

IRS COLLECTIONS

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Administrative Collection Procedures: Collection Due Process; Offers in Compromise and Installment Agreements; and Section 6672 Penalty Matters

I. Introduction

- A. The Internal Revenue Service (“IRS”) Restructuring and Reform Act of 1998 (RRA) created IRC §§6330 and 6320, Notice and Opportunity for Hearing Upon Filing of Notice of Lien/ Levy. IRC §§ 6330, 6320.
- B. These hearings known as Collection Due Process hearings (“CDP”) may be requested upon the receipt of any IRS notices which state “Your Right to a Hearing” including:
1. Notice of Federal Tax Lien Filing (“NFTL”) and Your Right to a Hearing Under IRC §6320;
 2. Notice of Intent to Levy and Notice of Your Right to a Hearing;
 3. Notice of Jeopardy Levy and Right of Appeal;
 4. Notice of Levy on Your State Tax Refund - Notice of Your Right to a Hearing; and
 5. Final Notice - Notice of Levy and Notice of Your Right to a Hearing.
- C. IRC §§6320/ 6330 provide for one hearing per type of tax and tax period for the tax debt listed on the Notice of Federal Tax Lien filing or Notice of Intent to Levy. The right to request a CDP hearing applies to the first NFTL filed or the first levy issued for a particular tax debt.
1. To the extent practical, a CDP lien hearing will be held in conjunction with a CDP levy hearing whenever a NFTL is filed and Notice of Intent to Levy is concurrently issued.

- D. CDP hearings allow taxpayers to raise issues relating to the collection of the tax liability, including:
1. Appropriateness of the collection actions;
 2. Collection alternatives (e.g., installment agreement, offer in compromise, request for “currently not collectible” status);
 3. Spouse defenses under IRC § 6015;
 4. The existence or amount of the underlying liability, but only if the taxpayer did not receive a notice of deficiency or otherwise have an opportunity to dispute the tax;
 - a. A taxpayer who receives notification from the Post Office that a Notice of Deficiency is ready to be picked up but refuses to collect the notices had a meaningful opportunity to challenge the underlying tax liability and is not entitled to do so at a CDP hearing. See Onyango v. Commissioner, 142 T.C. No. 24 (2014).
 - b. Self serving testimony alone is insufficient to demonstrate that a Notice of Deficiency was not received. See Klingenberg v. Commissioner, T.C. Memo. 2012-292, aff’d 551 Fed.Appx. 354 (9th Cir. 2014).
 5. Any other relevant issue relating to the unpaid tax, the lien, or the proposed levy.
 6. See IRC §§6330(c)(2)(B) and 6330(c)(4) for information on issues precluded from Appeal’s consideration.

E. Procedural Requirements

1. In addition to the IRS issuing a Notice and Demand to the taxpayer, the

IRS must provide notice to the taxpayer concerning his/ her right to a CDP hearing under IRC §6330/6320 after it has:

- a. Filed the first lien; or
- b. Before its first intended levy for the particular tax and tax period

2. The notice must comply with the following requirements:

- a. Sent to taxpayer's last known address (Graham v. Comm'r, T.C. Memo. 2008-129);
- b. By certified mail return receipt;
- c. For Notice of Federal Tax Lien filings, the IRS notice must be sent not more than five business days after the day of filing the lien notice. IRC §6320(a)(2)
- d. For levy notices, the IRS notice must be issued at least thirty days before the day of the proposed levy. IRC §6330(a)(2).

3. IRC §6330(c)(3) requires the Appeals hearing officer to take into consideration the following in making a CDP determination.

- a. Verification from the Secretary that the requirements of applicable law or administration procedure were met.
- b. Relevant issues relating to the unpaid tax, the filing of the NFTL or the proposed levy; and
- c. Whether the action taken or proposed balances the government's need for the efficiency collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. See IRM 8.22.9.7.7

4. Levy action is not suspended by law but is generally suspended by policy in the following instances:
 - a. During a timely CDP lien hearing; or
 - b. During a timely CDP levy hearing.
 - c. During an Equivalent Hearing (“EH”).
5. Collection may deem levy action appropriate in a CDP hearing or EH case if:
 - a. Collection is at risk (e.g. collection statute expiration date is imminent and the taxpayer is dissipating assets or pyramiding additional liabilities);
 - b. The taxpayer raises only frivolous issues; or
 - c. The taxpayer is solely seeking to delay the collection process.

II. How Does A Tax Debt Arise?

- A. In order for the IRS to begin collections, the tax must first be assessed by any of the following means:
 1. Self-assessment - A filed tax return or an amended return showing tax due. (IRC § 6201(a)(1)).
 2. Audit - The IRS may assess additional tax based on many grounds including the disallowance of or the finding that certain taxable income was not included.
 - a. IRS matches information returns with a taxpayer’s tax identification number and discovers income that was not included on a return and assesses additional tax.
 - b. Substitute for Return - If the taxpayer fails to file a return and the

IRS matches information returns with taxpayer's tax identification, the IRS can prepare a Substitute for Return (SFR) assessing the tax. (IRC § 6020(b))

3. Trust Fund Recovery Penalty - If the taxpayer fails to remit employment taxes, the IRS will propose a trust fund recovery penalty assessment against the Responsible Person. (IRC § 6672)

III. How does the IRS proceed with collection? How should the tax practitioner respond to the IRS collections?

- A. Once the tax is assessed and the taxpayer fails to pay the tax liability, the IRS will begin collections by issuing a series of five notices.
- B. Taxpayer should respond to each of the IRS notices.
- C. 1st Notice CP501 - "You have unpaid taxes" - This is taxpayer's first notice that

there is a tax balance due and owing.

- D. Tax Practitioner's Response to the 1st Notice:
 1. The tax practitioner should first determine whether or not the tax amount is correct or still due.
 2. Tax practitioner's tools to ascertain the validity of the tax assessment include:
 - a. Power of Attorney - Prepare and file a Form 2848.
 - b. Transcripts - Request IRS transcripts through e-services or Practitioner's Priority Service telephone number 866-860-4259.
 - c. Administrative requests for information - Request the IRS's administrative file through a Freedom of Information Act Request

(“FOIA”).

E. Tax Practitioner’s grounds for abating or reducing the tax include:

1. The underlying tax liability is incorrect.

a. If the taxpayer did not receive a notice of deficiency and has not had a prior administrative or judicial opportunity to challenge the amounts assessed, the taxpayer may challenge the liability as part of the collective due process hearing. Montgomery v. Commissioner, 122 T.C. 1 (2004).

(1) Penalties are included in the underlying tax liability. Id. at 8-9. Id.

(2) A self-assessed tax liability on a tax return may be reviewed *de novo*. Id.

(3) The U.S. Tax Court reviews the underlying liability *de novo*. Id.

2. The Statute of Limitations for Assessment has expired. (IRC § 6501)

a. Generally, an additional tax assessment is invalid if not assessed within 3 years of the tax return filing. (IRC § 6501(a))

(1) Exceptions:

(a) 6-year rule (IRC § 6501(e) and Treas. Reg. § 301.6501(e)-1) - If the taxpayer omits additional gross income in excess of 25% of the amount of gross income stated in the tax return filed with the IRS.

(b) Unlimited (Fraud) (IRC § 6501(c)(1) and Treas.

Reg. § 301.6501(3)-1) - If taxpayer submitted a fraudulent return.

3. The Statute of Limitations for Collection has expired. The IRS has ten years from the date of a timely assessment to collect the tax through a levy or begin a proceeding in court. (IRC § 6502)
4. The taxes were discharged in bankruptcy. (11 U.S.C. §§ 727, 1141)
5. Trust Fund Recovery Penalty. The taxpayer may not be the Responsible Person for the failure to remit employment taxes and the IRC failed to notify the taxpayer in writing by mail to his/ her “last known address.” (IRC § 6672(b)(1)). Mason v. Commissioner, 132 T.C. 14 (2009); Barry v. Commissioner, T.C. Memo. 2010-57.
6. Penalty Abatement - The penalties for failure to file or pay may be abated based on an administrative waiver (IRM 20.1.1.3.3) or reasonable cause (IRC § 6651(a)(2) and (3)).
7. Innocent Spouse Relief - Taxpayer may be an innocent spouse; thus, taxpayer is not liable for the tax due on the joint tax return. (IRC § 6015).
 - a. Innocent spouse petition will stop collection activity against the petitioning spouse until the IRS makes a final determination with respect to the innocent spouse petition.

F. 2nd Notice CP503 - “Second Reminder”

1. Once the tax practitioner determines that the tax is valid and owing, the tax practitioner will need to determine the appropriate collection alternative.
2. Taxpayer has the right to propose a collection alternative at any time.

3. An installment agreement may be appropriate.
 4. Tax Practitioner needs to determine whether to request a penalty abatement now or to wait until the Final Notice of Intent to Levy (5th Notice).
 5. Taxpayer may make voluntary tax payments to reduce the tax and interest until a formal installment agreement is granted.
- G. 3rd Notice - “Immediate Action is Required”
1. Taxpayer may request a collection alternative.
- H. 4th Notice CP504- “Notice of intent to seize ‘levy’ your state tax refund or other property”

1. The taxpayer is given notice that unless the tax is paid in full, the IRS will file a Notice of Federal Tax Lien shortly.
2. The Notice of Federal Tax Lien filing is a public filing and can have detrimental effects on the taxpayer’s credit and business reputation.
3. If Taxpayer’s strategy is to take out a loan to full pay the tax liability, taxpayer may appeal the lien filing by filing a Request for a Collection Appeals Program (Form 9423). See PART V, *infra*.
4. Once the lien is filed, the taxpayer may seek to have the lien withdrawn for any of the following reasons:
 - a. Notice was filed prematurely;
 - b. Taxpayer entered into an installment agreement and the tax liability is less than \$50,000;

- c. Withdrawal may facilitate tax collection; or
 - d. Best interest of taxpayer and government.
 - e. See IRC § 6323(j); I.R.M. 5.12.9.
- I. 5th Notice CP90/CP297/CP297A - “Final Notice of Intent to Levy and Taxpayer’s Right to a Collection Due Process Hearing”
 - 1. Because a lien is not self-executing, the IRS will take further action to enforce the lien, such as a levy or a judicial action to foreclose on the lien.
 - 2. The 5th Notice gives taxpayer the right to request a hearing.
 - a. Taxpayer should request a Collection Due Process hearing within 30 days from the date of the Final Notice of Intent to Levy. (Form 12153)
 - 3. If the Request for a CDP is not timely filed, IRS will pursue enforcement action:
 - a. Seizure and Sale of Property;
 - b. Backup withholding; or
 - c. Garnishment of wages and other payments.
- J. In addition to the above notices, if the tax liability exceeds a certain amount and the taxpayer is not paying the taxes through a collection alternative, the IRS will issue a Notice of Federal Tax Lien Filing and Your Right to a Hearing, five days after the IRS files the lien.
- K. If the Taxpayer fails to timely respond to the Final Notice or the Notice of Federal Tax Lien filing.
 - 1. Taxpayer may request an Equivalent Hearing. The Appeals Officer’s determination cannot be appealed to US Tax Court.

2. Taxpayer has the right to request help from Taxpayer Advocate.
 - a. Contact the Local TAS office
 - b. Form 911: Application for Taxpayer Advocate Service (TAS)
 - c. Grounds for TAS Assistance
 - (1) Economic harm
 - (2) Immediate threat of adverse action
 - (3) Threat of significant costs
 - (4) Threat irreparable injury or long-term harm
 - (5) Delay of more than 30 days
 - (6) No response or resolution on promised date
 - (7) System failed to operate as intended or failed to resolve problem
 - (8) Administration of tax law raises question of equity and fairness
 - (9) Public policy warrants taxpayer assistance

L. Right to a CDP Hearing for Employment Taxes: The right to request a pre-levy CDP Hearing for unpaid employment taxes is not available when a taxpayer requested a hearing for employment taxes due during the preceding two years. IRC § 6330(f)(3); I.R.M. 5.11.1.5.1(Aug. 1, 2014). The purpose of this statute is to protect the IRS from taxpayers who are pyramiding their employment tax liabilities. The IRS typically grants Equivalency Hearing in those situations.

IV. IRS Fresh Start Program

- A. Tax Liens will generally not be filed when a taxpayer owes less than \$10,000.
- B. The IRS may withdrawal a Notice of Federal Tax Lien after the liability is paid in

full. Form 12277 must be filed.

1. Some taxpayers may qualify to have their liens withdrawn if they are paying through a Direct Debit Installment Agreement. Form 12277 must be filed.

- a. The taxpayer must be in full compliance with all filing and payment requirements.
- b. The taxpayer must have made at least three consecutive direct debit payments.
- c. The taxpayer must not have defaulted on an existing or previous installment agreement.

C. Taxpayers owing \$25,000 or less may request a withdrawal of the Notice of Federal Tax Lien. Form 12277 must be filed.

D. Taxpayers with Direct Debit Installment Agreements who can full pay the amount owed within 60 months or before the Collection Statute expires, may request a withdrawal of the Notice of Federal Tax Lien. Form 12277 must be filed.

V. Requesting a CAP Hearing

A. Filed to request relief from the following:

1. Levy or seizure action that has or will take place;
2. A Notice of Federal Tax Lien that has or will be filed;
3. The filing of a Notice of Federal Tax Lien against a nominee or alter-ego;
4. Denial of requests to issue lien certificates such as withdrawals, subordinations, discharge or non-attachment;
5. Denial of request to return levied property pursuant to IRC § 6343(d);
6. Disallowance of property owner's claim for return of property under IRC

§ 6343(b);

7. Denial of lien withdrawal.

B. Procedure

1. Request a meeting with the collection's officer and the group manager;
2. If the requested relief is denied, file Form 9423 within three (3) business days of the conference to prevent further collection action during the pendency of the request.

C. Taxpayer cannot challenge underlying taxes in a CAP hearing.

D. Taxpayer cannot seek Tax Court review of the determination during a CAP hearing.

VI. Requesting a CDP Hearing

A. Collection due process cases are handled by the IRS Appeals Office.

B. Taxpayer will meet with an IRS Appeals Officer or Settlement Officer to discuss the case.

1. In order for Appeals to consider collection alternatives, the taxpayer must be in filing and estimated tax payment compliance for the current year.

Taxpayer may be required to file a Form 433, if applicable.

- a. Exception: If a levy will cause an undue hardship and must be immediately released, the Taxpayer is not required to prove compliance as a pre-requisite for a hearing. See *Vinatieri v.*

Commissioner, 133 T.C. No. 16.

C. How does a tax practitioner request a CDP Hearing?

1. Complete Form 12153, Request for CDP Hearing/ Equivalency Hearing.
2. Your Form 12153 package should include a 2848 and cover letter.

3. Cover Letter should provide:
 - a. A face-to-face transcribed conference request at the local IRS Appeals Office.
 - b. A request for de novo review of the tax, penalty and interest, if applicable.
 - c. A request for the memorandum required by IRC § 6751(b) with respect to the assessment of penalties, if applicable.
 - d. A request for penalty abatement request, if applicable.
 - e. A statement of all pertinent and potential issues.
 - f. A request for the right to amend the request.
 - g. A request for the right to supplement the CDP request.
 - h. A request for no ex-parte communication between IRS employees working on the same or related cases unless it is beneficial for resolution of the case to allow such ex parte communications.
 - i. Taxpayer's proposed collection alternative, if applicable.
4. Transcribed CDP Hearings Under IRC §7521(a)
 - a. Taxpayers have a right to a recorded face-to-face CDP hearing provided that their request does not include frivolous claims. Keene v. Comm'r, 121 T.C. No. 2 at 14.(2003).
 - (1) Having a transcript of the Section 6330 hearing will allow us to perform better the review provided to taxpayer by Section 6330(d)... Until now, in order to determine what issues taxpayers raised at the Section 6330 hearing, the Court was faced with "he said-she said" situations -

needless “credibility contests” between the taxpayer and the Appeals Officer. Keene, 121 T.C. No. 2 (2003)(J. Vasquez, concurring).

b. Requirements to record CDP hearing

- (1) Advance request must be made to IRS;
- (2) Recording is made at taxpayer’s expense and with taxpayer’s own equipment.

5. If the IRS filed the NFTL in error: The IRS will withdraw the NFTL but Taxpayers rights to a CDP are still protected.

6. Taxpayer is required to be in compliance to be granted a CDP hearing: Make sure taxpayer has filed all tax returns and is paying estimated taxes otherwise the IRS can deny the CDP request.

D. Once the Request for CDP is filed and processed, the taxpayer will receive notices from IRS Appeals.

1. Once the case has been assigned to an Appeals Officer, taxpayer may submit a Supplement.

2. The Supplement may include:

- a. Case Information Statement (Form 433);
- b. Request for Installment Agreement (Form 9465), if applicable.
- c. Request for Offer in Compromise. (Form 656), if applicable.
- d. Penalty Abatement request, if applicable.

3. If case is not assigned to the local IRS Appeals Office, consider revising the request for:

- a. a transfer to local IRS Appeals Office case; and

- b. a face-to-face conference.

VII. Preparing for the CDP Hearing Conference

A. Explore all potential arguments

1. Any issue not raised during the Collection Due Process hearing is waived. Giamelli v. Commissioner, 129 T.C. 107, 111 (2007).
 - a. Limitation: The taxpayer may not raise any issue that was previously raised and considered at any previous administrative or judicial proceeding, if the taxpayer meaningfully participated in the hearing. (i.e., tax court, penalty abatement appeal, etc.)
 - (1) This does not include a self-assessed tax liability. Montgomery v. Commissioner, 122 T.C. 1 (2004).
 2. Review all information about taxpayer's case:
 - a. Request updated IRS transcripts
 - (1) Practitioner Priority Service
 - b. Review the IRS' administrative file pursuant to the Freedom of Information Act Request.
 - c. Conduct searches for taxpayer's assets, liabilities, and background via google, credit reports, public record searches, lawsuits, liens, etc.
- ### B. What to do if Taxpayer Can't Pay Taxes? What are the taxpayer's collection alternatives?
1. **Currently Not Collectible** - For taxpayers where collection of the liability would create a hardship by leaving them unable to meet necessary living expenses.

- a. The statute of limitations for collection will continue to run.
- b. Any significant positive changes in the taxpayer's financial status will result in the taxpayer being taken out of currently not collectible status.
- c. Form 433 is required.
- d. Delinquent tax returns may not required to be filed. IRM 8.22.2.4.2; Vinatieri v. Commissioner, 133 T.C. No. 16(a taxpayer does not need to demonstrate compliance when a levy will cause an undue hardship and must be immediately released).
- e. Penalties and interest continue to accrue.

2. Installment Agreements

- a. Taxpayers who are eligible for Guaranteed or Streamlined installment agreements will have their agreements processed quickly, without managerial approval and minimal financial documents. IRM 5.14.5.1 (8-5-10).
- b. Guaranteed Installment Agreements Criteria:
 - (1) The aggregate tax liability (determined without regard to interest, penalties, additions to the tax, and additional amounts) does not exceed \$10,000;
 - (2) The taxpayer (and, if any such liability relates to a joint return, the taxpayer's spouse) has not, during any of the preceding 5 taxable years; failed to file any return of tax imposed by subtitle A; failed to pay any tax required to be shown on any such return; or entered into an installment

agreement under this section for payment of any tax imposed by subtitle A;

- (3) The Secretary determines that the taxpayer is financially unable to pay such liability in full when due (and the taxpayer submits such information as the Secretary may require to make such determination);
- (4) The agreement requires full payment of such liability within 3 years;
- (5) The taxpayer agrees to comply with the provisions of this title for the period such agreement is in effect; and
- (6) The taxpayer is an individual.

3. In-Business Trust Fund Express Installment Agreements (IBTF - Express IA)

- a. Small businesses who currently have employees can qualify for an In-Business Trust Fund Express Installment Agreement.
- b. These installment agreements generally do not require a financial statement or financial verification as part of the application process:
- c. The criteria to qualify for an IBTF Express IA:
 - (1) Tax debt is \$25,000 or less at the time the agreement is established.
 - (2) The debt must be full paid within 24 months or prior to the CSED.
 - (3) Must enroll in Direct Debit Installment Agreement if the

amount is between \$10,000 and \$25,000.

(4) Compliance with filing and payment requirements.

(5) See IR-2011-20 (2/24/2011)

4. “Fresh Start” Streamlined Installment Agreements for \$50,000 or less tax balances:

a. Streamlined installment agreements are termed “streamlined” because they do not require a financial statement (Form 433-A, Form 433-B, or Form 433-F). IRM 4.20.4.3 (2-26-13).

b. Streamlined agreements may be secured where the aggregate unpaid balance of assessments does not exceed \$50,000 and may be paid off within a 72 month period. IR-2012-31 (3/7/12)

(1) The \$50,000 balance is determined without regard to accrued interest, penalty and additions to tax. IRM 5.14.1.2 (6-1-2010); IR-2012-31 (3/17/12).

c. Streamlined Installment Agreements – If the tax liability is \$25,000 or less:

(1) The debt must be fully paid within 72 months or prior to the collection statute expiration date, whichever is earlier.

(2) Taxpayer must be compliant with filing returns and payment of taxes.

(3) Individuals may owe any type of tax.

(4) Defunct businesses, including any type of entity and any type of tax.

(5) Operating businesses are limited to income tax liabilities

only.

- d. If the tax liability is \$25,001 to \$50,000:
 - (1) The debt must be fully paid within 72 months or prior to the collection statute expiration date, whichever is earlier.
 - (2) Compliant with all filing and payment requirements.
 - (3) Individuals who owe any type of tax.
 - (4) Businesses are limited to defunct sole proprietors who owe any type of tax.
 - (5) Must be enrolled in a Direct Debit Installment Agreement.
 - (6) A limited amount of financial information may be required during the application process.

5. Non-Streamlined Installment agreement for tax debt of over \$50,000:

- a. Form 433A or F - Collection Information Statement must be submitted.
- b. Taxpayer may make a payment to reduce taxes to \$50,000.

6. Partial pay installment agreement - When taxpayers cannot full pay delinquent tax liabilities within 60 months, taxpayers may be allowed to pay their liabilities over a prescribed period of time.

- a. If full payment can not be achieved by the collection statute expiration date and taxpayers have some ability to pay, the IRS can enter into a Partial Pay Installment Agreement. (IRC § 6159)
 - (1) Example: the taxpayer is on a fixed income, such as social security, and has the ability to make small monthly payments. The only other asset is the taxpayer's primary

residence and there is equity in the property. The revenue officer does a risk analysis and determines that seizing the property would cause an economic hardship because the taxpayer cannot find suitable replacement housing and meet necessary living expenses if the property would be seized. See IRM 5.14.2.1.2 (2)

b. IRS Form 433A/B is required.

7. “Fresh Start” Offer-in-compromise - IRS is authorized to compromise tax liability. IRC § 7122(a). IR-2012-53 (5/21/2012)

a. Policy Statement P-5-100 states: The Service will accept an offer in compromise (“Offer”) when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer is a legitimate alternative to declaring a case currently-not-collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government.

b. The grounds for an offer are as follows:

(1) Doubt as to collectibility - The general rule is that the payment contemplated must equal or exceed the taxpayer’s reasonable collection potential in order to be considered for acceptance. See IRS Offer in Compromise Pre-Qualifier, irs.treasury.gov/oic_pre_qualifier/

(2) Doubt as to liability - This applies when the taxpayer has a

good defense to his or her liability and there are hazards of litigation for the IRS.

(3) Effective Tax Administration - IRS is authorized to compromise in order to promote effective tax administration.

(a) Example: A municipality paid employment taxes through a payroll service which failed to remit the trust funds. The municipality's is still liable for the trust fund taxes but will not be assessed penalties.

c. IRS's view towards business offers-in-compromise:

(1) When an offer is accepted to compromise trust fund tax owed by an operating business, the taxpayer is relieved of a significant operating expenses. The effect is to grant the delinquent taxpayer an economic advantage over competitors who are in tax compliance. Recovery of the unpaid trust fund tax amount is a significant issue when considering an offer from a business taxpayer. In the interest of "fairness to all taxpayers" the Service must be cautious to avoid providing financial advantages to those taxpayers through the forgiveness of employment tax debt, as this may be detrimental to competitors who are remaining in compliance with their tax obligations

d. On May 21, 2012 (updated on Jan. 6, 2014) the IRS announced another expansion of its "Fresh Start" initiative by offering more

flexible terms to its OIC program.

(1) This newest program promises to enable some of the most financially distressed taxpayers an opportunity to clear up their tax problems, and in many cases, more quickly than in the past.

(2) The changes include:

(a) Revising the calculation for the taxpayer's future income.

(b) Allowing taxpayers to repay their student loans.

(c) Allowing taxpayers to pay state and local delinquent taxes.

(d) Expanding the Allowable Living Expense allowance category and amount.

(3) Most significant: when the IRS calculates a taxpayer's reasonable collection potential, it will now look at only one year of future income for offers paid in five or fewer months, down from four years; and two years of future income for offers paid in six to 24 months, down from five years. IR-2012-53.

(4) Narrowed definition of dissipated asset.

8. Corporate Offers Involving Trust Fund Taxes

a. Only the amount representing the reasonable collection potential (RCP) of the corporation is needed to compromise a corporate trust fund liability

- (1) The RCP of the persons responsible for the Trust Fund Recovery Penalty (TFRP) is no longer needed as part of the corporate trust fund offer, and
- (2) The Trust fund portion of the tax liabilities must be paid or the TFRP either assessed or forwarded (by collection) for assessment before the corporate offer may be evaluated.

IRM 1.23.3.6.1 (8-28-2009)

9. Pros and Cons:

- a. Pros: an offer-in-compromise allows for the full satisfaction of an outstanding tax debt for less than the full amount.
- b. Cons: The statute of limitations is extended:
 - (a) During the pendency of the Offer, including appeal;
 - (b) While the terms of the Offer remain unfulfilled;
 - (c) For 30 days following the rejection of an Offer;
 - (d) For one year in addition to the total of the periods listed above.

10. Requirements for an offer:

- a. Visit irs.treas.gov/oic_pre_qualifer to see if your clients are eligible for an offer in compromise. The website provides step-by-step instructions to determine eligibility.
- b. Completed Form 656 and Form 433 OIC;
- c. Taxpayer must not be in bankruptcy;
- d. Taxpayer must be in compliance with all filing and current tax payment requirements;

- e. Submit \$150 processing fee;
- f. Lump Sum Payment - Pay 20% non-refundable payment required at time of offer; (this payment is non-refundable if the Offer is rejected)
- g. Periodic Payment - Pay 1st month of Offer (while the IRS considers the Offer, the taxpayer is required to make the monthly offer payments)

11. Types of Offers:

- a. Lump Sum Cash Offer
 - (1) Net Disposable Monthly Income x 12 months + Value of Assets
 - (2) Must be paid within 5 months or less
- b. Periodic Payment Offer
 - (1) Disposable monthly income x 24 months + Value of Assets
 - (2) Must be paid within 2 years from date that Offer is deemed processable.

VIII. Appeals Judicial Approach and Culture (AJAC) Project

- A. Purpose: The IRS wants to reinforce Appeals' quasi-judicial approach to handling cases, with the goal of enhancing the internal and external perception of fairness, impartiality and the independence of the Appeals office.
- B. Appeals Referral Investigation
 - 1. Appeals may refer the case to IRS Collections when a taxpayer's "currently not collectible" hardship cannot be determined without additional information;

2. The taxpayer requests an in-business offer in compromise and it requires a TFRP calculation; or
 3. The taxpayer provides a financial statement that requires verification for the taxpayer to qualify for an installment agreement or “currently not collectible” status.
- C. An Appeals Referral Investigation suspends the CDP Hearing for purposes of determining the collection statute of limitations.
- D. Offers in Compromise: Appeals has the authority to make a final determination on an offer in compromise. If the case is referred to IRS Collection and they reject the offer, Appeals will review the decision and make a final determination.
1. When Appeals receives an Offer in Compromise during a CDP Hearing, the offer must be forwarded to the IRS’s Centralized Offer in Compromise unit.
 2. Doubt as to Liability cases are handled by Appeals in the same way that Appeals handles audit reconsideration requests.
- IX. Post CDP Hearing
- A. IRS will issue a Notice of Determination either resolving the tax liability or denying taxpayer’s request for collection alternative or redetermination of tax.
- B. Taxpayers have the right to judicial review of IRS Appeal’s determinations provided that they timely:
1. filed the CDP request; and
 2. petition the US Tax Court
 - a. Taxpayers have 30 days to file a petition from the date of the Notice of Determination. IRC §6330(d)

C. The US Tax Court's standard of review:

1. De Novo review

- a. Where the validity of the tax liability is properly at issue. Montgomery v. Comm'r, 122 T.C. No. 1 (2004)

2. Abuse of Discretion

- a. Where the appropriateness of the collection action is at issue
- b. An abuse of discretion occurs if the Appeals Office exercises its discretion arbitrarily, capriciously, or without sound basis in fact or law. Woodral v. Comm'r, 112 T.C. 19, 23 (1999).
- c. Dalton v. Comm'r, No. 11-2217 - The 1st Circuit Court reversed the U.S. Tax Court in holding that a Court's job is twofold:
- (1) to decide whether the IRS's subsidiary factual and legal determinations are reasonable; and
 - (2) whether the ultimate outcome of the CDP proceeding constitutes an abuse of the IRS's wide discretion. In other words, subsidiary legal determination, even if incorrect, will not be an abuse of discretion, if the determination was reasonably reached.

D. Scope of Review

1. *De Novo*

- a. All relevant evidence introduced at trial. See Hoyle v. Comm'r, 131 T.C. No. 13 (2008)

2. Abuse of Discretion

- a. Administrative record at the time of the CDP hearing.
See Giamelli v. Comm’r, 129 T.C. No. 14 (2007).
 - (1) Exception: Change of Circumstances. See Churchill v. Comm’r, T.C. Memo. 2011-182 and Magana v. Comm’r, 118 T.C. No. 30 (2002).
 - b. Issues not raised during the CDP hearing cannot be raised by the taxpayer. See Giamelli v. Comm’r, 129 T.C. No. 14 (2007);
 - c. Chenery Doctrine: The IRS should not argue that a determination should be sustained on issues that were not identified in the Notice of Determination. See Antioco v. Commissioner, 105 T.C.M. (CCH) 1234 at *6-*7 (2013).
- E. Appeal of Tax Court Decision: The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to hear appeals from Tax Court decisions based on CDP Hearing final determinations unless the liability was at issue in the case. See Byers v. Commissioner, No. 12-1351 (January 17, 2014).