

ABA Section of Taxation

American Bar Association -- Section of Taxation

ABA

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Panel Name: Closely Held Businesses & Tax Debts: An Update on IRS
Collection Procedures and Opportunities for Resolving Outstanding Tax Debts

Committee Name: Closely Held Businesses

Slides: IRS Collection Update [\[FN\]](#)

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IRS Collection Update

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Discussion Topics

- New Forms
- 10-Year Collection Statute
- The Race to the Final Notice
- The Impact of the Appeals Judicial Approach & Culture - AJAC
- The 2012 Fresh Start Initiative and its impact on Collection
- Offers-in-Compromise
- Bankruptcy

New IRS Forms

- Updated POAs

- Updated 433 Forms for Offers
- Offers-in-Compromise
- Low-Income Taxpayer Thresholds

Why Collection Is the Hottest Area Now!

Year	Accounts in Collection
2005	6,478,000
2006	7,074,000
2007	8,240,000
2008	9,232,000
2009	9,667,000
2010	10,391,000
2011	10,809,000
2012	11,464,000
2013	11,721,000

IRS Collection Process

- Assessment of the tax
- 10-Year Collection Statute
- Billing Notices
- Threat to levy and right to a hearing
- Appeals: CDP, Equivalent and CAP

10-Year Statute

- Pursuant to [IRC §6502](#) the IRS has 10 years to collect a tax debt
- The 10-year statute begins upon the date of assessment, not the date of filing
- There are a number of actions that will toll, or suspend, the collection statute
- Issuance of a notice of deficiency--[IRC §6503\(a\)](#)
- Assets of the taxpayer are in custody of a court--[IRC §6503\(b\)](#)

- The taxpayer is outside the United States for a continuous period of six months or more--[§6503\(c\)](#)
- A wrongful seizure of property or wrongful lien on property--[§6503\(f\)](#)
- Taxpayer files bankruptcy--[IRC §6503\(h\)](#)
 - The time added for a bankruptcy filing includes the time in bankruptcy plus six months!
- Filing of a Collection Due Process hearing request--Regulation [§301.6330-1\(g\)](#)
- Filing of an Offer in Compromise--Regulation [§301.7122-1\(i\)](#)

Billing Notices

- The initial billing notice
- The Notice of Intent to Levy
- The Final Notice of Intent to Levy and the Taxpayer's Right to a Hearing

Final Notice & Your Right to a Hearing

Final Notice

Notice Of Intent To Levy And Notice Of Your Right To A Hearing

Please Respond Immediately

We previously asked you to pay the federal tax shown on the next page, but we haven't received your payment. This letter is your notice of our intent to levy under [Internal Revenue Code \(IRC\) Section 6331](#) and your right to appeal under [IRC Section 6330](#).

We may also file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, **or request an appeals hearing within 30 days from the date of this letter**, we may take your property, or rights to property. Property includes real estate, automobiles, business assets, bank accounts, wages, commissions, social security benefits, and other income. We've enclosed

Publication 594, which has more information about our collection process; Publication 1660, which explains your appeal rights; and Form 12153, which you can use to request a Collection Due Process hearing with our Appeals Office. **To preserve your right to contest Appeals' decision in the U.S. Tax Court, you must complete, sign, and return Form 12153 within 30 days from the date of this letter.**

IRS Collection Process

Final Notice and Right to a Hearing

- Final Notice includes Form 12153
- Taxpayer has 30-days to request a hearing
- You MUST file the request
- If the 30-day window is missed, file for an equivalent hearing

Form 12153

Request for a Collection Due Process or Equivalent Hearing

6. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)

Filed Notice of Federal Tax Lien

Proposed Levy or Actual Levy

7. Equivalent Hearing (See the instructions for more information on Equivalent Hearings)

I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing does not meet the requirements for a timely CDP Hearing.

8. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. **See page 4 of this form for examples.** You can add more pages if you don't have enough space.

If, during your CDP Hearing, you think you would like to discuss a Collection Alternative to the action proposed by the Collection function it is recommended you submit a completed Form 433A (Individual) and/or Form 433B (Business), as appropriate, with this form. See www.irs.gov for copies of the forms.

Collection Alternative

Installment Agreement

Offer in Compromise

I Cannot Pay Balance

Impact of AJAC

- AJAC is designed to get Appeals out of the collection business and focused on issues that the IRS and Taxpayer do not agree on
- Field is now required to hold the CDP request (Form 12153) for 45 days
- This is intended to force the field to work with the taxpayers
- New information presented to Appeals will be sent back to field
- Collection can rescind the Final Notice

IRS Collection Process

Appeals: Equivalent Hearings

- If the taxpayer failed to request a CDP hearing, they have up until one year to request an equivalent hearing

- With an equivalent hearing there is no requirement the IRS cease levy action
- There is no right to judicial review in the Tax Court

Appeals: CAP

- IRS created a procedural appeal process called the Collection Appeal process, or CAP
- A CAP appeal can be requested whenever a levy or lien is threatened by the collection division
- This is a procedural review to make sure the collection division has followed procedure
- It allows a taxpayer to get their case in front of an appeals officer

IRS Collection Tools

Liens

- Pursuant to [IRC §6321](#), a lien arises automatically whenever demand for payment is made and the taxpayer fails to pay
- No other action is required of the IRS
- IRS may file a Notice of Federal Tax Lien
 - Though the lien arises without any further IRS action, the IRS filed the Notice to inform third-party creditors of the IRS lien on the taxpayer's assets to protect its (the IRS's) interest

Power of the Federal Tax Lien

- The Lien attaches to all property owned or after-acquired
- Very powerful tool
- *Drye v. U.S.* -- The inheritance
- *U.S. v. Craft* -- Tenancy by the entirety

IRS Collection Tools

Liens

According to the Internal Revenue Manual, an IRS Notice of Federal Tax Lien will be filed whenever a taxpayer owes more than \$10,000

- Liens are self-releasing
- If the lien becomes unenforceable due to the expiration of the 10-year collection statute, the IRS will not issue a release

- If the tax is paid or compromised, the IRS will issue a release

Lien Discharge and Subordination

- The IRS will agree to discharge its lien where the taxpayer can demonstrate that upon the sale of the asset

1. The IRS will obtain all of the equity in the asset
2. The IRS will be full paid
3. There is no equity available for the IRS

4. Use IRS Form 14135 to request a discharge

- The IRS will agree to subordinate its lien to another creditor where that creditor will loan money to the taxpayer that will be used either

- To pay the IRS, or
- To improve the IRS's ability to collect the tax debt

- Practitioners should be prepared to argue why and how collection is improved by the IRS agreeing to the subordination

Resolving a Federal Tax Debt

Installments, CNC and Offers

Four Options for resolving an outstanding tax debt:

- Installment Agreements
- Offers-in-Compromise
- Currently-Not-Collectable
- Bankruptcy

Installment Agreements

- Ind. Streamlined Agreements: 50K/72 mos
- Biz Streamlined Agreements: 25K/24 mos
- 1 Year-Rule -- IRM 5.14.1.4.1.2
- 6 Year Rule -- IRM 5.14.1.4.1.1

Offers-in-Compromise

- 12 months of future income
- 3 years for dissipated assets
- Averaging Income
- Students loans and misc. expenses
- Low-Income Threshold
- Shipping Offers around the country

Bankruptcy

3-Year Rule

2-Year Rule

240-Day Rule

No Fraud

No Trust Taxes

No SFR

Questions

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