



CDP CAP



MEET YOUR PRESENTER

Partner

Kaitlyn Loughner received a Bachelors of Science in Accounting from the University of Pittsburgh in 2009. In 2013, she received her Juris Doctor from the University of Baltimore School of Law where she was an Associate Editor for the Law Forum. In addition, Kaitlyn is a Certified Public Accountant and has earned an LL.M. in Taxation.

Prior to joining Frost Law in 2012, Kaitlyn completed an externship with the Internal Revenue Service Chief Counsel Small Business/Self-Employed Office in Baltimore, where she worked with IRS attorneys on tax controversy issues and presented motions to the Tax Court.



Kaitlyn Loughner, Esq.



MEET YOUR PRESENTER

Director Pro Bono Chair

Rebecca Sheppard joined Frost Law as an attorney in June 2016. Rebecca previously worked for the Comptroller of Maryland in the Hearings and Appeals Section. Rebecca conducted administrative hearings, issued binding legal determinations and negotiated settlement agreements on behalf of the Comptroller of Maryland.

Rebecca received recognition from the Comptroller of Maryland for outstanding customer support and served as a member of the Maryland Charity Campaign. Prior to joining the Hearings and Appeals Section, Rebecca was a law clerk for the Maryland Tax Court. Rebecca also practiced law as an associate for a small firm in Baltimore County, where she drafted Trust and Estate documents, performed Estate Administration and prepared Medical Assistance applications and appeals.

Rebecca graduated from the University Of Baltimore school Of law, earning her Juris Doctor in the Spring of 2011. Rebecca attended college at the University of Maryland, College Park, and graduated with a degree in Government and Politics in the Spring of 2006.



Rebecca Sheppard, Esq.

Collection Appeals

Collection Appeals Procedure (CAP) is a highly expedited appeal program within the Service.

- CAP is designed to fast-track small liability issues when a taxpayer has received notice that a lien, levy or seizure has, or will be, enforced. CAP is also available for notice of a rejected installment agreement or termination of a installment agreement.
- CAP is not available for collection actions that have their own special appeals process such as offers in compromise, penalty appeals, and jeopardy levies.
- CAP cannot reopen examinations nor is there judicial recourse for CAP rulings.
- Default by a taxpayer will release the Service from the CAP decision and resume collections.

CAP Procedures

You may go through the CAP process if you've received any one of the following notices:

- Notice of Federal Tax Lien
- Notice of Levy
- Notice of Seizure
- Denial or Termination of Installment Agreement

CAP Procedures

If your only collection contact has been a notice or telephone call:

- Call the IRS telephone number shown on your notice
- Explain why you disagree and that you want to appeal the decision
- Be prepared to offer a solution
- Before you can start the appeals process with the Office of Appeals you will need to first discuss your case with a Collections manager

CAP Procedures

If you have already been in contact with a Revenue Officer:

- Call the Revenue Officer assigned to your case
- Explain why you disagree and that you want to appeal the decision
- Be prepared to offer a solution
- Before you can start the appeals process with the Office of Appeals you will need to discuss your case with a Collections manager
- Complete [Form 9423, Collection Appeals Request](#)
- You have two (2) days from your conference with the Collections manager to submit Form 9423 to the Revenue Officer.

Collection Due Process

Collection Due Process Rights

Collection Due Process rights arise when the IRS issues a Final Notice of Intent to Levy or files a Notice of Federal Tax Lien.

- These notices advise a taxpayer of their right to a CDP hearing with the IRS Independent office of Appeals before levy action is taken or in response to a Notice of Federal Tax Lien filing.

A CDP hearing is an opportunity to discuss alternatives to enforced collection action and allows taxpayers to dispute the amount owed if they did not have a prior opportunity to do so.

Collection Due Process Hearing

Liens

IRC § 6320

IRS must send Letter 3172 notifying the taxpayer of their rights to a CDP hearing within five days of filing a Federal Tax Lien. Taxpayer then has thirty days to respond and request a hearing.

Levies

IRC § 6330

IRS must send Letter 1058 or LT11 notifying the taxpayer of their rights to a CDP hearing prior to taking levy action.

Timely CDP hearings suspend the statute of limitations for collections, criminal prosecutions, and other tax liability suits.

Collection Due Process



Taxpayer may contest the existence or amount of a tax due if the taxpayer did not receive a Statutory Notice of Deficiency indicating the specific tax due or have any “opportunity to dispute such tax liability.”

Look to see if there was the *availability* of an opportunity, not whether the opportunity was taken.

Collection Due Process

Taxpayer is unable to raise an issue if the issue was considered or disputed in any previous CDP hearing, administrative action, or judicial proceeding.

If a CDP hearing request was timely submitted (either within the initial thirty days from levy notice or within the time allotted for a lien filing) it is appealable to the United States Tax Court.

Taxpayers cannot raise issues in Tax Court that were not raised in the CDP hearing.

Collection Due Process

One Hearing Per Period: IRC §§ 6320 and 6330 provide for one hearing per type of tax and tax period for the tax debt listed on the Final Notice of Intent to Levy or Notice of Federal Tax Lien filing.

Multiple NFTLs or Proposed Levy Notices: The right to request a CDP hearing applies to the first NFTL filed or the first proposed levy notice issued for a particular tax debt

Collection Due Process

Exercising CDP Rights:

A taxpayer invokes his or her rights to receive a CDP hearing by filing a Form 12153 with the IRS no later than 30 days after the date of the final notice of intent to levy or within the time provided in the Notice of Federal Tax Lien filing.

For CDP hearing requests, the "send to" address on the notice is usually a Post Office box. You can send the Form 12153 to the Post Office box via Certified Mail.

Collection Due Process



If you prefer to send via FedEx and the address on the Notice is Philadelphia, the physical address is:

ACS-CDP

M/S 4-Q26.133

2970 Market Street

Philadelphia, PA 19104

Collection Due Process



If you prefer to send via FedEx and the address on the Notice is Kansas City the physical address is:

Internal Revenue Service

333 W. Pershing Road

Kansas City, MO 64108

Collection Due Process



The Form 12153 package should include the following:

- Cover Letter

- Complete Form 12153 signed by either the taxpayer or the representative

- The packet must also include a Form 2848 (Power of Attorney) or Form 8821 (Tax Information Authorization)

Collection Due Process

Attachment to the Form 12153 that can include:

- A request for a face-to-face transcribed conference request at the local IRS appeals Office pursuant to IRC §§ 6330 and 7521***
- A request for review of the tax, penalty and interest, if applicable

Collection Due Process

A request that Appeals verify that the applicable requirements of law have been met, including but not limited to:

- Record of Assessments under IRC §6203
- Issuance of a notice of deficiency if the assessment is being challenged
- Notice and demand of payment IRC §§ 6303, 6321, 6331(a)
- Statute of Limitations (SOL) on assessment has not expired
- SOL on collection has not expired
- Document demonstrating compliance with IRC §6751(b)(1) if a non-automatic penalty is to be collected; and
Verification of contacts required by IRC §6404(g) for non-suspension of interest

Collection Due Process

- A request for penalty abatement request, if applicable ;
- A statement of relevant background facts;
- A statement of all pertinent and potential issues;
- A request for the right to amend the request;
- A request for the right to supplement the CDP request;
- A request for no ex-parte communication between IRS employees working on the same or related cases unless it is beneficial for resolution of the case to allow such ex parte communications; and
- If applicable, the taxpayer's proposed collection alternative (s)

Collection Due Process - Equivalent Hearings



Equivalent Hearing (EH): a taxpayer who does not file a timely appeal with the Office of Appeals can still request a hearing.

A taxpayer must submit a written request for an Equivalent Hearing within the one-year period beginning the day after the date of the CDP levy notice.

For an Equivalent Hearing on a Lien filing, a taxpayer must submit a written request for the EH within the one-year period beginning the day after the end of the five-business-day period following the filing of the NFTL.

The same Form 12153 is used to request the hearing.

Collection Due Process - Equivalent Hearings

Typically, the IRS will not take enforced collection action once an equivalent hearing is filed, but there are no provisions under the Internal Revenue Manual barring the IRS from doing so.

A Decision Letter on the Equivalent Hearing is issued at the end of the appeal, but the taxpayer will not have the opportunity to further appeal the decision in US Tax Court unless they are arguing that the EH was actually a timely filed CDP hearing request.

Collection Due Process

If you have a client who you believe may be a good candidate for bankruptcy, then you may prefer to request an equivalent hearing, rather than a timely hearing.

A timely CDP hearing request extends the time for dischargeability of tax debt in a bankruptcy case.

Collection Due Process

CDP Hearing:

Any issue not raised during the hearing is waived, so be sure to raise all potential arguments.

Determine and discuss which collection alternatives are being requested and which apply:

- Challenges to the underlying liability;
- Offers in Compromise;
- Audit Reconsideration;
- Innocent Spouse relief;
- Penalty Abatement;
- Currently Not Collectible status (Status 53); and
- Installment Agreements

Collection Due Process

The taxpayer cannot raise issues if the issues have met the test for a “frivolous submission” IRC § 6702(b)(2)(A)

(i) based on a position which the Secretary has identified as frivolous.

Example - A taxpayer arguing that compliance with the internal revenue laws is voluntary or optional and not required by law

Frivolous Submission Examples

Filing a tax return is voluntary or there is no legal requirement to file a federal income tax return

An employer is not legally obligated to withhold income or employment taxes on employees' wages

A taxpayer may "untax" himself or herself at any time

A taxpayer's income is excluded from taxation when the taxpayer rejects or renounces United States citizenship because the taxpayer is a citizen exclusively of a State, that is claimed to be a separate country

Wages, tips, and other compensation received for the performance of personal services are not taxable income

Frivolous Submission Examples

Only certain types of income are taxable, for example, income that results from the sale of alcohol, tobacco, or firearms or from transactions or activities that take place in interstate commerce

Federal income taxes are unconstitutional or a taxpayer has a constitutional right not to comply with the federal tax laws because:

- The First Amendment permits a taxpayer to refuse to pay taxes based on religious beliefs
- Mandatory compliance of tax laws invade a taxpayer's right to privacy under the Fourth Amendment
- The Fifth Amendment privilege against self-incrimination
- Sixteenth Amendment prohibits Congress from taxing individuals

Collection Due Process

Appeals takes into consideration the following:

- Determine that the requirements of any applicable law or administrative procedure have been met
- Arguments raised at the hearing

Whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be **no more intrusive than necessary**

Collection Due Process

Following the CDP hearing, Appeals issues its determination by mailing the taxpayer a Notice of Determination that explains the Officer's findings and decision.

IRC §6330(c)(3)

Collection Due Process

Taxpayers have 30 days from the date the Notice of Determination is mailed to file a petition in US Tax Court

The operative date is not the date of the Notice of Determination, but the date the notice is placed in the mail. (Weiss v. Commissioner, 147 T.C. 179 (2016))

Collection Due Process

The Tax Court's role in a CDP case:

- To decide whether the IRS' factual and legal determinations are reasonable; and
- Whether the ultimate outcome of the CDP proceeding constitutes an **abuse of discretion**
 - Even if the outcome is incorrect, the Court will not issue a determination that the IRS abused its discretion if the determination was reached reasonably.

THANK YOU!

Questions? Reach out to Rebecca.Sheppard@frostdtaxlaw.com or Kaitlyn.Loughner@frostdtaxlaw.com or give us a call at 410-497-5947/