



Department of the Treasury
Internal Revenue Service
Appeals Office
 300 East 8th Street, Ste. 602
 STOP 8000 AUS
 Austin, TX 78701

Date: [REDACTED]

Decision Letter on Equivalent Hearing
Under Internal Revenue Code Sections 6320 and/or 6330

Dear [REDACTED]

We concluded your Collection Due Process equivalent hearing. An impartial Appeals officer or an employee who had no prior involvement with this tax and tax period(s) conducted your hearing, unless you waived that right.

We reviewed the collection action for the periods shown above. This letter explains our decision on your case. A summary of our decision is on the next page and the enclosed statement explains in detail the matters we considered at your Appeals hearing and our conclusions.

We determined you didn't file your request for a due process hearing request within the legal timeframe. You requested and received an administrative hearing, referred to as an "equivalent hearing." If you can show that your due process hearing request was on time, you can file a petition with the United States Tax Court within 30 days from the date of this letter to dispute our decision about the timeliness of your hearing request. To obtain a petition form and the rules for filing a petition, write to:

Clerk
 United States Tax Court
 400 Second Street, NW
 Washington, DC 20217

You can visit the Tax Court website at www.ustaxcourt.gov.

You don't have the right to dispute an Appeals decision in an equivalent hearing in Tax Court if you agree your hearing request was not filed on time.

Summary of Decision

Appeals:

- Verified that the IRS followed applicable laws and administrative procedures
- Considered the issues
- Determined if the collection action is in balance with efficient tax collection and is no more intrusive than necessary

The Appeals decision is:

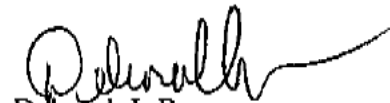
All legal and procedural requirements have been met regarding the filing of the federal tax lien.

Further, we find that the filing of the tax lien is sustained.

We are returning your case to the IRS Collections office for action consistent with the decision summarized above and described in the enclosed documents. If you have questions, contact the person shown at the top of this letter.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah L. Ross', with a long, sweeping horizontal line extending to the right.

Deborah L. Ross
Appeals Team Manager

Attachment to Decision Letter, L3210



Type of Tax	Tax Period(s)	Date of CDP Notice L3210-Lien	Deadline to file CDP request	Date F12153 Rec'd
1040	12-31-2005	10/14/2015	11/20/2015	12/30/2015
1040	12-31-2006	10/14/2015	11/20/2015	12/30/2015
1040	12-31-2007	10/14/2015	11/20/2015	12/30/2015
1040	12-31-2008	10/14/2015	11/20/2015	12/30/2015
1040	12-31-2009	10/14/2015	11/20/2015	12/30/2015
1040	12-31-2010	10/14/2015	11/20/2015	12/30/2015

Summary and Recommendation

Charles D. Williams, hereinafter referred to as the taxpayer, requested a hearing before the Office of Appeals pursuant to the provisions of IRC § 6320 for the periods listed above.

The filing of the Notice of Federal Tax Lien (NFTL) is sustained. The lien will remain filed.

Brief Background

The assessments above are the result of Substitute for Returns (SFR) filed on behalf of the taxpayer under IRC § 6020(b).

There are no other balances owed as of this writing; however, no return has been filed by either the IRS or the taxpayer for tax year 2011, 2012, 2013, 2014 or 2015.

**Discussion and Analysis
Applicable Law and Administrative Procedures**

The tax was assessed for the period considered in this hearing per IRC § 6201. The notice and demand for payment letter was mailed to the taxpayer's last known address, within 60 days of the assessment, as required by IRC § 6303. Transcripts for this account have verified the assessment and the notice and demand letter was issued to the taxpayer.

The Service has ten years from the date of assessment to collect the taxes due, plus any statutory extensions. The statutory period to collect the liabilities on the periods listed above is 05/18/2025.

This Settlement Officer has had no prior involvement in Appeals or in Compliance with respect to the periods being considered in this hearing.

IRC § 6321 provides a statutory lien when a taxpayer neglects or refuses to pay a tax liability after notice and demand. To be valid against third party encumbrances except other government entities, notice of the lien must be filed in the proper place for filing per IRC § 6323(a) and (f). Transcripts of this account verify the assessments and the notice and demand letters were issued to the taxpayer.

The taxpayer neglected or refused to pay the tax within 10 days of said notice and demand. Account transcripts have been verified to establish balances were due at the time of the filing of the Notice of Federal Tax Lien per IRC § 6322.

The Letter 3172, CDP notice, was sent by certified mail, return receipt requested, to the taxpayer's last known address no later than 5 days after the notice of federal tax lien was mailed for recordation per IRC § 6320(a). The required correspondence, Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320, was mailed to the taxpayer on 10/14/2015. Your request for a hearing was not received until 12/30/2015. The request for a hearing, submitted on Form 12153 for the periods listed above was not filed within the prescribed timeframe of IRC § 6320. When a request for a hearing is not received within the required timeframe, the taxpayer is afforded an administrative hearing referred to as an "equivalent hearing."

With the best information available, the requirement of various applicable law or administrative procedures has been met, and the actions taken or proposed by the Revenue Officer were appropriate under the circumstances.

Relevant Issues Presented By the Taxpayer

IRC § 6330(c) allows the taxpayer to raise any relevant issues relating to the unpaid tax at the hearing. In the request for a hearing, the taxpayer did not request a collection alternative. The taxpayer only issue is that he wanted a face to face hearing to challenge the liability issue saying he had never had an opportunity to do so before. Mr. Williams also indicated he would be recording said meeting.

In regards to the taxpayer's request for a face-to-face conference, the records show the taxpayer has not filed an income tax return at least since 2005, or earlier. The Internal Revenue Service has filed Substitute For Returns (SFR) on his behalf for tax years 2005 thru 2010. However, there is no return filed from either the taxpayer or the Internal Revenue Service for tax years 2011, 2012, 2013, 2014 and 2015, thus the taxpayer is not in filing compliance, and as such does not qualify for the requested face to face hearing, per IRM 8.22.5.6.1.1(1) and (2) and Treas. Reg. 301.6330-1(e).

Settlement Officer West issued a substantive contact letter to the taxpayer dated June 16, 2016, explaining he did not qualify for the requested face to face hearing and why,

thus a telephonic hearing was scheduled for 07/21/2016 at 1:00 pm CST. SO West asked the taxpayer calls her on that day and time since he did not provide a telephone number to Appeals for her to call him. Further, SO West indicated that he would not be allowed to record the hearing as it is only permissible when the hearing is conducted face to face. SO West also offered the taxpayer could chose to hold hearing via correspondence in lieu of the phone call.

Even though the taxpayer did not request a collection alternative in his request for a hearing, SO West offered him the opportunity to qualify for one. SO West requested financial information on which to base a collection alternative, and specified the taxpayer needed to be in filing compliance. SO West informed the taxpayer the Service's records show he had not yet filed income tax returns for tax years 2011, 2012, 2013, 2014 or 2015. The deadline to submit this information was July 8th, 2016.

In regards to the liability issue being raised by the taxpayer during this appeal, SO West explained in this letter that before it is determine whether or not he could raise the underlying liability during this CDP hearing, Appeals must verify the validity of these assessments. In this end, Appeals determined the taxpayer was previously issued the Statutory Notice of Deficiency (SNOD) letter, which afforded him the opportunity to further contest the liability by petitioning U.S. Tax Court. SO West verified the Service sent the taxpayer two separate SNOD letters via certified mail, return receipt requested. Both of these went unclaimed by the taxpayer and eventually returned to sender. The Service used the taxpayer's last known addresses at the time the letters were mailed to him on November 12, 2014.

The addresses used by the Service to mail the SNOD were:

- 1709 N. Main Street, Euless, TX 76039-2343 and
- PO Box 610841, Dallas, TX 75261-0841.

The issuance of the SNOD letters as described was appropriate and met the requirements, rules and regulations. The assessments under this appeal are therefore valid. Notwithstanding, SO West explained in this letter that Appeals would allow him to raise the liability issue and advised him the assessments under this appeal are from IRS created returns as authorized by the Internal Revenue Code 6020(b) because he did not file a tax return for each of the years listed.

SO West gave the taxpayer the opportunity to file his own tax returns for the years under this appeal, since he was in disagreement with the assessed amounts and further stated she would be happy to process his returns thru a process called "Audit Reconsideration". SO West referred the taxpayer to Publication 3598, for more information on this topic.

On July 18, 2016, the Settlement Officer received a letter from the taxpayer dated July 11, 2016. In this letter the taxpayer refused SO West's offer to hold hearing by phone or correspondence, stating Appeals should not rely on the IRM to deny his request for a face to face hearing, as the IRM itself is not law. The taxpayer indicated he wanted to

first resolve his issues prior to the face to face hearing and asked for proof he has a tax liability because per his records he does not. The taxpayer did not provide the information requested and did not submit the documentation need to support his challenge to the liability issue. Similarly, the taxpayer offered no specific challenge to the liability only to say his records indicated he had no tax liabilities.

Consistent with his July 11 letter, Mr. Williams did not telephone Appeals on July 21, 2016, to conduct the telephonic hearing that Appeals had scheduled for that date.

Since the taxpayer missed the telephonic hearing and specifically refused to conduct hearing by mail, SO West responded with the last chance letter, L4000, on August 2, 2016. In this letter SO West acknowledged the taxpayer's letter dated 7/11/2016 and stated she understood he wanted to discuss the issues and have them resolved before the hearing, but the hearing, she explained, is for that precise purpose: To discuss and address all issues with the proposed collection action and for the consideration of collection alternatives if he so choose. This letter gave the taxpayer another 14 days in which to provide any new information for Appeals consideration or to contact her via phone. She concluded the letter by advising the taxpayer that Appeals will make a determination in the Collection Due Process hearing he requested by reviewing the Collection administrative file and whatever information he had already provided and issue a determination and/or decision letter. SO West informed the taxpayer that before he decides whether to petition a notice of determination, he should know that the Tax Court is empowered to impose monetary sanctions up to \$25,000 for instituting or maintaining an action before it primarily for delay or for taking a position that is frivolous or groundless [*Pierson v. Commissioner*, 115 T.C. 576 (2000); *Forbes v. Commissioner*, T.C. Memo 2006-10 (\$20,000 penalty imposed); *Aston v. Commissioner*, T.C. Memo 2003-128 (\$25,000 penalty imposed)].

Mr. Williams responded to the last chance letter with yet another letter reiterating his refusal to participate in the hearing via mail or telephone. In this letter the taxpayer said he never received the SNOD because at the time he had a different address than the one the IRS used to mail him the letter. He attached a copy of a hand-written letter to the IRS dated 10-01-2014, notifying of his change of address. The taxpayer did not attach proof of mailing. SO West research shows the SNOD were mailed to the taxpayer's last known address, which was a different PO BOX than the one he claims he had at the time. However, as explained herein, the SNOD was also sent to his home address, and that is the same today as it was then. SO West verified both these letters were returned by the Post Office as "unclaimed", which per USPS regulations is defined as mail that is not claimed by the addressee. Had the address been incorrect, the certified mail would have been returned marked "undeliverable-as-addressed" or "unable to forward", which again it was not the case here.

In this circumstances, Appeals does not believe it is either necessary or productive to grant this taxpayer another opportunity for a hearing on any challenge to the underlying liability.

See *Lunsford v. Commissioner*, 117 T.C. at 189. The taxpayer has had ample opportunity to obtain de novo review in this proceeding of any legitimate challenge to the underlying liability, and failed to do so.

Likewise, the taxpayer was given sufficient time and opportunity to provide the requested financial information for consideration of a collection alternative. Again, the taxpayer refused to comply.

Even though in his request for this CDP hearing, Mr. Williams did not select a collection alternative to the filed lien or the proposed levy, SO West invited him to provide financial information to be considered for an alternative to the collection actions, but the taxpayer did not comply.

Nevertheless, Appeals considered whether it would be appropriate for the filed lien to be released or withdrawn. IRC § 6333(c)(3)(C) requires that the Settlement Officer determine if the filed Notice of Federal Tax Lien balances the need for the efficient collection of the taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The SO reviewed the different conditions which require the release of a Notice of Federal Tax Lien per IRC § 6325(a). These conditions are:

1. The tax liability is satisfied
2. The statute of limitations for collection has expired
3. The taxpayer furnishes a bond, which is acceptable to the Service.
4. The lien was filed in error.

SO West found none of these conditions had been met in this case.

The Settlement Officer also reviewed the four conditions, which can necessitate the withdrawal of a Notice of Federal Tax Lien.

1. IRC § 6323(j)(1)(A) – The filing is premature or otherwise not in accordance with administrative procedures.
2. IRC § 6323(j)(1)(B) – The taxpayer has entered into an installment agreement, unless the installment agreement provides for the lien.
3. IRC § 6323(j)(1)(C) – The withdrawal will facilitate collection.
4. IRC § 6323(j)(1)(D) – It is in the best interests of the taxpayer and the Service to withdraw the lien.

The Settlement Officer found that in this case the filing of the lien was not premature, there was no installment agreement on file, there was no evidence that a withdrawal would facilitate collection and it would not be in the best interests of the Service to withdraw the lien. A withdrawal of the lien would create a detriment to the government's position. Thus, absent some statutory basis to withdraw the Notice of Federal Tax Lien, or release the lien, maintaining the filed lien balances the need for

the efficient collection of taxes with Mr. Williams's legitimate concern that any collection action be no more intrusive than necessary.

In addition, Mr. Williams's refusal to file his income tax return is contrary to IRC 6011(a) which states taxpayer must file returns that conform to the forms and regulations prescribed by the Secretary. See sec. 1.6011-1(a), Income Tax Regs, and where the taxpayer did not file a valid return, the Commissioner can prepared a substitute for return satisfying the requirement under Section 6020(b), *see Wheeler v. Commissioner, supra at 209*.

During this CDP hearing, when given the opportunity to provide information to support his disagreement with the SFR returns, Mr. Williams responded by making demands of the IRS. Generally, the Commissioner's determination of a taxpayer's liability for an income tax deficiency is presumed correct, and the taxpayer bears the burden of proving it incorrect. *See Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933)*.

The Courts have consistently found the taxpayer is not entitled to dictate the course of the CDP proceedings and the CDP hearing is not an occasion for the taxpayer to make broad demands for information from Appeals thereby effectively stalling the CDP hearing, which radically misunderstands the CDP process, see *Sullivan v. IRS, Docket No. 6379-12L, 2012*.

In conclusion, Appeals gave the taxpayer the opportunity to follow thru with this challenge, but the taxpayer failed to do so. Throughout this appeal, the taxpayer never revealed the nature of his dispute over the underlying liability. The taxpayer's mere contradiction of the IRS's position does not, in it of itself, offer evidence to support his claim. When offered the chance to proof the liabilities assessed were incorrect, Mr. Williams responded by demanding the Settlement Officer provide him proof he owes this money; placing the burden of proof on the government is incorrect as it is the taxpayer's responsibility to substantiate his challenge.

Mr. Williams's only issue underlying the dispute about his liabilities appears to be his claim that he did not receive the SNOD thus he has not had a prior opportunity. However, when given the opportunity in this proceeding, Mr. Williams failed to avail himself of it when he offered no specific grounds of his dispute.

In conclusion, the taxpayer has advanced only unspecified challenges to his underlying tax liabilities which make it impossible for Appeals to consider his dispute.

Balancing Efficient Collection and Intrusiveness

IRC Section § 6330(c)(3)(C) requires that the Settlement Officer determine if the filed lien balance the need for the efficient collection of the taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Since the taxpayer did not respond to any of our requests for information Appeals has insufficient information to determine if a collection alternative would have been appropriate.

The lack of information regarding the taxpayer's financial status and the taxpayer noncompliance with his filing requirements bars Appeals from offering another collection alternative such as an installment agreement, an offer in compromise or listing the account as uncollectible.

Since the taxpayer has not pursued his due process rights, it is Appeals' determination that the filed lien balances the need for efficient collection of taxes with the taxpayer's legitimate concern the action is no more intrusive than necessary.

The filed lien is sustained.