

Collection Due Process Procedures

Prior to filing a lien or levy, the Collection Due Process (CDP) procedures, generally require the IRS to give taxpayers a hearing relating to a lien or levy. A CDP hearing relating to a lien is available in cases where the taxpayer has received notice of the IRS filing a notice of federal tax lien. A notice of filing of a federal tax lien will include a statement notifying the taxpayer of his right to request a hearing relating to the validity of the lien. The IRS provides the notice on Letter 3172, “Notice of Federal Tax Lien Filing and Your Right to a Hearing Under Internal Revenue Code Section 6320.”

A similar method of administrative appeal through CDP procedures is available for levies. Obtaining a CDP hearing before levy is possible if the taxpayer has received a notice of intent to levy. The IRS provides a notice of intent to levy on either Letter 1058, “Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing,” or Letter 11, “Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing.” The levy notice also informs the taxpayer of his right to request a hearing before the IRS executes the levy. The IRS does not have to send a notice of intent to levy if (1) it determines that collection of the tax is in jeopardy; (2) before levying on a state to collect federal tax liability from state tax refunds; or (3) for “disqualified employment tax levies.” However, in such cases the IRS gives the taxpayer an opportunity for a post-levy CDP hearing.

An important advantage of CDP procedures over other types of administrative review available to taxpayers is that, in CDP procedures, the IRS’s final determination is not truly final. A taxpayer receiving a less than satisfactory determination in a CDP hearing may still appeal the decision to the U.S. Tax Court.

Time for Requesting a Hearing. CDP procedures are only available if the taxpayer requests a CDP hearing within a 30-day period. In the case of levies, the 30-day period begins to run on the day after the taxpayer receives notice of his right to a hearing. In the case of liens, the 30-day period begins to run on the day after the end of the five-day period within which the IRS must provide notice to the taxpayer of the filing of a notice of federal tax lien. If mailing a CDP hearing request, the request must be postmarked within the 30-day period, but does not have to be received by the IRS within that period. A taxpayer who fails to meet these time limits will not receive a CDP hearing. In this case, the taxpayer may still be able to get a so-called “equivalent hearing” in place of the CDP hearing. An equivalent hearing is substantially the same as a CDP hearing in its procedures, but is not subject to the judicial review of the U.S. Tax Court.

Collection Due Process Procedures (cont.)

Who Conducts the Hearing? Regardless of whether the CDP procedure relates to a lien or a levy, 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. Both types of CDP hearings are informal and neither the taxpayer nor his representative has the right to subpoena and examine witnesses. A CDP hearing does not require a face-to-face meeting but a taxpayer can ordinarily get one, unless he or she makes only irrelevant or frivolous arguments. Neither type of CDP procedure is available to nominees of, or persons holding property of, the taxpayer.

Issues a Taxpayer May Raise. During a CDP hearing, the taxpayer may raise any relevant issue relating to the unpaid tax or the proposed levy, including appropriate spousal defenses, challenges to the appropriateness of collection actions, and offers of collection alternatives (alternatives usually are installment agreements or offers in compromise). Challenges to the appropriateness of collection actions can include claims that the taxpayer received a discharge in bankruptcy, that the statute of limitations on collection has expired or that the liabilities are currently not collectible. A taxpayer may also challenge the existence or amount of the underlying tax liability for any tax period, but only if he did not receive a statutory notice of deficiency for that liability or did not otherwise have an opportunity to dispute that tax liability. After the CDP hearing, the IRS issues its determination by sending the taxpayer a notice of determination by certified or registered mail. Within 30 days of the determination, the taxpayer may appeal the determination to the Tax Court.

Frivolous Appeal Penalty. Finally, the IRS may impose a \$5,000 penalty upon any person who submits a request for a CDP hearing (or submits any one of certain other types of specified submissions) if any portion of the submission is either based on a position which the IRS has identified as frivolous, or reflects a desire to delay or impede the administration of federal tax laws. The IRS may also treat that portion of the submission as if it had never been submitted (i.e., dismiss it out of hand). However, the penalty targets those who abuse the process and should not deter taxpayers with legitimate disputes from using the CDP process.

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