearing with Appeals.

RESOLUTION BEFORE THE HEARING

If the taxpayer reaches a satisfactory resolution with Collection after filing a request for a CDP hearing, the taxpayer can withdraw his or her request for a CDP hearing. The taxpayer can use Form 12256, Withdrawal of Request for Collection Due Process Hearing, when the CDP hearing request is based on an appropriately issued CDP notice but the taxpayer has been able to satisfactorily resolve his or her case prior to the commencement of the CDP hearing with Appeals.

A taxpayer can also withdraw his or her request for a CDP hearing with Appeals, if the case is resolved prior to the commencement of the CDP hearing with Appeals but after the case has been forwarded to Appeals. The withdrawal form eliminates the right to judicial review. The decision to use Form 12256 belongs to the taxpayer. Upon receipt of the withdrawal request, Form 12256, the suspension of the statute of limitations on the period of collection under the provisions of I.R.C. §§6320 and 6330 is no longer in effect.

THE COLLECTION DUE PROCESS HEARING

The Office of Appeals holds the CDP hearing. An officer or employee who has had no prior involvement with respect to the unpaid tax conducts the hearing. However, the taxpayer may waive this requirement.

In every case, Appeals must consider and address the requirements of the law and administrative procedures, the relevant issues presented and the intrusiveness of collection action.

The taxpayer may raise any relevant issue at the conference, such as appropriate spousal defenses, appropriateness of collection actions, and collection alternatives, such as an installment agreement, offer in compromise, etc. The taxpayer may also challenge the existence of the underlying tax liability if he or she did not receive a notice of deficiency or did not have an opportunity to dispute the tax liability.

Taxpayers with liabilities not subject to the deficiency procedure such as Trust Fund Recovery Penalty (TFRP) are considered to have had an opportunity to dispute the liability if they were previously offered and declined a conference with Appeals.

The taxpayer may **not** raise an issue that was raised and considered at a previous CDP hearing or in any other previous administrative or judicial proceeding in which the taxpayer participated meaningfully.

DETERMINATION/DECISION LETTER

Appeals' hearing on a timely CDP request is concluded with the issuance of a determination letter. Letter 3193, Notice of Determination Concerning Collection Action(s) under I.R.C. §6320 and/or I.R.C. §6330 (Tax Court) is issued to the taxpayer for cases where the Tax Court would appear to have jurisdiction. The Tax Court has jurisdiction of CDP cases where the underlying tax liability is the type of liability that is subject to the deficiency procedures (e.g., income, gift, and estate taxes). For these types of tax liabilities, the Tax Court is the appropriate court of jurisdiction, regardless of whether an actual deficiency is at issue. The determination letter advises the taxpayer that he or she may initiate an action for judicial review of the Appeals determination within 30 days of the date of the letter.

Letter 3194, Notice of Determination Concerning Collection Action(s) Under I.R.C. §6320 and/or I.R.C. §6330 (District Courts) is issued for cases where U.S. District Courts would appear to have jurisdiction. The U.S. District Courts have jurisdiction over CDP cases not within the jurisdiction of the Tax Court. For these types of tax liabilities, the District Court is the appropriate court of jurisdiction where the underlying tax liability is not the type of liability subject to the deficiency procedures (e.g., Trust Fund Recovery Penalty and excise taxes other than those under I.R.C. Chapters 41, 42, 43, and 44). The determination letter advises the taxpayer that he or she may initiate an action for judicial review of the Appeals determination within 30 days of the date of the letter.

The appeals hearing on an equivalent hearing is concluded with the issuance of a decision letter, except as it relates to certain spousal defenses under I.R.C. §6015. 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 Compliance.

If the tax liability is upheld or the enforcement action is valid, the letter will so state even if the appeals/settlement 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. Compliance will be responsible for implementing the agreement worked out in Appeals.

A taxpayer that reaches a satisfactory resolution with Appeals may sign Form 12257, Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, and Waiver of Suspension of Levy Action. The waiver will provide clear information regarding any agreement reached with the taxpayer, any relief given, and any necessary actions required by Collection. The waiver eliminates the right to judicial review.

The Office of Appeals retains jurisdiction with respect to any Notice of Determination made under I.R.C. §6320 or I.R.C. §6330, including subsequent appeals requested by the taxpayer who requested the original CDP hearing. A retained jurisdiction hearing would be considered on the following issues:

- Collection actions taken or proposed with respect to such determination.
- After the person has exhausted all administrative remedies, a change in the taxpayer's circumstances affects such determination.

SUBSEQUENT REVIEW

Taxpayers, who request subsequent review of their case by Appeals under the changed circumstance provision under retained jurisdiction, must first exhaust all administrative remedies, such as having a conference with the collection manager. If there has been a change in circumstances with respect to the taxpayer affecting the I.R.C. §6320 or §6330 determination, Appeals, under the retained jurisdiction provision, may consider issues that were raised and considered at the previous hearing. The statutory period for collection is not suspended during the retained jurisdiction proceeding.

2002 Workbook