

(ii) The disbursing officer may rely upon the taxpayer for the determination of the amount of tax payable in foreign currency but may not accept any such currency for deposit until the taxpayer has presented for inspection the certified statement referred to in paragraph (b)(1) of this section. Upon acceptance of foreign currency for deposit the disbursing officer shall give the taxpayer a receipt in duplicate showing the name and address of the depositor, the date of the deposit, the amount of foreign currency deposited and its equivalent in U.S. dollars on the date of deposit, and the kind of tax for which the deposit is made.

(iii) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall attach to the return required to be filed in accordance with paragraph (b) of this section the original of the receipt given by the disbursing officer. Tender of such receipt to the Director of International Operations shall be considered as payment of tax in an amount equal to the U.S. dollars represented by the receipt.

(iv) A taxpayer shall make the deposit required by this paragraph in ample time to permit it to attach the receipt to its return for filing within the time prescribed by § 31.6071(a)-1 of this chapter (Employment Tax Regulations).

§ 301.6316-8 Refunds and credits in foreign currency.

(a) *Refunds.* The refund of any overpayment of tax which has been paid under section 6316 in foreign currency may, in the discretion of the Commissioner, be made in the same foreign currency by which the tax was paid. The amount of any such refund made in foreign currency shall be the amount of the overpayment in U.S. dollars converted, on the date of the refund check, at the rate of exchange then used for his official disbursements by the disbursing officer of the Department of State in the country where the foreign currency was originally deposited.

(b) *Credits.* Unless otherwise in the best interest of the Internal Revenue Service, no credit of any overpayment of tax which has been paid under section 6316 in foreign currency shall be

allowed against any outstanding liability of the person making the overpayment except in respect of that portion or the liability which, in accordance with § 301.6316-1 or § 301.6316-7, would otherwise be permitted to be paid in the same foreign currency.

§ 301.6316-9 Interest, additions to tax, etc.

Any reference in §§ 301.6316-1 to 301.6316-8, inclusive, to “tax” shall be deemed also to refer to the interest, additions to the tax, additional amounts, and penalties attributable to the tax.

LIEN FOR TAXES

§ 301.6320-1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see Sec. 301.6212-2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person entitled to notice under section 6320?

A-A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q-A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A-A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q-A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A-A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q-A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A-A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A-A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q-A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A-A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiling the NFTL, an administrative hearing before the IRS Office of Appeals (Appeals), or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A-A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A-A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will

notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q-A9. How will notification under section 6320 be accomplished?

A-A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q-A10. What must a CDP Notice given under section 6320 include?

A-A10. These notices must include, in simple and nontechnical terms:

- (i) The amount of the unpaid tax.
- (ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.
- (iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.
- (iv) The statutory provisions and the procedures relating to the release of liens on property.

Q-A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A-A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q-A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A-A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A-B3 of paragraph (b)(2) and Q&A-C8 of paragraph (c)(2) of this section.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on

the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing—(1) In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q-B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A-B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer forgoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q-B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A-B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a

NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q-B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A-B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q-B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A-B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q-B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A-B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing—(1) In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q-C1. What must a taxpayer do to obtain a CDP hearing?

A-C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information and signature specified in A-C1(ii) of this paragraph (c)(2). See A-D7 and A-D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) If the IRS receives a timely written request for CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely written request for a CDP hearing that does not satisfy the requirements set forth in A-C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use Form 12153, "Request for a Collection Due Process Hearing," in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, <http://www.irs.gov/pub/irs-pdf/f12153.pdf>, or by calling, toll-free, 1-800-829-3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely CDP hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

Q-C2. Must the request for the CDP hearing be in writing?

A-C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q-C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A-C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP

hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q-C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A-C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A-C6 of this paragraph (c)(2).

Q-C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A-C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q-C6. Where must the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q-C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A-C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five-business-day notification period, the taxpayer foregoes the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the 30-day period that does not satisfy the requirements set forth in A-C1(ii)(A), (B), (C), (D) or (F) of this paragraph (c)(2) is consid-

ered timely if the request is perfected within a reasonable period of time pursuant to A-C1(iii) of this paragraph (c)(2). If the request for 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. In such cases, the taxpayer may obtain an equivalent hearing without submitting an additional request. See paragraph (i) of this section.

Q-C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A-C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q-C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A-C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1*, individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hear-

ing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q-D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q-D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A-D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q-D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A-D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q-D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid

tax and tax period involved in the hearing?

A-D4. Prior involvement by an Appeals officer or employee includes participation or involvement in a matter (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP matter, and the Appeals officer or employee actually participated in the prior matter.

Q-D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A-D5. The taxpayer must sign a written waiver.

Q-D6. How are CDP hearings conducted?

A-D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q-D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A-D7. Except as provided in A-D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will

ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, as described in A-F4 of paragraph (f)(2). If no face-to-face or telephonic conference is held, or other oral communication takes place, review of the documents in the case file, as described in A-F4 of paragraph (f)(2), will constitute the CDP hearing for purposes of section 6320(b).

Q-D8. In what circumstances will a face-to-face CDP conference not be granted?

A-D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A-D7 of this paragraph (d)(2) and this A-D8. If all Appeals officers or employees at the location provided for in A-D7 of this paragraph (d)(2) have had prior involvement with the taxpayer as provided in A-D4 of this paragraph (d)(2), the taxpayer will not be offered a face-to-face conference at that location, unless the taxpayer elects to waive the requirement of section 6320(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals would have offered the taxpayer a face-to-face conference at the location provided in A-D7 of this paragraph (d)(2), but for the disqualification of all Appeals officers or employees at that location. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example,

because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, "Offer in Compromise," no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. Appeals in its discretion, however, may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. In all cases, a taxpayer will be given an opportunity to demonstrate eligibility for a collection alternative and to become eligible for a collection alternative, in order to obtain a face-to-face conference. For purposes of determining whether a face-to-face conference will be granted, the determination of a taxpayer's eligibility for a collection alternative is made without regard to the taxpayer's ability to pay the unpaid tax. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A-C1(ii)(E) of paragraph (c)(2). See also A-C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a proposed levy for individual A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6330 CDP hearing, employee B may conduct the CDP hearing under section 6320 involving the NFTL filed for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to individual C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6320 unless individual C waives the requirement that the hearing will be conducted by

an Appeals officer or employee who has had no prior involvement with respect to individual C's 1998 income tax liability.

Example 3. Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941, "Employer's Quarterly Federal Tax Return." Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a NFTL filed with respect to a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a NFTL filed with respect to a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing—(1) In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the filing of the NFTL have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also

may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q-E1. What factors will Appeals consider in making its determination?

A-E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q-E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A-E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

Q-E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A-E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final

determination letter addressing the spousal defense?

A-E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q-E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q-E6. What collection alternatives are available to the taxpayer?

A-E6. Collection alternatives include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, subordination of the NFTL, discharge of the NFTL from specific property, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A-D8 of paragraph (d)(2).

Q-E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A-E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not have a prior opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section

6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability.

Q-E8. How will Appeals issue its determination?

A-E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A-E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q-E10. Why is the Notice of Determination and its date important?

A-E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q-E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NF'TL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A-E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer on such precluded issues

are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination—(1) In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q-F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A-F1. Subject to the jurisdictional limitations described in A-F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

Q-F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A-F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q-F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A-F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q-F4. What is the administrative record for purposes of Tax Court review?

A-F4. The case file, including the taxpayer's request for hearing, any other written communications and information from the taxpayer or the taxpayer's authorized representative sub-

mitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative, memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in the Tax Court review of the Notice of Determination issued by Appeals.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q-G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A-G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no

event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q-G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q-G3. What, if any, enforcement actions can the IRS take during the suspension period?

A-G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or

determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the Tax Court, plus 90 days.

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q-H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A-H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods

specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q-H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an “equivalent hearing.” The equivalent hearing will be held by Appeals and generally will follow Appeals’ procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q-I1. What must a taxpayer do to obtain an equivalent hearing?

A-I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information and signature required in A-II(ii) of this paragraph (i)(2).

(ii) The request must be dated and must include the following:

(A) The taxpayer’s name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer’s authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not satisfy the requirements set forth in A-II(ii) of this paragraph (i)(2) within a reasonable period of time after a request from the IRS. If the requirements are not satisfied within a reasonable period of time, the taxpayer’s equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer’s behalf by the taxpayer’s spouse or other unauthorized representative, and that otherwise meets the requirements set forth in A-II(ii) of this paragraph (i)(2), by filing, within a reasonable period of time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer’s behalf. If the affirmation is filed within a reasonable period of time after a request, the timely equivalent hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

Q-I2. What issues will Appeals consider at an equivalent hearing?

A-I2. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I3. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A-I3. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q-I4. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I4. Collection action is not required to be suspended. Accordingly,

the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q-I5. What will the Decision Letter state?

A-I5. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I6. Will a taxpayer be able to obtain Tax Court review of a decision made by Appeals with respect to an equivalent hearing?

A-I6. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

Q-I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6320?

A-I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q-I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A-I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A-I10 of this paragraph (i)(2).

Q-I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A-I9. No. All taxpayers who want an equivalent hearing concerning the filing of the NFTL must request the hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q-I10. Where must the written request for an equivalent hearing be sent?

A-I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1-800-829-1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q-I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL?

A-I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A-I1(ii) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A-I1(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the

Internal Revenue Service, Treasury

§ 301.6323(b)-1

tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) *Effective date.* This section is applicable on or after November 16, 2006, with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

[T.D. 8979, 67 FR 2561, Jan. 18, 2002, as amended by T.D. 9290, 71 FR 60839, Oct. 17, 2006]

§ 301.6321-1 Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. For purposes of section 6321 and this section, the term “any tax” shall include a State individual income tax which is a “qualified tax”, as defined in paragraph (b) of § 301.6361-4. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of sections 6321 and 6331, any interest in restricted land held in trust by the United States for an individual non-competent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian. For the method of allocating amounts collected pursuant to a lien between the Federal Government and a State or States imposing a qualified tax with respect to which the lien attached, see paragraph (f) of § 301.6361-1. For the special lien for estate and gift taxes, see section 6324 and § 301.6324-1.

[T.D. 7577, 43 FR 59361, Dec. 20, 1978]

§ 301.6323(a)-1 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by section 6321 is not valid against any purchaser (as defined

in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until a notice of lien is filed in accordance with § 301.6323(f)-1. Except as provided by section 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 301.6323(f)-1, the interest acquired by such person is subject to the lien imposed by section 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 301.6323(c)-1, 301.6323(c)-2, and 301.6323(c)-3, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 301.6323(d)-1. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by section 6321, see § 301.6323(e)-1. For provisions relating to certain other interests arising after tax lien filing, see § 301.6323(b)-1.

[T.D. 7429, 41 FR 35498, Aug. 23, 1976]

§ 301.6323(b)-1 Protection for certain interests even though notice filed.

(a) *Securities*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security (as defined in paragraph (d) of § 301.6323(h)-1) against—

(i) A purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of the security who at the time of purchase did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the lien;