

**MSP
#14****COLLECTION DUE PROCESS HEARINGS: Current Procedures Allow Undue Deference to Collection Function and Do Not Provide the Taxpayer a Fair and Impartial Hearing****PROBLEM**

IRS procedures for Collection Due Process (CDP) hearings deprive taxpayers of a fair and independent review of IRS collection actions. A CDP Hearing Officer must verify that the IRS followed the law and administrative procedures, and consider whether the collection action balances the need for efficient tax collection with the taxpayer's concern that the action be no more intrusive than necessary. However, Hearing Officers may overlook this balancing test and rely too heavily on the determination made by the Collection function.

ANALYSIS

Taxpayers often do not have an opportunity to work with Collection prior to a CDP hearing. Neither the Automated Collection System (ACS) nor Field Collection tracks how often employees contact taxpayers by phone or mail prior to sending CDP notices. If taxpayers do work with Collection, they often must waive their rights to a CDP hearing when accepting collection alternatives such as installment agreements for payment. IRS Office of Appeals employees do not appear to understand the purpose of CDP, and there are legitimate concerns about Appeals' independence from Collection. Among other things, Appeals lacks its own Internal Revenue Manual (IRM) guidance for CDP cases and must use the Collection IRM to evaluate collection alternatives and conduct the balancing test unique to CDP cases. Appeals does not consider the hazards of litigation in CDP cases even though the rationale for judicial review of collection actions is to provide guidance regarding when IRS actions constitute abuse of discretion. If the IRS ignores that guidance, it will harm taxpayers.

RECOMMENDATIONS

The IRS should require Collection to attempt to contact the taxpayer, preferably by phone, before issuing a CDP notice and direct the taxpayer to send his or her CDP request to Appeals instead of Collection. The IRS should consider untimely CDP requests as requests for an equivalent hearing if they qualify. If a taxpayer reaches an agreement with Collection, the IRS should not ask the taxpayer to waive the right to a CDP hearing, and Appeals should retain jurisdiction of the CDP hearing and enter into the agreement with the taxpayer. Appeals should suspend a CDP hearing when a taxpayer raises a liability issue for a non-CDP year that would be included in collection alternatives covered by the CDP hearing and allow the taxpayer to resolve these related liability issues with the appropriate IRS function. The IRS should update the Appeals IRM with a significant section on CDP hearings to provide guidance on reviewing the collection action, conducting the balancing test, and considering collection alternatives. All Appeals Officers, Settlement Officers, and Appeals Account Resolution Specialists should be required to take updated training on conducting the balancing test and applying the hazards of litigation.