OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL, SB/SE LAS VEGAS OFFICE
Attn: Wendy Harris

FROM: Alan C. Levine, Chief, Branch1 CC:PA:CBS:B01

SUBJECT: CDP Procedures- Hearings by Mail.

You have asked for our review and comments with respect to a form "Hello" letter that Las Vegas Appeals intends to use in Collection Due Process (CDP) cases in which only frivolous or constitutional arguments are raised. You have indicated that the proposed letter will state that Appeals no longer plans to offer face-to-face or telephone CDP conferences to taxpayers who indicate in their request for a CDP hearing that they are raising only frivolous or constitutional arguments to the proposed collection action. Las Vegas Appeals plans to send the form letter advising the taxpayers that unless they raise a relevant issue with 15 days from the date of the "Hello" letter, the appeals officer will issue a Notice of Determination sustaining the proposed collection action. For the reasons set forth below, it is our view that the CDP hearing envisioned by this letter does not satisfy the statutory requirements of I.R.C. § 6330(b).

The form "Hello" letter (copy attached) invites the taxpayer to present additional information that would be relevant to an issue upon which Appeals can grant relief. The letter states that if no further information is received, the CDP hearing will consist of a review of the taxpayer's correspondence and other information in Appeals' possession. Nowhere does the letter offer the taxpayer a face-to-face CDP hearing on relevant issues nor does it offer the taxpayer the alternative of a telephone conference.

Section 6330(b)(1) provides that if a taxpayer timely requests a CDP hearing, Appeals must hold the hearing, but neither the statute nor the Treasury Regulations explicitly define what a CDP hearing is. However, it was the consensus of the Service in interpreting the statute and drafting the regulations that Congress meant for CDP hearings to be held in Appeals' normal, informal manner. Appeals has traditionally held hearings in person, by telephone, or by correspondence.

At a meeting with the Department of Justice, Appeals, and Chief Counsel, it was decided that Appeals would strive to grant, at a minimum, face-to-face conferences to all requesting taxpayers. Conferences by other means, such as by telephone or correspondence, are also acceptable provided the taxpayer has consented to this procedure, has been offered the opportunity for a face-to-face conference, and the basis for this type of conference is documented in the file. Konkel v. Commissioner, 86 AFTR2d 5545 (M.D. Fla. 2000) is instructive. In Konkel, a taxpayer who explicitly stated that he wanted all communication with Appeals regarding his CDP hearing to be by correspondence argued in his district court complaint that he did not receive a face-to-face hearing. At the suggestion of a Magistrate Judge during the course of the proceedings, Appeals offered the taxpayer a face-to-face hearing, but the taxpayer did not respond. The court granted the Government's motion for summary judgment.

More importantly, a taxpayer is entitled to a CDP hearing even if he will raise only frivolous or constitutional arguments because the appeals officer must cover the statutory requirements of sections 6330(c)(1) and (3)(C) of verification and balancing. Section 6330(c)(1) requires an appeals officer to "obtain verification from the Secretary that the requirements of any applicable law or administrative procedures have been met." Section 6330(3)(C) requires the appeals officer to "balance the need efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." In order to create an adequate record for the court, Appeals should grant face-to-face CDP hearings to taxpayers who request them. The appeals officer should inquire whether the taxpayer has any collection alternatives or other relevant issues. The word "relevant" is the key. I.R.C. § 6330(c)(2)(A) permits the taxpayer to raise any relevant issues relating to the unpaid tax or the proposed levy. This could include spousal defenses, collection alternatives, and challenges to the appropriateness of the collection actions. Frivolous arguments and worn constitutional arguments are not relevant issues. In our view, the appeals officer can conclude the CDP hearing if the taxpayer has no relevant issues to raise. The appeals officer is not required to spend much time beyond the minimum outlined here.

We appreciate the need to expedite these cases and to conserve both administrative and judicial time and resources. We suggest that appeals officers make use of the recent case of Pierson v. Commissioner, 115 T.C. No. 39 (filed Dec. 14, 2000). In that case, the Tax Court held that the taxpayer had instituted or maintained his frivolous and groundless case primarily, if not exclusively, as a protest against the Federal income tax. While, the Court declined to impose the penalty provided by I.R.C. § 6673 because the Tax Court's jurisdiction in CDP matters has been relatively short, the court, citing White v. Commissioner, 72 T.C. 1126 (1979), warned that it was providing "fair warning to those taxpayers who, in

the future, institute or maintain a lien or levy action primarily for delay or whose position in such proceeding is frivolous or groundless." The court has stated emphatically that it will henceforth impose sanctions pursuant to section 6673 in CDP cases. Therefore, we encourage appeals officers to inform taxpayers of the Pierson case at the CDP hearing. They may want to provide taxpayers with a copy of the opinion. Accordingly, Appeals must offer an opportunity for a face-to-face hearing to all taxpayers, regardless of what arguments they raise. Taxpayers may choose a telephone or correspondence alternative. Appeals should rely strongly on the Pierson case, and those cases that will, undoubtedly, follow Pierson, to impress on taxpayers the importance of raising relevant issues in a CDP hearing.

We have met with Appeals Headquarters about this issue and they concur with our opinion. Your local Appeals office should tailor their "Hello" letters to incorporate the advice given in this memorandum.

If you have any questions, please call Susan Watson at 202-622-3409.

Internal Revenue Service
Las Vegas Appeals Office
4750 W. Oakey Blvd.
Las Vegas, NV. 89102

Department of the Treasury
Area 8, Las Vegas Appeals

Person to Contact:
[redacted]

Telephone Numbers:
[redacted]

Refer Reply to:
AP:WR:SW:LV:DF
In Re:
Collection Due Process - Levy
Tax Period(s):
[redacted]

Date: [redacted]

[redacted]
P. O. Box [redacted]

Dear [redacted]

I have received your case in which you filed a request for a due process hearing with Appeals. The attachment to your request raises issues pertaining to the legal authority of the Internal Revenue Service. Such matters have previously been addressed by the courts and will not be addressed at your hearing.

Your tax liabilities as assessed by the authority granted by Congress to the Internal Revene Service, under Internal Revenue Code (IRC) Section 6020(b), are the result of your failure to voluntarily file required income tax returns or your submission of return information which could not be used.

Internal Revenue Service records reflect that you were issued Statutory Notices of Deficiency providing you the opportunity to dispute the IRC Section 6020(b) assessments or to petition the Tax Court. There is no evidence you responded to that opportunity.

I have reviewed all correspondence in your case file. Your correspondence does not present any argument upon which Appeals may grant you relief. If you have additional information which does present an argument upon which Appeals may grant you relief, please submit it no later than [redacted] You may also submit proposals of collection alternatives. In order to qualify for an installment agreement or an offer in compromise, you must first have properly filed all your federal income tax returns due to date. Please submit your additional information, returns, and proposals no later than [redacted] Upon receipt of the aforementioned additional information, or your returns and proposals of collection alternatives, I will schedule your hearing.

If none are received, your hearing will consist of review of your correspondence and consideration of information in our possession. Therefore, if I do not receive from you by [redacted] your additional information, or your returns and your alternative collection proposals, I will have our Determination Letter issued sustaining the proposed collection action.

You can authorize an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service to represent you. Your authorization should be made on Form 2848 (Power of Attorney and Declaration of Representative), Form 8821 (Tax Information Authorization and Declaration of Representative) or a similar document.

Sincerely,

[redacted]

Settlement Officer