

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Review of the IRS Independent Office of Appeals Collection Due Process Program

September 20, 2024

Report Number: 2024-300-060

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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Why TIGTA Did This Audit

This audit was initiated because TIGTA is statutorily required to determine whether the IRS complied with select provisions of Internal Revenue Code §§ 6320 and 6330 when taxpayers exercised their right to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy.

Impact on Tax Administration

The Collection Due Process (CDP) hearing provisions are designed to give taxpayers an opportunity for an independent review to ensure that the levy action that has been proposed or the Notice of Federal Tax Lien that has been filed is warranted and appropriate. An effective process is necessary to ensure that statutory requirements are met, and taxpayers' rights are protected. A CDP hearing is held before the IRS Independent Office of Appeals (Appeals). Appeals is to be independent of all other IRS offices, and its mission is to resolve Federal tax controversies without litigation, on a basis that is fair and impartial to both the Federal Government and the taxpayer.

What TIGTA Found

Appeals officers only verify that the taxpayer received timely notice of the lien or levy and will address any issues raised by the taxpayer. For each CDP hearing case, the Appeals officer is required to attest, in the case file documentation, that they independently obtained verification that the requirements of all applicable law or administrative procedures were met. However, Appeals officers do not consider if there are prohibitive levies on the tax module that were the subject of the CDP hearing when verifying that the requirements of all applicable laws were met. TIGTA believes the Appeals officer should independently verify whether the IRS took prohibited levy action on the tax modules subject to the CDP hearing.

TIGTA reviewed 103 levy CDP hearing requests from the error populations identified in the Fiscal Year 2023 statutory reviews of levies and liens. Prohibited levy action was taken in 93 cases during the CDP hearing. In 11 of these cases the hearing was cancelled so no law and administrative review was required. While [REDACTED] the remaining 80 cases included statements from the Appeals officer attesting that all legal and administrative requirements had been met. However, Appeals officers did not verify that the IRS successfully suspended collection actions on the subject tax modules during the CDP hearing period. In 17 of the 93 cases with a prohibited levy, the IRS received over \$226,000 in levy payments. All the prohibited levy payments were refunded, or the taxpayer requested that the IRS apply the levy payment to another balance due.



What TIGTA Recommended

TIGTA recommended that the IRS 1) instruct Appeals officers to verify as part of the law and administrative review, whether any prohibited levy action was taken; 2) require that Appeals case reviews conducted by managers specifically review the law and administrative review performed on a case to determine if it was conducted appropriately; 3) systemically review for taxpayers in our population who had funds taken with a designated payment code other than that of the Federal Payment Levy Program or Alaska Permanent Fund Dividend Levy Program and who were not made whole; and 4) require for CDP hearings that prohibited levies are recorded in the Case Activity Reports.

IRS management agreed with one and partially agreed with three recommendations. Management does not agree that Appeals is required to verify and document whether any prohibited levy action was taken but plans to take other actions. In addition, Appeals plans to review taxpayers in TIGTA's population and take additional action where appropriate, and update Case Activity Reports guidance.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 20, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in cursive script, reading "Danny R. Verneuille".

FROM: Danny R. Verneuille
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Review of the IRS Independent Office of Appeals
Collection Due Process Program (Audit No.: 2024300024)

This report presents the results of our review to determine whether the Internal Revenue Service complied with select provisions of Internal Revenue Code §§ 6320 and 6330 when taxpayers exercised their right to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Taxpayer Service*.

Management's complete response to the draft report is included as Appendix III. If you have any questions, please contact me or Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).

Table of Contents

Background.....Page 1

Results of Review.....Page 3

Appeals Does Not Review for Prohibited Levies on Tax
Modules That Were the Subject of a CDP Hearing.....Page 3

Recommendation 1:.....Page 6

Recommendation 2:.....Page 7

Taxpayers Were Made Whole From Prohibited Levy
Payments, but Not All of These Payments Were
Documented.....Page 7

Recommendations 3 and 4:.....Page 8

Appendices

Appendix I – Detailed Objective, Scope, and Methodology.....Page 9

Appendix II – Information on the Populations and Samples
Taken From Fiscal Year 2023 Audits.....Page 11

Appendix III – Management’s Response to the Draft Report.....Page 13

Appendix IV – Abbreviations.....Page.17

Background

The Internal Revenue Code (I.R.C.) provides that if any person liable to pay any tax assessments neglects or refuses to pay the unpaid tax, the Internal Revenue Service (IRS) has the authority to levy a taxpayer's property within 10 days after notice and demand.¹ Additionally, as a matter of law, a lien arises upon the occurrence of a tax delinquency and encumbers the property of the delinquent taxpayer.² To protect the Government's claim, the IRS also has the authority to file a Form 668(Y), *Notice of Federal Tax Lien* (NFTL), in the appropriate State and local office to notify interested parties that a lien exists.³

Taxpayers have a right to a Collection Due Process hearing

Congress enacted the IRS Restructuring and Reform Act of 1998, which gave taxpayers the right to a hearing with respect to both levies and liens before the IRS Independent Office of Appeals (hereafter referred to as Appeals) under the I.R.C. Collection Due Process (CDP) provisions.⁴ CDP hearings are typically provided before a levy (with some limited exceptions), while CDP hearings for liens are heard after the filing of the NFTL.

Under most circumstances, by law, no levy may be placed on the taxpayer's property unless the IRS has notified the taxpayer in writing of their right to a hearing prior to the levy being placed (Notice to Levy).⁵ Such a notice shall be required only once for the taxable period to which the unpaid tax applies. The IRS notifies the taxpayer by sending either an LT 11 Notice, *Final Notice of Intent to Levy and Notice of Your Right to a Hearing*, issued by the Automated Collection System, or a Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Collection Due Process Hearing, i.e., Levy Notice*.

With respect to liens, the IRS notifies the taxpayer of the filing of an NFTL as well as the taxpayer's right to request a hearing by sending the taxpayer Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing under IRC 6320*, not more than 5 business days after the filing of the NFTL.⁶

CDP rights include the right to a fair and impartial hearing before Appeals.⁷ Appeals is to be independent of all other IRS offices, and its mission is to resolve Federal tax controversies, without litigation, on a basis that is fair and impartial to both the Federal Government and the taxpayer.

The CDP hearing provisions were designed to allow taxpayers to raise any relevant issue with respect to the levy or lien, including appropriate spousal defenses, challenges to the

¹ I.R.C. § 6331(a). I.R.C. § 6331(d) provides that the taxpayer must be provided at least 30 days' notice prior to the levy.

² I.R.C. §§ 6321 and 6323.

³ I.R.C. § 6323.

⁴ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

⁵ Under certain circumstances, such as tax collection is in jeopardy of not occurring, or State income tax levies, the IRS will not notify the taxpayer before a levy is made or suspend levy actions prior to a hearing.

⁶ The NFTL is a public document that alerts other creditors that the IRS is asserting a secured claim against a taxpayer's asset.

⁷ I.R.C. § 6330(b).

appropriateness of the collection action, and collection alternatives such as offers in compromise or installment agreements.⁸ CDP hearings also give taxpayers an opportunity for an independent review to ensure that the proposed levy or the NFTL that has been filed is warranted and appropriate and that all applicable laws or administrative procedures have been satisfied.⁹ An effective process ensures that statutory and procedural requirements are met and taxpayers' rights are protected.

In general, collection action is suspended for levy CDP hearings during:

- The 30 days a taxpayer has from the Notice of Levy to elect a CDP hearing.
- Throughout the CDP hearing process.
- Throughout any petition for judicial review.¹⁰

On the other hand, Treasury Regulations provide that the IRS may levy during a lien CDP hearing but not during the 30 days a taxpayer has to request the lien CDP hearing.¹¹

The Notice of Lien and Notice of Intent to Levy inform the taxpayer of their legal right to appeal these actions by requesting a CDP hearing. Taxpayers requesting a CDP hearing complete Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, and provide the CDP hearing request to the IRS office on the CDP notice. Taxpayers have five business days plus 30 calendar days after the date of the filing of the NFTL to request a lien hearing and 30 calendar days after the date of the Notice of Intent to Levy to request a levy hearing.

Taxpayers who timely request a CDP hearing are generally granted a hearing. Those electing a CDP hearing after the 30-day request period and within the one-year period commencing the day after the date of the CDP levy notice or the day after the end of the five business-day period following the filing of the NFTL are entitled to an equivalent hearing. An equivalent hearing in most respects is the same as a CDP hearing with the exception that there is no right to seek judicial review from the Appeals notice of determination.¹²

CDP hearing request in Appeals

Upon receipt in Appeals, the hearing request is assigned to an Appeals officer. Appeals issues the taxpayer a contact letter acknowledging receipt of the request for the CDP hearing. This letter provides the taxpayer the opportunity to discuss with Appeals the reasons for their disagreement or to discuss alternatives to the collection action.¹³

At the conclusion of a CDP hearing, Appeals will generally issue a notice of determination to the taxpayer stating whether the disputed lien or levy action is sustained or not sustained. Appeals will issue additional types of notices based on different hearing resolutions. The notices issued are discussed further in this report.

⁸ I.R.C. § 6330(c) and I.R.C. § 6320(c).

⁹ I.R.C. § 6330(c)(1) and I.R.C. § 6320(c).

¹⁰ I.R.C. § 6330(e).

¹¹ Treas. Reg. 301.6320-1(g) Q&A-3.

¹² A hearing request may not always be granted. For example, if the entire CDP request is frivolous or reflects a desire to delay the administration of the Federal tax laws, the taxpayer is not entitled to a hearing.

¹³ Letter 3846, *Appeals Received Your Request for a Collection Due Process Hearing*.

The Treasury Inspector General for Tax Administration (TIGTA) conducts multiple reviews each year, as required, focusing on different aspects of the IRS's implementation of I.R.C. §§ 6320 and 6330.¹⁴ This is our 24th annual audit of taxpayers' appeal rights. This review focuses on whether:

- Levies were issued on taxpayers' property.
- Appeals officers documented prohibited levies in case files.
- Taxpayers who had funds unlawfully levied were refunded the payments or provided consent for the IRS to retain the payments.

Results of Review

Appeals Does Not Review for Prohibited Levies on Tax Modules That Were the Subject of a CDP Hearing

In 93 (90 percent) of the 103 closed lien and levy CDP cases we sampled and reviewed, the IRS placed a prohibited levy on tax modules that were the subject of CDP hearings (hereafter referred to as subject tax modules.) A levy is prohibited if it was placed on a tax module that was the subject of the levy CDP hearing request during the

TIGTA reviewed a sample of 103 closed lien and levy CDP cases and found 93 prohibited levies were placed on taxpayer modules.



CDP hearing process, or if it was placed on a tax module that was the subject of a lien CDP hearing within the 30 calendar days a taxpayer is allowed to request a CDP hearing. We sampled from levy and lien CDP hearing requests identified in the Fiscal Year (FY) 2023 statutory review of liens and the FY 2023 statutory review of levies error populations.¹⁵ We randomly selected and reviewed a stratified sample of 103 closed levy and lien CDP hearing cases consisting of 93 closed levy and 10 closed lien cases.¹⁶

We were advised that the Appeals officer verifies that the taxpayer received timely notice of the lien or levy and will address any issues raised by the taxpayer.¹⁷ This verification process does not include checking to see whether the IRS placed a prohibitive levy on the taxpayer. Accordingly, Appeals officers are not verifying that the IRS is complying with all of the I.R.C.

¹⁴ I.R.C. § 7803(d)(1)(A)(iii) and (iv).

¹⁵ TIGTA, Report No. 2023-30-057, *Fiscal Year 2023 Statutory Review of Compliance With Notice of Federal Tax Lien Filing Collection Due Process Procedures* (Sept. 2023); and TIGTA, Report No. 2023-30-066, *Fiscal Year 2023 Statutory Review of Compliance With Legal Guidelines When Issuing Levies* (Sept. 2023).

¹⁶ Our sample was selected using a 95 percent confidence interval, 5 percent error rate, and ± 5 percent precision factor.

¹⁷ Internal Revenue Manual (IRM) 8.22.4, *Collection Due Process Appeals Program* (May 12, 2022).

requirements pertaining to CDP hearing requests. Specifically, I.R.C. § 6330(e) provides that levy action should be suspended after the taxpayer timely requests a levy CDP hearing.

Appeals does not review the CDP hearing subject tax modules for prohibited collection activity unless the taxpayer explicitly raises the issue

For the 93 closed lien and levy cases in our stratified random sample that had a prohibited levy placed on the subject tax module, 82 of the lien and levy cases required a law and administrative review of the CDP hearing subject tax modules. Of these 82 cases, 80 included statements from the Appeals officer attesting that all legal and administrative requirements had been met. In all 80 cases, the Appeals officers did not verify whether the IRS took prohibitive levy action on the subject tax modules. [REDACTED]

[REDACTED] For the remaining 11 lien and levy cases, 10 taxpayers withdrew their request for a hearing and [REDACTED]

Appeals informed us that its officers are not instructed to review the subject tax modules for prohibited collection action as part of the law and administrative review. The pertinent Appeals Internal Revenue Manual (IRM) requires only a review for administrative items such as laws and procedures relating to the filing of the notices, if there was a valid assessment, and a balance due on the tax module.¹⁸ We believe that this IRM also should pertain to all of the provisions of I.R.C. § 6330(c) that require Appeals to verify "that the requirements of any applicable law or administrative procedure have been met."

To further illustrate its position, Appeals has stated, "...confirming whether a levy action was taken in situations where it is prohibited when it is not raised as an issue by the taxpayer is not a part of this legal and procedural review." [REDACTED]

Appeals officers not being aware of or reviewing for statutory violations when performing the law and administrative reviews on the subject tax module could allow for serious violations of tax law and IRS procedures to go unnoticed. By not conducting a thorough law and administrative review, the result may be a violation of taxpayers' rights. Based on the 82 cases in which Appeals did not verify whether Collection complied with the provisions of I.R.C. § 6330(e), we estimate that 6,510 of levy CDP Appeals cases in our population of 7,815 did not contain a correct verification of the CDP hearing subject tax modules.¹⁹

We disagree with Appeals' position that prohibited collection action should not be reviewed on the subject tax module when conducting the law and administrative review. We believe that the I.R.C. prohibition on levy action for the subject tax module is an applicable law. The onus should be on the IRS and not the taxpayer. In most instances, taxpayers will be unable to raise the issue of a prohibitive levy during their hearing because taxpayers will not always know that levy action was taken.

¹⁸ IRM 8.22.5.4.2 (Aug. 31, 2020).

¹⁹ Our sample was selected using a 95 percent confidence interval, 5 percent error rate, and ±5 percent precision factor. When projecting the results of our statistical sample, we are 95 percent confident that the actual total amount is between 5,943 and 7,077.

For CDP hearings, Appeals should determine whether collection activity has stopped during the law and administrative review, even if the taxpayer does not explicitly raise the issue outside of the request for the CDP hearing.

Appeals relied on Collection to prevent levy action

Appeals officials believe that because transaction codes were designed to prevent collection actions on the CDP hearing subject tax modules, it is rare that the IRS takes prohibited levy action while a case is being appealed. Therefore, it relies on the input of these transaction codes to prevent prohibited levy action on the subject tax modules.

When a timely CDP hearing is requested, Automated Collection System Support or Field Collection inputs the transaction codes on the subject tax module, identifying the beginning date of the collection statute suspension and acting as a “freeze” code preventing the proposed levy from being processed. This moves the subject tax modules out of the collection stream.²⁰ Once posted in the Master File, the transaction code should prevent the IRS from taking prohibited levy action on the subject tax modules until the CDP hearing process is complete.²¹

In the 93 lien and levy cases with prohibited levies, the placement of the transaction codes to indicate the request for a CDP hearing for the subject tax modules were delayed.²² In the three strata sampled, all 90 of the

Automated Levy Program prohibited levies were issued because of the delay in inputting the transaction codes. For the three prohibited levies found in the FY 2023 liens audit, all three also experienced processing delays.

All 93 of the prohibited levies were issued due to a delay in the **input** of transaction codes.



In the FY 2023 levies report, IRS management stated that delays in inputting the CDP hearing requests’ transaction codes caused the violations in the Federal Payment Levy Program, Municipal Tax Levy Program, and Alaska Permanent Fund Dividend Levy Program strata.²³ The Automated Collection System Support employees did not timely input the transaction codes because of an unanticipated high volume of CDP levy hearing requests that outpaced available staffing following the July 2021 restart of the Automated Levy Programs. These programs were suspended during the Coronavirus Disease 2019 Pandemic.

Automated Levy Programs were suspended again in January 2022. The IRS informed us that it is planning a roll out approach to the upcoming restart of the program, unlike the July 2021 restart, in the hopes of mitigating issues such as this.

²⁰ IRM 25.3.8.2 (3) and (4) (Aug 5, 2021). Automated Collection Systems Support is in the Small Business/Self-Employed Division.

²¹ Transaction Code 520 blocks Automated Levy Program levies, the subject of our review, from automatically posting and alerts employees not to issue manual levies.

²² Transaction Code 520 and Transaction Code 971/Action Code 630 indicate a taxpayer has requested a CDP hearing.

²³ These strata are discussed further in Appendix II.

Manager conducted case reviews do not directly address the law and administrative reviews

Our review of the managerial open and closed case review process did not find a direct requirement that a reviewer determine if the law and administrative review was completed and appropriate. Appeals managers can conduct both open and closed Appeals case reviews. Open case reviews occur while the case is in process. Closed case reviews occur after the employee submits the case to the manager for approval.

Manager conducted case reviews **do not require** determination of the law and administrative review being **conducted appropriately.**



Case reviews are intended to provide adequate feedback to and document the performance of employees.²⁴ Appeals managers are required to conduct reviews of sufficient depth to assure the correctness of the action proposed by the Appeals officer, therefore the managers' case reviews should provide adequate feedback to and document performance of their employees.

The Standards for Internal Control in the Federal Government, also known as the Green Book, explains that management should remedy identified internal control deficiencies on a timely basis.²⁵ The IRS should require managers to complete a comprehensive review of CDP cases that would include verifying the Appeals officer completed a thorough law and administrative procedures review. Such a requirement would ensure that managers can identify any weaknesses in the employees' verification of legal and administrative procedures, which may lead to further training on the process and prevention of incorrect reviews.

The Chief, IRS Independent Office of Appeals, should:

Recommendation 1: Establish procedures for Appeals officers to verify and document, as part of the law and administrative review, whether any prohibited levy action was taken on the subject tax modules for which a taxpayer requests a levy CDP hearing.

Management's Response: The IRS partially agreed with this recommendation. Management does not agree that Appeals is required to verify and document, as part of the law and administrative review, whether any prohibited levy action was taken. However, they agree that levies imposed during the period specified in I.R.C. § 6330(e) may result in a violation of taxpayer rights and should be prevented. Appeals plans to work with relevant stakeholders to help develop procedures to address situations in which prohibited levy actions were taken for the taxable periods for which a taxpayer requests a levy CDP hearing under I.R.C. § 6330(b).

Office of Audit Comment: The intent of this recommendation is to enhance the effectiveness of the law and administrative review and to protect taxpayer rights. Appeals employees did not identify prohibited levies taken by the Automated Levy Program when a taxpayer requested a CDP hearing. As a result, we believe Appeals' proposed corrective action to develop procedures with relevant

²⁴ IRM 1.4.28.13.3 (1) (Apr. 19, 2016) and 1.4.28.8 (1) (Aug. 15, 2017).

²⁵ Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

stakeholders to address these situations is inadequate. Further, we disagree with Appeals' position that it is not required to verify and document, as part of the law and administrative review, whether any prohibited levy action was taken. I.R.C. § 6330(c) requires Appeals to verify "that the requirements of any applicable law or administrative procedure have been met."

Recommendation 2: Establish procedures for Appeals managers conducting case reviews to specifically review the law and administrative review performed by the Appeals officer to determine if it was conducted appropriately.

Management's Response: IRS management partially agreed with this recommendation. Any procedures implemented by Appeals in response to Recommendation 1 will be incorporated into the existing manager case review process.

Office of Audit Comment: Although IRS management partially agreed with our recommendation, we believe their corrective actions are inadequate given the concerns stated in our response to management's corrective action for Recommendation 1.

Taxpayers Were Made Whole From Prohibited Levy Payments, but Not All of These Payments Were Documented

In 17 of the 93 cases, the IRS received over \$226,000 in levied funds because of prohibited levies placed on the CDP hearing subject tax modules. In all 17 cases, the taxpayer was "made whole."²⁶ Specifically, 15 taxpayers were refunded the amounts taken and [REDACTED] I.R.C. §§ 6343 (b) and (d) allow for the IRS to return the levy payments when a taxpayer has been wrongfully levied upon or a levy was not in accordance with IRS administrative procedures.²⁷

During the FY 2023 Levy audit, this issue was brought to the IRS's attention. The IRS reviewed the accounts of the impacted taxpayers, identifying 1,339 with erroneous levy payments. It took corrective action by issuing letters to these taxpayers to offer a refund or obtain consent to retain the funds.

Because we obtained our sample from the error population of the FY 2023 Levy audit, we reviewed the 1,339 taxpayers the IRS identified to determine if the 17 taxpayers from our sample were identified by the IRS. [REDACTED]

[REDACTED] The IRS identified payments taken only from the Federal Payment Levy Program and Alaska Permanent Fund Dividend Levy Program. It is possible that other taxpayers who had funds taken due to a prohibited levy were missed by the IRS because it only reviewed the two mentioned levy programs. The IRS should systematically review for taxpayers in our population who may have

²⁶ We considered being made whole as the taxpayer was either refunded the levy payments or in agreement with the taxpayer's payments being applied to another tax module with a balance.

²⁷ The IRS is not to pay interest in these instances.

had funds taken with a designated payment code other than that of the Federal Payment Levy Program or Alaska Permanent Fund Dividend Levy Program.

Case Activity Reports did not always document when funds were levied from taxpayers

For the 17 cases involving levied funds, only [REDACTED]

[REDACTED] According to the IRM, Appeals employees use the Case Activity Report to record information on decisions or actions taken on the case and case activities.²⁸

Some examples of actions taken on a case that should be recorded are when a levy prohibited by statute or policy is placed on the case or funds are taken from the taxpayer because of the levy. Documenting these actions in the Case Activity Report would benefit the IRS and be considered a good business practice.

Recommendation 3: The Commissioner, Small Business/Self-Employed Division, should systemically review for taxpayers in our population who may have had funds taken with a designated payment code other than that of the Federal Payment Levy Program or Alaska Permanent Fund Dividend Levy Program and who were not made whole.

Management's Response: IRS management partially agreed with this recommendation. The Small Business/Self-Employed Division agreed to review taxpayers in TIGTA's population who had funds levied due to prohibited paper levies and take additional action where appropriate.

Office of Audit Comment: While IRS management partially agreed with our recommendation, we believe their corrective action meets the intent of our recommendation.

Recommendation 4: The Chief, IRS Independent Office of Appeals, should require for CDP hearings that prohibited levies are recorded in the Case Activity Reports.

Management's Response: IRS management agreed with this recommendation. Appeals plans to update internal guidance to require recordation in the Case Activity Record of any known prohibited levy action taken for the tax periods for which a taxpayer requests a hearing under I.R.C. § 6330(b).

²⁸ IRM 8.1.3.3.7 (2) (Dec. 16, 2011).

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether the IRS complied with select provisions of I.R.C. §§ 6320 and 6330 when taxpayers exercised their right to appeal the filing of an NFTL or the issuance of a Notice of Intent to Levy. To accomplish our objective, we:

- Held discussions with the Independent Office of Appeals on the applicable policies and procedures related to CDP hearings.
- Selected a stratified random sample from the 7,615 known exception levy cases found in the FY 2023 TIGTA Liens and Levies audits. TIGTA's contracted statistician assisted with developing the sampling plan and projections. We reviewed 103 of the 7,615 closed CDP cases.¹
- Determined whether Appeals complied with applicable provisions of I.R.C. §§ 6320 and 6330 and the IRM by confirming:
 - The levies posted to the taxpayer's account followed the provisions of I.R.C. §§ 6320 and 6330 and the IRM.
 - The Appeals officer obtained verification that the requirements of all applicable laws or administrative procedures were met in I.R.C. §§ 6320(c) and 6330(c)(1).
 - The Appeals officer made a determination after considering any levy action taken after the taxpayers' timely request for a CDP hearing with provisions of I.R.C. §§ 6320(c) and 6330(c)(3).
- Determined if taxpayers had funds taken by the IRS because of a prohibited levy and if the taxpayers were made whole.

Performance of This Review

This review was performed with information obtained from the IRS Independent Office of Appeals located in Washington, D.C., during the period November 2023 through June 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Phyllis Heald London, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Timothy Greiner, Director; Eugenia Smoak, Audit Manager; Michele Strong, Lead Auditor; and Angela Dyson, Senior Auditor.

¹ Our sample was selected using a 95 percent confidence interval, 5 percent error rate, and ± 5 percent precision factor.

Validity and Reliability of Data from Computer-Based Systems

For this review, we relied on tests performed in the FY 2023 liens and levies audits. We obtained and reviewed the data reliability assessments from each audit and found the data reliable for the purposes of this review.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the policies and procedures requiring Appeals officers to verify and document that all the laws and provisions of I.R.C. §§ 6320 and 6330 and the IRM were met. We evaluated these controls via our case reviews.

Appendix II

Information on the Populations and Samples Taken From Fiscal Year 2023 Audits

Levy CDP hearings requested under I.R.C. § 6330

In TIGTA's FY 2023 audit of the IRS's compliance with the suspension of levies during CDP hearings, focusing on I.R.C. § 6330, we found that the IRS erroneously took levy actions by issuing systemic levies while a CDP levy hearing was pending. The following Automated Levy Programs issued levies to 10,095 taxpayers:

- The Federal Payment Levy Program attaches to Federal disbursements due to an individual or business, such as Federal wages, retirement, vendor/contractor payments, and Social Security.
- The Municipal Tax Levy Program attaches to participating local municipal income tax refunds.
- The Alaska Permanent Fund Dividend Levy Program attaches to the Permanent Fund Dividend distributed by the State of Alaska.

The Federal Payment Levy Program, Municipal Tax Levy Program, and Alaska Permanent Fund Dividend Levy Program cases made up three of the five strata in our sample. We reviewed 76, 12, and 5 cases for the three strata, respectively. We found that a prohibited levy was placed on the tax module in 90 cases of the 93 reviewed. The 90 cases are a violation of I.R.C. § 6330.

Lien CDP hearings requested under I.R.C. § 6320

TIGTA's FY 2023 audit of the IRS's compliance with legal and administrative guidelines on CDP lien notices focused on I.R.C. § 6320. TIGTA systemically identified cases in which Automated Levy Program levies were issued to 1,214 taxpayers during the period in which they had the right to request a hearing under I.R.C. § 6320, within 30 calendar days after the lien notice was sent for a tax period.

Although, the I.R.C. allows the IRS to levy during lien CDP hearings, prior to April 2024, the IRS's policy was not to levy during lien CDP hearings. The FY 2023 Levy audit identified 91 taxpayers who were levied on during the CDP hearing process. Until April 2024, the IRS policy stated:

- If the taxpayer files a timely appeal during the I.R.C. § 6330 notice period, levy actions, except in certain situations, must be suspended during the appeal period and during any further appeals to Tax Court.¹ *Levy action also must be suspended during the period in which the taxpayer has a right to request a hearing under I.R.C. 6320 or 6330.* [emphasis added]

¹ The situations are jeopardy situations, levies on State income tax refunds, Disqualified Employment Tax Levies, or Federal Contractor Collection Due Process.

Review of the IRS Independent Office of Appeals Collection Due Process Program

- When a taxpayer files a timely request for a CDP hearing during the I.R.C. § 6320 notice period, levy actions are not required to be suspended. *However, as a general rule, levy action is suspended pending the Appeals determination on the NFTL.* [emphasis added]²

The final two strata for our sample consisted of cases in which: 1) a lien CDP hearing request was filed timely (5 cases), or 2) the time frame was still open when a taxpayer could request a lien CDP hearing (5 cases). In these 10 lien CDP hearing cases, we found 3 with a prohibited levy. Accordingly, taking levy action in these cases was a violation of I.R.C. § 6320 because the IRS levied during the time frame the taxpayers could still request a CDP hearing.

Using the 11,400 total taxpayers identified in these two reviews, we obtained a population of the taxpayers who requested a CDP hearing, and the case was closed in Appeals by the end of FY 2023. Our population consisted of 7,815 closed levy and lien CDP cases from which we randomly selected 103 cases, in the five separate strata provided in Figure 1.

Figure 1: Strata Information and Results by Taxpayer

Strata	Total Error Count from FY 2023 Audits	Population	Sample Size	Prohibited Levy Action Found
Federal Payment Levy Program	8,617	6,545	76	75
Municipal Tax Levy Program	1,398	1,055	12	10
Alaska Permanent Fund Dividend Levy Program	80	71	5	5
Lien CDP Hearing was Requested Timely	91	89	5	3
Right to Request Lien CDP Hearing Open	1,214	55	5	0
Totals	11,400	7,815	103	93

Source: TIGTA Strata Samples for the audit.

² IRM 5.19.8.4.6 (Aug. 5, 2016).

Appendix III

Management's Response to the Draft Report



CHIEF, INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 6, 2024

MEMORANDUM FOR DANNY R. VERNEUILLE
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Elizabeth P. Askey Digitally signed by Elizabeth P. Askey
Date: 2024.09.06
16:01:31 -04'00'
Elizabeth P. Askey
Acting Chief, IRS Independent Office of Appeals

SUBJECT: Draft Report – Fiscal Year 2024 – Review of the IRS Independent Office of Appeals Collection Due Process Program (Audit #2024300024)

Thank you for the opportunity to review and respond to the draft report on the Collection Due Process (CDP) program in the Independent Office of Appeals (Appeals). We recognize the importance of a fair and impartial review of collection actions and are proud of our role in protecting taxpayer rights.

As part of the audit, TIGTA reviewed 103 levy CDP hearing requests selected from a population of cases with known errors identified during the Fiscal Year 2023 statutory review of liens and levies. From that review TIGTA identified levy action on certain taxpayer modules, caused by the untimely input of certain freeze codes by Collection employees. These prohibited levies were the byproduct of the unanticipated volume of CDP levy requests directly related to the restart of the Automated Levy Programs during the Coronavirus Pandemic.

Appeals shares TIGTA's concerns. But we believe any solution demands a comprehensive approach that takes into account the causes of prohibited levies, as well as available remedies, neither of which directly involves Appeals. However, we are committed to working with relevant stakeholders to develop effective and efficient processes that prevent, identify, and correct prohibited levies.

As noted in the draft report, Appeals is statutorily required to obtain verification that the applicable laws and administrative procedures were met for issuing the lien or levy notice at issue in the CDP hearing. While we do not believe the statute requires Appeals to conduct the extensive review and legal determinations that may be required to determine whether a levy is prohibited under IRC section 6330(e), we agree with TIGTA that Appeals can assist with developing a solution.

We appreciate your recommendations on how Appeals can play a greater role in ensuring taxpayers' rights are protected. Our specific responses to your recommendations are attached.

If you have any questions, please have a member of your staff contact Patrick E. McGuire, Acting Director, Case and Operations Support at (503) 265-3755.

Attachment

Review of the IRS Independent Office of Appeals Collection Due Process Program

Attachment

Recommendation 1:

The Chief, Appeals, IRS Independent Office of Appeals, should establish procedures for Appeals officers to verify and document, as part of the law and administrative review, whether any prohibited levy action was taken on the subject tax modules for which a taxpayer requests a Levy CDP hearing.

Proposed Corrective Action:

The IRS Independent Office of Appeals partially agrees with this recommendation. While we don't agree Appeals is required to verify and document, as part of the law and administrative review, whether any prohibited levy action was taken, we agree that levies imposed during the period specified in IRC section 6330(e) may result in a violation of taxpayer rights and should be prevented. We will work with relevant stakeholders to help develop procedures to address situations where prohibited levy action was taken for the taxable periods for which a taxpayer requests a levy CDP hearing under IRC section 6330(b).

Implementation Date: October 15, 2025

Responsible Official: Director, Case and Operations Support, IRS Independent Office of Appeals

Recommendation 2:

The Chief, Appeals, IRS Independent Office of Appeals, should establish procedures for Appeals managers conducting case reviews to specifically review the law and administrative review performed by the Appeals officer to determine if it was conducted appropriately.

Proposed Corrective Action:

The IRS Independent Office of Appeals partially agrees with this recommendation. Any procedures implemented by Appeals in response to Recommendation 1 will be incorporated into the existing manager case review process.

Implementation Date: February 15, 2026

Responsible Official: Director, Case and Operations Support, IRS Independent Office of Appeals

Recommendation 3:

The Commissioner, Small Business/Self-Employed Division, should systemically review for taxpayers in our population who may have had funds taken with a designated payment code other than that of the Federal Payment Levy Program and/or Alaska Permanent Fund Dividend Levy Program and who were not made whole.

Review of the IRS Independent Office of Appeals Collection Due Process Program

Proposed Corrective Action: SB/SE partially agrees with this recommendation. SE/SE agrees to review taxpayers in TIGTA's population who had funds levied due to prohibited paper levies and take additional action where appropriate.

Implementation Date: March 15, 2025

Responsible Official: Director, Collection Policy, Small Business/Self Employed

Recommendation 4:

The Chief, Appeals, IRS Independent Office of Appeals, should require for CDP hearings that prohibited levies are recorded in the Case Activity Reports.

Proposed Corrective Action:

The IRS Independent Office of Appeals agrees with this recommendation. We will update internal guidance to require recordation in the Case Activity Record of any known prohibited levy action taken for the taxable periods for which a taxpayer requests a hearing under IRC section 6330(b).

Implementation Date: June 15, 2025

Responsible Official: Director, Case and Operations Support, IRS Independent Office of Appeals

Appendix IV

Abbreviations

CDP	Collection Due Process
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NFTL	Notice of Federal Tax Lien
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.