

§ 301.6316-8

26 CFR Ch. I (4-1-01 Edition)

(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

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

(a) *Notification*— (1) *In general.* For a notice of federal tax lien (NFTL) filed on or after January 19, 1999, district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required 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 this section 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 § 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 only required to be given 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 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. Under section 6323(f), a NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each 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 location.

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 filing the NFTL, an administrative hearing before Appeals, or assistance from the National Taxpayer Advocate.

Q-A7. Will the IRS give notification to a known nominee of, or 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 is, therefore, not entitled to notice, but such persons have other remedies. See A-B5 of paragraph (b) 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 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-day period described in section 6320(a)(2).

(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 that commences 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 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 an opportunity to request a CDP hearing.

(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 Collection Due Process hearing (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 amount of 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 tax and tax period previously subject to a CDP Notice in a different location?

A-B1. No. Although the taxpayer will receive notice of each filing of the NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for each tax pe-

riod with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to an amount of 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 amount of unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination as to the NFTL. Under such circumstances, a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q-B2. Is the taxpayer entitled to a CDP hearing where a NFTL for a tax and tax period is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed 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 amount of unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same 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 he 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 amount of unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a second section 6320 CDP hearing?

A-B4. No. The taxpayer is entitled to only one CDP hearing under section 6320 for a tax and tax period set forth in a NFTL with respect to the first filing of a NFTL that occurs on or after January 19, 1999.

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. Such person may also avail himself of the administrative procedure included in section 6325(b)(4) of the Internal Revenue Code 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.

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 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 give D a CDP Notice with respect to the NFTL filed in County X. It will give D notification of the NFTL filed in 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 filing of the NFTL 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.

(c) *Requesting a CDP hearing—(1) In general.* Where a taxpayer is entitled to a CDP hearing under section 6320, such a 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. The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information: the taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN); the type of tax involved; the tax period at issue; a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL; and the reason or reasons why the taxpayer disagrees with the filing of the NFTL. Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a 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 or by calling, toll free, 1-800-829-3676.

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. First, 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, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to 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 will also 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 taxpayers are allowed 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 request 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 under section 7502 and the regulations under that section and section 7503 and the regulations under that section 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 should the written request for a CDP hearing be sent?

A-C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q-C7. What will happen if the taxpayer does not request a section 6320 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 will forego the right to a CDP hearing under section 6320 with respect to the tax and tax period or periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. 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 that commences 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 (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 to only one CDP hearing for a tax and tax period set forth in a NFTL under section 6320 with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing 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 has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that 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 with respect to a tax period?

A-D1. The taxpayer may receive more than one CDP hearing 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 tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

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 hearing with respect to one tax period shown on the NFTL will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the NFTL.

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 tax and tax period or periods involved in the hearing?

A-D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (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 or periods shown on the NFTL.

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

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

(e) *Matters considered at CDP hearing*—(1) *In general.* 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 the issuance of a determination, the hearing officer is required to obtain verification from

the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure 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 tax liability specified on the CDP Notice for any tax period shown 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 that 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. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary 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 tax liability specified in 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 asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

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. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q-E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A-E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q-E5. What collection alternatives are available to the taxpayer?

A-E5. Collection alternatives would include, for example, withdrawal of the NFTL in circumstances that will facili-

tate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q-E6. What issues may a taxpayer raise in a CDP hearing under section 6320 if he 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-E6. 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 tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where 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 already had an opportunity to dispute the existence or amount of the tax liability.

Q-E7. How will Appeals issue its determination?

A-E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's 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 Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly,

the Notice of Determination will advise the taxpayer of his 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 to withdraw in writing the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q-E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A-E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q-E9. Why is the Notice of Determination and its date important?

A-E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A-E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(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 taxable 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 therefore 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. The taxpayer is not, therefore, 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 opportunity for a

conference at which the taxpayer would have the opportunity to dispute the 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 in writing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(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, 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 or to a district court of the United States.

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

A-F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015 (b) or (c), 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's denial of relief under section 6015 (b) or (c), the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals's 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 (b) or (c) claims may be reviewable by the Tax Court.

Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability specified in the CDP Notice arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q-F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A-F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q-F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A-F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation—(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 review or reconsideration. 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 with-

drawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(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 determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. 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.

(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 appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(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's determination. Once a taxpayer has exhausted his other remedies, Appeals's 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's 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 section 6320 CDP hearing 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 or a district court?

A-H2. No. As discussed in A-H1, a taxpayer is entitled to only one section 6320 CDP hearing 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 or a district 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 will generally 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 issues will Appeals consider at an equivalent hearing?

A-I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q-I2. 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-I2. 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-I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A-I3. 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.

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Q-I4. What will the Decision Letter state?

A-I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q-I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A-I5. 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's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999, and before January 21, 2002.

[T.D. 8810, 64 FR 3399, Jan. 22, 1999, as amended by T.D. 8939, 66 FR 2820, Jan. 12, 2001]

§ 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]