

**COLLECTION DUE PROCESS:
POST-ASSESSMENT SAFEGUARDS IN THE COLLECTION PROCESS**

Karen L. Hawkins
Taggart & Hawkins
1901 Harrison St. Suite 1600
Oakland, CA 94612
(510) 893-9999 phone
klhawkins@tagghawk.com

I. Notice and Opportunity for Hearing after Filing of Lien – IRC §6320

A. Requirement of Notice of Lien

1. IRS must give written notice of the filing of a notice of lien, i.e., Notice of Federal Tax Lien Filing and Right to Hearing (“NFTL”), to the person described in §6321, i.e., the taxpayer liable for the tax, whose property will be subject to the lien, within five days after the lien notice is filed.¹
2. The notice must be given in person, left at the taxpayer’s dwelling or usual place of business, or sent by certified or registered mail to his/her last known address. An NFTL becomes effective upon filing. Actual receipt is not required for the notice to be valid or to have priority. If the IRS fails to properly provide notice, the IRS will provide a substitute notice and a new opportunity to request a hearing. Treas. Reg. §301.6320-1(a)(2), Q&A, A12.
3. The notice must advise the taxpayer in plain English, of the amount of the unpaid tax, the right to request a hearing within thirty-five (35) days² of the date the lien was filed, the administrative appeal rights available to the taxpayer as well as the procedures relating to appeal, and the lien release statutes and procedures. §6320(a)(3).
4. The IRS is not required to give notice of the refiling of an NFTL.
5. If a subsequent NFTL is filed for the same tax liability and same time period, notice may be given, but such notice will not give rise to an additional hearing opportunity. Treas. Reg. §301.6320-1(b)(2), Q-A, B1.

1. The statute uses “person” throughout. However, the IRS takes the position that only the taxpayer liable for the tax liability is entitled to notice and a hearing. Treas. Reg. §301.6320-1(a)(2), Q&A, A1; Treas. Reg. §301.6330-1(a)(3), Q&A, A2. The regulations were effective January 19, 2002.

2. §6320(a)(3)(B) reads “during the 30-day period beginning on the day after the 5-day period” within which written notice must be provided.

6. A nominee or person known to be holding the property of the taxpayer against whom the NFTL is issued is not entitled to notice, even though the nominee may be named in the NFTL. Treas. Reg. §301.6320-1(b)(2), Q&A, B5.
- B. Opportunity for a Collection Due Process Hearing (“CDP hearing”)
1. A hearing must be requested in writing. §6320(b)(1); Treas. Reg. §301.6320-1(c)(2), Q&A, C1.
 - a. The request for a CDP hearing may take any form. The IRS provides Form 12153, Request for Due Process Hearing, which may be used to request a hearing. Whatever approach is used, the written hearing request must include the following: (a) taxpayer’s name, address and daytime telephone; (b) taxpayer’s identification number, e.g., SSN, ITIN, EIN; (c) the type of tax involved; (d) the tax period at issue; (e) a clear statement that the taxpayer requests a CDP hearing; and, (f) the reason(s) why the taxpayer disagrees with the NFTL filing. The most current version of the Form 12153 is attached as an Exhibit.
 - b. The written request must be dated and signed by the taxpayer or the taxpayer’s authorized representative.
 2. A taxpayer’s request for a hearing must be sent or hand-delivered, if permitted, to the IRS office and address as directed in the NFTL. If the notice does not include an address, the taxpayer may obtain the address of the office to which the written request should be sent by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN). Treas. Reg. §301.6320-1(c)(2), Q&A, C6.
 3. Any properly requested hearing will be held by the IRS Office of Appeals (“Appeals”). §6320(b)(1). The hearing will be conducted by an officer or employee with no prior involvement with the unpaid tax liability generating the taxpayer’s NFTL. §6320(b)(3). Appeals will retain jurisdiction regarding any determination or decision, including subsequent hearings the taxpayer requests relating to collection actions taken or proposed to execute a determination or decision. Appeals will not retain jurisdiction to consider a taxpayer’s changed circumstances. §6320(c); §6330(d)(2)(B).

4. With regard to conduct of the hearing, review, suspensions of the collection statute, and frivolous requests for a hearing, IRC §6320(c) incorporates §6330(c), (d), (e) and (g) with the exception that Appeals will not retain jurisdiction to conduct another hearing if the taxpayer's circumstances change. See Part II, E, *infra*.
5. A taxpayer is entitled to only one CDP hearing for lien notices issued with respect to the unpaid tax for a specific tax period. The request must be made within thirty (30) days after receipt of the first lien notice for that specific unpaid tax and tax period. Treas. Reg. §301.6320-1(b).

Note: Another CDP hearing for the same tax period under §6320 may occur if a different type of tax is involved or where the same type of tax is involved but the amount of unpaid tax has changed as a result of an additional assessment of tax. Treas. Reg. §301.6320-1(d)(2), Q&A, D1.
6. To the extent practicable, the CDP hearing under §6320 will be held in conjunction with any other CDP hearing requested under §6330.
7. If the request for a CDP hearing is not timely made, the taxpayer loses the right to a CDP hearing with Appeals, and judicial review of the Appeals determination will be available. However, the taxpayer may request an equivalent hearing. See Part III, *infra*.

II. Notice and Opportunity for Hearing before Levy – IRC §6330

A. Requirement of Notice of Intent to Levy

1. The IRS must give written notice, **Notice of Intent to Levy and Notice of Right to Hearing** to the taxpayer advising the taxpayer of the unpaid tax and of his/her right to a CDP hearing before issuing a levy on any property or right to property of the taxpayer. The Notice must be given not less than thirty (30) days before the intended levy. §6330(a)(1), (2).
 - a. Where the IRS seeks to impose a continuous levy, i.e., a levy on wages, the notice requirement applies from the date the levy is first imposed. Therefore, a continuous levy may not proceed without notice and an opportunity to be heard. In these levy cases, Appeals

retains jurisdiction to hear any changes in the taxpayer's circumstances which may warrant adjustments to the levy.³

- b. In jeopardy situations or for levies on state tax refunds due to the taxpayer, prior notice is not required and there is no entitlement to a pre-levy CDP hearing. However, the taxpayer will be given an opportunity for a post-levy CDP hearing "within a reasonable period of time after the levy." §6330(f); "reasonable time" is not defined. The Tax Court has jurisdiction to hear challenges to jeopardy levies and to levies on state tax refunds. *Dorn v. Commissioner*, 119 T.C. 356 (2002); *Clark v. Commissioner*, 125 T.C. 108 (2005).
2. The Notice must be given in person, left at the taxpayer's dwelling or usual place of business, or sent by certified mail, return receipt requested, to his/her last known address. Actual receipt is not required for the Notice to be valid. Treas. Reg. §301.6330-1(a)(3), Q&A, A9, A10.

If the return receipt is not returned, the IRS may proceed to levy the property after thirty (30) days, but must provide an equivalent hearing to the CDP hearing upon request by the taxpayer.
3. The Notice must advise the recipient, in plain English, of the amount of the unpaid tax, the right to request a hearing within thirty (30) days of the receipt of the Notice, the applicable statutory provisions and procedures, the right to an administrative appeal, the alternatives available to prevent the levy, e.g., installment agreements or offers in compromise, and the statutory provisions and procedures relating to the redemption of property and the release of liens. §6330(a)(3).
4. Persons filing joint returns remain two separate individuals for collection purposes. §6330 does not treat a husband and wife who filed a joint return as a single person for purposes of the provision. A husband and wife filing a joint return are jointly and severally liable for the tax due on the joint return. §6013(d). Consequently, the government may elect to pursue either or both spouses to collect tax due on a joint return. A spouse not named in

3. This directive is contained in Senate Report 105-174, §3401 of RRA '98. However, the Service takes the position that a wage levy which was in place before January 19, 1999 is not impacted by any of the provisions of §6330, and the taxpayer is entitled to neither notice nor a hearing. Treas. Reg. §301.6330-1(a)(4), Example 1; *Meehan v. Commissioner*, 122 T.C. 396 (2004).