

Legislative Recommendation #23**Provide Collection Due Process Rights to Third Parties Holding Legal Title to Property Subject to IRS Collection Actions****PRESENT LAW**

Current law authorizes the IRS to file Notices of Federal Tax Lien (NFTLs) and issue levies against a taxpayer's property or rights to property, including property owned jointly, property owned by certain third parties, and property secured by certain creditors. However, third parties generally are not considered "taxpayers" for purposes of the Collection Due Process (CDP) notice and hearing procedures described in IRC §§ 6320 and 6330, and they are therefore not entitled to CDP rights.¹ For that reason, the IRS does not issue CDP lien notices pursuant to IRC § 6320 or provide notice of proposed levies pursuant to IRC § 6330 to these third parties.²

REASONS FOR CHANGE

Congress created the CDP notice and hearing procedures to give taxpayers the right to a meaningful hearing before the IRS levies their property or immediately after the IRS files an NFTL against their property. During a CDP hearing, a taxpayer has the right to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives.

However, affected third parties, such as joint owners, nominees, and alter egos, do not have CDP rights. This may be an oversight.³ There is apparent inconsistency between the statute and the accompanying regulations. For example, the regulations governing CDP rights relating to levy action explain that a CDP notice is issued to the person described in IRC § 6331(a) (*i.e.*, the person who is liable to pay the tax due after notice and demand and who refuses or neglects to pay) and concludes that a "pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer."⁴ However, the applicable Code section refers to "person." IRC § 6330(a) stipulates that "[n]o levy may be made on any property or right to property of any *person* unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made." (Emphasis added.)

Affected third parties would benefit from CDP hearings at least as much as liable taxpayers. Indeed, an affected third party may warrant additional protection because the underlying liability is generally not his or hers, and if the property at issue belongs strictly to the third party, the IRS may have no right to take its proposed collection action. Without the benefit of CDP protections, an affected third party against whom the IRS takes a collection action has comparatively limited remedies.

Additionally, current law provides different treatments for different types of third parties. Although third parties generally do not receive CDP rights, transferee assessments are established under the same procedures

1 Treas. Reg. §§ 301.6320-1(a)(2), Q-A1 & A-A1; 301.6330-1(a)(3), Q-A1 & A-A1.

2 See generally IRC §§ 6321, 6322, 6323(a), (f) and (h)(6), and 6331(a).

3 In the context of explaining the CDP provisions, the Senate report accompanying its version of the IRS Restructuring and Reform Act of 1998 referred to "[t]he taxpayer (or affected third party)." S. REP. NO. 105-174, at 67 (1998).

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

used for taxpayers.⁵ Transferees may challenge an assessment in court. Transferees also receive CDP rights when the IRS files an NFTL or issues a notice of intent to levy.⁶ However, other types of third parties, such as nominees and alter egos, do not receive these protections.

For these reasons, the National Taxpayer Advocate believes affected third parties should be given the same CDP rights to raise defenses and propose collection alternatives as taxpayers who owe a liability. While current law could be interpreted as allowing the IRS to give CDP rights to third parties, the IRS has not adopted that interpretation.

RECOMMENDATION

- Clarify that IRC §§ 6320 and 6330 extend CDP rights to affected third parties who hold legal title to property subject to IRS collection actions.⁷

5 IRC § 6901.

6 Internal Revenue Manual 5.17.14.4.2, Assessing Liability Under IRC § 6901 (Jan. 24, 2012).

7 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544 (Legislative Recommendation: *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*).