

#24 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, by certain third parties, or secured by certain creditors. However, these third parties 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. 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.⁹³

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 a 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 or alleged nominees, alter egos, and transferees, do not have CDP rights. This may be an oversight.⁹⁴ Affected third parties would benefit from CDP hearings at least as much as the underlying taxpayer. 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 the CDP protections, an affected third party against whom the IRS takes a collection action has comparatively limited remedies. 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.

Recommendation

Amend IRC §§ 6320 and 6330 to extend CDP rights to "affected third parties" who hold legal title to property subject to IRS collection actions.⁹⁵

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

94 In the context of explaining the Collection Due Process (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) (emphasis added).

95 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544-552 (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).