



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
December 9, 1999

OFFICE OF
CHIEF COUNSEL

Number: **200007001**

Release Date: 2/18/2000

CC:EL:GL:Br1

GL-705496-99

UIL-50.00.00-00

MEMORANDUM FOR DIRECT COUNSEL, MIDWEST REGION, MILWAUKEE
CC:MSR:MWD:MIL

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation) CC:EL:GL:BO1

SUBJECT: Advisory Opinion
Waiver of Due Process Rights

This is in response to your memorandum dated July 16, 1999, requesting our review and comments with respect to your proposed advisory opinion. Subsequent to that memorandum several telephone conversations took place between you, James M. Klein of your office, and Jerome Sekula of this office. Pursuant to those discussions, your office issued an advisory opinion to the Chief, Appeals Division, Midwest Region, on September 8, 1999. We have reviewed that memorandum which we received on September 27, 1999.

ISSUE

Whether the Internal Revenue Service (Service) may suggest to a taxpayer that the taxpayer waive Collection Due Process (CDP) rights allowed under the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98)?

CONCLUSION

If the Service determines that it may be in the best interest of the taxpayer, a revenue officer may advise or suggest to the taxpayer or the taxpayer's representative, if the taxpayer is represented, that the taxpayer waive certain of the collection due process rights granted to a taxpayer under I.R.C. §§ 6320 and 6330, as added by RRA98 section 3401.

FACTS

Recently, the Service effectuated a waiver of due process rights under RRA98 to enable the filing of a Notice of Federal Tax Lien which the taxpayer desired. Although the lien filing was made at the taxpayer's request, the filing was made earlier than the Service's administrative procedures would otherwise require. To protect itself against possible claims that it had not met all administrative

procedures (for the purposes of section 6330(c)(1)) prior to the filing, Collection requested the taxpayer to execute a waiver of the taxpayer's right to the Collection Due Process (CDP) hearing to which the taxpayer would otherwise be entitled to request following the filing of the lien. You have asked our office when it is appropriate for the Service to discuss and accept waivers of CDP rights.

LAW AND ANALYSIS

Section 6320 requires the Service to provide, within five business days after lien filing, CDP notification and the opportunity for an independent hearing and possible subsequent appellate court review to persons against whom a NFTL has been filed. Section 6330 requires the Service to provide, at least 30 days before the first levy, CDP notification and the opportunity for an independent hearing and possible subsequent appellate court review to persons against whose property the Service intends to levy upon for the payment of tax. The purpose of these two provisions is to permit a taxpayer who owes tax to have both an administrative and a judicial hearing to challenge the Service's determination of tax liability and/or the Service's collection actions.

Discussions with a taxpayer or the taxpayer's representative concerning a waiver of the taxpayer's CDP rights do implicate, at least tangentially, the provisions of RRA98 section 3468. That section prohibits Service employees from requesting a taxpayer to waive the taxpayer's right to bring a civil action against the United States or any Service employee for any action taken in connection with the internal revenue laws unless the taxpayer waives that right knowingly and voluntarily, or that request is made in person and the taxpayer's attorney or representative is present, or the request is made in writing to the taxpayer's attorney or representative. Taxpayers who waive their right to a CDP hearing do not receive a CDP hearing or a Notice of Determination by Appeals from which they could otherwise seek court review. Accordingly, the consequences of a waiver of the taxpayer's right to a CDP hearing should be discussed with the taxpayer or the taxpayer's representative, if the taxpayer is represented.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

Discussions concerning waivers of CDP rights will not be appropriate in all cases and should be engaged in only when the facts and circumstances of a particular case indicate they may be warranted. The Service must attempt to avoid circumstances that might be construed as being under duress when a waiver of CDP rights is executed by a taxpayer. The Service should agree to permit a taxpayer to execute a waiver of the taxpayer's CDP rights only when the taxpayer desires that the Service take some further administrative action that the Service would not be able to do because of section 6320 or section 6330: for example, a third-party levy that is otherwise delayed because of the notice provision requirements of either of the two sections.

The filing of a Notice of Federal Tax Lien (NFTL) does not require pre-notification to the taxpayer of CDP rights. Accordingly, any waiver concerning lien filings should normally be secured, as was done here, prior to such a filing. Pursuant to I.R.C. §§ 6331(d) and 6330(a)(2), in levy situations, notification must be given at least 30 days prior to the day of the first levy. To prevent any misunderstandings in levy situations, the taxpayer must first be given a CDP notice. Only after that CDP notice has been given should the taxpayer be allowed to waive the taxpayer's CDP rights.

We agree that a revenue officer can advise or suggest to a taxpayer or the taxpayer's representative to consider such waivers whenever the facts and circumstances indicate it may be beneficial to the taxpayer and the Service to have the taxpayer waive his or her rights to enable the Service to act quickly in performing some administrative function it could not otherwise take. Since, currently, there is no written prescribed waiver form, revenue officers should contact district counsel to draft or review a waiver on an as-needed basis.

If you have any comments or questions, please contact Jerome D. Sekula of this office at 202-622-3610.

cc: Audrey M. Morris, Acting Assistant Regional Counsel(GL), Midstates Region
George E. Bowden, Technical Assistant (FS)