

**SUMMARY:** This document corrects a notice of proposed rulemaking (REG-104143-05) that was published in the **Federal Register** on Friday, August 26, 2005 (70 FR 50228). The document contains regulations relating to payments made for service not in the course of the employer's trade or business, for domestic service in a private home of the employer, for agricultural labor, and for service performed as a home worker within the meaning of section 3121(d)(3)(C) of the Internal Revenue Code.

**FOR FURTHER INFORMATION CONTACT:** Paul Carlino, (202) 622-0047 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The notice of proposed rulemaking (REG-104143-05) that is the subject of this correction is under section 3121(d)(3)(C) of the Internal Revenue Code.

##### **Need for Correction**

As published, REG-104143-05 contains an error that may prove to be misleading and is in need of clarification.

##### **Correction of Publication**

Accordingly, the notice of proposed rulemaking (REG-104143-05), that was the subject of FR Doc. #05-16944, is corrected as follows:

##### **§ 31.3121(a)-2 [Corrected]**

On page 50231, column 2, § 31.3121(a)-2, paragraph (d)(2), third line from the bottom of the paragraph, the language "paragraph (d)(2), see § 31.3102-1 in" is corrected to read "paragraph (d)(2), see § 31.3121(a)-2 in".

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 301**

[REG-150088-02]

RIN 1545-BB96

#### **Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Upon Filing of Notice of Federal Tax Lien**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to a taxpayer's right to a hearing under section 6320 of the Internal Revenue Code of 1986 after the filing of a notice of Federal tax lien (NFTL). The proposed regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The proposed regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) files a NFTL on or after January 19, 1999. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written and electronic comments must be received by December 15, 2005. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on January 19, 2006 must be received by December 29, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-150088-02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-150088-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-150088-02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, call Laurence K. Williams, 202-622-3600

(not a toll-free number); concerning submissions and/or to be placed on the building access list to attend the hearing, call Robin Jones, 202-622-7180 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) after the IRS files a NFTL. Final regulations (TD 8979) were published on January 18, 2002 in the **Federal Register** (67 FR 2558). The final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206, 112 Stat. 685)(RRA 1998), including the addition of section 6320 to the Internal Revenue Code. The final regulations affected taxpayers against whose property or rights to property the IRS files a NFTL.

Section 3401 of RRA 1998 also added section 6330 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing before or, in limited cases, after levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8980) under section 6330 were published in the **Federal Register** (67 FR 2549) along with the final regulations under section 6320.

##### **Explanation of Provisions**

A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by a CDP Notice concerning a levy or a CDP Notice concerning the filing of a NFTL. The IRS Office of Appeals (Appeals) has conducted over 92,000 CDP hearings and more than 30,000 equivalent hearings since sections 6320 and 6330 became effective for collection actions initiated on and after January 19, 1999.

In general, the experience of the past six years with CDP hearings has demonstrated that there is a need for changes to allow Appeals to effectively and fairly handle the cases of taxpayers who raise issues of substance. Appeals has instituted many improvements in its processing of CDP cases and has conducted extensive training in an effort to provide careful, but timely, review of CDP cases, which currently are filed at a rate of approximately 2,450 per month. The proposed regulations, if adopted as final regulations, will

increase efficiency without compromising the quality and fairness of review.

In many CDP cases, significant time is spent merely identifying the issues. Although the Form 12153 used to request a CDP hearing requires a taxpayer to state a reason or reasons for disagreeing with the NFTL filing, many taxpayers either do not supply that information, or raise new issues during the CDP hearing process not identified on the hearing request. Delays result while taxpayers provide new supporting documentation and Appeals personnel reconsider prior conclusions in light of the new information. Cases of other taxpayers pending in Appeals are delayed because other work must be constantly rescheduled.

Cases are also delayed when taxpayers propose collection alternatives for which they are not eligible. The IRS does not consider offers in compromise or installment agreements from taxpayers who have failed to file required returns as of the date the offer or the proposed installment agreement is submitted. See Publication 594, "What You Should Know about the IRS Collection Process (Rev. 2-2004)." Similarly, the IRS will not consider an offer in compromise from an in-business taxpayer unless the taxpayer has timely filed all returns and timely made all Federal tax deposits for two consecutive quarters. See Form 656, "Offer in Compromise (Rev. 7-2004)." The resources of Appeals are ineffectively utilized arranging and conducting face-to-face conferences requested by non-compliant taxpayers whose only complaint is the rejection of an offer to compromise or installment agreement for which they are not eligible.

Frivolous cases also cause unnecessary delays. During fiscal year 2004, 5.4 percent of the 32,226 CDP and equivalent-hearing cases Appeals handled involved taxpayers who were non-filers or raised only frivolous issues. Cases raising frivolous issues, in particular, consume a disproportionately large amount of time, because Appeals personnel must often read lengthy, frivolous submissions in search of any substantive issue buried within. Delays also result when taxpayers use face-to-face conferences as a venue for frivolous oration and harassment of Appeals personnel.

The proposed regulations attempt to address these and other problems that have become apparent during the first six years of CDP practice. The proposed changes are aimed at creating a more focused procedure that will allow Appeals to continue to provide careful

review of NFTL filings as the volume of cases increases.

A taxpayer must request a CDP hearing in writing. The current regulations require that a request for a CDP hearing include the taxpayer's name, address, and daytime telephone number, and that the request be dated and signed by either the taxpayer or the taxpayer's authorized representative. Section 301.6320-1(c)(2), Q&A-C1. A Form 12153, "Request for a Collection Due Process Hearing," is included with the CDP Notice sent to the taxpayer pursuant to section 6320. The Form 12153 requests (1) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or EIN), (2) the type of tax involved, (3) the tax period at issue, (4) a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL, and (5) the reason or reasons why the taxpayer disagrees with the NFTL filing. Although taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing, the current regulations do not require the use of Form 12153.

Section 301.6320-1(c)(2), A-C1, of the proposed regulations requires taxpayers to state their reasons for disagreement with the NFTL filing whether or not a Form 12153 is used to request a CDP hearing. In addition, a taxpayer who fails to sign a timely CDP hearing request because the request is made by a spouse or other unauthorized representative must affirm in writing that the request was originally submitted on the taxpayer's behalf. Failure to provide the written affirmation within a reasonable time after a request from Appeals will result in the denial of a CDP hearing for that taxpayer.

A CDP hearing is to be conducted by an Appeals officer or employee who has had no "prior involvement" with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement. Section 301.6320-1(d)(2), A-D4 of the current regulations provides that "prior involvement" by an Appeals officer or employee includes participation or involvement in an Appeals hearing that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice, other than a CDP hearing held under either section 6320 or section 6330. It is important that "prior involvement" be construed in a manner that reasonably protects against predisposition but at the same time does not disqualify too broad a range of Appeals personnel. A broad standard of "prior involvement" would lead to uncertain application, could result in

the disqualification of an entire Appeals office, many of which have small staffs, and could make it difficult to conduct the CDP hearing. Section 301.6320-1(d)(2), A-D4 of the proposed regulations provides that prior involvement exists only when the taxpayer, the tax liability and the tax period shown on the CDP Notice also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding. Examples are provided in § 301.6320-1(d)(3) of the proposed regulations. Section 301.6320-1(d)(2), A-D7, of the proposed regulations clarifies that a face-to-face conference is merely one aspect of a CDP hearing under section 6320 and is not by itself the entire CDP hearing.

A-D7 of the proposed regulations also provides that, in all cases, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, other written communications from the taxpayer, and any notes of oral communications with the taxpayer or the taxpayer's representative. If no face-to-face or telephonic conference is held, review of those documents will constitute the CDP hearing for purposes of section 6320(b).

A-D7 of the proposed regulations further clarifies that when a business taxpayer is offered an opportunity for a face-to-face conference it will be held at the Appeals office closest to the taxpayer's principal place of business. The current regulations have been misinterpreted by some taxpayers as requiring the IRS to hold a face-to-face conference at the taxpayer's principal place of business. Q&A-D8 of the proposed regulations is new. It describes specific circumstances in which Appeals will not hold a face-to-face conference with the taxpayer or the taxpayer's representative because a conference will serve no useful purpose. The experience of Appeals is that although most taxpayers request face-to-face conferences, they are sometimes difficult to schedule on a date and at a time that is convenient for the taxpayer. In some of these cases, taxpayers or their representatives have used the scheduling of a face-to-face conference as a tactic to delay the IRS's collection efforts. In other cases, taxpayers have requested a face-to-face conference merely to raise frivolous arguments concerning the Federal tax system or to request collection alternatives for which they do not qualify. Q&A-D8 of the proposed regulations provides that a face-to-face conference need not be offered if the taxpayer or the taxpayer's representative raises only frivolous

arguments concerning the Federal tax system. See the IRS Internet site, [http://www.irs.gov/pub/irs-utl/friv\\_tax.pdf](http://www.irs.gov/pub/irs-utl/friv_tax.pdf), for examples of frivolous arguments. A face-to-face conference also will not be granted if the taxpayer proposes collection alternatives that would not be available to other taxpayers in similar circumstances. A face-to-face conference need not be granted if the taxpayer does not provide in the written request for a CDP hearing, as perfected, the required information set forth in A-C1(ii)(E) of paragraph (c)(2) of the proposed regulations.

In addition, a face-to-face conference will not be held at the location closest to the taxpayer's residence or principal place of business if all Appeals officers or employees at that location are considered to have prior involvement as provided in A-D4. In this case, the taxpayer will be offered a hearing by telephone or correspondence, or some combination thereof. The taxpayer may be able to obtain a face-to-face conference at the Appeals office closest to the taxpayer's residence or principal place of business under these circumstances if the taxpayer waives the requirement of section 6320(b)(3) concerning impartiality of the Appeals officer or employee. Appeals will offer the taxpayer a face-to-face conference at another Appeals office if in the exercise of its discretion Appeals would have offered the taxpayer a face-to-face conference at the original location.

With the foregoing exceptions, it is anticipated that a face-to-face conference will ordinarily be offered with respect to any relevant issues or collection alternatives for which the taxpayer qualifies.

Sections 301.6320-1(e)(1) and 301.6320-1(e)(3), A-E2 and A-E7 have been changed to more closely follow the language of section 6330(c)(2)(B), made applicable to section 6320 by section 6320(c). These changes are necessary because these regulations have been misinterpreted as defining the underlying tax liability that may be considered at the CDP hearing under section 6330(c)(2)(B) to be the tax liability listed on the CDP Notice. The intent of the existing regulations, which refer to tax liability on the CDP Notice, is that taxpayers may only challenge taxes or tax periods listed on the CDP Notice, not to supply a substantive definition of underlying tax liability. Section 301.6320-1(e)(3), A-E6 has been amended to clarify that taxpayers who receive CDP hearings can only qualify for collection alternatives available generally to taxpayers in similar circumstances.

The experience of the past six years has revealed that many taxpayers raise an issue with Appeals but fail to furnish any documentation or evidence with respect to the issue despite being given a reasonable period to do so. For example, a taxpayer may request an installment agreement, but when an Appeals officer or employee requests financial data necessary to determine eligibility for the installment agreement, the taxpayer may not comply with the request. Or a taxpayer may dispute liability for a tax period by claiming entitlement to deductions, but provide no substantiation for the deductions in response to requests from Appeals. Current § 301.6320-1(f)(2), A-F5 provides that a taxpayer may not seek judicial review of an issue that he has not raised during the CDP hearing. A-F5 is revised to clarify that in order to obtain judicial review, a taxpayer must not only bring the issue to the attention of Appeals but must also submit, if requested, evidence with respect to that issue. Under revised A-F5, if the taxpayer does not provide Appeals any evidence with respect to the issue after being given a reasonable opportunity to submit such evidence, then he may not ask a court to consider the issue.

There has been some confusion about what documents Appeals should retain, and what notations the Appeals officer or employee conducting the hearing should make, in order to provide a judicially reviewable administrative record. A new Q&A-F6 has been added to specify the contents of the administrative record required for court review.

The IRS receives a number of tardy requests for CDP hearings. The changes to § 301.6320-1(i)(2) explain how these requests will be treated. The proposed amendments to the regulations add a new Q&A-I1 to § 301.6320-1(i)(2) to explain that a taxpayer must request an equivalent hearing in writing. A taxpayer may obtain an equivalent hearing if the 30-day period described in section 6320(a)(3) for requesting a CDP hearing has expired. Unlike an Appeals determination in a CDP hearing, the Appeals decision in an equivalent hearing is not reviewable in court. Under new Q&A-I1, the IRS is not required to treat a late-filed CDP request as a request for an equivalent hearing. Section 301.6320-1(c)(2), A-C7 has been amended to require that the taxpayer be notified of the right to an equivalent hearing in all cases in which a tardy request for a CDP hearing is received. It is expected that the IRS will either send the taxpayer a letter or orally inform the taxpayer that the CDP hearing request is untimely and ask if

the taxpayer wishes to have an equivalent hearing. If the taxpayer elects to have an equivalent hearing, the IRS will treat the CDP hearing request as a request for an equivalent hearing without requiring the taxpayer to make an additional request written request.

Current Q&A-I1 through I5 are renumbered Q&A-I2 through I6. The proposed regulations add Q&A-I7 to § 301.6320-1(i)(2) to clarify that the period during which a taxpayer may obtain an equivalent hearing is not indefinite. The equivalent hearing procedure is not provided by statute but, consistent with the legislative history of RRA 1998, was adopted in order to accommodate taxpayers who failed timely to exercise their right to a CDP hearing. The equivalent hearing was meant to occur near the time a CDP hearing held pursuant to a timely request would have occurred, because it was meant to address the same matters that would have been addressed at a CDP hearing. The procedure was not meant to provide a hearing right that could be exercised months or years after the circumstances that precipitated the filing of the NFTL have passed. A hearing before Appeals at a later time may be obtained under the Collection Appeals Program. Therefore, proposed Q&A-I7 limits to one year the period during which a taxpayer may request an equivalent hearing. The period commences the day after the end of the five business day period following the filing of the NFTL, described in section 6320(a)(2).

Because the time for requesting an equivalent hearing will be limited, the proposed regulations add new Q&A-I8, Q&A-I9, Q&A-I10 and Q&A-I11 to § 301.6320-1(i)(2) to provide the same rules governing mailing, delivery and determination of timeliness that apply to requests for CDP hearings. Unlike existing § 301.6320-1(c)(2), A-C6, new A-I10 does not identify the officials to whom to send an equivalent hearing request if the CDP Notice does not specify where to send the request. Because the identity and the address of the person to whom the request should be sent may change in the future, taxpayers will be able to obtain more current information by calling the 1-800 number listed in A-I10. Section 301.6320-1(c)(2), A-C6 also has been revised in the proposed regulations to provide that taxpayers should call the 1-800 number to obtain the address to which the CDP hearing request should be sent.

The proposed regulations are effective the date 30 days after final regulations are published in the **Federal Register** with respect to requests for CDP

hearings or equivalent hearings made on or after the date 30 days after final regulations are published in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 19, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption.

An outline of the topics to be discussed and the time to be devoted to each topic must be submitted by any person who wishes to present oral comments at the hearing. Outlines must be received by December 29, 2005.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 301.6320-1 is proposed to be amended as follows:

1. Paragraph (c)(2) A-C1, Q&A-C6 and A-C7 are revised.
2. Paragraph (d)(2) A-D4 and A-D7 are revised.
3. Paragraph (d)(2) Q&A-D8 is added.
4. Paragraph (d)(3) is added.
5. Paragraph (e)(1) is revised.
6. Paragraph (e)(3) A-E2, A-E6 and A-E7 are revised.
7. Paragraph (f)(2) A-F5 is revised.
8. Paragraph (f)(2) Q&A-F6 is added.
9. Paragraph (i)(2) Q&A-I1 through Q&A-I5 are redesignated as Q&A-I2 through Q&A-I6, a new paragraph (i)(2) Q&A-I1 and new paragraphs Q&A-I7 through Q&A-I11 are added.
10. Paragraph (j) is revised.

#### § 301.6320-1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information specified in A-C1(ii) of this paragraph (c)(2). See A-D7 and A-D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following information:

- (A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).
- (B) The type of tax involved.
- (C) The tax period at issue.
- (D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for a CDP hearing that does not provide the required information set forth in A-C1(ii) of this paragraph within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use a Form 12153, "Request for a Collection Due Process Hearing," in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, <http://www.irs.gov/pub/irs-pdf/f12153.pdf>, or by calling, toll-free, 1-800-829-3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

\* \* \* \* \*

Q-C6. Where must the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (SSN or TIN).

\* \* \* \* \*

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer foregoes the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. If the request for CDP hearing is received after the 30-day period, the taxpayer will be notified of the untimely request and of the right to

an equivalent hearing. See paragraph (i) of this section.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

A–D4. Prior involvement by an Appeals officer or employee includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax liability and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP hearing or proceeding, and the Appeals officer or employee actually participated in the prior hearing or proceeding.

\* \* \* \* \*

A–D7. Except as provided in A–D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, which includes the taxpayer's request for a CDP hearing, any other written communications from the taxpayer or the taxpayer's authorized representative, and any notes made by Appeals officers or employees of any oral communications with the taxpayer or the taxpayer's authorized representative. If no face-to-face or telephonic conference or correspondence hearing is held, review of those documents will constitute the CDP hearing for purposes of section 6320(b).

Q–D8. In what circumstances will a face-to-face CDP conference not be granted?

A–D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A–D7 of this paragraph (d)(2) and this A–D8. If all Appeals officers or employees at the location provided for in A–D7 of this paragraph have had prior involvement with the taxpayer as provided in A–D4 of this paragraph, the taxpayer will not be offered a face-to-face meeting at that location, unless the taxpayer elects to waive the requirement of section 6320(b)(3). The taxpayer will be offered

a face-to-face conference at another Appeals office if Appeals in the exercise of its discretion would have offered the taxpayer a face-to-face conference at the location provided in A–D7. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless the alternative would be available to other taxpayers in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, "Offer in Compromise," no face-to-face conference will be offered to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A–C1(ii)(E) of paragraph (c)(2). See also A–C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

*Example 1.* Individual A timely requests a CDP hearing concerning a NFTL filed with respect to A's 1998 income tax liability. Appeals employee B previously conducted a CDP hearing regarding a proposed levy for the 1998 income tax liability assessed against individual A. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6330 CDP hearing, employee B may conduct the CDP hearing under section 6320 involving the NFTL filed for the 1998 income tax liability.

*Example 2.* Individual C timely requests a CDP hearing concerning a NFTL filed with respect to C's 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6320 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to C's 1998 income tax liability.

*Example 3.* Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941. Employee D would not be considered to have prior

involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

*Example 4.* Appeals employee F is assigned to a CDP hearing concerning a NFTL filed with respect to a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not involve the TFRP assessed against individual E.

*Example 5.* Appeals employee G is assigned to a CDP hearing concerning a NFTL filed with respect to a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing—*(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

\* \* \* \* \*

(3) \* \* \*

A-E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

\* \* \* \* \*

A-E6. Collection alternatives include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. For example, the IRS does not consider an offer to compromise made by a taxpayer who, at the time of the CDP hearing, has not filed required returns or has not made certain required deposits of tax, as set forth in Form 656, "Offer in Compromise." The collection alternative of an offer to compromise would not be available to such a taxpayer in a CDP hearing.

\* \* \* \* \*

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer has already had an opportunity to dispute the existence or amount of the underlying tax liability.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

A-F5. In seeking Tax Court or district court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in

the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q-F6. What is the administrative record for purposes of court review?

A-F6. The case file, including written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative and memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in any court review of the Notice of Determination issued by Appeals.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

Q-I1. What must a taxpayer do to obtain an equivalent hearing?

A-I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information required in paragraph (ii) of this A-I1.

(ii) The request must be dated and must include the following information:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (SSN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not provide the required information set forth in paragraph (ii) of this A-I1 within a reasonable period of time after a request from the IRS. If the requested information is not provided within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent

hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in paragraph (ii) of this A-I1, by the taxpayer's spouse or any other representative, by filing, within a reasonable time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

\* \* \* \* \*

Q-I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6320?

A-I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q-I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A-I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A-I10 of this paragraph (i)(2).

Q-I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A-I9. No. All taxpayers who want an equivalent hearing concerning the filing of the NFTL must request the hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q-I10. Where must the written request for an equivalent hearing be sent?

A-I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the

address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (SSN or EIN).

Q-I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL?

A-I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

\* \* \* \* \*

(j) *Effective date.* This section is applicable 30 days after the date final regulations are published in the **Federal Register** with respect to requests made for CDP hearings or equivalent hearings on or after the date 30 days after final regulations are published in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-150091-02]

RIN 1545-BB97

#### Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Prior to Levy

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to a taxpayer's right to a hearing before or after levy under section 6330 of the Internal Revenue Code of 1986. The proposed regulations make certain clarifying changes in the

way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The proposed regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy on or after January 19, 1999. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written and electronic comments must be received by December 15, 2005. Outlines of topics to be discussed at the public hearing scheduled for 10 a.m. on January 19, 2006 must be received by December 29, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-150091-02), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-150091-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-150091-02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building (7th Floor), 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, call Laurence K. Williams, 202-622-3600 (not a toll-free number). Concerning submissions and/or to be placed on the building access list to attend the hearing, call Robin Jones, 202-622-7180 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) before levy. Final regulations (TD 8980) were published on January 18, 2002 in the **Federal Register** (67 FR 2549). The final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206, 112 Stat. 685) (RRA 1998), including the addition of section 6330 to the Internal Revenue Code. The final regulations affected taxpayers against whose property or rights to property the IRS intends to levy.

Section 3401 of RRA 1998 also added section 6320 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing after the filing of a notice of Federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8979) under section 6320 were published in the **Federal Register** (67 FR 2558) along with the final regulations under section 6330.

#### Explanation of Provisions

A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by a CDP Notice concerning a levy or a CDP Notice concerning the filing of a NFTL. The IRS Office of Appeals (Appeals) has conducted over 92,000 CDP hearings and more than 30,000 equivalent hearings since sections 6320 and 6330 became effective for collection actions initiated on and after January 19, 1999.

In general, the experience of the past six years with CDP hearings has demonstrated that there is a need for changes to allow Appeals to effectively and fairly handle the cases of taxpayers who raise issues of substance. Appeals has instituted many improvements in its processing of CDP cases and has conducted extensive training in an effort to provide careful, but timely, review of CDP cases, which currently are filed at a rate of approximately 2,450 per month. The proposed regulations, if adopted as final regulations, will increase efficiency without compromising the quality and fairness of review.

In many CDP cases, significant time is spent merely identifying the issues. Although the Form 12153 used to request a CDP hearing requires a taxpayer to state a reason or reasons for disagreeing with the proposed levy, many taxpayers either do not supply that information, or raise new issues during the CDP hearing process not identified on the hearing request. Delays result while taxpayers provide new supporting documentation and Appeals personnel reconsider prior conclusions in light of the new information. Cases of other taxpayers pending in Appeals are delayed because other work must be constantly rescheduled.

Cases are also delayed when taxpayers propose collection alternatives for which they are not eligible. The IRS does not consider offers in compromise or installment agreements from taxpayers who have failed to file required returns as of the date the offer or the proposed