

## **Administrative appeal of IRS levies**

Dear Reader:

You recently asked what can be done if IRS attempts to levy against your property. Suits against IRS or its employees over IRS levy actions are available only in limited situations. But, there are three less restrictive ways to contest levies by administrative appeals within IRS.

One way to appeal a levy within IRS is by using the Collection Appeals Program (CAP). Under the CAP, a taxpayer may appeal liens, levies, seizures, and proposed denials or terminations of installment agreements. When the taxpayer appeals his case IRS will normally stop collection action until the appeal is settled, unless it has reason to believe the collection of the tax is in jeopardy. Once a decision is made in the case, the decision is binding on both the taxpayer and IRS.

A second method of administrative appeal is by use of the Collection Due Process (CDP) program. A CDP hearing before levy is available in levy cases where the taxpayer has received a notice of intent to levy. A notice of intent to levy is accompanied by a notification in writing of the taxpayer's right to a hearing before levy. If the taxpayer requests a hearing, the hearing will be conducted by an officer or employee in IRS's Office of Appeals who did not previously participate in matters involving the taxpayer and the unpaid tax at issue. IRS doesn't have to send a notice of intent to levy (1) if it finds that collection of tax is in jeopardy, (2) before levying on a state to collect a federal tax liability from a state tax refund or (3) for "disqualified employment tax levies." However, in such cases a post-levy CDP hearing is available. Like CAP hearings, CDP hearings are informal. A CDP hearing doesn't require a face-to-face meeting, but a taxpayer can ordinarily get a face-to-face meeting if he wants it, except where he makes only irrelevant or frivolous arguments.

Filing an application with the office of the Taxpayer Advocate is a third method of administrative appeal of a proposed levy. The Taxpayer Advocate or his designee can issue a Taxpayer Assistance Order (TAO) based on a determination that the taxpayer is suffering or is about to suffer a significant hardship as a result of the way in which the tax laws are being administered by IRS. Relief can include suspension of collection actions and release of a levy.

There are many differences to be considered in determining which of these methods of administrative appeal to use. One of the most important differences concerns the right of review. A determination in a CDP hearing may be appealed to the Tax Court, but there is no right to judicial review in the CAP or TAO process.

An important disadvantage of the CDP is that the taxpayer must request a hearing within the 30-day period beginning on the day after the date he receives notice of his right to a hearing. This time limit cannot be waived, however, a written request submitted within the 30-day period that does not satisfy content requirements is considered timely if the request is perfected within a reasonable period of time. If the request for a CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an "equivalent hearing." But an equivalent hearing does not suspend any collection action against the taxpayer and no judicial review of the hearing determination is available. In contrast, both the TAO and CAP are not subject to a time limit tied to the notice of levy and are available both before and

after a levy is imposed on property. Both the TAO and CAP are also generally quicker procedures than the CDP.

There are also significant differences in the types of problems that can be considered under each process. Under the CDP process, a taxpayer may contest the underlying tax liability if certain conditions are met, while such a contest is not possible in the CAP or the TAO. On the other hand, the CDP process is not available to nominees of, persons holding property of, or persons holding property with respect to, the taxpayer, but such persons may use the TAO or CAP. Another distinction is that IRS will not consider trust fund recovery penalties, offers in compromise, or penalty abatement appeals under CAP procedures.

A \$5,000 penalty is imposed on any person who submits a request for a CDP hearing or an application for a TAO (or submits any one of certain other types of specified submissions) if any portion of the submission is either based on a position which IRS has identified as frivolous, or reflects a desire to delay or impede the administration of federal tax laws. However, the penalty is clearly aimed at those who abuse the process and should not deter taxpayers with legitimate disputes from using the CDP or TAO process.

If you would like further information on pursuing any of these options, please do not hesitate to call.

