Department of the Treasury

Internal Revenue Service

Office of Chief Counsel

Notice

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Face-to-Face Conferences with Appeals in Collection Due Process

Upon incorporation

Subject: Cases Cancel Date: into CCDM

Purpose

This Notice provides guidance concerning when the Internal Revenue Service Office of Appeals will offer a taxpayer a face-to-face conference in a lien and levy case arising under I.R.C. ' 6320 or ' 6330.

Discussion

Section 6320 provides generally that a person described in section 6321 will receive notice and opportunity for a hearing with Appeals upon the filing of a notice of federal tax lien pursuant to section 6323. Section 6330 provides generally that a taxpayer will receive notice and opportunity for a hearing with Appeals prior to levy on that taxpayers property or rights to property. These provisions do not define the nature of a CDP hearing.

Sections 301.6320-1(d)(2) Q&A D6 and 301.6330-1(d)(2) Q&A D6 of the Treasury regulations provide that the CDP hearing may, but is not required to, consist of a face-to-face conference with Appeals. The CDP hearing may also consist of written or oral communications between an Appeals employee and the taxpayer or the taxpayer-s representative. See Katz v. Commissioner, 115 T.C. 329 (2000); Davis v. Commissioner, 115 T.C. 35 (2000); Konkel v. Commissioner, 2001-2 USTC & 50,520 (M.D. Fla. 2000).

Sections 301.6320-1(d)(2) Q&A D7 and 301.6330-1(d)(2) Q&A D7 of the Treasury regulations provide that, if a taxpayer requests a face-to-face conference, the taxpayer must be offered one at the Appeals office closest to the taxpayer's residence or, if the taxpayer is a corporation, closest to its principal place of business. The face-to-face conference contemplated by these regulations is a conference for the purpose of addressing issues relevant to the taxpayer's CDP case. The regulations are premised

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on the understanding that the taxpayer will have relevant matters to discuss at the face-to-face conference. Pursuant to section 6330(c)(2), these issues may include any relevant issue relating to the unpaid tax or proposed collection action, such as spousal defenses, challenges to the appropriateness of collection actions, offers of valid collection alternatives, and challenges to the existence or amount of underlying tax liability.

A face-to-face conference serves no useful purpose if the taxpayer has no intention of discussing relevant issues, or if the taxpayer wishes to use the conference as a forum to espouse only frivolous and groundless arguments. Examples of frivolous and groundless arguments are provided in AThe Truth About Frivolous Tax Arguments," which may be found on the IRS internet web site at www.irs.gov. This is not, however, an exclusive list of frivolous and groundless arguments.

Accordingly, in cases where the CDP hearing request raises only frivolous and groundless arguments, Appeals will contact the taxpayer to ask the taxpayer to state what relevant issues the taxpayer would like to address at the hearing. If the taxpayer fails to respond or responds with only additional frivolous and groundless arguments, the taxpayer will not be offered a face-to-face conference. The taxpayer will instead be provided a CDP hearing through telephone conferences, written correspondence, or some combination thereof. If the taxpayer responds with specificity that the issues to be discussed are valid collection alternatives or other nonfrivolous issues pertaining to the lien or levy, then a face-to-face conference will be offered to the taxpayer. If a face-to-face conference is offered and the taxpayer asks to record the conference, an audio recording of the face-to-face conference will be permitted in accordance with section 7521. See Keene v. Commissioner, 121 T. C. No. 2 (2003) (under section 7521 a taxpayer must be permitted to make an audio record of a section 6330 hearing).

Questions concerning this issue in the context of CDP cases should be addressed to the Office of the Associate Chief Counsel, Procedure & Administration (Collection, Bankruptcy & Summonses Division, Branch 1), 202-622-3610.

_____/s/ DEBORAH A. BUTLER Associate Chief Counsel (Procedure & Administration)