The Tax Adviser

Resolving federal tax liabilities

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EXECUTIVE SUMMARY

- Taxpayers often contact tax practitioners for the first time after receiving an IRS letter threatening to institute collection procedures, such as a lien or a levy. To gain time to review the situation, a practitioner can request a collection hold and, if this is not granted, request assistance from the Taxpayer Advocate Service if the collection action will cause the taxpayer harm.
- The next step is to file a Freedom of Information Act request to obtain the taxpayer's administrative file and request a tax transcript to obtain information needed to determine the amount of the liability, whether it is valid, and whether the statute of limitation has expired.
- Options for eliminating or reducing the liability include an offer in compromise (OIC) or an installment agreement. Taxpayers or representatives may also be able to suspend collection action by having the IRS put the liability in uncollectible status.
- Both an OIC and a request to be put in uncollectible status require the taxpayer to provide financial information. Depending on the taxpayer's situation, the magnitude of the liability, and the type of agreement sought, the taxpayer may not be required to provide financial information when requesting an installment agreement.
- A taxpayer may appeal an IRS collection procedure administratively through the Collections Appeals Program or the Collection Due Process procedures. Under both of these appeal methods, the taxpayer is provided a hearing regarding the collection action with an IRS Appeals officer.

Federal income tax debts can arise from a tax self-assessed on a tax return, an IRS audit adjustment, or even a substitute for return, which the IRS normally prepares when a taxpayer fails to file a return.[1] The assessment can be for one's personal activities, activities stemming from a corporation or limited liability company for which one is a responsible party, or simply from personal liability as in the case of a partner in a partnership.

Depending on the nature of the assessment, a taxpayer may be aware the assessment is coming long before he or she receives a bill or may be shocked to first learn of a liability upon receipt of an unexpected bill and demand for payment. Often the first notice a taxpayer's representative has of a taxpayer's liability is having to respond to a letter threatening to institute an enforced collection measure requiring immediate action to forestall damage that may be irreparable. This article provides an understanding of the various tools and procedures that can be used to resolve a taxpayer's liabilities in the least costly or disruptive way possible.

Initial contact: Collection hold

A taxpayer's representative's first contact with the IRS in attempting to resolve a client's federal tax debt should be to request a collection hold while the representative determines the nature and scope of the liability. The IRS will typically grant one, especially if it is a first-time request and the representative has just been retained.

If a collection hold is denied and collection activity is likely to cause harm to the taxpayer, immediately file a Form 911, *Request for Taxpayer Advocate Service Assistance*. The IRS will typically not levy against the taxpayer until the Form 911 has been resolved.

A notice of a proposed levy, a notice of levy, or a Notice of Federal Tax Lien will be accompanied by a notice of a right to a Collection Due Process (CDP)[2] hearing. As discussed more fully below, a CDP hearing request must be made within 30 days of the date on the notice or the right to the hearing and possible judicial review will be lost. A CDP hearing should be requested to preserve the taxpayer's rights, regardless of any assumptions that negotiation will resolve the matter.

Once the lines of communication with the IRS are open and a collection hold is in place, the next step is to determine if the liability is correct and legally subject to collection. A Freedom of Information Act (FOIA) request[3] is used to obtain the taxpayer's file for the years and taxes at issue, along with a request for transcripts using Form 4506-T, *Request for Transcript of Tax Return*, to determine the chronology of assessment actions. Upon receiving the information, the representative should review the file and transcript to determine the nature of the liability, the manner in which it arose, the procedures by which it was assessed, and the accuracy of the calculation that underlies the bill. If any of the liability arises from trust fund taxes, such as withholding from payroll, the representative should carefully determine if payments were properly applied between trust fund and non—trust fund liabilities.

Although married taxpayers filing a joint return are usually jointly and severally liable for the taxes due on that return, "innocent spouse relief"[4] may be available to the client. Innocent spouse relief is requested by filing Form 8857, *Request for Innocent Spouse Relief*, or a similar statement. Innocent spouse relief under Sec. 6015(b) or separate liability relief under Sec. 6015(c) must be requested no later than two years after the IRS has begun collection activities. Sec. 6015(f) equitable relief must be requested within the 10-year limitation period on collection in Sec. 6502 or within the period of limitation on credits or refunds under Sec. 6511.[5]

Is the collection of the debt time-barred by the statute of limitation?

In general, the statute of limitation on the IRS's authority to collect a tax liability is 10 years from the tax assessment.[6] However, numerous circumstances can "toll" or suspend the collection statute of limitation, including taxpayers' making requests for installment agreements, offers in compromise (OICs), Taxpayer Advocate Service assistance, or CDP hearings, to name a few. Given that there are a variety of potential circumstances that can suspend the collection statute of limitation, it is critical to review a taxpayer's transcripts to determine the collection statute expiration date (CSED). The CSED is the IRS's internal system for tracking the statute of limitation on a tax liability; each tax assessment has a CSED associated with it.[7]

If the IRS has filed a federal tax lien to collect a liability, it is generally valid until the taxpayer's liability is satisfied or until the time for enforcing the lien expires.[8] The IRS's time to collect upon the lien may be extended in a variety of circumstances, including: (1) a taxpayer's waiver in the case of an OIC;[9] (2) until six months after a bankruptcy stay under Sec. 6503(h); or (3) if a taxpayer is continuously outside the United States for at least six months.[10]

In some circumstances, the IRS can mitigate the effect of the expiration of the collection statute by requesting that the Department of Justice bring an action to reduce the federal liability to a money judgment before the CSED. Once reduced to judgment, the tax liability reflected in the judgment can be collected until it is satisfied or becomes unenforceable, as in bankruptcy.[11] The judgment can also be incorporated into a judgment lien, which is good for an additional 20 years and is subject to renewal for an additional 20 years upon its initial expiration.[12]

Options available to resolve federal tax liabilities

If the tax liability is correct, and the statute of limitation on collection action is still open, numerous options are available to discharge the liability. These include entering into an installment agreement with the IRS, making an OIC for the liability, or having the account put into "uncollectible" status if the taxpayer cannot pay the liability.

The IRS uses an objective approach to determine a taxpayer's ability to pay. The starting point for that determination is the information the taxpayer submits on Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, for individual taxpayers, including the self-employed, or on a Form 433-B, *Collection Information Statement for Businesses*,for business entities. These documents are signed under penalty of perjury, and a false statement on the form can result in criminal prosecution. For example, in a recent case, a taxpayer was indicted under Sec. 7206(1) for submitting a false Form 433-A, stating that he had not transferred any assets for less than full value in the last 10 years; however, he had transferred stock to his sons and to one of his affiliated companies for less than fair market value (FMV).[13] Every participant who is knowingly involved in filing a false statement is liable for that falsehood.

Taxpayers often overstate the value of assets on the Forms 433, due to either lack of attention or lack of understanding; they can also simply be overly optimistic or fail to use forced sale value. Quick sale value is generally 20%-25% lower than the regular market value and can therefore wipe out a significant amount of home equity.[14]

The Forms 433-A also ask a taxpayer to identify living expenses, as well as the taxes due on income. As part of the living expense analysis, the IRS has standard amounts that are allowed for housing costs and food. Taxpayers can claim these amounts without providing further proof. Higher costs must be documented along with justification for them. For example, while private school tuition is typically not allowed as an expense, tuition for private schooling required by a child's medical or emotional problem may be.

The IRS will calculate reasonable collection potential (RCP) from the data it receives on the Forms 433. Every collection alternative is based upon the information in the Forms 433 and the RCP derived from them.

Uncollectible status

A debt is not currently collectible when it would create an economic hardship for the taxpayer. Hardship exists if a taxpayer is unable to pay reasonable basic living expenses, based on the amounts indicated on the Form 433.[15]

When the tax debt is determined to be uncollectible, the IRS ceases all collection activity and puts the account into "currently not collectible" status.[16] The statute of limitation on collection is not extended by placing the debt in uncollectible status, although interest and penalties continue to accrue. The IRS is required to release, as soon as practicable, any levy on salary or wages when a taxpayer is placed in uncollectible status. Uncollectible status generally is reviewed for changes every two years.

Installment agreement

The maximum length of an installment agreement is typically the shorter of 72 months or the time left until the CSED. Penalties and interest continue to accrue on the unpaid liabilities over the term of the agreement. An installment agreement will not prevent a lien from being filed. However, levies are restricted while an installment agreement is in place.[17]

To enter into an installment agreement, the taxpayer must have filed all returns previously due and timely file all of his or her income tax returns thereafter. If the tax debtor is self-employed, he or she must remain timely with quarterly estimated tax payments. If the taxpayer has a business with employees, he or she must have timely filed at least the last two quarterly returns for the business and be current on the payroll tax deposits to get an installment agreement.

If the tax liability is $25,000 or less, the IRS does not require a financial statement to be filed. If the tax liability is between $25,000 and $50,000, the taxpayer needs to file only a simplified financial statement, Form 433-F, *Collection Information Statement*. If the tax liability is over $50,000, the taxpayer will be required to file the Form 433-A and/or Form 433-B.

In addition to traditional installment agreements, various specialized types of installment agreements may be available, including guaranteed agreements, streamlined installment agreements, express installment agreements, and an extension of time for payment of tax due to undue hardship.

Guaranteed agreements

Guaranteed agreements are installment agreements that the IRS is required to enter into and does not have the discretion to refuse. These are available when the taxpayer (1) owes $10,000 or less (exclusive of penalties and interest); (2) has *not* within the last five years failed to file any income tax returns, failed to pay any income taxes, or entered into an installment agreement; (3) agrees to fully pay the liability within three years; and (4) agrees to file and pay all tax returns during the term of the agreement.

Streamlined installment agreements

Streamlined installment agreements are available for liabilities that are $50,000 or less, when the taxpayer can fully pay the outstanding tax debt by the earlier of 72 months or the time left on the collection statute of limitation.

In-Business Trust Fund Express installment agreements

In-Business Trust Fund Express installment agreements are available for businesses with employees with payroll tax liabilities that are $25,000 or less. The debt must be paid within 24 months or before the CSED, whichever is earlier.

Extension of time for payment of tax due to undue hardship

In extraordinary circumstances, a taxpayer can obtain up to a 30-month extension of time to pay liabilities that would otherwise cause undue hardship. The application is made using Form 1127, *Application for Extension of Time for Payment of Tax Due to Undue Hardship*. Liabilities that may be extended include those that arise from income taxes, self-employment income taxes, or gift taxes.

Considerations before requesting an installment agreement

The IRS can issue a lien while the installment agreement is pending. However, taxpayers can file a request for a CDP hearing to object to the IRS's intent to file a lien or the actual filing of the lien. If the lien is already filed, taxpayers can seek to have it withdrawn as part of the CDP hearing. Once an installment agreement is in place, the IRS is limited to the collection actions set forth in the agreement.

Under Regs. Sec. 301.6331-4, the IRS may not levy the taxpayer's assets during:

- The period that a request for an installment agreement is pending;
- The 30-day period following rejection of the request;
- The period that an installment agreement is in effect;
- The 30-day period following termination of an agreement; or
- The period the appeal of the rejection or termination of an installment agreement is pending (if the rejection or termination is appealed).

If the IRS attempts to levy during any of the above periods, taxpayers have a right to a CDP hearing.

Appealing the IRS's determination

If the IRS rejects a taxpayer's request for an installment agreement, the taxpayer can go to the IRS Appeals Office or Tax Court depending on the context in which the taxpayer requested the installment agreement.

Under Regs. Sec. 301.6159-1(e), installment agreements cannot be altered, modified, or terminated unless:

- The information that the taxpayer provided to the IRS was inaccurate;
- The IRS determines the collection of tax is in jeopardy;
- The taxpayer fails to timely pay an installment, pay any other federal tax liability when the liability becomes due, or provide a financial condition update requested by the IRS; or
- The IRS determines that the taxpayer's financial condition has significantly changed.

The taxpayer must comply with the current terms of any existing agreement and remain current on tax return filings and payments while the IRS reviews the taxpayer's request to modify the agreement.

If the IRS intends to terminate or modify an installment agreement, it must send a Notice of Termination at least 30 days before. A taxpayer may appeal the modification or termination of an installment agreement to IRS Appeals before the expiration of the 30-day period beginning on the day after the modification or termination is to take effect.

Offers in compromise

The OIC program allows a tax debtor to settle his or her tax liability for less than the amount owed. An OIC cannot be used if the taxpayer is in bankruptcy.

For the IRS to process an OIC request, the taxpayer must:

- Be complying with all current filing and payment requirements;
- Be properly identified;
- Specifically identify the liability;
- Properly state the terms of the payment;
- Sign the offer;
- Submit a detailed statement and supporting documentation, supporting the request to compromise the liability; and
- Include a 20% nonrefundable down payment of any offered amount with the OIC application.

Levies generally cannot be issued during the pendency of an OIC,[18] and the statute of limitation on collection is tolled from the time the offer is submitted and during its pendency.[19] A taxpayer must also stay current with his or her tax and filing obligations for at least five years from the date the OIC is accepted.

Whether an offer should be accepted is within the IRS's discretion. If the IRS rejects the offer, the taxpayer can request administrative review by IRS Appeals within 30 days. There is no judicial review if IRS Appeals rejects the offer. However, if the rejection occurs in the context of a CDP hearing, the taxpayer can obtain judicial review of the rejection. The rejection would have to be considered an abuse of discretion to be overturned in court.

The date of rejection is important because the statute of limitation on collection is suspended during the time the offer is pending, for 30 days thereafter, and for any period that an appeal is under review.[20]

There are three grounds for an OIC: (1) doubt as to collectibility, (2) doubt as to liability, and (3) an equity offer.

Doubt as to collectibility

An OIC based on doubt as to collectibility is appropriate when taxpayers can demonstrate that the offered amount equals or exceeds the amount that the IRS would be likely to collect through enforced collection over the remaining CSED.

The request for an OIC based on doubt as to collectibility is made on a Form 656, *Offer in Compromise*, which also requires submitting Forms 433-A and/or 433-B, and supporting statements and documents. The IRS objectively bases the acceptability of an offer on the RCP reflected in the Forms 433 submitted with the OIC application.

Appeals officers are instructed to reject offers substantially below the taxpayer's RCP, except in relatively rare situations where "special circumstances" justify acceptance of such an offer.[21] Special circumstances are defined as: (1) facts demonstrating that the taxpayer would suffer "economic hardship" if the IRS were to collect from him or her an amount equal to the RCP; and (2) compelling public policy or equity considerations that provide a sufficient basis for a compromise.[22] Some factors that may be considered special circumstances are advanced age or limited future earning potential.

In the vast majority of cases, an acceptable settlement offer must reflect the maximum amount the taxpayer can pay, based on his or her available assets and any income that exceeds the taxpayer's allowable basic living expenses.

The formula to calculate RCP is: RCP = (Realizable net equity in assets) + (Net future monthly income) × (12 or 24).

Note: 12 is the multiplier if the taxpayer intends to pay within five installments or less, and 24 is the multiplier if the taxpayer intends to pay in between five and 24 months.[23]

Although the determination of an acceptable offer is designed to be dispassionate and objective, based solely on the assets, income, and expenses of the taxpayer, there is still some flexibility possible in the calculation. For example, the underlying bases for the computation of net equity and monthly disposable income are often somewhat subjective.

Realizable net equity in assets

In calculating realizable net equity in assets, the taxpayer should use the forced/quick sale value of the assets. Similarly, the value of a 401(k) should take into account any taxes and/or early withdrawal penalty that would be due upon the liquidation of the funds in the account.The valuation of a whole life insurance plan should be based on its cash value upon early termination. Bank assets are based upon the ending balance for the three months prior to the offer and can be significantly affected by the timing of the offer submission. The author has seen enormous variations in this metric for taxpayers whose income is seasonal.

Net equity in assets includes dissipated assets. A dissipated asset is any asset (liquid or illiquid) that has been "sold, transferred, or spent on non-priority items or debts and that is no longer available to pay the tax liability."[24] However, dissipated assets are only included in the calculation "where it can be shown the taxpayer has sold, transferred, encumbered, or otherwise disposed of assets in an attempt to avoid the payment of the tax liability."[25] Assets considered dissipated are those used for unnecessary items after the tax has been assessed or within six months of the assessment.[26]

Net future income

Net future income is total monthly income less living expenses. Monthly income includes wages, interest, net business income, net rental income, distributions, pensions, and Social Security benefits. The IRS will consider an unemployed taxpayer's health, education, skills, prior earnings, and professional background to determine if he or she is merely temporarily unemployed or actually unemployable.[27] When a taxpayer has been unemployed for a long time, his or her current income should be used, and the revenue officer (RO) should not average income, nor should the RO use anticipated future income if the taxpayer's future employment is uncertain.[28]

The amount allowable is based upon national/local standards unless the taxpayer can show that the actual expenses are higher. These standards are available on the IRS website at www.irs.gov (https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards).

Housing expense varies greatly by location. Using New York County, N.Y., as an example of a high-cost housing environment, the 2018 default basic housing and utilities expenses for a family of five is $4,168.[29]

IRS standards are also available for vehicle loan and/or lease payments,[30] public transportation costs,[31] out-of-pocket health care,[32] and food and clothing items.[33]

The Tax Court has held it is an abuse of discretion for the IRS to disregard actual documented expenses and rely solely on the national and local expense standards to determine the taxpayer's basic living expenses.[34]

Doubt as to liability

An OIC may also be available based on doubt as to liability. In cases involving doubt as to liability, a taxpayer may have lost his or her ability to protest an assessment to the Tax Court because he or she failed to file a petition to challenge the assessment in time. While a taxpayer in those circumstances can generally pay the assessment in full and then seek a refund in federal district court, it is an expensive and cumbersome process. In practice, in most cases, the "pay first and seek a refund later" mechanism may not be financially possible.

An OIC based on doubt as to liability gives a taxpayer the opportunity to present his or her case before the IRS for a second look, and possibly have the assessment reduced or canceled, without paying first or going to court, to the benefit of both the government and the taxpayer. OICs based on doubt as to liability are unrelated to the taxpayer's ability to pay. An OIC based on doubt as to liability is sought by filing Form 656-L, *Offer in Compromise (Doubt as to Liability)*.

Promotion of effective tax administration: Equity offers

The IRS is authorized to accept an OIC to promote effective tax administration if collection of the entire liability will create an economic hardship.[35]

Waiver of statute of limitation during pendency of OIC

Making an OIC will require the signing of a Form 656, which waives the collection statute of limitation during the pendency of the offer plus 30 days.[36] Because the statute of limitation is likely to be substantially extended by the filing of the offer, it may make sense to use the informal online "Offer in Compromise Pre-Qualifier" to determine whether the taxpayer may be eligible for an OIC.[37]

Choosing between an OIC and an installment agreement

The CSED and RCP should be calculated before submitting either a request for an installment agreement or an OIC. All of the delinquent tax periods should be included in any offer or agreement, since the RCP determines the amount to be paid regardless of the size of the underlying liability. Any delinquent assessment that is not included in the final offer would not be discharged by the offer. The representative should confirm all the outstanding liabilities by reviewing a recent transcript and the FOIA record production, as well as by calling the IRS.

If the RCP is zero because the allowable expenses equal or exceed available total income and there are no substantive assets to levy, the taxpayer should be placed in uncollectible status. While agents are generally skeptical of financial disclosures that show little or no available resources, a demonstrated zero RCP entitles the taxpayer to be placed in uncollectible status.

Uncollectible status is actually the best of both worlds, since it carries no threat of forced collection activity and yet does not toll the collection statute of limitation. Even if the taxpayer eventually has sufficient disposable income to come out of uncollectible status, the fact that there are fewer years remaining until the CSED expires reduces the RCP and, thus, the amount required for an eventual OIC. Entering uncollectible status for as long as possible before making an offer is generally desirable, absent some expectation of a future large windfall before the CSED.

Both an OIC and a request for an installment agreement toll the statute of limitation while they are being considered, although, of the two, the OIC process takes much longer.

Even if the taxpayer has an accepted payment agreement, the IRS will generally issue a warrant or lien to protect its interests until the amount is discharged in full unless the liability falls below a relatively low threshold. The thresholds are policy decisions, and, depending on the current threshold amount, a payment might possibly avoid a lien. While liens can be embarrassing, they can also have devastating effects on a taxpayer's business, such as affecting the ability to get business financing. One bright spot is the fact that passports are not suspended if a payment arrangement is in place, whether by installment agreement, OIC, or uncollectible status.

Failure to reach agreement on a collection alternative

If the taxpayer cannot reach a payment agreement with the Collections agent, he or she can seek relief through either the Collection Appeals Program (CAP)[38] or the CDP procedures. CAP may be useful in instances where the CDP or equivalent hearing procedures are not available. The CAP allows a taxpayer faced with a notice of lien, levy, seizure, or denial or termination of an installment agreement to challenge any procedural errors in the collection activity before the action being taken.

A CAP appeal must be requested in writing. The IRS prefers that the request be made by submitting Form 9423, *Collection Appeal Request*.[39] The request must indicate the actions the taxpayer disagrees with and explain the disagreement. The taxpayer must also offer a solution to his or her tax problem.[40]

The Appeals decision is binding on both the taxpayer and the IRS unless there is fraud, malfeasance, concealment, misrepresentation of material fact, an important mistake in mathematical calculation, or other circumstances that indicate that the failure to reopen the CAP decision would be a serious administrative omission.[41]

A CAP appeal is limited to either sustaining the proposed collection action or otherwise directing Collections to take the appropriate corrective action to modify or abate the collection action.[42] The CAP is an expedited process, but the determination is binding on the IRS and the taxpayer and generally does not allow a CDP hearing or judicial review of an adverse determination.

The CDP notice

The CDP procedures provide taxpayers with notice, hearing, and review procedures for forced collection action by the IRS. When the IRS pursues collection action by either lien or levy, Secs. 6320 and 6330 grant taxpayers the right to a CDP hearing with an impartial Appeals officer and generally require the IRS to give the taxpayer notice of the right to a hearing. However, the IRS is not required to provide notice of the right to a CDP hearing: (1) if a determination has been made that the collection of tax is in jeopardy; (2) before issuing state refund levies; and (3) for certain employment tax levies and federal contractor levies.

A CDP notice is required when the IRS sends the taxpayer a:

- Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320;
- Final Notice — Notice of Intent to Levy and Notice of Your Right to a Hearing;
- Notice of Jeopardy Levy and Right of Appeal;
- Notice of Levy on Your State Tax Refund — Notice of Your Right to a Hearing; or
- Notice of Levy and Notice of Your Right to a Hearing.

In most cases, the IRS cannot take enforcement action to seize property and rights to property (including bank accounts, wages, and real and personal property) until it provides a CDP notice to the taxpayer of his or her right to an Appeals hearing to explore collection alternatives to levy or seizure.

In theory, the CDP request allows a taxpayer to obtain an impartial review of the collection proposal by Appeals. In practice, however, the CDP notice is often attached to a collection letter early in the collection process and before the taxpayer knows whether he or she will be able to reach an agreement. Failure to request a CDP hearing within 30 days limits a taxpayer to an equivalent hearing only. The 30-day limitation period begins from the later of the date of the mailing of the notice or the date on the notice itself.[43] The right to a CDP hearing is independent for each different type of tax and for each tax period.[44] A taxpayer may challenge the existence or amount of a tax liability at a CDP hearing so long as the taxpayer did not receive a statutory notice of deficiency for the tax liability or did not otherwise have an opportunity to dispute the tax liability.[45] Unlike a CDP hearing, there is no judicial review available for an equivalent hearing.[46]

The CDP request is made on Form 12153, *Request for a Collection Due Process Hearing*, or a written statement containing similar information.[47] Except in extraordinary circumstances, collection action on the levy is suspended during the pendency of the CDP hearing and 90 days after a final determination in the hearing.[48] There will be no stay, however, if the taxpayer's request is based on a frivolous position or is made to delay or impede collection because the request for the CDP hearing will be treated as if had not been submitted. There will also be no stay if one of the Sec. 6330(f) exceptions (for jeopardy situations, state income tax levies, federal contractor levies, or disqualified employment tax levies) applies.

If the matter can be resolved by negotiation between the time for making the CDP request and the scheduled CDP hearing, the request can be withdrawn. If not, the hearing before an impartial Appeals officer can take place in a face-to-face meeting, by telephone, or even by written communications (if the taxpayer consents).[49]

The issues before the Appeals officer include the appropriateness of the collection action, such as the effect of a bankruptcy discharge or whether uncollectible status is appropriate. A CDP hearing can address the availability and appropriateness of collection alternatives, including payment arrangements or the substitution of assets for those that have been levied. Statute-of-limitation defenses to collection, as well as the proper application of payments and credits, can be addressed by the Appeals officer at the CDP hearing. A taxpayer may challenge the existence or amount of the underlying liability if the taxpayer did not receive a statutory notice of deficiency for the liability or did not otherwise have an opportunity to dispute the liability.

Judicial review is available after an adverse notice of determination from the CDP hearing by a petition to the Tax Court within 30 days of the notice of determination. Even if the IRS failed to properly mail the taxpayer notices of intent to levy, Tax Court relief is unavailable until a notice of determination is sent.[50] Relief from the Tax Court in a collection matter requires proof by the taxpayer that meets the very high bar that there has been an "abuse of discretion."

Understanding the options

There is no doubt that the IRS has enormous power when it seeks to collect an outstanding liability. However, a thorough understanding of the procedures, restrictions, and policies that apply to the exercise of those powers can enable a taxpayer's representative to mitigate the adverse effects of collection activity and potentially reduce the outstanding balance in appropriate circumstances.

Footnotes

[1]Sec. 6020(b).

[2]Secs. 6320 and 6330.

[3]The IRS posts FOIA request guidelines and a sample letter on its website at www.irs.gov (https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines).

[4]Sec. 6015.

[5]Notice 2011-70.

[6]Sec. 6502(a).

[7]Internal Revenue Manual (IRM) §5.1.19.1.1.

[8]Sec. 6322.

[9]Regs. Sec. 301.7122-1(i).

[10]Sec. 6503(c).

[11]Sec. 6502(a).

[12]28 U.S.C. §3201.

[13]*Yurek*, 15-cr-394-WJM (D. Colo. 6/20/17).

[14]IRM §5.8.5.4.1(3).

[15]IRM §5.16.1.2.9.

[16]IRM §5.16.1.

[17]Sec. 6331(k)(2).

[18]Sec. 6331(k)(1).

[19]See Sec. 6331(k)(3)(B), cross-referencing Sec. 6331(i)(5).

[20]Regs. Sec. 301.7122-1(i).

[21]*Fairlamb*, T.C. Memo. 2010-22; Rev. Proc. 2003-71, §4.02(2).

[22]IRM §5.8.11.2.2.

[23]IRM §5.8.5.25.

[24]*Johnson*, 136 T.C. 475 (2011).

[25]IRM §5.8.5.18(1).

[26]IRM §5.8.5.18(1).

[27]IRM §5.8.5.20 (03/23/2018).

[28]IRM §5.8.5.18(4).

[29]IRS, "New York — Local Standards: Housing and Utilities," available at www.irs.gov (https://www.irs.gov/businesses/small-businesses-self-employed/new-york-local-standards-housing-and-utilities).

[30]IRS, "Local Standards: Transportation," available at www.irs.gov (https://www.irs.gov/businesses/small-businesses-self-employed/local-standards-transportation).

[31]Id.

[32]IRS, "National Standards: Out-of-Pocket Health Care," available at www.irs.gov (https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-out-of-pocket-health-care).

[33]IRS, "National Standards: Food, Clothing and Other Items," available at www.irs.gov (https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items).

[34]*Fowler*, T.C. Memo. 2004-163.

[35]Regs. Sec. 301.7122-1(b)(3)(i).

[36]Regs. Sec. 301.7122-1(i)(1).

[37]IRS, "Offer in Compromise Pre-Qualifier," irs.treasury.gov/oic_pre_qualifier (https://irs.treasury.gov/oic_pre_qualifier/).

[38]IRM §8.24.1.

[39]IRS Publication 1660, *Collection Appeal Rights*, p. 3(2018), and IRM §5.1.9.4.2.

[40]Id.

[41]IRM §5.1.9.5.4.

[42]IRS Publication 1660, *Collection Appeal Rights* (2018).

[43]*Weiss*, 147 T.C. 179 (2016).

[44]Secs. 6320(b)(2) and 6330(b)(2).

[45]Sec. 6330(c)(2)(B); *Our Country Home Enterprises, Inc.*, 855 F.3d 773 (7th Cir. 2017).

[46]*Buffano*, T.C. Memo. 2007-32.

[47]Sec. 6330(b)(1); see also Regs. Sec. 301.6330-1(c)(2), Q&A 1.

[48]Sec. 6330(e)(1).

[49]IRS Publication 1660, *Collection Appeal Rights*, p. 2(2018).

[50]*Adolphson*, 842 F.3d 478 (7th Cir. 2016).

Contributor

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