

Internal Revenue Service
Appeals Office M/S 55201
Fresno, CA 93888-0700

Department of the Treasury

Date: APR 16 2008

Person to Contact:
Theresa A Avalos
Employee ID Number:
Tel: 559-456-5933
Fax: 559-456-5998
Contact Hours: 7:00am - 2:30pm

ROLAND [REDACTED]
[REDACTED]
MARYVILLE MO [REDACTED]

Refer Reply to:
AP:CO:FRC:TAA
Taxpayer Identification Number:
[REDACTED]
Tax Type/Form Number:
Income / 1040
In Re:
Collection Due Process Hearing
(Tax Court)
Tax Period(s) Ended:
12/2003

CERTIFIED MAIL

**NOTICE OF DETERMINATION
CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330**

Dear Mr. [REDACTED]:

We have reviewed the collection actions that were taken or proposed for the period(s) shown above. This letter is your Notice of Determination, as required by law. A summary of our determination is stated below. The attached statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions about them.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court within 30 days from the date of this letter.

To obtain a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217, or access the Tax Court website at www.ustaxcourt.gov.

In addition to the regular United States Tax Court procedures, the United States Tax Court also has a simplified procedure for an appeal under section 6330(d)(1)(A) of a determination in which the unpaid tax does not exceed \$50,000. You may also obtain information about this simplified procedure by writing to the United States Tax Court or accessing the United States Tax Court website at www.ustaxcourt.gov.

The time limit (30 days from the date of this letter) for filing your petition is fixed by law. The courts cannot consider your case if you file late. If an appeal is filed in the incorrect court (e.g., United States District Court), you will not be able to refile in the United States Tax Court if the time period for filing a Tax Court petition has expired.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached page(s). If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

We have found that all legal and administrative requirements for the action taken have been met. We have also considered whether the collection action taken or proposed 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 case will be returned to the Automated Collection System (ACS) for the appropriate actions

Sincerely,



James M. Urner
Appeals Team Manager

Enclosure(s): Attachment

Attachment

Taxpayer: Roland [REDACTED]

TIN: [REDACTED]

Type of Tax(es)	Tax Period(s)	Date of CDP Notice	Indicate 6320	CDP request received
1040	12/31/2003	07/24/2007	6320	08/07/2007

Summary and Recommendation

You filed a request for a Collection Due Process (CDP) hearing under Internal Revenue Code (IRC) § 6320 following receipt of a Letter 3172 Notice of Federal Tax Lien Filing and Your Rights to a Hearing. A copy of the Notice of Federal Tax Lien (NFTL) and Letter 3172 were provided with the administrative file. Accordingly, the tax periods shown above were on the NFTL sent for filing on July 20, 2007. A balance is still due as verified by computer transcripts. Your Form 12153 requesting a CDP hearing was received on August 7, 2007. This was timely submitted as it was made within the 30-day period for requesting a CDP hearing.

The case will be returned to Compliance for appropriate action.

Accordingly, my determination is based on my review of the available information in the Collection Administrative file. There is no information in the file that warrants the withdrawal of the filed NFTL. The filed NFTL is the appropriate action in this case.

Brief Background

The CDP notice was for a unpaid income tax liability for 2003 taxes. The tax liability is from a substitute for return filed by the Internal Revenue Service. You have been advised to file your own tax returns for the 2003 tax year.

On March 10, 2008, we sent you a contact letter which offered you a written correspondence hearing as an alternative to a telephone hearing. We received your letter dated March 26, 2008 requesting a face-to-face hearing.

In our letter dated March 10, 2008, we explained that Appeals does not provide a face to face conference if the only items you wish to discuss are those:

1. Courts have determined are frivolous (Examples of arguments that are considered frivolous are provided in "The Truth About Frivolous Tax Arguments" on the IRS Internet website at http://www.irs.gov/pub/irs-utl/friv_tax.pdf. It is not a complete list of frivolous arguments).
2. Appeals does not consider irrelevant issues, such as moral, religious, political, constitutional, conscientious, or similar grounds.

You were provided with an opportunity for a face-to-face conference on any nonfrivolous issue. We advised you to provide the nonfrivolous issue in writing by March 31, 2008 before we could schedule a face-to-face conference.

Your request for a face to face hearing was denied since you failed to present any relevant issues towards payment of the outstanding tax liabilities. In our letter dated March 10, 2008, we requested you submit a completed financial statement and file your delinquent returns for tax years 2004, 2005 and 2006 in order for us to consider a collection alternative. Although you responded to our letters, you did not provide the information requested in order to explore collection alternatives, other than full payment. As such, the levy and lien are sustained.

Discussion and Analysis

Verification of Legal and Procedural Requirements

The requirements of applicable law or administrative procedures have been met and the actions taken were appropriate under the circumstances.

* We verified through transcript analysis that assessment was made on the applicable CDP notice periods per IRC § 6201 and 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.

* Per transcript analysis, there was a balance due when the NFTL filing was requested. This balance is still due.

* IRC § 6321 provides a statutory lien when a taxpayer neglects or refuses to pay a tax liability after notice and demand for payment. Transcripts of the account show that the IRS issued notice and demand for each of the tax periods involved and those periods remain unpaid.

* Per review of computer transcripts, the CDP notice (Letter 3172) was sent by certified mail to your last known address, no later than 5 business days after the NFTL was recorded (IRC § 6320(a)). This was also the address shown on your CDP hearing request.

* We verified the appropriate computer codes have been posted with the correct date for the tax periods at issue to suspend both levy action and the statutory period of collection to collect these taxes.

* Per transcript analysis, a CP504 notice, warning of a possible filing of a NFTL, was issued for the tax periods subject to the hearing at least 31 days prior to the NFTL filing.

* There is no pending bankruptcy case, nor did you have a pending bankruptcy case at the time the CDP notice was sent (11 U.S.C. § 362 (a) (6)).

- This Appeals employee has had no prior involvement with this taxpayer concerning the applicable tax periods before this CDP case.

Issues Raised by the Taxpayer

Challenges to the Existence or Amount of the Liability

You challenged the existence of the liability on your CDP request. You stated that you didn't believe you are the person named on the collection notice.

You may file your own tax return and send it to the Audit Reconsideration of the Internal Revenue Service.

Challenges to the Appropriateness of the Collection Action

You have not requested the NFTL be withdrawn. However, we have considered whether any of the criteria for allowing withdrawal of the lien existed in your case.

IRC § 6323(j) allows the withdrawal of a filed notice of lien without full payment and without prejudice under the following conditions:

- * The filing of the notice of lien was premature or otherwise not in accordance with administrative procedures of the Internal Revenue Service;
- * The taxpayer had entered into an agreement under IRC § 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise;
- * Withdrawal of the lien will facilitate collection of the tax liability; or
- * Withdrawal of the lien would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States. Similar to the above provision, each set of circumstances should be analyzed to determine if this condition exists.

There is nothing in the Collection administrative file that indicates withdrawal of the filed lien should be considered and you have provided no additional information that indicates the withdrawal of the filed lien should be considered.

Collection Alternatives Offered by the Taxpayer

On your Form 12153 requesting the CDP hearing, you did not offer a collection alternative.

Other issues raised by the Taxpayer

Balancing of Need for Efficient Collection With Taxpayer Concern That the Collection Action Be No More Intrusive Than Necessary

We balanced the competing interests when finding the filing of the NFTL is appropriate. You did not offer any collection alternatives during the CDP hearing process. As discussed above, the assessment(s) at issue are valid. Given your failure to propose any collection alternatives, retaining the NFTL balances the need for efficient collection with your concern that the collection action be no more intrusive than necessary.

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