

the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (e) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous.

(C) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the following:

(1) The identity of the court and the district in which the bankruptcy petition was filed; and

(2) The docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

(e) *Proof of full payment.* As used in paragraph (d)(2)(iii) of this section, the term "proof of full payment" means:

(1) An internal revenue cashier's receipt reflecting full payment of the tax liability in question prior to the date the federal tax lien issue was filed;

(2) A canceled check to the Internal Revenue Service in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the district director.

(f) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of federal tax lien.

(g) *Effective date.* The provisions of this section are effective July 7, 1989.

[T.D. 8250, 54 FR 19569, May 8, 1989. Redesignated at 56 FR 19948, May 1, 1991]

Seizure of Property for Collection of Taxes

§ 301.6330-1 Notice and opportunity for hearing prior to levy.

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time

after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q-A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A-A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A-A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q-A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A-A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it

had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q-A5. When will the IRS provide this notice?

A-A5. Beginning on January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of the IRS' intent to levy on property or rights to property, other than in state tax refund and jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a state tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q-A6. What must a pre-levy CDP Notice include?

A-A6. Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) Notification of the right to request a CDP hearing.
- (iii) A statement that the IRS intends to levy.
- (iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q-A7. What must a post-levy CDP Notice include?

A-A7. A post-levy CDP Notice must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS has levied upon the taxpayer's state tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q-A8. How will this pre-levy or post-levy notification under section 6330 be accomplished?

A-A8. The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information the IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with the CDP Notice.

(i) The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q-A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A-A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. See paragraph (c) of this section for when a request for a CDP hearing must be filed. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A-A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1*, except the IRS intends to levy upon a taxpayer's bank account on or after January 19,

1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the unpaid tax and tax periods covered by the pre-levy or post-levy CDP Notice provided to the taxpayer. The taxpayer must request the CDP hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is the taxpayer entitled to a CDP hearing where a levy for state tax refunds is issued on or after January 19, 1999, even though the IRS had previously issued other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A-B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the type of tax and tax periods set forth in the state tax refund levy issued on or after January 19, 1999.

Q-B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice under section 6330 with respect to the unpaid tax and periods, provides subsequent notice to that taxpayer that the IRS intends to levy on property or rights to property of the taxpayer for the same tax and tax periods shown on the CDP Notice?

A-B2. No. Under section 6330, only the first pre-levy or post-levy CDP Notice with respect to the unpaid tax and tax periods entitles the taxpayer to request a CDP hearing. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals' determination with respect to levies relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances, a taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q-B3. When the IRS provides a taxpayer with a substitute CDP Notice

and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a CDP Notice under section 6330 was previously sent, is the taxpayer entitled to a section 6330 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q-B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A-B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(3) *Example.* The following example illustrates the principles of this paragraph (b):

Example. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. The IRS gives D a CDP Notice of intent to levy with respect to the 1997 tax liability. The IRS will not notify E of its intent to levy. The IRS is not required to notify E of its intent to levy although E holds property of individual D. E is not the taxpayer.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6330, the CDP hearing must be requested during the 30-day period that commences the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information and signature specified in A-C1(ii) of this paragraph (c)(2). See A-D7 and A-D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) If the IRS receives a timely written request for CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely written request for a CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use Form 12153, "Request for a Collection Due Process Hearing," in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS

Internet site, <http://www.irs.gov/pub/irs-pdf/f12153.pdf>, or by calling, toll-free, 1-800-829-3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely CDP hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the

issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A-C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C6. Where must the written request for a CDP hearing be sent?

A-C6. 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. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q-C7. What will happen if the taxpayer does not request a CDP hearing

in writing within the 30-day period commencing on the day after the date of the CDP Notice issued under section 6330?

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the date of the CDP Notice, the taxpayer foregoes the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the 30-day period that does not satisfy the requirements set forth in A-C1(ii)(A), (B), (C), (D) or (F) of this paragraph (c)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-C1(iii) of this paragraph (c)(2). If the request for CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an equivalent hearing. In such cases, the taxpayer may obtain an equivalent hearing without submitting an additional request. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions

occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. The IRS mails a CDP Notice of intent to levy to individual A's last known address on June 24, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 24, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing—(1) In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and

does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one pre-levy CDP hearing under section 6330 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP pre-levy hearing under section 6330 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6330 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A-D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an Appeals officer or employee includes participation or involvement in a matter (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP matter, and the Appeals officer or employee actually participated in the prior matter.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. Except as provided in A-D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the proposed levy will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, as described in A-F4 of paragraph (f)(2). If no face-to-face or telephonic conference is held, or other oral communication takes place, review of the documents in the case file, as described in A-F4 of paragraph (f)(2), will constitute the CDP hearing for purposes of section 6330(b).

Q-D8. In what circumstances will a face-to-face CDP conference not be granted?

A-D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A-D7 of this paragraph (d)(2) and this A-D8. If all Appeals officers or employees at the location provided for in A-D7 of this paragraph (d)(2) have had prior involvement with the taxpayer as provided in A-D4 of this paragraph (d)(2), the taxpayer will not be offered a face-to-face conference at that location, unless the taxpayer elects to waive the requirement of section 6330(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals would have offered the taxpayer a face-to-face conference at the location provided in A-D7 of this paragraph (d)(2), but for the disqualification of all Appeals officers or employees at that location. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or

frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, "Offer in Compromise," no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. Appeals in its discretion, however, may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. In all cases, a taxpayer will be given an opportunity to demonstrate eligibility for a collection alternative and to become eligible for a collection alternative, in order to obtain a face-to-face conference. For purposes of determining whether a face-to-face conference will be granted, the determination of a taxpayer's eligibility for a collection alternative is made without regard to the taxpayer's ability to pay the unpaid tax. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A-C1(ii)(E) of paragraph (c)(2). See also A-C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a NFTL filed with respect to individual A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6320 CDP hearing, employee B may conduct the CDP hearing under section 6330 involving the proposed levy for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program

(CAP) hearing regarding a NFTL filed with respect to individual C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6330 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to individual C's 1998 income tax liability.

Example 3. Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941, "Employer's Quarterly Federal Tax Return." Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a proposed levy for a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a proposed levy for a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing—(1) In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative

procedure with respect to the proposed levy have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed levy, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination (under section 66 or section 6015) as to spousal defenses in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives include, for example, a proposal to withhold the proposed levy or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A-D8 of paragraph (d)(2).

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6330 if the taxpayer previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or

amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not have a prior opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue

a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the issuance of a notice of intention to levy, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a pre-

cluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer on such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination—(1) In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A-F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q-F4. What is the administrative record for purposes of Tax Court review?

A-F4. The case file, including the taxpayer's request for hearing, any other written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative, memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in the Tax Court review of the Notice of Determination issued by Appeals.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity—(1) In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the Notice of Determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e) provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. The IRS, however, may levy for other taxes and periods not covered by the CDP Notice if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods and taxes, whether or not covered by the CDP Notice issued under section 6330, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP No-

vice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the Tax Court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals—(1) In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (B)?

A-H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court.

(i) *Equivalent hearing—(1) In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an “equivalent hearing.” The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-II. What must a taxpayer do to obtain an equivalent hearing?

A-II. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information and signature required in A-II(ii) of this paragraph (i)(2).

(ii) The request must be dated and must include the following:

(A) The taxpayer’s name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer’s authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not satisfy the requirements set forth in A-II(ii) of this paragraph (i)(2) within a reasonable period of time after a request from the IRS. If the requirements are not satisfied within a reasonable period of time, the taxpayer’s equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer’s behalf by the taxpayer’s spouse or other unauthorized representative, and that otherwise meets the requirements set forth in A-II(ii) of this paragraph (i)(2), by filing, within a reasonable period of time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer’s behalf. If the affirmation is filed within a reasonable period of time after a request, the timely equivalent hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

Q-I2. What issues will Appeals consider at an equivalent hearing?

A-I2. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I3. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I3. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-

levy CDP Notice, that is, CDP hearings.

Q-14. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A-14. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-15. What will the Decision Letter state?

A-15. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-16. Will a taxpayer be able to obtain Tax Court review of a decision made by Appeals with respect to an equivalent hearing?

A-16. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

Q-17. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6330?

A-17. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NF-TL.

Q-18. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A-18. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A-110 of this paragraph (i)(2).

Q-19. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A-19. No. All taxpayers who want an equivalent hearing must request the hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q-110. Where must the written request for an equivalent hearing be sent?

A-110. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q-111. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330?

A-111. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the date of the CDP Notice issued under section 6330, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A-11(i) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-11(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within

the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) *Effective date.* This section is applicable on or after November 16, 2006 with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

[T.D. 8980, 67 FR 2551, Jan. 18, 2002, as amended by T.D. 9291, 71 FR 60831, Oct. 17, 2006]

§ 301.6331-1 Levy and distraint.

(a) *Authority to levy—(1) In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the district director to whom the assessment is charged (or, upon his request, any other district director) may proceed to collect the tax by levy. The district director may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The district director may also levy upon property with respect to which there is a lien provided by section 6321 or 6324 for the payment of the tax. For exemption of certain property from levy, see section 6334 and the regulations thereunder. As used in section 6331 and this section, the term “tax” includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see provisions under sections 6323 and 6324 (a)(2) and (b) for protection of certain transferees against a Federal tax lien. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. A levy on a bank reaches any interest that accrues on the taxpayer’s balance under the terms

of the bank’s agreement with the depositor during the 21-day holding period provided for in section 6332(c). Except as provided in § 301.6331-1(b)(1) with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the district director until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made together with interest that accrues during the 21-day holding period provided for in section 6332(c). For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer’s balance at the time the levy is made. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he or she may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331(a), the 30-day period provided in section 6331(d), or the limitation on levy provided in section 6331(g)(1).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such