



*Review of the Office of Appeals
Collection Due Process Program*

August 28, 2014

Reference Number: 2014-10-049

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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1 = Tax Return/Return Information

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HIGHLIGHTS

REVIEW OF THE OFFICE OF APPEALS COLLECTION DUE PROCESS PROGRAM

Highlights

Final Report issued on August 28, 2014

Highlights of Reference Number: 2014-10-049
to the Internal Revenue Service Chief of
Appeals.

IMPACT ON TAXPAYERS

The Collection Due Process Program was designed to allow taxpayers a process for exercising their rights to appeal when the IRS files a lien or a notice of intent to levy against them. An effective process is necessary to ensure that statutory requirements are met and taxpayers' rights are protected.

WHY TIGTA DID THE AUDIT

This audit was initiated because TIGTA is statutorily required to determine whether the IRS complied with the provisions of 26 United States Code Sections 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or the issuance of a Notice of Intent to Levy.

WHAT TIGTA FOUND

This year's audit continues to identify the same deficiencies in the IRS's processing of Collection Due Process cases as previously reported. Specifically, the Office of Appeals did not always classify taxpayer requests properly and, as a result, some taxpayers received the wrong type of hearing. In its two statistically valid samples, TIGTA identified eight taxpayer cases that were misclassified. This is an increase from the six misclassified taxpayer cases that were identified in the prior year's review.

In addition, TIGTA continued to identify errors relating to the determination of the Collection Statute Expiration Date on taxpayer accounts. From a statistically valid sample, TIGTA identified 12 taxpayer cases that had an incorrect Collection Statute Expiration Date. For the 12 taxpayer cases identified, ***1****

*****1*****
*****1*****

*****1*****
*****1*****
*****1*****
*****1*****

TIGTA also found that Appeals personnel did not always document their impartiality statement in final hearing notification letters issued to taxpayers. TIGTA identified that in 23 of the 132 taxpayer cases reviewed, the IRS did not have the required impartiality statement documented in the waiver and withdrawal letters sent to taxpayers.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief, Appeals, should review misclassified cases and determine if there are process improvements or additional training areas that can be emphasized to ensure that taxpayer cases are classified correctly. Additionally, the Chief, Appeals, should consider evaluating whether Collection Due Process notices are clear and provide the proper directions for taxpayers to follow in sending their hearing requests to the IRS. TIGTA also recommended that the Chief, Appeals, correct the taxpayer accounts that were identified with Collection Statute Expiration Date errors.

The IRS agreed with the recommendations. The IRS plans to review the cases TIGTA identified and, if appropriate, update the previously developed Collection Due Process Timeliness training. The IRS plans to meet with Collection function management and the Office of Taxpayer Correspondence to discuss the lien and levy Collection Due Process notices, and plans to review and correct the taxpayer accounts TIGTA identified.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 28, 2014

MEMORANDUM FOR CHIEF, APPEALS

FROM:

Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Review of the Office of Appeals Collection Due Process Program (Audit # 201410002)

This report presents the results of our statutory review of the Office of Appeals Collection Due Process Program. The overall objective of this review was to determine whether the Internal Revenue Service (IRS) complied with 26 United States Code Sections 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. This audit is part of our Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VIII.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



Table of Contents

Background	Page 1
Results of Review	Page 3
Some Taxpayers Did Not Receive the Appropriate Type of Hearing	Page 3
<u>Recommendations 1 and 2:</u>	Page 4
The Collection Statute Expiration Date Was Not Always Computed Correctly	Page 5
<u>Recommendation 3:</u>	Page 6
Hearing Officers Did Not Always Document Their Impartiality As Required.....	Page 6
Appendices	
Appendix I – Detailed Objective, Scope, and Methodology	Page 9
Appendix II – Major Contributors to This Report	Page 11
Appendix III – Report Distribution List	Page 12
Appendix IV – Outcome Measures.....	Page 13
Appendix V – Collection Due Process Procedures.....	Page 17
Appendix VI – Time Periods for Collection Due Process and Equivalent Hearings	Page 20
Appendix VII – Prior Mandatory Collection Due Process Audit Reports	Page 21
Appendix VIII – Management’s Response to the Draft Report	Page 22



Review of the Office of Appeals Collection Due Process Program

Abbreviations

CDP	Collection Due Process
CSED	Collection Statute Expiration Date
EH	Equivalent Hearing
FY	Fiscal Year
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



Background

When initial contacts by the Internal Revenue Service (IRS) do not result in the successful collection of unpaid tax, the IRS has the authority to attach a claim to a taxpayer's assets with a Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320* (lien).¹ The IRS also has the authority to seize or levy a taxpayer's property, such as wages or bank accounts, to satisfy a taxpayer's debt.² However, before a levy can be placed on a taxpayer's account, the IRS must issue the taxpayer a Letter 11 or Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy).

In January 1996, Congress modified collection activity provisions that allowed taxpayers to appeal the filing of a lien and proposed or actual levies.³ Further, Congress enacted legislation to protect taxpayers' rights in the IRS Restructuring and Reform Act of 1998, which gave taxpayers the right to a hearing with the Office of Appeals (Appeals) under the Collection Due Process (CDP)⁴ provisions.⁵ The Office of Appeals is independent of other IRS offices, and its mission is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both the Federal Government and the taxpayer.

When a taxpayer timely requests an Appeals hearing regarding the filing of a lien or the issuance of a Notice of Intent to Levy, the taxpayer is granted a CDP hearing. However, if the taxpayer's request for a CDP hearing is not received within the allotted time, usually within 30 calendar days, the taxpayer, at the discretion of Appeals, may be granted an Equivalent Hearing (EH). The taxpayer must request an EH within one year of the issuance of the Notice of Intent to Levy or the filing of a lien. Taxpayers have the right to petition the U.S. Tax Court if they disagree with Appeals' decision on a CDP hearing, which is not afforded to those taxpayers who are granted an EH.

When Appeals makes a final decision on a taxpayer's case, the hearing officer will generally issue one of the following:

- Determination Letter 3193 – *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330.*

¹ 26 United States Code (U.S.C.) § 6321.

² 26 U.S.C. § 6331.

³ Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

⁴ See Appendix V for an explanation of the CDP and EH procedures.

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



Review of the Office of Appeals Collection Due Process Program

- Decision Letter 3210 – *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330.*
- Waiver Letter 4382 – *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing.*
- Withdrawal Letter 4383 – *Withdrawal of Request for Collection Due Process or Equivalent Hearing.*

Waiver Letter 4382 is used when the taxpayer and the IRS agree on a viable collection alternative.⁶ Withdrawal Letter 4383 is used when the taxpayer has reached a resolution with the IRS regarding the tax and tax periods and he or she is otherwise satisfied that a hearing with Appeals is no longer needed. During Fiscal Year (FY) 2013, Appeals closed 39,419 CDP and 8,773 EH taxpayer cases.

The Treasury Inspector General for Tax Administration (TIGTA) is required to determine annually whether the IRS complied with legal guidelines and procedures for the filing of a lien or a Notice of Intent to Levy and the rights of the taxpayer to appeal these actions.⁷ This is our fourteenth annual audit of taxpayer appeal rights.

The period for this year's audit covered CDP and EH taxpayer cases closed between October 1, 2012, and September 30, 2013. This review was performed by contacting Appeals personnel in Baltimore, Maryland; St. Paul, Minnesota; and Syracuse, New York, during the period October 2013 through May 2014. 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. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

⁶ A Form 12257 Waiver is a signed agreement between the taxpayer and the IRS wherein the taxpayer waives the right to a judicial review and waives the suspension of collection action. For example, these taxpayers may have agreed to an installment agreement, offer in compromise, or other collection alternative.

⁷ 26 U.S.C. §§ 7803(d)(1)(A)(iii) and (iv) (Supp. III 2000).



Results of Review

Some Taxpayers Did Not Receive the Appropriate Type of Hearing

We identified eight taxpayer cases (*****1*****) that were misclassified in our two statistically valid samples of 64 CDP and 68 EH taxpayer cases. This is an increase from the six misclassified taxpayer cases that we identified in our prior review.⁸

*****1*****
*****1*****.⁹ *****
*****1*****
*****1*****
*****1*****.

CDP provisions allow taxpayers the right to petition the U.S. Tax Court if they disagree with Appeals' final determination or decision, whereas an EH does not provide this right. ***1***
*****1*****, we project from the total population that an estimated 1,232 out of 39,419 taxpayer cases may have incorrectly received a CDP hearing during FY 2013 instead of an EH as required.¹⁰

In addition, *****1*****
*****1*****
*****1***** we project from the total population that 387 of 8,773 taxpayer cases may have been received timely for a CDP hearing but were incorrectly processed as late, and the taxpayers were not appropriately provided taxpayer rights and privileges associated with a CDP hearing.¹¹

In the other *****1*****
*****1*****
*****1*****
*****1*****
*****1*****, we project from the total population that an

⁸ TIGTA, Ref. No. 2013-10-103, *The Office of Appeals Continues to Experience Difficulties in the Handling of Collection Due Process Cases* (Sept. 2013).
⁹ *****1*****.
¹⁰ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 220 taxpayers and 3,750 taxpayers.
¹¹ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 106 taxpayers and 966 taxpayers.



Review of the Office of Appeals Collection Due Process Program

estimated 387 of 8,773 taxpayer cases may have been inappropriately granted an EH even though the request was made more than one year after the notice was issued.¹²

Appeals management agreed with our analysis and indicated that the eight taxpayer cases were misclassified due to incorrect judgment on the part of hearing officers. Appeals acknowledged that sometimes hearing officers made wrong decisions when classifying cases because facsimile dates were illegible and documents were missing from the file. Appeals management also stated that taxpayers may have been confused by collection notices regarding where to send their requests for hearings¹³ and that the IRS could consider clarification of the request collection notices.

In a previous review, we recommended that Appeals management provide refresher training to Appeals personnel to reemphasize the process to follow when determining whether a taxpayer is entitled to a CDP hearing or an EH.¹⁴ Appeals Management agreed with our recommendation and developed a refresher class on the topic of determining timeliness of CDP and EH requests. As of September 4, 2013, the class was available as an optional Continuing Professional Education topic to Appeals technical employees who work CDP cases.

Recommendations

The Chief, Appeals should:

Recommendation 1: Review the eight misclassified cases and determine if there are process improvements or additional training areas that can be emphasized to ensure that taxpayer CDP and EH cases are classified correctly.

Management's Response: IRS management agreed with this recommendation and stated that they will review the identified cases and, if appropriate, will update the previously developed CDP Timeliness training for Appeals technical employees who work CDP cases.

Recommendation 2: Consider working with Collection function management and the IRS Office of Taxpayer Correspondence¹⁵ to ensure that lien and levy notices are clear and provide the proper directions for taxpayers to follow in sending their hearing requests to the IRS.

¹² The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 106 taxpayers and 966 taxpayers.

¹³ Form 12153, *Request for a Collection Due Process or Equivalent Hearing* (Rev. 12-2013).

¹⁴ TIGTA, Ref. No. 2012-10-077, *Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist* (Jul. 2012).

¹⁵ The Office of Taxpayer Correspondence is the IRS hub for comprehensive correspondence that provides consistency, quality, and plain language for notices and letters with the goal of helping taxpayers take the appropriate action to resolve their tax issues.



Management's Response: IRS management agreed with this recommendation and stated that they plan to meet with Collection function management and the Office of Taxpayer Correspondence to discuss the lien and levy CDP notices owned by the Collection function.

The Collection Statute Expiration Date Was Not Always Computed Correctly

We also identified 12 taxpayer cases (*****1*****) that had an incorrect Collection Statute Expiration Date (CSED) in our two statistical samples. *****1*****
*****1*****
*****1*****, we project a total of 4,311 of the 39,419 CDP taxpayer cases closed in FY 2013 may have an incorrect CSED and taxpayer cases had time extended in error.¹⁶ *****1*****
*****1*****, we project a total of 1,232 of the 39,419 CDP taxpayer cases closed in FY 2013 for which the collection time was inappropriately shortened.¹⁷

Although the IRS should not extend or shorten the CSED for EH cases in Appeals, ***1****
*****1*****
*****1*****, we project a total of 129 of the 8,773 EH taxpayer cases closed in FY 2013 may have an incorrect CSED because the IRS inappropriately extended the date in error.¹⁸ *****1*****
*****1*****, we project a total of 258 EH taxpayer cases closed in FY 2013 had an incorrect CSED and the collection time was inappropriately shortened.¹⁹ Further, the number of CSED errors has slightly decreased from the last review, in which we identified a total of 14 CSED errors.²⁰

The IRS generally has 10 years from the date of assessment to collect a liability owed by a taxpayer. The final date to collect is referred to as the CSED. Because the IRS usually stops collection activity during the Appeals process, the CSED is temporarily suspended during a CDP hearing. However, the CSED should not be suspended for an EH hearing. Specifically, the IRS

¹⁶ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 2,068 taxpayer accounts and 7,712 taxpayer accounts.

¹⁷ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 220 taxpayer accounts and 3,750 taxpayer accounts.

¹⁸ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between seven taxpayer accounts and 1,620 taxpayer accounts.

¹⁹ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 46 taxpayer accounts and 787 taxpayer accounts.

²⁰ TIGTA, Ref. No. 2013-10-103, *The Office of Appeals Continues to Experience Difficulties in the Handling of Collection Due Process Cases* (Sept. 2013).



Review of the Office of Appeals Collection Due Process Program

suspends the 10-year statute of limitations from the date of the CDP hearing request until the date the Appeals determination is made final or the date the IRS receives the taxpayer's withdrawal request.

When the IRS suspends the collection statute for a period longer than its policy allows, it potentially violates taxpayer rights. Conversely, when the CSEDs are incorrectly shortened, the IRS has less time to collect delinquent taxes, which could cause a potential loss of tax revenue. Incorrect CSED dates resulted from IRS employees incorrectly calculating the suspension start or stop date.²¹ Our review identified that the code needed to designate the start of the collection statute suspension was not always input correctly or the suspension end date was incorrect. The statute suspension is systemically controlled on the Integrated Data Retrieval System.²² One code is entered to start the suspension, and another is entered to stop the suspension and restart the statute period. Generally, the code input to suspend the collection statute is entered by the Collection function; however, in certain instances, Appeals personnel are responsible for the input. Upon completion of each CDP hearing, Appeals is responsible for entering the code to remove the suspension of the statute period. The Integrated Data Retrieval System will systemically recalculate the CSED based on the dates entered for the two codes (which reflect the length of the Appeals hearing plus expiration of the time period for seeking judicial review or the exhaustion of any rights to appeal following judicial review).

Appeals management agreed with the number of CSED exceptions and informed us that they plan to correct the accounts of those taxpayers with incorrect CSEDs.

Recommendation

Recommendation 3: The Chief, Appeals, should review and correct the 12 taxpayer accounts that we identified with CSED errors.

Management's Response: IRS management agreed with this recommendation and stated that they will review the identified accounts and all Transaction Code 520 and 521 errors will be corrected.

Hearing Officers Did Not Always Document Their Impartiality As Required

During this review, we identified that 23 of the 132 taxpayer cases in our two statistically valid samples did not have the required impartiality statement documented in the waiver and

²¹ The statute of limitations is suspended from the date the IRS receives a timely filed request for a CDP hearing to the date the taxpayer's withdrawal is received by the IRS or the date the determination from Appeals becomes final, including any court appeals.

²² The IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.



Review of the Office of Appeals Collection Due Process Program

withdrawal letters sent to taxpayers. We identified seven CDP cases for which the impartiality statement was not documented on the Waiver Letter 4382 and nine cases for which the impartiality statement was not documented on the Withdrawal Letter 4383. We also identified seven EH cases for which the impartiality statement was not documented on the Withdrawal Letter 4383. The Waiver letter is issued at the conclusion of a CDP hearing or EH when an agreement is reached and the taxpayer waives the right to a judicial review. The Withdrawal letter is issued when a taxpayer no longer wishes to participate in the CDP hearing or EH and withdraws his or her request for an appeal.

The 23 errors we identified represent an increase from our prior review, which identified 13 taxpayer cases without an impartiality statement documented as required.²³ We project that 9,855 of the 39,419 CDP taxpayer cases may not contain the required impartiality statement.²⁴ Additionally, we project that 903 of the 8,773 EH taxpayer cases closed in FY 2013 may not contain the required impartiality statement.²⁵ However, we found that hearing officers properly documented the impartiality statement in the Case Activity Records as well as the CDP Notices of Determination and the EH Decision Letters issued to the taxpayers for all of the taxpayer cases we reviewed.²⁶

The law requires that a CDP hearing be conducted by an impartial hearing officer who has had no prior involvement with the unpaid tax.²⁷ In addition, the Appeals Internal Revenue Manual extends this requirement to all hearing officers, including those working EH cases. The Internal Revenue Manual specifies that each hearing officer must document “no prior involvement” in the Case Activity Record during the initial analysis of the taxpayer’s appeal. In addition, hearing officers are also required to document their impartiality in the letters and waivers issued to taxpayers at the conclusion of the appeal. Including impartiality statements in Appeals closing correspondence ensures that taxpayers understand that their requests are reviewed by an impartial hearing officer. However, by not including the required statements in some of the notification letters, the IRS inadequately documented that assurance of impartiality to some taxpayers.

Appeals management agreed with the number of errors regarding documentation of impartiality. They informed us that they are taking steps to update the Appeals Centralized Database System²⁸ to systemically generate updated versions of Waiver Letter 4382 and Withdrawal Letter 4383

²³ TIGTA, Ref. No. 2013-10-103, *The Office of Appeals Continues to Experience Difficulties in the Handling of Collection Due Process Cases* (Sept. 2013).

²⁴ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 6,446 taxpayers and 13,978 taxpayers.

²⁵ The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 433 taxpayers and 1,620 taxpayers.

²⁶ The IRS is required by statute to issue a Determination Letter 3193 at the conclusion of a CDP hearing.

²⁷ 26 U.S.C. §§ 6320 and 6330(b)(3).

²⁸ The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.



Review of the Office of Appeals Collection Due Process Program

that contain the impartiality statement. Appeals management also stated they have submitted Appeals Work Requests to update the letters, but programming has not been completed due to higher resource priorities. They also informed us that they have disabled the old versions of Waiver Letter 4382 and the Withdrawal Letter 4383 on their website and now refer the employees to their published catalogue of letters for the updated versions of those letters. We are not making a recommendation at this time since Appeals management has already taken steps to address the notification issue.



Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with 26 U.S.C. Sections (§§) 6320(b) and (c) and 6330(b) and (c) when taxpayers exercised their rights to appeal the filing of a Notice of Federal Tax Lien or issuance of a Notice of Intent to Levy. To accomplish this objective, we:

- I. Determined whether any new procedures or processes have been developed since the prior TIGTA statutory review.
- II Selected a statistically valid sample of closed CDP and EH taxpayer cases, obtained the Appeals case and IRS Administrative files, and determined whether Appeals had completed case files.¹
 - A. Obtained an extract of the Appeals Centralized Database System² file maintained at TIGTA's Data Center Warehouse³ of 39,419 CDP and 8,773 EH taxpayer cases closed during FY 2013 (October 1, 2012, through September 30, 2013). We evaluated the sufficiency and reliability of the electronic data received from the IRS to ensure that the data field descriptions were accurately stated.
 - B. We validated the extract by reviewing the appropriateness of data within fields requested and comparing population totals to information obtained from Appeals officials.
 - C. Selected and secured closed CDP and EH taxpayer cases for our two statistical samples. We reviewed statistical samples of 64 CDP taxpayer cases (population of 39,419) and 68 EH taxpayer cases (population of 8,773). We used a confidence level of 90 percent, a precision level of ± 6 percent, and an expected error rate of 10 percent to determine these sample sizes. We discussed our sampling methodology with our contracted statistician, who reviewed our projections.

¹ TIGTA's sampling methodology is based on a closed CDP/EH statistical sample case review. Our review of sample cases was to determine whether Appeals' treatment of taxpayers was in compliance with laws and regulations and not to determine or evaluate the appropriate attributes of liens or levies applied by the IRS.

² The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.

³ The TIGTA Data Center Warehouse is a secured centralized storage of IRS database files used to maintain critical historical data that have been extracted from operational data storage and transformed into formats accessible to TIGTA employees.



Review of the Office of Appeals Collection Due Process Program

- D. Determined the number of taxpayer cases in our statistical samples for which TIGTA was unable to obtain an Administrative or Collection closed case file to make a determination of whether Appeals complied with U.S.C. §§ 6320 and/or 6330.
- III. Determined whether Appeals CDP and EH taxpayer cases were classified correctly using the CDP and the EH statistical samples reviewed in Step II.C. We also determined whether the CSED was calculated correctly on the taxpayer's account on the Integrated Data Retrieval System⁴ based on the type of hearing granted for the 132 sample cases we reviewed.
- IV. Determined whether Appeals was in compliance with 26 U.S.C. §§ 6320(b) and (c) and 6330(b) and (c) using the CDP and the EH statistical samples selected in Step II.C by reviewing case file information to determine whether Appeals documented that the taxpayer was provided with an impartial hearing officer or waived this requirement [26 U.S.C. §§ 6320(b)(3) and 6330(b)(3)].

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 status of policies and procedures in the CDP program and the IRS policies and procedures for classifying CDP and EH taxpayer cases, ensuring hearing officers met the criteria specified in 26 U.S.C. §§ 6320 and 6330, and reviewing applicable computer codes on the Integrated Data Retrieval System for CDP and EH taxpayer cases. We evaluated these controls by selecting a statistical sample of CDP and EH taxpayer cases, reviewing documentation, and discussing potential exceptions with Appeals officials.

⁴ The IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.



Appendix II

Major Contributors to This Report

Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations)

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Chief, Appeals AP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL: LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Chief, Appeals AP



Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 1,232 taxpayer cases contain CDP hearing requests that were received late and were not properly classified as an EH case (see page 3).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System¹ and identified a population of 39,419 CDP taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 64 CDP taxpayer cases and found that *****1***** of the taxpayer cases in the population (1,232 taxpayer cases) may have contained misclassified CDP taxpayer requests. When CDP taxpayer cases are misclassified, taxpayers receive hearing rights to which they are not legally entitled. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.56 percent and 9.51 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 387 taxpayer cases contain EH requests that were received timely and were not properly classified as a CDP case (see page 3).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 8,773 EH taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 68 EH taxpayer cases and found that *****1***** of the taxpayer cases in the population (387 taxpayer cases) may have contained misclassified EH taxpayer requests. When EH taxpayer cases are misclassified, taxpayers do not receive

¹ The Appeals Centralized Database System is a computerized case control system used to control and track cases throughout the appeals process.



Review of the Office of Appeals Collection Due Process Program

hearing rights to which they are legally entitled. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.21 percent and 11.01 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 387 taxpayer cases contain EH requests that were received more than one year after the Notice of Intent to Levy and/or Lien Notices were issued and were inappropriately provided an EH (see page 3).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified 8,773 EH taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 68 EH taxpayer cases and found that *****1***** of the taxpayer cases in the population (387 taxpayer cases) may have contained misclassified taxpayer requests for which Appeals may have improperly provided an EH. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 1.21 percent and 11.01 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 4,311 taxpayer cases in which taxpayers had CDP CSEDs that were inappropriately extended longer than the length of the hearing (see page 5).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 39,419 CDP taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 64 CDP taxpayer cases and found that *****1***** of the taxpayer cases in the population (4,311 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED extended in error for a taxpayer case provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 5.25 percent and 19.57 percent.



Type and Value of Outcome Measure:

- Increased Revenue – Potential; 1,232 taxpayer cases indicated taxpayers had CDP CSEDs that were not correctly extended for the length of the CDP hearing (see page 5).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 39,419 CDP taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 64 CDP taxpayer cases and found that *****1***** of the taxpayer cases in the population (1,232 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED shortened in error for a taxpayer case provides the IRS less time than legally allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.56 percent and 9.51 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 129 taxpayer cases in which EH taxpayers had an incorrect CSED posted to their taxpayer accounts (see page 5).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 8,773 EH taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 68 EH taxpayer cases and found that *****1***** of the taxpayer cases in the population (129 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED extended in error for a taxpayer case provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.08 percent and 18.47 percent.

Type and Value of Outcome Measure:

Increased Revenue – Potential; 258 taxpayer cases in which EH taxpayers had an incorrect CSED posted to their taxpayer accounts (see page 5).

Methodology Used to Measure the Reported Benefit:

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 8,773 EH taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 68 EH taxpayer cases and found that *****1***** of the taxpayer cases in the population (258 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED extended in error for a taxpayer case provides the IRS more time than legally allowed to collect the delinquent taxes. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.08 percent and 18.47 percent.



Review of the Office of Appeals Collection Due Process Program

*****1*****
*****1***** of the taxpayer cases in the population (258 taxpayer cases) had an incorrect CSED posted to taxpayer records. A CSED shortened in error for a taxpayer case provides the IRS less time than legally allowed to collect the delinquent taxes, which may result in the loss of revenue for the IRS. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 0.53 percent and 8.97 percent.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 9,855 CDP taxpayer cases did not contain the impartiality statement documented on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer (see page 6).
- Taxpayer Rights and Entitlements – Potential; 903 EH taxpayer cases did not contain the impartiality statement documented on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer (see page 6).

Methodology Used to Measure the Reported Benefit:

For the CDP statistical sample, we used a computer extract from the Appeals Centralized Database System and identified a population of 39,419 CDP taxpayer cases that were closed in FY 2013. We reviewed a statistically valid sample of 64 CDP taxpayer cases and found that 16 of these CDP taxpayer case files did not contain the required impartiality statement on the Waiver Letter 4382 or the Withdrawal Letter 4383 issued to the taxpayer. We estimate that 25 percent of the taxpayer cases in the population (9,855 CDP taxpayer cases) did not contain the required impartiality statement. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 16.35 percent and 35.46 percent.

For the EH statistical sample, we used a computer extract from the Appeals Centralized Database System and identified 8,773 EH taxpayer cases that were closed in FY2013. We reviewed a statistically valid sample of 68 EH taxpayer cases and found that *****1*****
*****1*****
*****1***** of the taxpayer cases in the population (903 EH taxpayer cases) did not contain the required impartiality statement. Using the Exact Binomial Method, we are 90 percent confident that the true exception rate is between 4.93 percent and 18.47 percent.



Appendix V

Collection Due Process Procedures

The IRS is required to notify taxpayers in writing when a lien has been filed or when it intends to levy. A taxpayer is allowed to appeal the filing of the lien or proposed levy action through the CDP by filing a hearing request.

The Hearing Request

This hearing request must be received:¹

- Within 30 calendar days plus five business days of the filing of a lien.
- Within 30 calendar days of the date of the Notice of Intent to Levy.

If a taxpayer's hearing request is submitted on time, the IRS will:

- Suspend all collection efforts.
- Provide the taxpayer with a CDP hearing by the Office of Appeals (Appeals).

If a taxpayer's hearing request is not submitted timely, Appeals has discretionary authority to:

- Provide the taxpayer with an EH that considers the same issues as in a CDP hearing for both liens and levies.
- The IRS is not required to suspend collection action.
- The taxpayer does not have the right to a judicial review.

Conducting the Hearing

Taxpayers are entitled to one hearing per tax period for which a lien or Notice of Intent to Levy has been issued. The hearing is conducted by an appeals officer or settlement officer (hearing officer) who has had no prior involvement with the unpaid tax.

During the hearing, the hearing officer must:

- Verify whether the requirements of all applicable laws or administrative procedures related to the lien or Notice of Intent to Levy were met.
- Address any issues the taxpayer may raise relevant to the unpaid tax, the filing of the lien, or the proposed levy, such as whether the taxpayer is an innocent spouse.

¹ See Appendix VI for more specific information on the time periods for CDP hearing and EH requests.



Review of the Office of Appeals Collection Due Process Program

- Determine if collection actions were appropriate.
- Decide if other collection alternatives would facilitate the payment of the tax.
- Determine whether any proposed collection action balances the need for efficient collection of taxes with the taxpayer's legitimate concerns.

The taxpayer may not raise an issue that was considered at a prior administrative or judicial hearing if the taxpayer participated meaningfully in the prior proceeding.

Hearing Decisions

At the conclusion of a hearing:

- Appeals provides the taxpayer a letter with the hearing officer's findings, agreements reached with the taxpayer, any relief provided to the taxpayer, and any actions the taxpayer or the IRS are required to take.
- For a CDP case, the taxpayer receives a Letter 3193, *Notice of Determination Concerning Collection Actions Under Sections 6320 and 6330*, which provides an explanation of the right to a judicial review. If the taxpayer disagrees with the Appeals decision, he or she may petition the courts.
- For an EH case, the taxpayer receives a Letter 3210, *Decision Letter Concerning Equivalent Hearing Under Section 6320 and/or 6330*. If the taxpayer disagrees with the Appeals decision in an EH, he or she may not petition the courts.
- For both applicable CDP and EH cases, the taxpayer may receive:
 - Form 12257, *Waiver of Appeals Notice of Determination in a Collection Due Process Hearing*. Withdrawal Form 12257 and Letter 4383 are applicable when:
 - The taxpayer has reached a resolution with the IRS regarding the tax and tax periods; and
 - He or she is otherwise satisfied that a hearing with Appeals is no longer needed.
 - Form 12256, *Withdrawal of Request for Collection Due Process or Equivalent Hearing*. Waiver Form 12256 and Letter 4382 are applicable when:
 - The taxpayer agrees with Appeals;
 - Waives the right to a judicial review; and
 - Waives the suspension of collection action.



Review of the Office of Appeals Collection Due Process Program

- The CDP or EH case is generally reviewed by the hearing officer's manager at the completion of the case to evaluate whether the hearing officer's case actions were complete, accurate, and resulted in a quality decision.²

Jurisdiction

After Appeals has made a determination on a case, if the taxpayer has a change in circumstances that affects the Appeals determination or if the Collection function does not carry out the determination, the taxpayer has the right to return to Appeals. The Appeals office that made the original determination generally retains jurisdiction over the case.

² Per Appeals Delegation Order APP-193-1, managerial approval of a CDP determination is not required when the only issue raised is a collection alternative and that issue is resolved with a streamlined installment agreement.



Appendix VI

Time Periods for Collection Due Process and Equivalent Hearings

Taxpayers must appeal within certain deadlines to qualify for either a CDP hearing or an EH, depending on whether the taxpayer is appealing a proposed levy or a tax lien.¹

Collection Due Process Deadlines

- Lien Notice – A request for a CDP hearing for a Federal tax lien filing must be postmarked by the date indicated in the Letter 3172, *Notice of Federal Tax Lien Filing and Your Rights to a Hearing Under IRC 6320* (lien notice).
- Levy Notice – A request for a CDP hearing for a levy must be postmarked within 30 days after the date of the Letter 11/1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy notice).

Equivalent Hearing Deadlines

Taxpayers who miss the deadline for a CDP hearing may request an EH within the following time periods:

- Lien Notice – one year plus five business days from the filing date of the Notice of Federal Tax Lien.
- Levy Notice – one year from the date of the levy notice.

Timeliness Considerations

Any written request for a CDP hearing should be filed at the address indicated on the notice. If the request is not sent to the correct address, it must be received by the correct office within the 30-day period in order to be timely.

Source: Publication 1660, *Collection Appeal Rights* (Rev. 10-2012).

¹ Form 12153, *Request for a Collection Due Process Hearing* (Rev. 3-2012), explains the deadlines for requesting a CDP hearing or an EH. Regulations also specify that 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 (26 CFR § 301.6330-1, Q C-6, Nov. 16, 2006).



Appendix VII

Prior Mandatory Collection Due Process Audit Reports

Prior TIGTA audits of the Appeals Collection Due Process performed during FYs 2009 through 2013.

- **FY 2009** – TIGTA, Ref. No. 2009-10-126, *The Office of Appeals Continues to Improve Compliance With Collection Due Process Requirements* (Sept. 2009).
- **FY 2010** – TIGTA, Ref. No. 2010-10-075, *The Office of Appeals Has Improved Compliance Within Its Collection Due Process Program; However, Some Improvement Is Still Needed* (Jul. 2010).
- **FY 2011** – TIGTA, Ref. No. 2011-10-062, *Additional Improvements Are Needed in the Office of Appeals Collection Due Process Program to Ensure Statutory Requirements Are Met* (Aug. 2011).
- **FY 2012** – TIGTA, Ref. No. 2012-10-077, *Office of Appeals Errors in the Handling of Collection Due Process Cases Continue to Exist* (Jul. 2012).
- **FY 2013** – TIGTA, Ref. No. 2013-10-103, *The Office of Appeals Continues to Experience Difficulties in the Handling of Collection Due Process Cases* (Sept. 2013).



Review of the Office of Appeals Collection Due Process Program

Appendix VIII

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 14 2014

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kirsten B. Wielobob *Kirsten Wielobob*
Chief, Appeals

SUBJECT: Draft Audit Report - Review of the Office of Appeals Collection
Due Process Program (Audit # 201410002)

Thank you for the opportunity to review and comment on the subject draft audit report. Appeals has worked and will continue to work diligently to protect taxpayer rights and to ensure that all cases are handled appropriately. We agree with your recommendations which will assist us in our efforts. Attached are our corrective actions in response to your recommendations.

If you have any questions, please have a member of your staff contact John V. Cardone, Director, Appeals, Policy, Quality and Case Support, at 202-317-8830.

Attachments



Review of the Office of Appeals Collection Due Process Program

Attachment

Recommendation 1:

The Chief, Appeals, should review the eight misclassified cases and determine if there are process improvements or additional training areas that can be emphasized to ensure that taxpayer CDP and EH cases are classified correctly.

Proposed Corrective Action:

Appeals agrees with this recommendation. We will review the identified cases and, if necessary, will update the previously developed CDP Timeliness training for Appeals Technical Employees who work CDP cases.

Implementation Date: June 30, 2015

Responsible Official: Director, Appeals Policy, Quality and Case Support

Recommendation 2:

Consider working with Collection management and the IRS Office of Taxpayer Correspondence to ensure that Lien and Levy Notices are clear and provide the proper directions for the taxpayers to follow in sending their hearing requests to the IRS.

Proposed Corrective Action:

Appeals agrees with this recommendation. We will meet with Collection management and the Office of Taxpayer Correspondence to discuss the lien and levy CDP notices owned by Collection.

Implementation Date: June 30, 2015

Responsible Official: Director, Appeals Policy, Quality and Case Support



Review of the Office of Appeals Collection Due Process Program

Attachment

Recommendation 3:

The Chief, Appeals, should review and correct the 12 taxpayer accounts that we identified with CSED errors.

Proposed Corrective Action:

Appeals agrees with this recommendation. We will review the identified accounts and all Transaction Code (TC) 520 and 521 errors will be corrected.

Implementation Date: October 31, 2014

Responsible Official: Director, Appeals Policy, Quality and Case Support