

COLLECTION DUE PROCESS HEARING

ORIGINAL

DATE: Thursday, May 11, 2000

PLACE: Internal Revenue Service  
24000 Avila Road, Suite 4404  
Laguna Niguel, California

PERSONS PRESENT: Carl Carter, Settlement Officer  
Richard Miller, CPA  
Thomas W. Roberts, CPA  
8190 Beechmont Ave. #108  
Cincinnati, Ohio 45255

REPORTER: Shelley Hill, CSR  
Certificate NO. 2379



(949) 833-9099 • (800) 647-9099 • FAX (949) 833-1390

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1	Letter, Request for Collection Due Process Hearing 12/21/99	5
2	Letter to IRS 4/30/99	6

1. LAGUNA NIGUEL, CALIFORNIA, MAY 11, 2000

2 1:15 P.M.

3  
4 MR. CARTER: Today is May the 11th, the year  
5 2000. My name is Carl Carter, I'm a settlement officer  
6 with the Office of Appeals, Internal Revenue Service,  
7 Laguna Niguel, California. My badge number is  
8 33-04590. This is a Collection Due Process Hearing, and  
9 I'm going to ask the other people present to introduce  
10 themselves.

11 MR. ROBERTS: Yeah, I'm Thomas W. Roberts, CPA,  
12 representing Stephen and Patricia [REDACTED].

13 MR. MILLER: Richard Miller, CPA, observing.

14 MR. CARTER: Thank you.

15 The Collection Due Process Hearing today is  
16 being held under the provisions of Internal Revenue Code  
17 Section 6330, which deals with the notice of intent to  
18 levy, and I would like to read a few dates and issues  
19 into the record for clarification purposes as to why  
20 we're here.

21 This is for Stephen and Patricia [REDACTED] for  
22 1989, '90, '91, '92 and '93 assessments of which the  
23 notice of levy -- the intent of notice of levy was  
24 mailed to each individual taxpayer individually on May  
25 the 5th, 1999.

1           On April the 5th, 1999 a request for Collection  
2 Due Process Hearing addressing the notice of levy,  
3 attempt of notice of levy Form 12153 was received. It  
4 is deemed as a timely request for hearing, therefore,  
5 this is in fact a Collection Due Process Hearing and not  
6 an equivalent hearing.

7           I would also like to note that the Collection  
8 Due Process request does in fact address IRC 6320  
9 regarding a notice of federal tax lien; however, the  
10 notice of federal tax lien was filed prior to enactment  
11 of public law 105-206, specifically Section 3401(B) of  
12 the Reform and Restructuring Act of 1998, which added  
13 Code Section 6330 and 6320 to the Internal Revenue  
14 Code. This was effective 180 days after July 22nd,  
15 1998.

16           The federal tax lien in question cited on the  
17 Collection Due Process predates the Internal Revenue  
18 Code section, and therefore, the Code section was not  
19 retroactive to cover any areas or any issues prior to  
20 the 180 days subsequent to July 22nd, 1998. Therefore,  
21 this hearing can only address the Internal Revenue Code  
22 Section 6330 issue of the intent to levy.

23           And now we get to do the part where the  
24 hearing -- where I sit and listen and you guys talk.

25           MR. ROBERTS: All right. Mr. Carter, I had

1. received in January a package of documents from Sherwin  
2 Coogan. As I understand it, he was the person that  
3 originally started the hearing process and has now  
4 retired, you took it over from him; is that correct?

5 MR. CARTER: Correct.

6 MR. ROBERTS: Okay. In that package he wrote a  
7 letter outlining his analysis of where we -- where he  
8 felt we stood within the records he has reviewed, I  
9 presume he reviewed the records, and our first and  
10 initial question with regard to the -- whether or not  
11 the collection action was valid and following due  
12 process was the existence or nonexistence of an actual  
13 assessment for the years in question.

14 According to Mr. Coogan's letter, and I will --  
15 let's make sure you have a copy of it, I would think you  
16 do, and if you do we will put a -- put one in with the  
17 court reporter as an exhibit.

18 MR. CARTER: Right, and you may wish -- if there  
19 are any highlights in there, you may wish to read that  
20 in.

21 MR. ROBERTS: Yeah, we will label that Exhibit  
22 1.

23 On Page 2 of that document that we have labeled  
24 Exhibit 1, it references our questioning the assessment,  
25 and Mr. Coogan states in there that there is no

1 provision for furnishing us a copy of the summary record  
2 of assessment signed by the assessment officer, nor can  
3 it be readily obtained by him.

4 He also states that they -- they appeared to  
5 show, referencing the transcripts, absent evidence to  
6 the contrary that valid assessments of tax deficiency  
7 were made and list various years and the claimed  
8 assessments.

9 Prior to this, we had requested from the  
10 Internal Revenue Service through the Privacy Act  
11 procedures a copy of the actual assessment and the  
12 supporting documents. We had returned to us on April  
13 30th, 1999 a letter from Rodney J. Strickland, a  
14 disclosure officer -- oh, you have a copy of that, too,  
15 good -- that I'll label as Exhibit 2.

16 In that letter it states that the -- and I'm  
17 paraphrasing -- that the Form 23C that we requested is  
18 basically synonymous with the RACS, that's R-A-C-S, 006  
19 report, one being an automated report, one being a  
20 manual report, and that with the exception of those two  
21 documents which are documents we did not want, there was  
22 no information responsive to our request available.

23 They did convert this from a Privacy Act  
24 request to a Freedom of Information Act request, and did  
25 address it as such. Our position is that since we did

1. request these documents through the proper IRS  
2 procedures, they state in Exhibit 2 that they do, that  
3 the assessment does not exist. Only the RACS report or  
4 the 23C which is the summary assessment, that that  
5 should be sufficient to be evidence to the contrary that  
6 assessment exists. It is our position that Code Section  
7 6330 charges you, the hearing officer, with the duty to  
8 get verification from the Secretary of the Treasury and  
9 the commissioner, whoever they subsequently delegate it  
10 to, to get verification that all IRS rules and  
11 procedures have been followed. We do not think that it  
12 gives you the luxury of a presumption of correctness for  
13 the assessment as the tax court often gives. In federal  
14 district court when IRS is inquired to prove an  
15 assessment exists, they have to actually furnish it  
16 where a tax court allows a presumption of correctness.  
17 Because congress chose not to give that presumption,  
18 they're absent, they did not speak to that, they only  
19 said you will get verification of this, it is our  
20 position that that document needs to be present before a  
21 determination can be made.

22           Now, my first question to you, sir, would be,  
23 is that document available in any of the records you  
24 reviewed?

25           MR. CARTER: Form 23C, to the best of my

1 knowledge, of course, is an obsolete form and only used  
2 when a certain computer software system is inoperable,  
3 so my answer to that question would be I have no  
4 knowledge of a 23C being available for use, nor would  
5 I -- would I request such a form for verifications  
6 knowing in fact that it's an obsolete form.

7 MR. ROBERTS: Okay. Is there any form,  
8 whether -- regardless of its title, that would be signed  
9 by an assessment officer listing the taxpayer's name,  
10 address, Social Security number, the amount of the tax,  
11 the nature of the tax, and then going -- then being  
12 listed on a separate document being called a 23C or a  
13 23C date; are there any documents that would support  
14 that type of a report?

15 MR. CARTER: Unknown.

16 MR. ROBERTS: Okay. Going back to Exhibit 1 is  
17 a -- what I believe to be a transcript of the taxpayer's  
18 account. Is that an accurate reflection?

19 MR. CARTER: I believe we're looking at a  
20 transcript of -- a partial transcript of the account of  
21 Stephen J. and Patricia L. [REDACTED]

22 MR. ROBERTS: Okay. Are you able to identify  
23 from that account any assessments that were made for any  
24 of the years in question?

25 MR. CARTER: Absolutely.



1 MR. ROBERTS: Could you point just one of those  
2 out to me, please?

3 MR. CARTER: It would appear that Stephen and  
4 Patricia voluntarily formed -- filed, excuse me, an  
5 individual income tax return for 1989 and that 1989 tax  
6 return was assessed in 1990. It was subsequently  
7 selected for examination by the Examination Division of  
8 the Internal Revenue Service, and an audit was conducted  
9 and an additional assessment of additional taxes,  
10 penalty and interest was assessed in October of 1995.

11 MR. ROBERTS: Okay. And that additional tax  
12 assessed by examination, I guess -- was that 11/6/95?  
13 Would it be November 6? Maybe I'm misreading.

14 MR. CARTER: Yeah, the transaction codes which  
15 the -- is in computer-ease, if you read the verbiage  
16 after the transaction codes, what you're looking for is  
17 where it says "Additional tax assessed by examination,"  
18 and that's dated October 10th, 1995.

19 MR. ROBERTS: And I think just above that, it  
20 appears to be one dated November 6th, '95 also; am I  
21 correct in that?

22 MR. CARTER: Correct in that, but do note that  
23 the amount is zero for the November 6, 1995.

24 MR. ROBERTS: Oh, I see, okay.

25 In the -- the code for the assessment is 300,

1 is that --

2 MR. CARTER: Correct.

3 MR. ROBERTS: -- correct?

4 Are there any documents available to you in  
5 your file that you've reviewed that support that Code  
6 300 being placed on the transcript as an assessment?

7 MR. CARTER: Yes, I have a document in my  
8 possession in which it shows the signatures of Stephen  
9 J. [REDACTED] and Patricia L. [REDACTED] had signed and agreed  
10 to audit assessments for -- I have to look up the year.  
11 1998, 1990, 1991, and 1992 in which, to the best of my  
12 knowledge at this time, the assessments were attested,  
13 agreed to, by Stephen and Patricia [REDACTED]

14 MR. ROBERTS: Okay. And are there documents  
15 where they agreed to those, or are you referring to the  
16 fact that they were on a 1040 -- signature on a 1040?

17 MR. CARTER: Documents existed which they have  
18 affixed their signature agreeing to the assessment.

19 MR. ROBERTS: Okay. And do you have those  
20 documents?

21 MR. CARTER: Yes, I do.

22 MR. ROBERTS: Could I take a look at them,  
23 please?

24 MR. CARTER: No, you can't.

25 MR. ROBERTS: Okay. I, of course, am objecting

1 to not being able to see the documents in the file for  
2 the client, for the taxpayer that I'm representing,  
3 because I want to verify on their behalf that the  
4 documents being used to justify an assessment and a  
5 subsequent levy and taking are in fact valid, and if  
6 there are people who signed those documents in addition  
7 to the [REDACTED] I would like to have disclosed to me  
8 who those people are for subsequent deposition purposes  
9 if necessary.

10 MR. CARTER: I would recommend -- and this is my  
11 opinion as a settlement officer -- is that it would be  
12 improper for me to provide that information of those  
13 documents in this form. The best and most proper way  
14 for you to receive that information would be a  
15 specific, either a Privacy Act or a FOIA, I'm not sure,  
16 one of the two, request for the revenue agent  
17 reports for those years that attest -- that show the  
18 attestation and agreement.

19 MR. ROBERTS: Is there a particular code section  
20 or other law that you are relying on in your denying me  
21 the ability to look at those now?

22 MR. CARTER: Correct, I rendered an opinion --

23 MR. ROBERTS: Oh.

24 MR. CARTER: -- not based upon any particular  
25 regulation or code, just merely recollection of 30 years

1 of service with the Internal Revenue Service.

2 MR. ROBERTS: Okay. And is that opinion based  
3 upon the fact that at other meetings those documents  
4 were never furnished, or is there some other reason for  
5 that, if I may?

6 MR. CARTER: I don't know, I don't know. Again,  
7 in my opinion, it would seem that that information  
8 should have been provided to you in a previous Freedom  
9 of Information Act request, because I have reviewed  
10 those requests, they did appear to be quite  
11 comprehensive, and so I don't have a specific answer to  
12 that, but I'm providing the information to you to -- for  
13 you to get that specific information, give a specific  
14 request.

15 MR. ROBERTS: I understand. Okay.

16 In your review of the taxpayer's file, did you  
17 discover that a notice and demand for payment had been  
18 sent formally, I guess, Form 17 back a few years?

19 MR. CARTER: You know, I wouldn't -- I wouldn't  
20 know a Form 17 if it bit me.

21 MR. ROBERTS: Okay.

22 MR. CARTER: All right. In appeals we rely upon  
23 the -- the -- what's called the integrated -- integrated  
24 data retrieval system to give us all the computer codes.  
25 For example, we just recently reviewed a print of all

.1 the computer codes that indicate when an assessment is  
2 made when -- for example, it also tells us when the  
3 collection due process was received, it has all that  
4 information, so generally what we rely upon is the  
5 computer codes to tell us what happened on what date,  
6 and like I said, I wouldn't -- Form 17 is what you said?

7 MR. ROBERTS: Yes.

8 MR. CARTER: I wouldn't know a form 17 if it bit  
9 me.

10 MR. ROBERTS: Okay. So, with regard to the  
11 document that's appended to Exhibit 1, the transcript  
12 that we were referring to earlier, does it show that a  
13 notice and demand had been sent?

14 MR. CARTER: Let's look and see.

15 The transcript in your possession gives what's  
16 called -- and I hate to speak in jargon and I'll try not  
17 to -- shows posted transactions. Okay. These are  
18 transactions that directly affect the account, money in,  
19 money out, assessments in, abatements out, returns  
20 filed, refunds out. Whatever is an actual physical  
21 happening to the account reflects itself in those  
22 computer code postings with the explanations.

23 There are other pages available that show the  
24 dates, in fact, that computerized notices are in fact  
25 mailed. For example, the service centers at one point

1 in the collection process mail what's called a Notice  
2 504 which says "Urgent Notice," okay, Notice 504 does  
3 not give right to a collection due process because it's  
4 called an Urgent Notice, it's not an imminent threat of  
5 a collection action. But the coding on that is 504. It  
6 does not appear ever in transcripts of a posted  
7 transaction to an account because it's not, it's a  
8 secondary page, and I can get access to that and give  
9 the information that you ask but not instantly.

10 MR. ROBERTS: Okay. Would the document that  
11 would include that be an individual master file, would  
12 those notices be listed on there; is that what you're  
13 referring to maybe?

14 MR. CARTER: I think not.

15 MR. ROBERTS: Oh, okay.

16 MR. CARTER: I think not. In that, again, the --  
17 the notice process is governed by the integrated data  
18 retrieval system, IDRS, and the dates and form letters  
19 are all clearly identified from a printout from that  
20 source, and I would be more than happy to provide you  
21 with that if I had it at this instant.

22 MR. ROBERTS: I understand. Okay. So the forms,  
23 any form -- I'm trying to understand now --

24 MR. CARTER: Uh-huh.

25 MR. ROBERTS: -- any form that would have been

1 sent by IRS that does not create a transaction such as  
2 you listed on the transcript in reference to would be  
3 listed on that IDRS report, is that --

4 MR. CARTER: Correct.

5 MR. ROBERTS: So if there's a -- now, does the  
6 IDRS report also include what's on the transcript?

7 MR. CARTER: Yes.

8 MR. ROBERTS: Okay. So is it accurate to say  
9 that any -- any document that -- and please don't let me  
10 put words in your mouth now -- but is it accurate to say  
11 any documents that IRS sends to a taxpayer would be  
12 listed on there that it had happened, is that --

13 MR. CARTER: No, it would not.

14 MR. ROBERTS: Okay.

15 MR. CARTER: All right. The -- the IDRS is a  
16 computerized system, a data system, that monitors all  
17 accounts that are in either collection or audit status,  
18 okay, it monitors all accounts that are in a debit or  
19 credit status, all right, so as long as we have an audit  
20 in process, as long as we have collection in process, as  
21 long as we have a pending refund or a -- or a pending  
22 balance due in any statement process, this is in fact a  
23 very reliable computer system to use.

24 For you and me, when we file a tax return, I  
25 send the check in with my tax return, it happily,

1 theoretically, post to IDRS but will never generate any  
2 of those notices because I paid the bill with the  
3 return, so it never went into a debit or credit status.  
4 So no notices, no account record.

5 MR. ROBERTS: Okay, I see.

6 With regard to notices that may have been sent  
7 prior to the returns being filed, if that's possible in  
8 this case -- and I don't know that -- is there any type  
9 of report available from IRS that you're aware of that  
10 would list those; for instance, the individual master  
11 file; would that be something that lists everything that  
12 happens with regard to this taxpayer, whether it's in  
13 one of these four statuses you mentioned or not?

14 MR. CARTER: Unfortunately, I wish I could say  
15 yes, but from my experience over many years, the  
16 Internal Revenue Service has -- has used various  
17 computer systems and methodologies and software that  
18 don't necessarily communicate with each other. For  
19 example, the Examination Division can generate a and --  
20 we're talking in the past, not today, because the  
21 systems are in fact merging as we speak, but in the past  
22 the Examination Division would send out a letter, it  
23 would be on the Examination Division computer system,  
24 and if a revenue officer wanted to ever look at that  
25 letter, it would never show up on what we call IDRS, it



1 would never be any record to it because the two computer  
2 systems don't talk.

3 MR. ROBERTS: I understand.

4 MR. CARTER: So what happens is that to -- if I  
5 may use the term audit trail -- when anyone is seeking a  
6 record of what happened to an account, then especially  
7 it's more difficult probably internally than it is for  
8 you externally because externally you can say, give me  
9 everything and you should get everything, all right.  
10 Internally, I have to know where every particular  
11 computer system is and do multiple requests. More  
12 information than you ever wanted to know.

13 MR. ROBERTS: You're absolutely right, and with  
14 that, I think my questions to you are complete at this  
15 point. Being unable to review those documents that I  
16 wanted to see in the file, I think at this point I'm  
17 through. If you have something, I believe, that you  
18 want to add.

19 MR. CARTER: The only thing that I would add is  
20 that do you have any proposed alternative to the -- the  
21 collection divisions? Their proposal was to immediately  
22 levy something. I don't know what they were going to  
23 levy, but that was their -- that was their proposal.

24 Do you know if the [REDACTED] or yourself have an  
25 alternative proposal other than -- other than that?

1 MR. ROBERTS: I do know we discussed that, and  
2 the answer is no, there are no alternative proposals at  
3 this time. Their belief and my belief is that until I  
4 discovered at the hearing today that there was a signed  
5 assessment, agreed assessment, that we doubted that  
6 there was an assessment in existence, so until I'm able  
7 to seek that document and see it, I'm going to be  
8 stopped from proposing any additional alternative  
9 collection.

10 MR. CARTER: That's satisfactory. In fact, since  
11 I am the possessor of the -- of said documents and the  
12 originals of same, that if you would be so kind as to --  
13 when you do the Freedom of Information Act request, it  
14 will come into our disclosure office here in Laguna  
15 Niguel, and I'll keep right on track, make sure -- we  
16 want to expedite the process as much as possible.

17 MR. ROBERTS: Okay, great. I would appreciate  
18 that, sir, we will send it directly here within the  
19 week.

20 MR. CARTER: Sounds good.

21 MR. ROBERTS: Great.

22 MR. CARTER: So any other comments?

23 MR. MILLER: No.

24 MR. CARTER: So at this point in time, the only  
25 thing I would like to read into the record is that I

.1 will not -- I will not render a determination, I will  
2 not ask for any additional information unless you so  
3 deem it necessary, I'm simply going to sit back and wait  
4 a couple weeks, and then we'll be back in contact.

5 MR. ROBERTS: That will work for us.

6 MR. CARTER: All right. Thank you so much.

7 MR. ROBERTS: And I thank you. We can go off the  
8 record.

9 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED AT  
10 1:45 P.M.)

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