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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3401 - Due Process in IRS Collection Actions

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Section 3401

A. Provision covered: Section 3401 (Due Process in IRS Collection Actions) I.R.C. §§ 6320, 6630, 7443(b).

B. Background: Under present law, there is no requirement that the Service notify the taxpayer when a Notice of Federal Tax Lien (NFTL) has been filed. Under present law, notice of the intent to levy must be given at least 30 days before property can be seized or salary and wages levied upon. During the 30-day notice period, the taxpayer under the Collection Appeals Process (CAP) may request a hearing to take place before an appeals officer. If the taxpayer demands a hearing within that period, the proposed collection is postponed until the hearing has concluded and the appeals officer has issued his or her determination. There is no right to appeal the decision of the appeals officer to a court.

C. Changes: NFTL. RRA § 3401 adds a new I.R.C. § 6320 to provide that the Service must notify in writing the taxpayer against whom a NFTL has been filed. The notification may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail not more than five business days after the day the NFTL was filed. The notification must state the amount of unpaid tax, the right to request a hearing during a 30-day period following the end of the five-day notification period, the administrative appeals available to the taxpayer with respect to such lien and procedures relating to such appeals, and the provisions and procedures relating to the release of liens. The taxpayer is entitled to one hearing per tax period before an Appeals

officer who has had no prior involvement with respect to that tax period. (The taxpayer may waive the requirement that the Appeals officer had no prior involvement with respect to that tax period.) Hearings with respect to liens may be held in conjunction with hearings under I.R.C. 6330, involving levies. The period of limitations on collection with respect to that tax period is suspended while the hearing and any appeal of it are pending.

At the hearing, the Appeals officer is required to receive verification that all legal and administrative requirements for filing the lien have been met. The taxpayer is allowed to raise any relevant issue at the hearing. Issues eligible to be raised include (but are not limited to) challenges to the underlying liability as to existence or amount, appropriate spousal defenses, challenges to the appropriateness of collection actions, and collection alternatives, which could include the posting of a bond, substitution of other assets, an installment agreement or an offer-in-compromise.

The taxpayer may not raise any issue that was raised and considered at a previous hearing under I.R.C. § 6330 or in any other administrative or judicial proceeding if that taxpayer participated meaningfully in such prior hearing or proceeding. The taxpayer may appeal the determination of the Appeals officer in the Tax Court or a U.S. District Court within 30 days of the date of the determination.

Levies. RRA § 3401 adds a new I.R.C. § 6330 to provide that the no levy may be made on any property or right to property of any taxpayer unless the Service notifies that taxpayer in writing before that levy is made. The notification may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail, return receipt requested, not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period. The notification must state the amount of unpaid tax, the right to request a hearing during the 30-day period, the Code provisions relating to, and the procedures applicable to, levy and sale, the administrative appeals available to the taxpayer with respect to such levy and sale, the procedures relating to such appeals, the alternatives available to taxpayers which could prevent levy (including installment agreements), and the provisions and procedures relating to the redemption of property and the release of liens. The taxpayer is entitled to one hearing per tax period before an Appeals officer who has had no prior involvement with respect to that tax period. (The taxpayer may waive the requirement that the Appeals officer had no prior involvement with respect to that tax period.) The period of limitations on collection with respect to that tax period is suspended while the hearing and any appeal of it are pending.

At the hearing, the Service is required to verify that all legal and administrative requirements for the proposed collection action have been met. For example, in the case of an anticipated seizure of property which would be sold (i.e., tangible personal or real property), verification would include a showing that the requirements of new I.R.C. § 6331(j)(1) concerning a thorough investigation of the status of that property has been completed. Under § 6331(j)(2) this would include a showing that the revenue officer (RO) has verified the taxpayer's liability, the estimated expenses of levy and sale will not exceed the value of the property to be seized, the RO has determined that there is sufficient equity in the property to be seized to yield net proceeds from sale to apply to

the unpaid tax liabilities, and the RO recommending the seizure has thoroughly considered the facts of the case, including the availability of alternative collection methods, before recommending the collection action. If a levy is anticipated to be made on cash or intangible personal property which will not be sold, verification would include a showing that the RO has verified the taxpayer's liability and has thoroughly considered the facts of the case, including the availability of alternative collection methods, before recommending the collection action.

The taxpayer is allowed to raise any relevant issue at the hearing. Issues eligible to be raised include (but are not limited to) challenges to the underlying liability as to existence or amount, appropriate spousal defenses, challenges to the appropriateness of collection actions, and collection alternatives, which could include the posting of a bond, substitution of other assets, an installment agreement or an offer-in-compromise.

The taxpayer may not raise any issue that was raised and considered at a previous hearing under I.R.C. § 6320 or in any other administrative or judicial proceeding if that taxpayer participated meaningfully in such prior hearing or proceeding. The taxpayer may appeal the determination of the appeals officer in the Tax Court or a U.S. District Court within 30 days of the date of the determination. The Service may not take any levy action pursuant to the determination during such 30 day period or while the taxpayer's court appeal is pending.

D. Impact The provision codifies certain pre-existing administrative rights available to taxpayers. The provision adds optional court review of the Service's determinations and establishes certain mandatory elements that must be considered by both the Service and the court which may be asked to review the determinations made. The provision is effective with respect to collection actions initiated after January 18, 1999.

E. Necessary Actions

Actions/Procedures: Issue instructions by memorandum or IRM before the effective date. Develop necessary forms and instructions to be given to taxpayers.

F. Other Special Comments: Certain terms used in the legislation are not defined. As such, regulations interpreting these new Code sections may have to be issued prior to their effective date.

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