



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

OFFICE OF
CHIEF COUNSEL

Number: **200009007**
Release Date: 3/3/2000
CC:DOM:FS:PROC
UILC: 6330.00-00
9999.98-00

November 15, 1999

MEMORANDUM FOR District Counsel,

FROM: Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD
SERVICE ADVICE

This Field Service Advice responds to your memorandum dated August 11, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

19aa	=
19bb	=
19cc	=
19dd	=
Date A	=
Date B	=
Date C	=
Date D	=
Date E	=
Date F	=
Date G	=

ISSUE

Did a telephone conversation between the Appeals Settlement Officer and the taxpayer's representative constitute a Collection Due Process (CDP) hearing pursuant to I.R.C. § 6330 where the discussion was limited to the necessity of the taxpayer filing a 19dd income tax return before an installment agreement or offer in compromise could be explored?

CONCLUSION

The telephone conference constituted a CDP hearing because the taxpayer's representative was informed that the opportunity to raise any additional issues at a later time would be lost if the taxpayer did not file her 19dd income tax return by a specified date and the taxpayer had not raised any additional issues prior to that date.

FACTS

For 19aa, 19bb, and 19cc, the taxpayer filed delinquent income tax returns reflecting substantial amounts due. The revenue officer assigned to the case attempted to collect the liabilities, however, no resolution was reached. The revenue officer also attempted to secure the filing of a tax return for the 19dd tax year. The taxpayer had requested an installment agreement or the possibility of exploring an offer in compromise; however, she was advised no agreement could be reached until the 19dd return was filed. As a result, the revenue officer issued a Final Notice - Notice of Intent to Levy and Notice of Your Right to a Hearing, Form 1058, for the 19aa and 19bb tax years on Date A, and for the 19cc tax year on Date B.

On Date C, the Service timely received a Request for a Collection Due Process Hearing, Form 12153, with respect to the 19aa and 19bb tax years. On Date D, the Service timely received a request for a Collection Due Process Hearing, Form 12153, with respect to the 19cc tax year.

On Date E, the Appeals Settlement Officer contacted the representative by telephone for purposes of holding the due process hearing. (As of this date, the Appeals Settlement Officer had not received the Request for a Collection Due Process Hearing for the 19cc tax year, and thus, the parties did not discuss this year.) The representative stated he had the Form 12153 ready for the 19cc tax year and was advised by the Appeals Settlement Officer to submit the form to the revenue officer who issued the Final Notice for 19cc.

During the Date E telephone conversation, the Appeals Settlement Officer discussed the issues of the case and the due process procedures. She stated she could not address the taxpayer's request for an installment agreement or an offer in compromise until the return for the 19dd tax year was filed. She advised the representative she could only wait one week for the 19dd tax return. If the return was filed, she would explore an installment agreement and discuss an offer in compromise. If the return was not filed by that time, she would close out the case and issue a Notice of Determination. According to the representative, the accountant had everything needed to prepare the tax return and would contact the taxpayer about the 19dd tax return.

The Appeals Settlement Officer does not recall advising the representative that the telephone conversation constituted the CDP hearing, although she clearly advised she would be issuing a Notice of Determination if the return was not filed within a week. When the return was not filed by the deadline, the Appeals Settlement Officer issued the Notice of Determination. The Notice, issued on Date G, covered the 19aa, 19bb, and 19cc tax years, even though at the time of the telephone conversation the request for the CDP hearing for the 19cc tax year had not been filed. The telephone conversation of Date E was Appeals' only contact with the representative and at no time was the 19cc tax year discussed.

The taxpayer's transcripts reflect that on Date F, the 19dd income tax return was posted.

The taxpayer timely filed a petition with the Tax Court claiming her request for a CDP hearing was denied. In the petition, she alleges that she was denied her rights to a CDP hearing pursuant to I.R.C. § 6330. The petition claims that pursuant to I.R.C. § 6330, relevant issues relating to the unpaid taxes and proposed levy, including offers of collection alternatives, which may include posting of bond, substitution of assets, installment agreement or offers in compromise are matters to be considered at a CDP hearing, and her rights to discuss and explore such alternatives were denied.

LAW AND ANALYSIS

Among other things, I.R.C. § 6330(a) requires that, at least thirty days prior to a levy, the Service must provide a taxpayer notice that (a) specifies the taxable period and amount of unpaid tax that it intends to collect by levy and (b) informs the taxpayer of the right to contest the proposed levy in a hearing held by an appeals officer who, with limited exceptions, has had no prior involvement with the taxpayer's case. Temp. Treas. Reg. 301.6330-1T(c) provides that the taxpayer must request a hearing in writing within the 30-day period that commences the day after the date of the notice informing the taxpayer of his right to a hearing. At the hearing, the taxpayer generally may raise any relevant issue relating to the unpaid tax or the proposed levy. I.R.C. § 6330(c)(2)(A).

In the present case, the taxpayer made two timely, written requests for CDP hearings. One request related to a notice of intent to levy with respect to the 19aa and 19bb tax years. The other request related to a notice of intent to levy with respect to the 19cc tax year. The adequacy of the hearing provided with respect to each request is discussed separately below.

a. The 19aa and 19bb tax years

Section 6330 sets forth conditions under which the taxpayer is entitled to a hearing and identifies issues that taxpayers may raise and the Appeals Officer must consider at the hearing. The statute is silent, however, as to precisely how the Appeals Officer is to conduct the hearing. Likewise, the Temporary Treasury Regulations and legislative history do not detail how the hearing is to be conducted. Some guidance, however, may be gleaned from Appeals' historical role.

Prior to enactment of I.R.C. § 6330, Appeals had long been conducting proceedings with taxpayers. Such proceedings included challenges to asserted tax liability and, since 19cc, challenges to the appropriateness of collection actions. See e.g. Treas. Reg. § 601.106(a) (concerning the authority of Appeals for the determination of tax liability); I.R.C. § 6159(d) (concerning review of terminations of installment agreements); IRM Section 9.4.0 (concerning the Collection Appeal Program). These are the same kinds of challenges that taxpayers may raise at a CDP hearing. Presumably, Congress was aware of Appeals' historical role and intended for Appeals to conduct hearings in the manner in which Appeals has historically conducted proceedings with taxpayers.

Historically, Appeals has conducted informal proceedings. See Treas. Reg. § 601.106(c). Testimony under oath is not taken. Id. Various official sources also acknowledge that Appeals may conduct proceedings via telephone conferences with taxpayers. See IRM Section 8.11.1.7.2.1(10) ("Appeals officers should be able to resolve the vast majority of penalty appeal cases by written or telephone communications with the taxpayer"); IRM Section 8.7.1.1.9.8(2) ("Phone conferences are likely to be common on . . . cases [brought under the Collection Appeal Procedures program]"); Publication 5, p. 1 ("Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference").

Appeals' use of correspondence and telephone not only allows Appeals Officers to be more efficient with their time, but also relieves taxpayers from the burden of traveling to Service offices. Any requirement of a face-to-face meeting would be especially burdensome in those locations where one Appeals office may cover a multistate area. Thus, because Congress did not prescribe otherwise, because the use of a telephone conference conforms to Appeals' practice in other areas, and because telephone conferences can be efficient for both the Service and taxpayer, we believe that conducting a Collection Due Process hearing via telephone is not prohibited.

The taxpayer appears to complain, however, that the particular telephone conversation the Appeals Officer conducted in the present case did not constitute a hearing. This complaint appears to be based upon the petitioner's alleged

impression that there would be additional meetings to determine whether an installment agreement, offer in compromise, or other collection alternative could be agreed upon. We believe, however, that any such impression was at odds with the facts and that the taxpayer was on notice that she would receive an adverse determination unless she filed her 19dd tax return within a week of the telephone conversation with the Appeals Officer or raised additional issues prior to that deadline.

The taxpayer requested consideration of two collection alternatives: an installment agreement and an Offer in Compromise. Under Service guidelines, a taxpayer is not entitled to an Installment Agreement or Offer In Compromise unless the taxpayer has filed all returns due. Accordingly, it was appropriate for the Appeals Officer to inform the taxpayer that, without filing a return for the 19dd tax year, there was no basis on which the Appeals Officer could conclude that an installment agreement or Offer In Compromise would be appropriate.

Moreover, after the Appeals Officer told the taxpayer's representative that she would issue an adverse determination if the 19dd return were not filed within a week, the representative was unambiguously informed that he needed to raise any other issues before that deadline or risk losing the opportunity to raise them if the taxpayer did not file the return by the deadline set. Being so informed, the representative's failure to raise any other issues was not a result of the failure to be provided a hearing. It was the result of the failure of the representative to speak up. We do not believe that the taxpayer's unfounded impressions and failure to raise issues can transform the telephone conference provided into something less than a CDP hearing.

Finally, we note that the petition indicates that failure to raise any other issue was simply the result of the taxpayer having mentioned all issues she intended to raise. The petition represents only that the taxpayer has a desire to voluntarily enter into an installment agreement or develop an Offer in Compromise with the Service. See Petition at ¶ 5. These are the very alternatives the Appeals Officer considered and rejected on grounds in accord with Service guidelines. Accordingly, the taxpayer was afforded a full hearing on all the issues she has ever expressed a desire to raise.

b. The 19cc tax year

The only contact that the Appeals Officer had with the taxpayer's representative in the present case was the telephone conversation held on Date E. The Appeals Officer initiated this contact in response to the taxpayer's request for a hearing concerning the notice of levy and right to a hearing with respect to her 19aa and 19bb tax years. It was not until Date D, five days after the telephone conversation, that the Service received the taxpayer's written request for a hearing with respect to

the proposed levy concerning her 19cc tax year. Under such circumstances, we do not believe that the taxpayer received the hearing to which she was entitled for her 19cc tax year. The statutory scheme provides for a hearing after a request, not prior to it. See I.R.C. § 6330(b).

It makes no difference that, during the telephone conversation, the taxpayer stated that he planned to submit a request for a hearing with respect to the 19cc tax year. Oral requests are insufficient to entitle a taxpayer to a hearing provided by I.R.C. § 6330. See Temp. Treas. Reg. § 301.6330-1T(c)(2)Q-C2, A-C2. The taxpayer became entitled to a hearing only after the Service received the timely, written request for one. Temp. Treas. Reg. § 301.6330-1T(c).

It also makes no difference that the taxpayer's written request relating to the 19cc tax year raised issues identical to the issues raised with respect to the 19aa and 19bb tax years. In some cases, the provisions of I.R.C. § 6330 preclude the taxpayer from raising certain issues. See I.R.C. § 6330(c)(2)(B) & (c)(4). Even when certain issues are precluded, however, the taxpayer remains entitled to a hearing. Especially significant in this respect is I.R.C. § 6330(c)(2)(A), which allows the taxpayer to raise any relevant issue "at the hearing." Thus, the taxpayer was not limited to raising the issues she identified in her written request. She might have raised other issues had she been contacted upon receipt of her request for a hearing. The Appeals Officer's failure to contact her, however, precluded this possibility.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

We will be in contact with the field to develop an appropriate pleading to remedy the Appeals Officer's failure to conduct a hearing with respect to the 19cc tax year.

Please call if you have any further questions.

By: _____
SARA M. COE
Chief
Procedural Branch (Field Service)