

Practical Considerations for Disputing a Tax Balance: Can it Be Done During a CDP Hearing?

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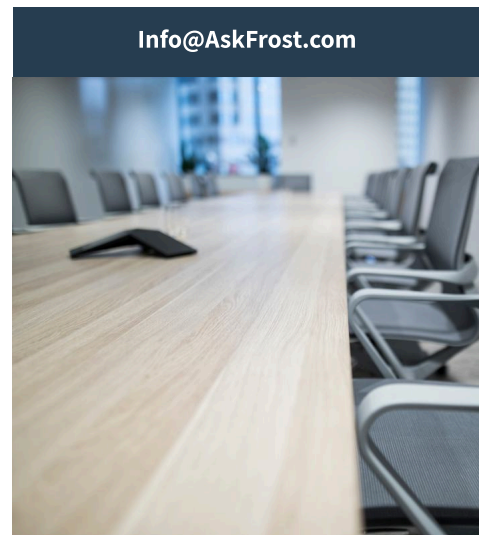
Earlier this year, the United States Tax Court decided two cases where taxpayers sought to dispute an underlying liability during an IRS Collection Due Process (“CDP”) hearing. Both cases provide practical considerations for disputing a balance owed during and after an examination.

In *Diversified Group, Inc. v. Commissioner*, the balance owed was the result of penalties assessed for failing to register marketed tax shelter strategies. The IRS proposed a \$41.2 million penalty pursuant to I.R.C.¹ The IRS notified the taxpayer of the proposed penalty assessment through letters, which included offers for a meeting with the Independent Office of Appeals to dispute the penalties before or after the assessment. The taxpayers declined the opportunity for a meeting with Appeals on three separate occasions and waived all rights to deal with Appeals except for a CDP hearing.

In *Ballengee v. Commissioner*, the balance owed was the result of an examination of a partnership tax return disallowing millions of dollars of carryforward losses.² After attempting to dispute the proposed assessment during the examination, the taxpayers were issued a Form 870-LT (a settlement agreement for both partnership and partner-level adjustments). Typically, a form is attached to this document that explains the adjustments in detail (Form 886-A). In this case, the Form 870-LT noted that the Form 886-A was “incorporated by references.” The taxpayers contended that it was not attached, and so they weren’t aware of what adjustments they were agreeing to in signing the closing agreement. After an IRS levy notice was issued, the taxpayers attempted to dispute the balance in a CDP hearing. Notably, James H. Ballengee has an accounting degree and practiced as a CPA at a Big 4 accounting firm, but did not consult counsel before signing the closing agreement.

In each case, the Court determined that the taxpayers were not entitled to challenge the underlying tax liability during their respective CDP hearings.

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Both cases illustrate the importance of understanding the tax law and IRS processes. For people dealing with tax issues, the team at Frost Law may be able to help by calling **(410) 497-5947** or **scheduling a free consultation**.

Here's a closer look at what happened in these two Tax Court cases.

When Can a Balance Be Disputed During a CDP Hearing?

In *Diversified*, the Court quotes Internal Revenue Code (IRC) Section 6330(c)(2)(B), which states that a balance may be disputed at a CDP hearing where “the person did not receive any statutory notice of deficiency . . . or did not otherwise have an opportunity to dispute such tax liability.” I.R.C. § 6330(c)(2)(B). The Court further reasoned that even a declined opportunity constitutes an opportunity. The Court in *Ballengee* cites this as well but notes that the Code section does not afford taxpayers the right to dispute a balance where they have signed a closing agreement waiving rights to a statutory notice of deficiency or other right to dispute the liability.

A closing agreement can only be nullified if there is a “showing of fraud, malfeasance, or misrepresentation of a material fact.”³ In *Ballengee*, even though the taxpayers contended that the explanation of adjustments was not attached to the form they signed, the Court found that there was no misrepresentation of a material fact. That's because the language of the signed form incorporated the explanation by reference two times. Even though the taxpayers assert they did not receive that attachment, they were still deemed to agree to it and are bound by it.

Practical Considerations for Disputing a Proposed Assessment

Both cases raise practical considerations when attempting to dispute a balance. A CDP hearing is not always going to be an available tool to do so. Declining or waiving rights to dispute a balance can cause taxpayers to lose critical opportunities to contest a balance due. In addition, *Ballengee* highlights the binding nature of IRS waivers and even attachments that are not present at the time of signing. If a form is “incorporated by reference,” taxpayers will be bound to it by signing the waiver.⁴

This underscores that taxpayers should always thoroughly review agreements with the IRS and consult with a tax professional before signing.

Further, the strategy to reach a CDP hearing for purposes of contesting an amount owed can have the opposite effect. In *Diversified*, the taxpayer denied both pre-and-post assessment conferences and argued before the Court that the opportunity they were afforded would be meaningless or inadequate. The Court reasoned that the merits of the opportunity are not the standard set forth in IRC 6330(c)(2)(B), but rather that the taxpayer had an opportunity.

This scenario highlights the detrimental effect of ignoring IRS correspondence that affords a change to dispute a balance or proposed assessment. While the Appeals process can at times appear informal, it does allow taxpayers a forum to present arguments before or after assessment where they can dispute the proposed amount without resorting to litigation.

Taxpayers should stay aware of the rights presented to them during and after examination and consult with a professional to determine how to best dispute a tax assessment.



For taxpayers struggling with tax issues – from unpaid taxes and collection issues to pursuing an appeal, Frost Law can help. People can contact Frost Law at **(410) 497-5947** or **[schedule a confidential consultation](#)**.

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Footnotes

1. § 6707. Diversified Group, Inc. v. Comm’r, 166 T.C. No. 2 (T.C. 2026).
2. Ballengee v. Comm’r, T.C. Memo 2026-73 (T.C. 2026).
3. Ballengee, T.C. Memo at 19 (citing I.R.C. § 7121(b)).
4. Ballengee, T.C. Memo at 19.

