

Representing Clients in Collection Due Process Hearings

A substantial number of the Community Tax Law Project's cases involve collection activity by the IRS with respect to a client's income. Prior to the IRS levying upon the taxpayer's income or assets, the IRS is required to give the taxpayer the notice of its intent to levy and the right to a hearing called a Collection Due Process Hearing. The IRS provides this notice by sending the taxpayer a "Final Notice of Intent to Levy-Notice of Right to Hearing" via certified mail. The purpose of this notice is to provide the taxpayer with the right to request a hearing with an IRS Appeals Officer to discuss collection alternatives other than a levy upon the client's assets. The client has 30 days from the date of this notice to request his/her Collection Due Process (CDP) Hearing. We recommend submitting requests for CDP Hearings via certified mail with return receipt requested to verify that the hearing request was submitted timely.

Taxpayers, or their authorized representatives, request a CDP Hearing by completing IRS Form 12153, and filing it with the IRS Automated Collection Service (ACS) at the address provided on the final notice. The request for a CDP hearing should contain the tax years in question and what collection alternative you believe would be more appropriate in the taxpayer's situation, i.e., an offer in compromise, an installment agreement or placement of the taxpayer's account into currently not collectible status. Once the taxpayer requests a CDP hearing, the IRS will assign the matter to a CDP associate, who will contact the taxpayer for information. If the taxpayer does not respond, or cannot resolve the issue with the CDP associate, the case is transferred to an Appeals Officer. The Appeals Officer will then contact you to begin discussions as to what collection option is most appropriate for the taxpayer.

You should be aware that the CDP process requires patience; it may take several months to resolve the matter. The Appeals Offices throughout the U.S. are experiencing an incredible backlog of cases because of the dramatic number of hearing requests currently pending. Cases are usually assigned to an Appeals Office within a reasonable distance from the taxpayer. However, if your local office is overwhelmed, the IRS may transfer the case to a less busy office in another region. If this happens, the hearing will take place via telephone conversations as opposed to in person. The Appeals Officer will request information via facsimile and U.S. mail. The CDP hearing process requires substantial documentation that corroborates all of the taxpayer's income and expenses. Thus, the client should begin gathering this information immediately for submission to the IRS. You will want to review I.R.C. § 6330 and the accompanying Treasury Regulations that govern the procedures for a Collection Due Process Hearing.

Following are samples of two items that you may find useful during your representation of the client in a Collection Due Process Hearing:

- Cover Letter
- Supplemental Information

Cover Letter – Request for Collection Due Process Hearing

<Today's Date>

Internal Revenue Service
P.O. Box 219236
Kansas City, Missouri 64121-9236

Re: *Client Name & SSN*
Form 12153, Request for Collection Due Process Hearing

Dear Sir or Madam:

I represent Client Name in the matter of Form 1040 tax liabilities for the year. 1995, 1996 and 1997. Client Name received a Final Notice - Notice of Intent to Levy & Your Notice of a Right to a Hearing dated November 15, 2003, notifying her that she had 30 days to file a request for a hearing in regard to her 1995, 1996, and 1997 Form 1040 tax liabilities. Please find enclosed Form 12153, Request for a Collection Due Process Hearing. I am also enclosing a copy of an executed Form 2848, Power of Attorney, authorizing me to represent Client Name in this matter.

As the enclosed Form 12153 states, Client Name objects to the proposed levy action on the grounds that there exist reasonable collection alternatives. These collection alternatives include, but are not limited to, placement into currently not collectible status, an installment agreement or submission of an offer in compromise. Client Name plans to submit a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals as part of the CDP Hearing process. It is my understanding that upon submission of this Form 12153, all collection activity for the 1995, 1996, and 1997 Forms 1040 against Client Name will cease until completion of the hearing process pursuant to I.R.C. §6330(e).

Thank you for your attention to this matter. If you have any questions about the enclosed information, please do not hesitate to contact me. I can be reached at (XXX) XXX-XXXX.

Sincerely,

Name of Attorney
Title
Name of Firm/Organization

Encl: As stated.
cc: Client Name

Supplemental Information – Request for Collection Due Process Hearing

Client Name
SSN XXX-XX-XXXX
Form 12153: Request for a Collection Due Process Hearing

Supplemental Information: Objection to Filing of Notice of Federal Tax Lien:

Client Name objects to the Internal Revenue Service's intent to levy and the filing of a Notice of Federal Tax Lien for income taxes for the taxable years 1995, 1996 and 1997. The Service's proposed collection actions are unnecessary given that there are reasonable collection alternatives available to the Service, including placement into currently not collectible status or a possible installment agreement or offer in compromise.

Background Information:

Client Name is an elderly taxpayer who is a former employee of the Name of Employer. Although she is married and currently resides with her spouse, she is financially independent from Client's Spouse. Prior to 1993, Client's Name worked as a school teacher for the Name of Employer. In 1992, she became disabled and began receiving disability payments under a long-term disability contract with Name of Employer. She began receiving Social Security Disability payments in May 1994. Because of her disability and the fact that she was not working, Client's Name did not believe that she was required to file federal income tax returns for the tax years in question. In 1995, she received a notice from the IRS alleging that she owed taxes of approximately \$600.00. She contacted the IRS and spoke with IRS representative, a Mr. Representative, and advised him that she disagreed that she owed any tax liability, as she was disabled and had not worked since 1992. Mr. Representative informed the

taxpayer that the IRS did not take collection activity against disabled taxpayers or senior citizens and recommended that she disregard the letters as the IRS would eventually stop sending them. Client's Name followed his advice, and did nothing further until 2002 when her checks began bouncing. She contacted her bank, which advised her that the IRS was levying upon her Social Security payments. She went to the federal building and spoke to an IRS representative in person, who advised Client's Name that the laws had changed and the IRS was now authorized to levy Social Security. Client's Name explained that she could not afford to pay the taxes as a result of the accrued interest. She was advised that she had to pay the liability, and was referred to the Name of LITC for assistance.

Collection Alternatives:

Client's Name has filed all past due returns and is compliant with her federal income tax filing requirements. Given her age and her minimal income, Client's Name proposes to submit IRS Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals and request that her accounts be placed into currently not collectible status.

Financial Status:

Client Name is a low-income taxpayer who qualifies for pro bono legal representation by LITC, a low-income taxpayer clinic (LITC) that receives federal funding from the Internal Revenue Service under IRC § 7526. The Name of LITC assists low-income taxpayers with incomes at or below 250% federal poverty guidelines. Client's Name' minimal income qualifies her for representation by Name of LITC. She also owes substantial medical bills as a result of a knee replacement, and she is undergoing continuing medical treatment as a result of complications with the replacement.