

HANDLING AND GETTING COLLECTION DUE PROCESS HEARINGS

FORM #03.002/07.005/09.005



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RELATED RESOURCES:

1. [Sovereignty Forms and Instructions Online, Form #10.004, Cites by Topic: "due process"](#)
2. [Requirement for Due Process of Law, Form #05.045](#)
 - o  [PDF in member subscriptions](#)
 - o [Member Subscriptions](#)



1. Getting a Due Process Hearing

The IRS and many if not most of its employees know that:

1. They are engaged in illegal and unlawful collection activity
2. That the Constitution does not authorize any collection activity inside of states of the Union for anything other than foreign commerce.
3. That the Constitution forbids any penalties against anyone without a court hearing first to establish guilt. See Constitution Article 1, Section 10, and Article 1, Section 9, Clause 3. All penalties administered without a court hearing amount to a "[Bill of Attainder](#)" (OFFSITE LINK), which is unconstitutional. There are no implementing regulations authorizing penalties, such that [44 U.S.C. §1505\(a\)\(1\)](#) (OFFSITE LINK) says penalties can only be implemented in the case of federal employees and contracts.
4. They can be personally liable for their unlawful and injurious acts and "false commercial speech" connected with them.

All tax crimes require an element of "[willfulness](#)" (OFFSITE LINK), which means that the person doing them must know that they are illegal and do them in willing defiance of a known legal duty. Meeting an IRS agent at a Collection Due Process hearing satisfies the requirement to notify them of the legal duty and therefore makes their injurious actions beyond that point "[willful](#)" (OFFSITE LINK). The personal liability of errant IRS employees is therefore heightened if they are informed about the unlawful nature of their acts and choose to continue injuring people anyway. Informing them makes their injurious acts "actionable":

*"Actionable. That for which an action will lie, furnishing legal ground for an action. See Cause of action; Justiciable controversy."
[Black's Law Dictionary, Sixth Edition, p. 29]*

The invitation to conduct a Collection Due Process hearings must be offered to you by the IRS *prior* to the commencement of any collection action. This is mandated by  [IRS Restructuring and Reform Act of 1998, Section 3401, Public Law 105-206, 112 Stat. 685 \(1998\)](#) (OFFSITE LINK) as well as [I.R.C. 6320](#) (OFFSITE LINK) (liens) and [6330](#) (OFFSITE LINK) (levies). If you have been invited to request a Collection Due Process (CDP) hearing, the appropriate form to complete is the  [IRS form 12153](#) (OFFSITE LINK).








2. Tricks the IRS and states play to avoid due process hearings and what to do about them

We know that IRS employees do not like:

1. Being reminded that they are violating the law.
2. Being forced to read the law and make their unlawful act willful beyond that point.
3. Having to answer very pointed questions about their delegated authority and the limits of the I.R.C. and the Constitution upon their authority.
4. Risking losing their anonymity, by having to show their IRS and state-issued ID's at a Collection Due Process hearing. Once you have

them at the hearing, now you know who to sue if they collect anyway.


Consequently, IRS employees will do everything within their power to avoid Collection Due Process hearings. Below are some of their tactics:

1. The collection notice they send you will invite you to request a CDP hearing, but will not include an IRS form 12153. That leaves you with the inconvenience of having to find the correct form on their website, fill it out, and send it in, which many people can't figure out. To prevent this tactic, use the  [Amended IRS form 12153](#) and send it to them immediately.
2. The IRS form 12153 itself does not have a block for the date it was completed. This is deliberate. After you fill it out and send it in, the receiving IRS employee will just say that they received it after the deadline of 30 days from the date of the invitation. This frees them from the obligation to conduct the meeting. To prevent this tactic:
 - 2.1 The  [Amended IRS Form 12153](#) has a field added for the date completed, so they can't pull this trick. The  [Standard Form 12153](#) (OFFSITE LINK) doesn't have this block. The Amended form, by the way, is electronically fillable with your Acrobat Reader. You can fill it in and save the form filled in for later reuse.
 - 2.2 If you send the  [Amended IRS Form 12153](#) via certified mail and keep the receipt, you can prove that they are lying if they say they did not timely receive it.
3. After you request the CDP hearing properly using the  [Amended Form 12153](#), they may then send you a letter asking you why you want it. They will do this as a way to get you to give them any arbitrary reason why they can deny you the meeting. Often, they will say that your reason is "frivolous", but not explain their legal basis for such a determination, or even why it is frivolous. This is their way, in fact, of being frivolous, not yours. Ways of dealing with this obstructionist tactic are as follows:
 - 3.1 The important thing to remember about the requirement for the CDP is that there is no statute or implementing regulation that authorizes them to deny it to you for any reason. I.R.C. 6320 and 6330 require that it be conducted and don't say the requirement can be waived for any reason. Therefore, your reason for wanting the hearing is *totally irrelevant* because they are not authorized by the code to deny it. The IRS agent either won't tell you this or will refuse to discuss it if you broach it with him.
 - 3.2 If the IRS agent tries to deny you the CDP after you tell him he has no authority for doing so, ask him for a copy of his Delegation of Authority order and the statute AND implementing regulation that authorizes him to arbitrarily deny you the hearing. He won't be able to produce it and he will have to admit that he is "blowing smoke" and playing poker with you.
4. If you don't respond back to their request for the reason for asking for the CDP, they will say that they have scheduled a phone CDP hearing instead. They will do this because:
 1. That way, you can't record it. Recording is only authorized at in-person meetings and not on the telephone;
 2. To avoid having to provide their state-issued and IRS ID so that you know who to sue;
 3. So that you don't really know who you are talking to. To prevent this tactic:
 - 4.1 When you respond to his request for the reason for the hearing, tell him that the meeting will be recorded, regardless of what form it takes. You might also want to indicate this on your  [Amended IRS form 12153](#) itself.
 - 4.2 In your response to his request for the reasons for asking for the CDP, you can demand that he fax you a copy of: 1. His Delegation of Authority Order; 2. His IRS ID; 3. His state-issued ID.
 - 4.3 In your response to his request for the reasons for asking for the CDP, you can tell him that you will be conducting the conference on your end using a speakerphone, and that there is no law against recording on speakerphones. Only non-speakerphones require two-party consent to telephonic recording.
5. If they grant you a telephonic CDP conference, the IRS Agent will deliberately call the wrong number. If you give him more than one number, for instance your Work and Home numbers, he will call your Home number even though he knows or suspects that you are at Work during that time. Then he will not try the other number because he doesn't want to speak with you anyway. He will also not provide his phone number if his call doesn't arrive at the appointed time, so that you can't close the loop and thwart his evasiveness.
6. They will try to apply a provision from the Internal Revenue Code as an excuse why they don't have to do something. Remember, no part of I.R.C. may be cited against a "nontaxpayer" not subject to it. Therefore, if they deny you a CDP hearing or make a determination against your rights, then they are proceeding under the color but without the actual authority of law and you should emphasize this. You should insist that BEFORE they can cite any provision of the I.R.C., they must FIRST satisfy the burden of proof that you are a "taxpayer". We'll give you a hint: they can't produce proof. Information returns are often the only proof they have, and these returns are not signed under penalty of perjury. Therefore, they are NOT admissible as evidence under the [Federal Rules of Evidence](#). See our memorandum of law entitled  [Government Burden of Proof. Form #05.025](#) for exhaustive information on this scam.

3. What do Do at the Due Process Hearing

After you get the Due Process Hearing, the manual entitled [Nontaxpayer's Audit Defense Manual, Form #06.011](#) describes in







detail how to prepare for the hearing, how to conduct yourself, etc. We won't repeat ourselves here. If you want very simplified and general instructions, see:

- [Sovereignty Forms and Instructions Online, Form #10.004: INSTRUCTIONS, step 4.17: Handle your Tax Examination or IRS Meeting Skillfully](#) (OFFSITE LINK)-Family Guardian Website
-  [IRS Office of Chief Counsel Collection Due Process Hearing Guidelines](#) (OFFSITE LINK)-Family Guardian Website

We also recommend the following:

1. Sending our [IRS Due Process Meeting Handout, Form #03.008](#) to the agent you are scheduled to meet with at least ten days before the hearing, demanding that he come to the meeting prepared with a rebuttal and answers to the admissions in that pamphlet.
2. Bringing the above form to the meeting and presenting it to the agent again and insisting again that proof of jurisdiction to proceed appears on the record in the form of a rebuttal to the pamphlet and answers to the admissions at the end of the pamphlet.

[4. Further reading and research](#)

1. [Sovereignty Forms and Instructions Online, Form #10.004, Cites by Topic: "due process"](#)
2. [Requirement for Due Process of Law](#), Form #05.045
 - o  [PDF in member subscriptions](#)
 - o [Member Subscriptions](#)
3.  [Standard IRS form 12153](#) (OFFSITE LINK)-Family Guardian Website.
4.  [Amended IRS form 12153](#) (OFFSITE LINK)-Family Guardian Website.
5. [Nontaxpayer's Audit Defense Manual, Form #06.011](#)-explains in detail how to handle a due process hearing
6.  [IRS Due Process Meeting Handout, Form #03.008](#)- hand this out at your IRS due process meeting
7. [Sovereignty Forms and Instructions Online, Form #10.004: INSTRUCTIONS, step 4.17: Handle your Tax Examination or IRS Meeting Skillfully](#) (OFFSITE LINK)-Family Guardian Website
8. [Sovereignty Forms and Instructions Online, Form #10.004: Cites by Topic, "due process"](#) (OFFSITE LINK)-Family Guardian Website
9. [SEDM Liberty University, Item 6.5: The Constitution, Income Tax, and You](#)-video that shows you basic steps for dealing with the IRS at an audit
10. [I.R.C. Section 6320](#): Notice and opportunity for hearing upon filing of notice of lien (OFFSITE LINK)
11. [I.R.C. Section 6330](#): Notice and opportunity for hearing before levy (OFFSITE LINK)
12.  [Family Guardian Website, Sample Collection Due Process Hearing Transcript](#) (OFFSITE LINK)
13.  [IRS Office of Chief Counsel Collection Due Process Hearing Guidelines](#) (OFFSITE LINK)-Family Guardian Website.
14. [Tax Procedure and Tax Fraud, Patricia Morgan, West Group, Chapter 4: Audits and Administrative Appeals](#)-(OFFSITE LINK) West Group

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