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Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions

PROBLEM

While some taxpayers may fraudulently convey their property to friends or relatives to avoid their personal legal obligation to pay taxes, others legitimately divest their property before the IRS assesses tax. The IRS files Notices of Federal Tax Lien (NFTLs) and issues levies against the property of third parties (individuals or entities, known as transferees, nominees, or alter egos) that hold property purportedly belonging to taxpayers subject to collection.¹ However, these third parties are not considered taxpayers for the purposes of Collection Due Process (CDP) rights under Internal Revenue Code (IRC) §§ 6320 and 6330 and therefore are not entitled to CDP rights.² The IRS Restructuring and Reform Act of 1998 (RRA 98) failed to provide for notice, CDP hearings, and subsequent pre-payment judicial review for third parties.³

The purpose of CDP rights is to give taxpayers a meaningful hearing before the IRS levies their property or immediately after the IRS files a NFTL against the taxpayers' property. An independent and impartial Appeals or Settlement Officer must weigh the issues raised by the taxpayer and determine whether the proposed collection action balances the need for efficient collection of taxes with the legitimate concern of the taxpayer that any proposed collection action be "no more intrusive than necessary."⁴

Without the benefit of the protections afforded by IRC §§ 6320 and 6330, the third party against whom the IRS has taken a collection action has limited remedies, provided only after the collection action has occurred.⁵ These remedies are time-consuming, costly and place an undue burden on those who cannot afford the significant expense of litigating in federal district court. In some cases, the third party may not challenge the wrongful levy or an erroneous lien because he or she does not have the financial resources to do so.

As a result, the collection process for alleged nominees, alter egos, and transferees perversely denies individuals and entities who may be innocent third parties the right to raise concerns and propose collection alternatives before an action is taken, while giving the taxpayer those very rights. Amending the IRC to provide CDP rights to nominees, alter egos, and transferees would appropriately give the "affected third party" (the language used

¹ Internal Revenue Manual (IRM) 5.12.2.6.4 (Oct. 30, 2009); IRM 5.17.14.1.4 and 5.17.14.2 (Jan. 24, 2012). See also IRM 5.11.1.2.5 (Dec. 11, 2009) and IRM 5.17.14.6.1 (Jan. 24, 2012).

² See Treas. Reg. § 301.6320-1(a)(2), Q&A-A7 and (b)(2), Q&A B5; Treas. Reg. § 301.6330-1(a)(3), Q&A-A2 and (b)(2), Q&A-B5.

³ RRA 98, Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746 (1998).

⁴ IRC § 6330(c)(1) and (c)(3)(C); H.R. Rep. No. 105-599, at 263 (1998) (Conf. Rep.).

⁵ See generally IRC §§ 6343(b) and 7426; 28 USC § 2410.

by the Senate Finance Committee in the initial draft of CDP provisions) at least as much due process protection as the person actually responsible for the tax.⁶

EXAMPLE

Jane Doe operates a small bakery that incurs tax debts and is unable to make loan payments. The IRS files an NFTL against the taxpayer, but the lender's security interest in all of the taxpayer's property and rights to property takes priority over the NFTL. To avoid foreclosure, Jane's son Jack agrees to assume and refinance the debt and acquire the business. After receiving approval from her manager and the Office of Chief Counsel, the Revenue Officer places a nominee levy on the business's credit card receipts in the belief that Jack has taken over for his mother and is acting as her nominee. Neither the Counsel attorney nor the Revenue Officer knows that Jack has legally acquired the business and paid off Jane's loan. If the IRS had provided Jack with a CDP notice and conducted a CDP hearing prior to the levy, Jack would have had the opportunity to demonstrate to an independent Appeals or Settlement Officer that he was not his mother's nominee and the Revenue Officer's initial determination could be reversed before the levy occurred. As a result of the absence of CDP rights for nominees, Jack is left with the option of bringing a wrongful levy action in U.S. District Court. He hires an attorney and prevails, but at the cost of a \$30,000 retainer fee.

RECOMMENDATION

The National Taxpayer Advocate recommends that Congress amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to "affected third parties," known as nominees, alter egos, and transferees, who hold legal title to property subject to IRS collection actions.

CURRENT LAW

IRC § 6321 creates a federal tax lien on all property and rights to property of any taxpayer who neglects or refuses to pay the tax for which the taxpayer is liable. This lien continues against the taxpayer's property until the liability either has been fully paid or is legally unenforceable.⁷ To put third parties on notice and establish the priority of the government's interest in a taxpayer's property against subsequent purchasers, secured creditors, and junior lien holders, the IRS must file an NFTL in the appropriate location, such as a county registry of deeds.⁸

⁶ See S. Rep. 105-174, at 67 (1998).

⁷ IRC § 6322. This statutory lien is sometimes called the "secret" lien, because third parties – and sometimes even the taxpayer – have no knowledge of the existence of this lien or the underlying tax debt.

⁸ IRC § 6323(f); Treas. Reg. § 301.6323(f)-1; IRM 5.12.2.8 (Oct. 30, 2009).

IRC § 6331(a) authorizes the IRS to levy upon all property and rights to property of any taxpayer who neglects or refuses to pay his or her tax liability after notice and demand for payment has been made on the taxpayer.

The IRS can file NFTLs and issue levies against the property of third parties (individuals or entities), known as transferees, nominees, or alter egos that hold property belonging to taxpayers subject to collection. In general, in transferee or nominee situations, the IRS can pursue only specific property to which the NFTL has attached, while it can pursue all of the alter ego's property to collect the taxpayer's liability.⁹

- **Transferee.** If the taxpayer transfers assets for inadequate consideration, the transferee is not considered a purchaser pursuant to IRC § 6323, and the federal tax lien maintains priority over the transferee's interest in the property.¹⁰ The IRS can file NFTLs against or levy upon property subject to a federal tax lien that has been transferred by the taxpayer, which is in the hands of the transferee or any subsequent transferee.¹¹
- **Nominee.** In a nominee situation, a third party owns the property in name only for the benefit of the taxpayer, while the taxpayer remains the true owner of, or holds the equitable interest in, the property.¹² The IRS can file NFTLs against property held by a nominee in the name of the nominee, or levy upon such property subject to an NFTL to satisfy the tax liabilities of the true owner.¹³
- **Alter Ego.** The alter ego doctrine focuses on the relationship between the taxpayer and the alter ego; *i.e.*, whether the taxpayer is similar to or controls another individual, trust, business or corporation. The alter ego doctrine often involves "piercing the corporate veil" to hold an individual or shareholder liable for the debts of a business entity, although "reverse piercing" may also be used to recover a taxpayer's delinquent tax liability from his alter ego business entity.¹⁴ When an owner is the alter ego of a corporate taxpayer or other legally distinct entity, the owner's assets may be used to satisfy the debts of the corporate taxpayer, and vice versa.¹⁵ The IRS can take collection actions against property held in the name of the alter ego, based on the assessment against the taxpayer, including filing an NFTL in the name of the alter ego, or levying upon such property in the hands of alter ego.¹⁶

⁹ *Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000); IRM 5.17.2.5.7(2) (Mar. 27, 2012).

¹⁰ IRC § 6323(a) and (h)(6); IRM 12.2.6.6(2) (Oct. 30, 2009). The transferee liability should not be confused with an administrative transferee assessment under IRC § 6901.

¹¹ Subject to certain exceptions, the federal tax lien (as perfected by the NFTL) takes priority over any subsequently arising interest in the taxpayer's property. IRC § 6323(a) and (h)(6). See also Treas. Reg. § 301.6331-1(a)(1).

¹² See *Holman v. United States*, 505 F.3d 1060 (10th Cir. 2007).

¹³ See, e.g., *United States v. Schaeffer*, 245 B.R. 407 (D. Colo. 1999) (former wife held property as a nominee of the taxpayer); *Allen Family Trust v. United States*, 558 F. Supp. 152 (D. Kan. 1982) (family trust is merely a nominee, a title holder for the taxpayer).

¹⁴ *Towe Antique Ford Found. v. Comm'r*, 999 F.2d 1387, 1390 (9th Cir. 1993); IRM 5.17.2.5.7.1 (Mar. 27, 2012); *Alter ego* essentially means a "second self." IRM 5.12.2.6.7 (Oct. 30, 2009).

¹⁵ See, e.g., *Oxford Capital Corp. v. United States*, 211 F.3d 280 (5th Cir. 2000); *Wolfe v. U.S.*, 798 F.2d 1241 (9th Cir. 1986); *Valley Finance v. United States*, 629 F.2d 162, 172 (D.C. Cir. 1980).

¹⁶ *Oxford Capital Corp. v. United States*, 211 F.3d 280, 284 (5th Cir. 2000).

The law requires the IRS to provide written notification (a CDP notice) to the taxpayer of the first NFTL filing for a specific tax period and of the taxpayer's right to a CDP hearing not more than five business days after the filing of the NFTL.¹⁷ The taxpayer is entitled to one CDP hearing per tax period before an Appeals or Settlement Officer who has had no prior involvement in the matter with respect to that tax period. Similarly, IRC § 6330 requires the IRS, subject to certain exceptions, to provide written notification (a CDP notice) of its intent to levy on any property or right to property of any taxpayer at least 30 days prior to the levy and to inform the taxpayer of the right to a CDP hearing.¹⁸ Again, the taxpayer is entitled to one hearing per tax period before an Appeals or Settlement officer who has had no prior involvement. The IRS generally cannot take any levy action pursuant to the determination during the 30 days in which the taxpayer may seek judicial review or while review is pending.

The purpose of CDP rights is to give taxpayers a meaningful hearing before the IRS levies their property or immediately after the IRS files a NFTL against the taxpayers' property.¹⁹ The hearing allows taxpayers an opportunity to raise issues relating to the collection of the tax liability, including:

- Appropriateness of collection actions;²⁰
- Collection alternatives such as an installment agreement (IA), offer in compromise (OIC), posting a bond, or substitution of other assets;²¹
- Appropriate spousal defenses;²²
- The existence or amount of the underlying tax liability, but only if the taxpayer did not receive a notice of deficiency or otherwise have an opportunity to dispute the liability;²³ and
- Any other relevant issue relating to the unpaid tax, the NFTL, or the proposed levy.²⁴

In addition to addressing the issues raised by the taxpayer, the Appeals or Settlement Officer must verify that the IRS has met the requirements of all applicable laws and administrative procedures,²⁵ and decide whether the proposed collection action balances the

¹⁷ See IRC § 6320. See also Letter 3172, *Notice of Federal Tax Lien Filing and Your Right to a Hearing under I.R.C. § 6320*.

¹⁸ Treas. Reg. § 301.6330-1(a)(3), Q&A-A5 (except in the case of jeopardy levies or levies on State income tax refunds). See also Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*, or LT-11, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*. The Letter 1058 is issued by field collection, in cases assigned to a Revenue Officer. The LT-11 is issued from a Service Center by the IRS Automated Collection System (ACS).

¹⁹ Prior to RRA 98, the U.S. Supreme Court had held that a post-deprivation hearing was sufficient to satisfy due process concerns in the tax collection arena. *Phillips v. Comm'r*, 283 U.S. 589, 595-601 (1931).

²⁰ IRC § 6330(c)(2)(A)(ii).

²¹ IRC § 6330(c)(2)(A)(iii).

²² IRC § 6330(c)(2)(A)(i).

²³ IRC § 6330(c)(2)(B).

²⁴ IRC § 6330(c)(2)(A); Treas. Reg. §§ 301.6320-1(e) and 301.6330-1(e).

²⁵ IRC § 6330(c)(1); *Hoyle v. Comm'r*, 131 T.C. 197 (2008).

need for efficient collection of taxes with the legitimate concern of the taxpayer that any collection be “no more intrusive than necessary.”²⁶ This balancing test is central to a CDP hearing.

However, the IRS will only give the CDP lien notice to the person described in IRC § 6321 who is named on the NFTL.²⁷ A CDP levy notice will only be given to the person described in IRC § 6331(a).²⁸ In other words, CDP rights are only available to the delinquent taxpayer — the person liable to pay the tax due after notice and demand who refuses or neglects to pay.

The IRS does not give a CDP lien notice under IRC § 6320 to a nominee, alter ego, or transferee of the taxpayer, because the third party is not the person described in IRC § 6321 and, therefore, is not entitled to such notice and CDP rights.²⁹ The IRS does, however, give these third parties a notice that it has filed the NFTL and provides administrative appeal rights under the Collection Appeals Program (CAP).³⁰ Because a CAP hearing before the IRS Office of Appeals is not a CDP hearing under IRC § 6320, any determination made as part of the CAP hearing is not subject to judicial review under IRC § 6330(d)(1).³¹ Third parties may also seek reconsideration by IRS collection employees and assistance from the National Taxpayer Advocate.³²

Similarly, the IRS does not give notice of the proposed levy to a nominee, alter ego, or transferee of the taxpayer, because the third party is not the person described in IRC § 6331(a) and is not entitled to a pre-levy CDP hearing.³³ The third party may seek reconsideration by the IRS office collecting the tax, by requesting a CAP hearing before Appeals, or by requesting assistance from the National Taxpayer Advocate. Because a CAP hearing is not a CDP hearing under IRC § 6330, any determination made as part of the CAP hearing is not subject to judicial review under IRC § 6330(d)(1).³⁴

²⁶ IRC § 6330(c)(3)(C). See also H.R. Rep. No. 105-599, at 263 (1998) (Conf. Rep.).

²⁷ Treas. Reg. § 301.6320-1(a)(2), Q&A-A1.

²⁸ Treas. Reg. § 301.6330-1(a)(3), Q&A-A1.

²⁹ See Treas. Reg. § 301.6320-1(a)(2), Q&A-A7 and (b)(2), Q&A B5; IRM 5.12.2.6.4 (Oct. 30, 2009).

³⁰ Treas. Reg. § 301.6320-1(b)(2), Q&A-B5; IRM 5.12.2.6.4(4) (Oct. 30, 2012). Letter 3177(DO), *Notice of Federal Tax Lien Filing — Nominee or Alter-Ego*.

³¹ Treas. Reg. § 301.6320-1(b)(2), Q&A-B5. See also *Forman v. U.S. Dept. of Treasury I.R.S.*, 2005-1 USTC ¶ 50,418 (N.D. Ill. 2005); *Gillum v. Comm’r*, 676 F.3d 633 (8th Cir. 2012).

³² Treas. Reg. § 301.6320-1(b)(2), Q&A-B5. Additionally, the third party may seek a certificate of discharge under section 6325(b)(4) and pursue any other procedures to which a third party may be entitled. *Id.*

³³ Treas. Reg. § 301.6330-1(a)(3), Q&A-A2 and (b)(2), Q&A-B5.

³⁴ Treas. Reg. § 301.6330-1(b)(2), Q&A-B5.

REASONS FOR CHANGE

Collection Due Process hearings were created by RRA 98.³⁵ The legislative history of IRC §§ 6320 and 6330 shows that Congress believed that “the IRS should afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property.”³⁶ CDP procedures were designed to “increase fairness to taxpayers.”³⁷ Even though the Senate report mentioned “[t]he taxpayer (*or affected third party*),” the Conference report did not reproduce this language. (emphasis added).³⁸ RRA 98 did not include third-party collection doctrines and did not provide for notice, CDP hearings, and subsequent pre-payment judicial review in those instances.³⁹ As a result, third parties, *i.e.*, transferees, nominees, and alter egos, are afforded no CDP rights and are not entitled to judicial review of IRS collection actions in U.S. Tax Court.

While some taxpayers fraudulently convey their property to friends or relatives to avoid their personal legal obligations to pay taxes, others legitimately divest their property before the IRS makes the assessment. Some practitioners have observed the aggressive approach that the IRS has recently taken in collecting taxes from alleged nominees and alter egos of delinquent taxpayers.⁴⁰ The IRS filed a significant number of nominee and alter ego liens in fiscal years (FYs) 2008-2011, as shown on Chart 2.6.1 below.

³⁵ RRA 98, Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746 (1998).

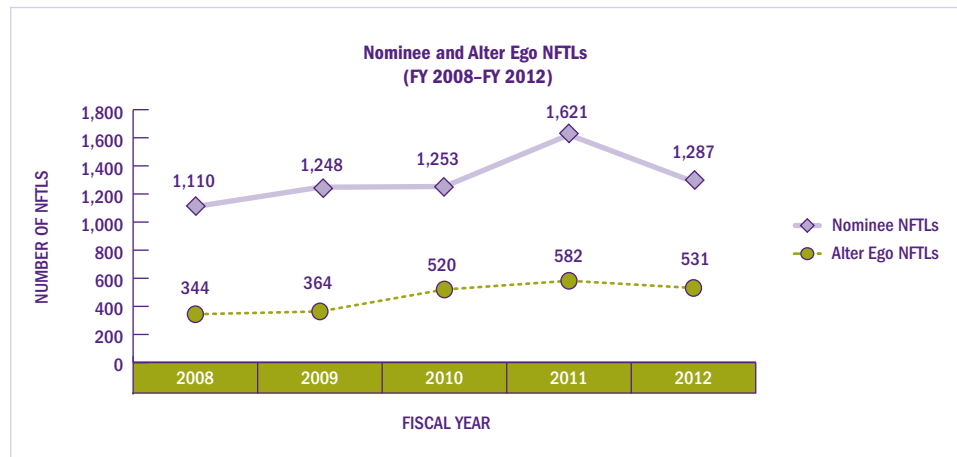
³⁶ S. Rep. 105-174, at 67 (1998). See also J. Comm. on Tax'n, General Explanation of Tax Legislation Enacted in 1998, JCS-6-98 (Nov. 24, 1998).

³⁷ S. Rep. 105-174, at 67 (1998).

³⁸ Cf. S. Rep. 105-174, at 67 and H.R. Rep. No. 105-599, at 265-66 (1998) (Conf. Rep.).

³⁹ As discussed above, Treasury regulations interpreted the law as affording CDP rights and subsequent judicial review only to taxpayers and not to third parties holding the property as transferees, nominees, or alter egos. See Treas. Reg. § 301.6320-1(a)(2), Q&A-A7 and (b)(2), Q&A B5; Treas. Reg. § 301.6330-1(a)(3), Q&A-A2 and (b)(2), Q&A-B5. Interestingly, during the rulemaking process, two commentators brought up the issue of the lack of CDP right to third parties before the IRS codified its first permanent CDP regulation in 2002. See T.D. 8979, 67 Fed. Reg. 2558, 2559 (Jan. 17, 2002).

⁴⁰ Robert E. McKenzie, *Nominee Liens & Alter Ego Liens*, presentation materials, American Bar Association Section of Taxation May meeting, Washington, DC (May 2012).

FIGURE 2.6.1, Nominee and Alter Ego NFTLs, FYs 2008–2012 (through August 2012)⁴¹

A few practitioners have perceived IRS actions aimed at collecting tax debts from third parties as “abusive.”⁴² Administrative remedies provided to nominees, alter egos, and transferees *post factum*, such as a request for reconsideration by the IRS office collecting the tax or an administrative appeal under the CAP program, are inadequate and ineffective because the collection action occurs *before* the IRS hears an explanation from the affected third party. Moreover, since the use of the third-party NFTL or levy requires advance IRS Office of Chief Counsel approval, the Appeals Officer may be reluctant to override counsel.⁴³ During a recent American Bar Association Section of Taxation webinar on nominee and alter ego liens and levies, a practitioner commented, “You walk in there and the appeals officer says, ‘Well, IRS counsel signed off; that’s good enough for me’ . . . and you’re stuck going to court.”⁴⁴ Another practitioner called the level of due process for nominees, alter egos, and transferees “illusory.”⁴⁵

Without the benefit of the protections afforded by IRC §§ 6320 and 6330, the third party against whom the IRS has taken a collection action has limited remedies. If the IRS denies administrative relief or the taxpayer misses the narrow deadline for making a written request for return of the levy proceeds under IRC § 6343(b), the available judicial remedies are not likely to provide expeditious relief from the effect of the third-party NFTL or levy.⁴⁶

⁴¹ IRS responses to TAS information request (Sept. 7 and Nov. 27, 2012).

⁴² Brant Goldwyn, *IRS Collection Actions Against Nominees and Alter Egos Lack Due Process, Practitioners Assert*, CCH (Aug. 9, 2012) (reporting about an American Bar Association program on the collection of taxes from nominees, transferees and alter egos).

⁴³ Amy S. Elliott, *Increased IRS Use of Alter Ego Liens Causing Problems for Taxpayers*, 2012 Tax Notes Today 154-2 (Aug. 9, 2012).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Identifiable property in possession of the IRS may be returned anytime. If seized property has been sold, or if cash has been turned over to the IRS by the person upon whom a levy was served, a request for the return of levied funds or cash proceeds from the sale of levied property must be made before the expiration of nine months from the date of the levy. IRC § 6343(b); Treas. Reg. § 301.6343-2(b) and (c). See also National Taxpayer Advocate 2001 Annual Report to Congress 202-14 (Key Legislative Recommendation: *Return of Levy Proceeds*).

If the IRS has filed an NFTL, the third party who holds the title is left with the option to bring an action to quiet title under 28 USC § 2410.⁴⁷ To contest a nominee, alter ego, or transferee levy, the affected third party has to file a wrongful levy action under IRC § 7426 in district court.⁴⁸ In addition to being time-consuming, these remedies are often costly and place an undue burden on those who cannot afford the significant expense of litigating in federal district court.⁴⁹ In some cases, the third party may never challenge the wrongful levy or an erroneous lien because he or she does not have the financial resources to do so.⁵⁰

The collection process for alleged nominees, alter egos, and transferees is fundamentally unfair and can produce unjust results, when an innocent third party holding the legal title to property gets no CDP protections, while the party actually responsible for the tax debt gets the full protection of IRC §§ 6320 and 6330.⁵¹

Amending the IRC to provide CDP rights to nominees, alter egos, and transferees would appropriately give the “affected third party” (the language used by the Senate Finance Committee in the initial draft of CDP provisions) at least as much due process protection as the person actually responsible for the tax.⁵² It is also good government policy, providing extra measures of protection against abuse in the collection arena and increasing fairness and transparency in tax administration, consonant with the legislative intent of RRA 98.⁵³

The availability of the CDP hearing procedure does not dictate the outcome. It simply assures the third party holding legal title to property that “the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the [affected third party] that the collection action be no more intrusive than necessary.”⁵⁴

⁴⁷ See *Baldassari v. United States*, 78-2 USTC ¶ 9560 (Cal. Ct. App. 1978). If the nominee NFTL is filed without any form of levy, a wrongful levy action under IRC § 7426 is not available. See also *Nickerson v. United States*, 75-1 USTC ¶ 9455 (D.R.I. 1974), *aff'd*, 513 F.2d 31 (1st Cir. 1975). Thus, the third party's creditworthiness and financial viability can be seriously impaired without any effective remedy.

⁴⁸ A wrongful levy suit action must be brought within nine months of the date of the levy. IRC § 6532(c)(1). If a request is made for return of property under section 6343(b), then the nine month period is extended for a period of twelve months from the date of filing such request or for a period of six months from the date the IRS denies the claim, whichever is shorter. IRC § 6532(c)(2).

⁴⁹ See Stephanie Hoffer *et al.*, *To Pay or Delay: The Nominee's Dilemma Under Collection Due Process*, 82 TUL. L. REV. 781 (2008). See also Emery G. Lee & Thomas E. Willging, *Defining the Problem of Cost in Federal Civil Litigation*, 60 DUKE L.J. 765 (2010) (finding median litigation costs, including attorney's fees, of \$15,000 for plaintiffs and \$20,000 for defendants). Litigation costs for a quiet title action can exceed \$30,000. American Bar Association Section of Taxation May Meeting, *Nominee and Alter Ego Liens*, panel discussion (May 2012).

⁵⁰ See Stephanie Hoffer *et al.*, *To Pay or Delay: The Nominee's Dilemma Under Collection Due Process*, 82 TUL. L. REV. 781, 783 (2008).

⁵¹ At a minimum, the government should provide impacted persons with notice of action and an opportunity to be heard. See Nina E. Olson, *Taking the Bull by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection*, 2010 Erwin N. Griswold Lecture Before The American College of Tax Counsel, 63 TAX LAW. 227 (Spring 2010).

⁵² See S. Rep. 105-174, at 67 (1998). For a more detailed discussion of due process in tax collection, see Nina E. Olson, *Taking the Bull by Its Horns: Some Thoughts on Constitutional Due Process in Tax Collection*, 2010 Erwin N. Griswold Lecture Before The American College of Tax Counsel, 63 TAX LAW. 227 (Spring 2010).

⁵³ See J. Comm. On Tax'n, *General Explanation of Tax Legislation Enacted in 1998*, JCS-6-98 (Nov. 24, 1998).

⁵⁴ IRC § 6330(c)(3)(C); H.R. Rep. No. 105-599, at 263 (1998) (Conf. Rep.).

EXPLANATION OF RECOMMENDATION

The proposed legislative change extends CDP protections currently available to taxpayers under IRC §§ 6320 and 6330 to “affected third parties,” such as nominees, alter egos, and transferees, that hold legal title to property subject to IRS collection actions. Permitting affected third parties to use CDP procedures would provide significant protective remedies from wrongful NFTLs and levies. A CDP hearing would provide these third parties with an opportunity for a meaningful independent review by the IRS Office of Appeals before the IRS issues its first levy or immediately after it files its first NFTL in the name of an alleged nominee, alter ego, or transferee. At the hearing, the third party would have the statutory right to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, and in some situations the underlying tax liability.⁵⁵ Most importantly, an independent Appeals or Settlement Officer will be required to follow the CDP hearing procedures, the review requirements, and the balancing test afforded to taxpayers under current law.⁵⁶ Further, affected third parties will have the right to judicial review of Appeals’ determinations provided that they timely request the CDP hearing and timely petition the U.S. Tax Court.⁵⁷ Similar to current CDP protections afforded to taxpayers, the IRS would also suspend levy actions against affected third parties during a levy hearing and any judicial review that may follow.⁵⁸

⁵⁵ IRC §§ 6320(c) and 6330(c). IRC § 6320(c) generally requires Appeals to follow the levy hearing procedures under IRC § 6330 for the conduct of the lien hearing, the review requirements, and the balancing test. A taxpayer cannot challenge the underlying liability in a CDP proceeding if the taxpayer has had a prior opportunity to challenge it. IRC § 6330(c)(2)(B). Furthermore, a third party holding property upon which a federal tax lien has attached may generally not challenge the assessment against the taxpayer. *Pipola v. Chicco*, 274 F.2d 909, 911-13 (2d Cir. 1960).

⁵⁶ IRC § 6330(c)(1) and (c)(3)(C).

⁵⁷ IRC § 6330(a)(3)(B) and (d); IRC § 6320(a)(3)(B).

⁵⁸ IRC § 6330(e)(1) provides that generally, levy actions are suspended during the CDP process (along with a corresponding suspension in the running of the limitations period for collecting the tax). However, IRC § 6330(e)(2) allows the IRS to resume levy actions during judicial review upon a showing of “good cause,” if the underlying tax liability is not at issue.