

The Administrative Appeals Process - IRS Levy

If a taxpayer is subject to an IRS collection action and fails to pay, or make arrangements to pay, his or her delinquent taxes in a timely fashion, he or she eventually will become subject to an IRS levy. The IRS may use the levy process to garnish wages, or seize investment accounts, bank accounts, real estate and personal property to satisfy the tax liability. Once the IRS notifies a taxpayer that he may become subject to a levy, there is still an opportunity to dispute the validity of the levy and avoid forced collection. While a lawsuit filed against the IRS is possible, lawsuits are only available in limited situations (see “Suing the Internal Revenue Service” in this Law Library). If suing the IRS is not an option, there are three less restrictive ways to contest levies by using the administrative appeals process within the IRS.

The Three Appeal Options

1. Collection Appeals Program (CAP). One way to appeal a levy within the IRS is by using the Collection Appeals Program (CAP). Under the CAP, a taxpayer may appeal liens, levies, seizures, and proposed denials or terminations of installment agreements. When a taxpayer appeals his case, the IRS will stop collection action until the appeal is settled, unless it has reason to believe the collection of the tax is in jeopardy. Once a decision is made on a CAP case, the decision is final and binding on both the taxpayer and the IRS.
2. Collection Due Process (CDP). A second method of administrative appeal is by use of the Collection Due Process (CDP) program. A CDP hearing is available in levy cases where the taxpayer has received a notice of intent to levy but the levy has not been executed. A notice of intent to levy is accompanied by a notification, in writing, of the taxpayer’s right to a hearing before levy. If the taxpayer requests a timely CDP hearing, an officer or employee in the IRS Office of Appeals conducts the hearing. The officer is someone who did not previously participate in matters involving the taxpayer and the unpaid tax at issue. Like CAP hearings, CDP hearings are informal. A CDP hearing does not require a face-to-face meeting, but a taxpayer can ordinarily request a face-to-face meeting so long as the arguments he or she is raising are not irrelevant or frivolous. (For more information about CDP hearings, see “Collection Due Process Procedures.”)
3. Hardship Appeal with Taxpayer Advocate. Filing an application with the office of the Taxpayer Advocate is a third method of administratively appealing a proposed levy.

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The Taxpayer Advocate or his designee can issue a Taxpayer Assistance Order (TAO) based on a determination that the taxpayer is suffering or is about to suffer a significant hardship as a result of the way in which the tax laws are being administered by the IRS. Relief can include suspension of collection actions and release of levy.

Advantages and Disadvantages of the Appeal Methods. There are many procedural aspects a taxpayer must consider when determining which of these methods of administrative appeal to use. One of the most important differences is the right of review. A taxpayer may appeal a CDP determination to the Tax Court, but there is no right to judicial review in the CAP or TAO process.

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.

There are also significant differences in the issues that can be considered under each administrative appeal process. Under the CDP process, a taxpayer may contest the underlying tax liability if certain conditions are met, while such a contest is not possible in the CAP or the TAO. On the other hand, the CDP process is not available to nominees of, persons holding property of, or persons holding property with respect to, the taxpayer, but such persons may use the TAO or CAP. Another distinction is that the IRS will not consider trust fund recovery penalties, offers in compromise or penalty abatement appeals under CAP procedures.

Frivolous Appeal Penalty. It must be kept in mind that, the IRS may impose a \$5,000 penalty on any person who submits a request for a CDP hearing or submits an application for a TAO (or submits any one of certain other types of specified submissions) if any portion

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