

2007 U.S. Supreme Court Decision Clarifies IRS Collection Powers in Cases of Transferee Liability

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ABSTRACT

The authors' paper will focus on recent court decisions concerning the I.R.S. power to enforce and collect a tax assessment against third parties where the basis for liability are taxes owed by another person or entity. The foregoing commentary is directed to the tax practitioners. The objective is to provide a practical guide for tax professional who focus on IRS collection cases.

The Supreme Court's decision on April 30, 2007 has provided needed clarity for practitioners that are engaged in a tax practice that includes the defense of taxpayers that are subject to I.R.S. enforced collection efforts.

In a 9-0 decision the Court ruled that a transferee challenge to a Levy action by the I.R.S. must commence an action against the I.R.S. within 9 months of the date of the Levy. The decision in EC Term of Years Trust v. The United States (herein after referred to as E < trust) affirms the U.S. Court of Appeals (5th Circuit decision). Because the 9th Circuit had ruled contrary to the 5th Circuit,(see WWSM Investors v. United States, 64F.3d 456 (1995)) The court granted Certiorari to resolve the conflict 549 U.S. ____ (2006).¹

The facts of E < trust are an example of a classic case of transferee liability. The transferors, Elmer and Dorothy Cullers created E < trust in 1991. The Cullers transferred a substantial portion of their assets to the trust. Shortly thereafter the I.R.S. assessed back taxes against the Culler's for unallowed deductions the Culler's claimed in the 1980s. The I.R.S. Levied against the transferee (the trustee of the E < trust) for taxes owed by the Culler's.² The trustee initially resisted the I.R.S. Levy. However after negotiations with the I.R.S., the trustee deposited \$3,000,000 into a separate bank account in the name of the trustee. The I.R.S. levied against the bank account. One year after the Levy, the trustee commenced a refund claim against the I.R.S. to reclaim the \$3,000,000.

The I.R.S. opposed the refund claim citing the 9 month statute of limitation set forth in I.R.C. Section 6532(c)(1).

The trustee argued that under the 9th Circuit decision in WWSM Investors v. United States the trustee could commence a refund claim under 28 U.S.C. 1346 (a)(1) which grants a 2 year statute of limitations.

The Supreme Court sided with the 5th Circuit and ruled that a suit to contest an I.R.S. Levy must be commenced exclusively under the provisions of IRC Section 7426(a)(1); therefore, the 9 month statute of limitation forever bars the trustee's refund claim.³ The Supreme Court's decision provides an opportunity to focus on the I.R.S. power to use enforced collection action against the taxpayer and transferees. This paper will explore the following topics:

1. The I.R.S. source of power to use enforced collection action
2. A review of Lien, Levy and other distraint procedures the I.R.S. has available
3. Transferee liability under the I.R.S. Code and under state fraudulent transfer statues
4. The I.R.S. Administrative avenues for relief will be explored and the I.R.S. forms and policies will be reviewed

I.R.S. POWER TO USE ENFORCE COLLECTIONS

The I.R.S. is authorized by IRC 6331 of the Internal Revenue Code to collect delinquent taxes through levy, lien and distraint. Many practitioners and some courts do not have a clear understanding of the collection powers and sometimes confuse the three enforcement tools.

Levy: A levy is a notice to a third party that commands the third party to payover a taxpayer's property owned by the taxpayer but in the possession of the third party, to the Internal Revenue Service.⁴ The most common form of levy include a demand to a bank that the taxpayer's checking account be paid over to the I.R.S. Another common form of levy is a levy directed to the taxpayer's employer to pay over accrued but unpaid wages of the taxpayer to the I.R.S.

Any property of the taxpayer can be levied to collect delinquent taxes, unless the property is exempt.⁵ The exempt property list is limited and short. Property that is immune from Levy include unemployment benefits and special pensions for Medal of Honor winners.

The I.R.S. must notify the taxpayer of the following:

1. a notice and demand for payment
2. a notice of intent to Levy
3. a notice of a right to a hearing⁶

The notice must be given to the taxpayer:⁷

1. in person
2. delivered at the taxpayer's home or business
3. sent to the taxpayer's last known address by certified mail

IRS letter #3174(p) sets forth the formal requirement of steps 2 and 3 above. (Exhibit A)

Upon receipt of the notice of intent to Levy if the taxpayer disagrees, the taxpayer must immediately file a request for a collection due process hearing **form 12153**.(Exhibit B) If after the hearing, the taxpayer remains unsatisfied with the I.R.S. response the taxpayer may file a collection appeal request on **I.R.S. form 9423**.(Exhibit C) The forms can be downloaded from the I.R.S. website. The request for a collection appeal must be filed within two days from the conclusion of the collection due process hearing.⁸ It is very important for the practitioner to maintain a record of the correspondence with the I.R.S. Therefore as a matter of good practice all forms should be faxed to the designated I.R.S. officer and mailed to that officer by certified mail return receipt requested. The precaution is necessary because on many occasions a case can be shifted to I.R.S. offices with the various I.R.S. service centers. It is possible that the current case officer may not have the taxpayer's entire file. Assuming that the I.R.S. rejects the taxpayer requests at a due process hearing and on appeal the I.R.S. can then Levy on the third party for the taxpayer assets.

Lien: A lien (a priority claim) arises in favor of the United States thirty days after the I.R.S. has recorded an assessment of a tax on its records and the taxpayer has refused to pay the tax within 10 days after the demand for payment.⁹ When a taxpayer has not fully paid a tax that is due and owing the lien will attach to all of the taxpayer's property.¹⁰ This lien is an unpublished lien that cannot defeat the claim of senior lien creditors, i.e., the recorded mortgage holder that has a lien against the taxpayer's residence. So long as the I.R.S. lien remains unrecorded, the taxpayer has the power to grant third party lenders lien priority that will be senior to the I.R.S. lien.¹¹

The I.R.S. may file a notice of federal tax lien with the clerk of the court for the county in which the taxpayer resides and/or owns property.¹² Once recorded, the lien will be senior to future third parties that seek priority over the taxpayer's assets through the recording of mortgages and or money purchase liens. The filing of notice of a federal tax lien is not a seizure of the taxpayer's assets. However, the filing of the notice of the tax lien can have a devastating impact on the taxpayer's credit record and his ability to secure future financing.

The filing of notice of federal tax lien protects the IRS' right to priority against future third party creditors i.e. a purchaser, a holder of a security interest or a judgment lien creditor. The federal tax lien will expire by operations of law. Ordinarily in the absence of a refiling by the I.R.S. the lien expires ten years after the I.R.S. has assessed the tax that is secured by the lien. The notice of tax lien is filed on **I.R.S. form 668** with the clerk of court in the county where the property is physically located.¹³

DISTRAIT/SEIZURE BY THE I.R.S.

The I.R.S. has the power to directly seize assets under the control of the taxpayer. This power granted to the I.R.S. to seize personal property, real estate and to close a business activity of the taxpayer. This power is the most intrusive as it relates to the direct confrontation by the I.R.S. with the taxpayer. The fruits of the I.R.S. distraitt action can be viewed and enjoyed by third parties through the I.R.S. auction of the taxpayer's assets. Visit the I.R.S. Auction website www.ustreas.gov/auctions/irs/.

In a seizure action the I.R.S. physically removes an asset from the control of the taxpayer.¹⁴ In cases where the asset cannot be removed from its physical location i.e. a going concern business the I.R.S. will lock the business and take control of the business assets.

Because a seizure involves the physical removal of an asset from the control of the taxpayer, the Internal Revenue Code and I.R.S. procedure require that the revenue officer verify certain facts.

IRC Section 6331 (j) requires

- A. The tax liability must be verified
- B. all other collection methods must be considered before a seizure action
- C. prior to the seizure the I.R.S. must verify that the sale of the seized asset will result in proceeds that exceed the expenses of sale and existing priority claims by third parties.

Internal Revenue Manual section 5.10.1.3.3.1. (10-01-2004) requires the revenue officer to include in his/her evaluation of the net equity potential, the actual costs of the asset seizure (towing fees, storage costs, transportation costs, lock smith fees, etc.)

In summary a seizure by the I.R.S. is a last resort action, in which the revenue officer and his/her manager must carefully evaluate the cost benefit of the seizure.

TRANSFeree LIABILITY

Transferee liability occurs when the I.R.S. seeks to collect a tax owed by a taxpayer from a third party. If successful the I.R.S. may collect the tax from the third party or the I.R.S. may use enforced collection action to gain control over the property transferred to the third party.

There are a number of theories relied upon by the I.R.S. to pursue tax collections from third party owners. This paper will focus on three of the most common forms of transferee liability.

Statutory Transferee Liability

The Internal Revenue Code Section 6901 provides a formal statutory frame work whereby the I.R.S. may assess against a third party for taxes that are owed by the original taxpayer. Under statutory transferee liability the I.R.S. may assess and collect taxes from a third party in cases where the original taxpayer has transferred his assets to a third party in a tax year in which a tax liability is assessed and remains unpaid, i.e., in 2000 the taxpayer transferred \$300,000 to a third party two years later in 2002 the I.R.S. assesses a tax against the taxpayer in the amount of \$300,000 based upon unreported income in 2000. Under the I.R.C Section 6901 the I.R.S. may also assess and collect the tax due from the third party.

The statutory procedure grants to the third party the right to contest the transferee assessment in U.S. tax court. Section 6901 codifies the power of the I.R.S. to assess a tax against a third party. The statutory scheme follows the same pattern that is required for the assessment of a tax against the taxpayer. Section 6901 is not limited to the assessment of income taxes. This section has been applied to beneficiaries of estates and to Donees where an unpaid gift tax has arisen as a result of a transfer for less than full consideration, Sec IRC Sec 6901 (h). Section 6901 has been applied to the acquiring corporation in mergers and reorganizations to collect a tax owed by the acquired corporation.¹⁵

Section 6901 requires three preconditions before transferee liability can be asserted.

1. There must be a transferee as defined in the Treasury regulations.
 - a. a distributee of an estate
 - b. a shareholder or partner of a dissolved corporation or partnership
 - c. a donee
 - d. a successor or surviving corporation
 - e. a fiduciary
2. The proposed assessment by the I.R.S. must be timely made. The Service has one year after the application of the pursuant to IRC 6901 statute of limitations for the assessment of the tax against the taxpayer to assess against a transferee.
3. The transfer of the property to the third party must occur after the accrual of a tax liability.¹⁶ The terms accrual and assessment must be distinguished. Assume that in the year 2000 a taxpayer has earned income that is not reported on his 2000 return which was timely filed on April 15, 2001. The I.R.S. subsequently assesses a deficiency for the unreported income on April 15, 2003. Assume that the taxpayer transferred property to his brother in the year 2000 and that the transferee is a person described under IRC 6901. The I.R.S. may assess against the brother because the tax liability accrued in 2000. The fact that the I.R.S. did not assess the tax against the taxpayer until 2003 is irrelevant.

In a case where a taxpayer files a fraudulent return the I.R.S. has no statute of limitation bar.¹⁷ Under IRC Section 6501 the I.R.S. may assess a tax against the taxpayer at anytime. Therefore, a transferee may find himself in a situation where he has owned the transferred asset for more than a decade yet be subject to a transferee liability assessment. Under Section 6901 the I.R.S. is not restricted to the enforced collection action against the transferred asset. The I.R.S. may assess and collect against any property of the transferee.¹⁸

The authors were recently involved in a case where the taxpayer filed fraudulent returns for the year 1982 through 1989. The I.R.S. prosecuted the taxpayer under the evasion statute IRC Section 7201. Subsequently in 1992 the I.R.S. assess taxes against the taxpayer for the open year.

The father of the taxpayer was provided title to a residence in 1982 by the taxpayer. In 1993 the I.R.S. assessed transferee liability against the father.

TAX COURT RELIEF.

If the I.R.S. elects to pursue the transferee under Section 6901 it must issue a statutory notice of deficiency.¹⁹ Therefore the transferee may petition the United States tax court for relief.

NOMINEE TRANSFeree LIABILITY

The I.R.S. may levy or file a notice of federal tax lien against a third party who holds title to an asset transferred to the third party by the taxpayer. The government's theory is based upon the concept of fraudulent conveyance and the purported fact that the third party is acting merely as an agent of the taxpayer. The I.R.S. may levy against the third party, as it did in the E < trust case or it may file notice of a federal tax lien to encumber real property transferred to the nominee. The third party can resist the levy through the procedure set forth in IRC Section 7426(a)(1) or in the case of the tax lien through a quiet title action to extinguish the lien.²⁰

A nominee case can arise when a taxpayer has transferred title to a third party. However, the taxpayer has retained control over the asset. A nominee theory involves the determination of the true beneficial ownership of the property. Oxford Capital Corp. vs. United States.²¹

Example: Reverend Billy Bob has under reported his income for the year 2006. To avoid future I.R.S. action against his assets he transfers his personal residence to his parents. Billy Bob continues to reside in the home. Billy Bob also pays the household expenses i.e. gas, electricity, homeowner insurance. If the I.R.S. determines that additional taxes are due from Billy Bob for the year 2006 and Billy Bob fails to pay the tax after a demand, the I.R.S. may take collection action against Billy Bob. The I.R.S. may also take action against the parents of Billy Bob as his nominee.

The I.R.S. may elect to file a notice of federal tax lien against the parents. Form 668 Notice of Federal Tax lien will indicate that the lien is filed against the parents as nominees of the taxpayer. The lien notice will identify the property that is the subject of the lien.

The 10 years collection statute that applies to Billy Bob will also apply to the nominee.

Therefore, should Billy Bob agree to extend the collection statute of limitation by signing I.R.S. form 900 or extend the collection statute by some other action i.e. tender an offer to comprise the tax liability. The statute of limitation will also apply to extend the collection period against the nominee.

Where a taxpayer transfers assets to a third party but retains control over the assets, the federal tax lien will attach to the specific property transferred and not to all of the assets of the nominee.

In a nominee case the I.R.S. may in addition to the filing of a federal tax lien, file a suit to set aside a fraudulent conveyance. The I.R.S. must prove that the taxpayer transferred to a nominee property in an effort to defeat the collection of a tax due to the United States. If the United States prevails, the title of the property is reinstated in the name of the taxpayer.

The potential liability of the transferee is limited to the property held by the transferee. The tax liability will not extend to the transferee's other property unless it can be proven by the United States that the transferee:

1. allowed the property to depreciate in value
2. sold, concealed or transferred the property
3. co-mingled the property

However, the amount of the personal judgment against the transferee cannot exceed the value of the property at the time of the transfer to the nominee.

In a case decided in the Sixth Circuit, the United States Court of Appeals (Spotts vs. U.S.) reviewed a case in which the former wife of a taxpayer had brought a quiet title action against the United States in which she sought to remove a nominee federal tax lien filed by the I.R.S. for taxes owed by her former husband. In the United States District Court the I.R.S. had prevailed on a summary judgment. The Court of Appeals reversed the district court and returned the case to the District Court for a hearing on the issue of whether the former husband had an interest in the residence at the time the tax deficiency accrued.²²

In Spotts, Ray and Peggy Spotts were invested in an offshore tax shelter in which all of Mr. Spotts' income from his business activity were deposited in an offshore bank. Mr. Spotts was given a debit card by the offshore bank to access his income. Two years later the Spotts decided to buy a home for \$275,000. \$200,000 of the purchase price came from the income earned by Mr. Spotts that was on deposit at the offshore bank. In an effort to conceal the \$200,000 payment, the Spotts signed a \$200,000 mortgage in favor of the offshore bank.

In 1998, two years after the purchase Mrs. Spotts filed for divorce and the I.R.S. assessed a \$375,000 liability for taxes that accrued during the year that the house was purchased. The assessment was against Mr. Spotts (Evidently Mrs. Spotts had no income during the tax periods and did not file a joint return.)

After the assessments against Mr. Spotts the I.R.S. filed a notice of a nominee federal tax lien against the house owned by Mrs. Spotts.

The Court of Appeals ruled that a nominee tax lien can only attach to property in which the taxpayer (Mr. Spotts) had an interest.

The court concluded that the mere fact that the house was titled in Mrs. Spotts name does not render the transfer suspect. The court cited the Kentucky Supreme Court for the position that legal title to the property raises a presumption of true ownership. Further the Appeals Court cited 54 AM Jur., Trusts Section 205 for the proposition that a conveyance from a husband to the wife, generally does not raise a presumption of a resulting trust (The wife holding the title for the husband) which is the essential element of a nominee theory of liability.

Spotts is a cautionary case for the government, because it is not sufficient in a nominee case to prove that the transfer was without consideration at a time when a tax has accrued. The essential element of nominee liability is that the transferor - taxpayer must remain the true beneficial owner of the property.

It is dangerous for practitioners to place too much reliance on the Spotts' case for the following reasons:

1. State law and federal fraudulent conveyance statutes will be determinative if a transferee is a nominee. There is no uniformity with respect to state laws. An analysis of the specific state law is required.
2. The United States is not restricted to the use of nominee liability. The I.R.S. may pursue the case under the deficiency procedures set forth under Section 6901.

Alter Ego Transfers. The E < trust case is a classic example of alter ego transfer. In the E < trust case, the Cullers created a trust with a bank trustee. The Cullers then transferred a substantial portion of their assets to the trust. At the time of the transfer the Cullers has reason to know that the I.R.S. would seek an assessment of taxes for years that preceded the year of the transfer.

In an Alter Ego case, the I.R.S. may disregard the entity i.e. the trust, corporation, partnership or LLC and pursue the claim against the transferee. In a case where the third party resists the I.R.S. Levy, lien or seizure, the I.R.S. must prove

1. The interest of the taxpayer and the entity (trust) are the same and are not divisible.
2. That an inequitable or fraudulent result would occur if the third party is allowed to retain the property.

Where the I.R.S. seeks to use an Alter Ego theory of liability the I.R.S. must rely on the fraudulent conveyance statute of the state where the property is located. Also under federal law, The Federal Debt Collection Procedures Act provides a federal cause of action for setting aside a fraudulent conveyance. (28 U.S.C. Sec. 3301)

PROCEDURES AVAILABLE TO TRANSFEREES WHERE PROPERTY THAT THEY CLAIM THEY OWN IS SEIZED OR IS THE SUBJECT OF A LEVY.

1. Administrative Remedy
A transferee may under IRC Section 6343(b) request that the I.R.S. release a Levy where it can be demonstrated the property has been wrongfully levied.
 - (a) Transferee. The taxpayer may not avail himself to this remedy. Only the transferee may make the request.
 - (b) I.R.S. publication. 594 provides the format for the request for release from a wrongful Levy. A transferee who has received I.R.S. Form CP-90-Final Notice of Intent to Levy must timely file Form 12153 a request for a collection due process hearing. The due process request must be filed within 30 days from the date of the CP-90 letter. The notice must be sent to the I.R.S. address listed on the Levy notice.
 - (c) The transferee must be able to show that he is not a transferee within the meaning of Section 6901, an Alter Ego or a nominee.
 - (d) If the due process hearing results in the I.R.S. declining to release the Levy the transferee must appeal the adverse decision within two days of the adverse due process hearing.
 - (e) The transferee must be aware that the use of the I.R.S. administrative process does not toll the 9 month statute of limitations.
2. U.S. District Court. After the conclusion of a due process hearing the taxpayer may seek a judicial review under IRC Section 7426(a) which provides that a third party may bring a Civil Action against the United States in a United States District Court. The form of the litigation is beyond the scope of this article. However the practitioner must be cognizant that the

statute of limitations has a very short fuse in cases where a transferee seeks to avoid a Levy or seizure against property that the transferee claims that is his property. Therefore, the 9 month statute of limitations must be monitored.

Procedures available to transferees where the property that is claimed is the subject of a federal tax lien.

1. Administrative Remedy
 - (a) To whom is the request directed. A request for a release of a tax lien against a transferee's property is directed to: **IRS, Attention: Technical Services Advisory Group Manager.** IRS Publication 4235 provides the address of the TSG Group for the geographical areas of the real property subject to the lien.
 - (b) Format. There is no specific form that is required to be used by the requestor.

IRS publication 487 provides the general instructions for the request. The request should include:

1.
 1. Name and address of the requestor
 2. A legal description of the property. This can be obtained from the real estate deed or real estate mortgage (A copy of the deed should be attached to the request)
 3. A copy of the tax lien
 4. The legal basis for the transferee's requested release.
 5. The transferee must sign the request and include the words above your signature "Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true correct and complete."
2. Judicial Remedy. While beyond the scope of this article, the transferee may commence a quiet title action against the United States to remove the federal tax lien, under the provisions of 28 U.S.C. Section 2410(a). In a quiet title action the transferee seeks to perfect his title in parcels of real estate that are subject to a notice of a federal tax lien. If granted the transferee's title to the real property will be cleared of the tax liens that have been filed by I.R.S.

SECTION 6901 TRANSFEEE LIABILITY PROCEDURES

Where the I.R.S. has elected to pursue a transferee under IRC Section 6901, the I.R.S. must as a precondition to the collection action follow the assessment procedure that are set forth in IRC Section 6901. There can be no transferee liability until the transferee has either waived the assessment procedure by the execution of I.R.S. form 870 or if the I.R.S. has issued a statutory notice of deficiency and the 90 day period for the assessment of the liability has elapsed and the taxpayer has not filed a petition to challenge the assessment in the U.S. tax court. Therefore, unlike a Levy, lien or seizure action that is based upon nominee or alter ego liability where the I.R.S. is seeking enforced collection against the transferee, a 6901 procedure is a two step process.

First, the I.R.S. must administratively conclude that the transferee liability should apply to the transferee. Once the determination has been made, the tax payer must agree with the I.R.S. position by execution of a form 870 (waiver of restriction on the assessment of the liability) or the I.R.S. must prevail in the U.S. tax court. Only after the 870 is signed; the statutory notice period has expired, or the I.R.S. prevails in court can the I.R.S. commence the collection action against the transferee. Therefore, the practitioner who seeks to defend the transferee under a 6901 case will have the benefit and the option to follow the normal I.R.S. internal review procedure that would include a review at the agent/manager level and the appeals office of the I.R.S. and the U.S. tax court.

Endnotes

This paper is a work in progress. The authors will provide end notes, amendments and editorial changes at the conference.

1. EC Term of years Trust vs. United States No.05-1541 (April 30, 2007)
2. Internal Revenue Code Section 7426(a)(1)
3. See pages 3 and 4 of the Supreme Court opinion
4. U.S. National Bank of Commerce, 472 U.S. 713, 720 (1985)
5. IRC Sec 6334(a) and Internal Revenue Manual Revenue Officers Handbook Section 1 5.11
6. I.R.S. Form CP-90
7. I.R.S. Publication 594 The I.R.S. Collection Process
8. I.R.S. Collection Appeal Rights (Page 2 form 9423)
9. IRC Section 6321, Section 6322 United Sates vs. Fidelity Philadelphia Trust Company 459 F.2d 771 (3rd cir 1972)
10. Treas. Reg. 301.6321-1
11. IRC Section 6323(a)
12. IRC Section 6323(f)
13. Id note 12
14. I.R.S. Seizures (GAO/GGD-00-4) Nov. 1999 pages 2 and 3
15. Internal Revenue Manual Section 5.17.14
16. Bartner Automatic Self Serv. Laundry Inc. V. Commissioner 35 T.C. 317 (1960) and IRM 4.11.52.4 (11-01-2004)
17. Harvey M. Pert vs. Commissioner, 105 T.C. 370 (1995)
18. I.R.C. 6901(a)
19. Id Note 18
20. Spotts vs. United States No. 04-5955 (6th circuit 2005)
21. 211 F.3d 280 (5th Cir. 2000)
22. Id Note 20

Exhibit A

Section 1 5.11 Notice of Levy

Exhibit 5.11.1-3

Letter 3174 (P) (Rev 1-1999)

(Reference 1.2.2.4)

Letter Number: 3174(P)
Letter Date:
Social Security Number or Employer
Identification Number:
Person to Contact:
Telephone Number:

Taxpayer Name
Address

Dear (name)

Although we previously sent you a notice of our intention to collect your unpaid tax through enforced collection, our records show that you still have not paid the amount you owe. Enforced collection may include placing a levy on your bank accounts, wages, receivables, commissions, etc. It could also involved seizing and selling your property, such as real estate, vehicles, or business assets.

To prevent collection action, please pay the amount you owe, now. Make your check or money order payable to United States Treasury, and write your social security number or employer identification number on it. Send your payment to us in the enclosed envelope with a copy of this letter. The amount you owe is:

Form Number	Tax Period	Unpaid Amount from prior Notices	Additional Penalty & Interest	Amount You Owe
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If you recently paid this or if you can't pay it, call as soon as you get this letter. Our telephone number is at the top of this letter. If you disagree with our taking enforcement action, you may be able to work out another solution. If you disagree with our taking enforcement action, you may be able to work out another solution. Speak to the person whose name appears at the top of this letter, or ask for that person's manager. If you do not agree with the results, you may fill out Form 9423, Collection Appeals Request, to ask for Appeals consideration.

The unpaid amount from prior notices may include tax, penalties, and interest you still owe. It also includes credits and payments we have received since our last notice to you.

Sincerely,

Title

Enclosures:
Copy of Letter
Envelope

Information You Need To Know When Requesting A Collection Due Process Hearing

What Is the Deadline for Requesting a Collection Due Process (CDP) Hearing?

- Your request for a CDP hearing about a Federal Tax Lien filing must be postmarked by the date indicated in the *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320* (lien notice).
- Your request for a CDP hearing about a proposed levy must be postmarked within 30 days after the date of the *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy notice).

Your timely request for a CDP hearing will prohibit levy action in most cases. A timely request for CDP hearing will also suspend the 10-year period we have, by law, to collect your taxes. Both the prohibition on levy and the suspension of the 10-year period will last until the determination the IRS Office of Appeals makes about your disagreement is final. The amount of time the suspension is in effect will be added to the time remaining in the 10-year period. For example, if the 10-year period is suspended for six months, the time left in the period we have to collect taxes will increase by six months.

You can go to court to appeal the CDP determination the IRS Office of Appeals makes about your disagreement.

What Is an Equivalent Hearing?

If you still want a hearing with the IRS Office of Appeals after the deadline for requesting a CDP hearing has passed, you can use this form to request an equivalent hearing. You must check the Equivalent Hearing box on line 6 of the form to request an equivalent hearing. **An equivalent hearing request does not prohibit levy or suspend the 10-year period for collecting your taxes; also, you cannot go to court to appeal the IRS Office of Appeals' decision about your disagreement.** You must request an equivalent hearing within the following timeframe:

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

Where Should You File Your CDP or Equivalent Hearing Request?

File your request by mail at the address on your lien notice or levy notice. You may also fax your request. Call the telephone number on the lien or levy notice to ask for the fax number. **Do not send your CDP or equivalent hearing request directly to the IRS Office of Appeals.**

Where Can You Get Help?

You can call the telephone number on the lien or levy notice with your questions about requesting a hearing. The contact person listed on the notice or other representative can access your tax information and answer your questions.

In addition, you may qualify for representation by a low-income taxpayer clinic for a free or nominal charge. Our Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area.

If you are experiencing economic harm, the Taxpayer Advocate Service (TAS) may be able to help you resolve your problems with the IRS. TAS cannot extend the time you have to request a CDP or equivalent hearing. See page five of Publication 594, *The IRS Collection Process*, or visit www.irs.gov/advocate/index.html. You also can call 1-877-777-4778 for TAS assistance.

Note-- The IRS Office of Appeals will not consider frivolous requests. You can find examples of frivolous reasons for requesting a hearing or disagreeing with a tax assessment in Publication 2105, *Why do I have to Pay Taxes?*, or at www.irs.gov/pub/irs-util/friv_tax.pdf

You can get copies of tax forms, schedules, instructions, publications, and notices at www.irs.gov, at your local IRS office, or by calling toll-free 1-800-TAX-FORM (829-3676).

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- **Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320,**
- **Notice of Intent to Levy and Notice of Your Right to a Hearing,**
- **Notice of Jeopardy Levy and Right of Appeal,**
- **Notice of Levy on Your State Tax Refund- Notice of Your Right to a Hearing.**

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 6 (Equivalent Hearing) to request an equivalent hearing.

1. Print Name: _____

If a husband and wife owe the tax liability jointly, please print both names if both want a hearing.

Address: _____

City: _____ State: _____ Zip Code: _____

2. Social Security Number or Numbers

SSN 1

____ - ____

SSN 2

____ - ____

Employer Identification Number

3. Daytime Telephone Number and Best Time to Call

() ____ - ____ ☐ am. ☐ pm.

4. Tax Information

Type of Tax (Income, Employment, Excise, etc. or Civil Penalty)	Tax Form Number (1040, 941, 720, etc)	Tax Period or Periods

Request for a Collection Due Process or Equivalent Hearing

5. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)

- ☐ Filed Notice of Federal Tax Lien ☐ Proposed Levy or Actual Levy

6. Equivalent Hearing (See the instructions for more information on Equivalent Hearings)

- ☐ I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing is too late.

7. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. **See page 4 of this form for examples.** You can add more pages if you don't have enough space.

Collection Alternative

- ☐ Installment Agreement ☐ Offer in Compromise

Lien

- ☐ Subordination ☐ Discharge ☐ Withdrawal

Please explain:

My Spouse Is Responsible

- ☐ Innocent Spouse Relief (Please attach Form 8857, *Request for Innocent Spouse Relief*, to your request.)

Other

- ☐ Reason:

(Use as much space as you need to explain the reason for your request. Attach extra pages if necessary.)

I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand my representative or I must sign and date this request before the IRS Office of Appeals can accept it.

SIGN HERE

Your Signature	Date
Spouse's Signature (if a joint request, both must sign)	Date

IRS Use Only

IRS Employee (Print)

Employee Telephone Number

IRS Received Date

Exhibit C

Collection Appeal Request

1. Taxpayer's Name		2. Representative: (Form 2848, Power of Attorney Attached)	
3. SSN/EIN	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone	6. Representative's Phone
7. Taxpayer's Street Address			
8. City		9. State	10. Zip Code
11. Type of Tax (Tax Form)	12. Tax Periods Being Appealed		13. Tax Due

Collection Action(s) Appealed

14. Please Check the Collection Action(s) You're Appealing:

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

Explanation

15. Please explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Authorized Representative's Signature	17. Date
18. Collection Manager's Signature	19. Date Received

Collection Appeal Rights

FOR LIENS, LEVIES, SEIZURES, AND DENIAL OR TERMINATION OF INSTALLMENT AGREEMENT

You may appeal a Notice of Federal Tax Lien, levy, seizure, or denial or termination of an installment agreement under these procedures. However, if you request an appeal after IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you or left at your home or business.

How to Appeal If You Disagree With One of These Actions

1. If you disagree with the decision of the Revenue Officer, and wish to appeal, you must first request a conference with a Collection manager.
2. If you do not resolve your disagreement with the Collection manager, you may request Appeals consideration by completing Form 9423, Collection Appeal Request.
3. On the Form 9423, check the Collection action(s) you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem. **THE COLLECTION OFFICE MUST RECEIVE YOUR REQUEST FOR AN APPEAL WITHIN 2 DAYS OF YOUR CONFERENCE WITH THE COLLECTION MANAGER OR WE WILL RESUME COLLECTION ACTION.**

What will happen when you appeal your case

Normally, we will stop the collection action(s) you disagree with until your appeal is settled, unless we have reason to believe that collection of the amount owed is at risk.

You may have a representative

You may represent yourself at your Appeals conference or you may be represented by an attorney, certified public accountant, or a person enrolled to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed Form 2848, Power of Attorney and Declaration of Representative. You can obtain Form 2848 from your local IRS office or by calling 1-800-829-3676.

Decision on the appeal

Once the Appeals Officer makes a decision on your case, that decision is binding on both you and the IRS. This means that both you and the IRS are required to accept the decision and live up to its terms.

Note: Providing false information, failing to provide all pertinent information, or fraud will void Appeal's decision.