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# Collection Appeal Rights

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You can appeal many IRS collection actions. There are various collection appeal procedures available to you. The two main procedures are **Collection Due Process (CDP)** and **Collection Appeals Program (CAP)**. There are other collection actions which have their own specific appeal procedures. These other actions are discussed at the bottom of page four of this publication.

**Collection Due Process (CDP)** is available if you receive one of the following notices: Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320 (Lien Notice), a *Final Notice - Notice of Intent to Levy and Notice of Your Right to A Hearing*, a *Notice of Jeopardy Levy and Right of Appeal*, a *Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing (Levy Notices)*. If you disagree with the CDP decision, you can go to court. CDP is more thoroughly described on pages one and two of this publication.

**Collection Appeals Program (CAP)** is generally quicker and available for a broader range of collection actions. However, you can't go to court if you disagree with the CAP decision. CAP procedures are described on pages three and four of this publication.

You may represent yourself at CDP, CAP and other Appeals proceedings. Or, you can have an attorney, certified public accountant, or a person enrolled to practice before the IRS represent you. If you want your representative to appear without you, you must provide a properly completed Form 2848, *Power of Attorney and Declaration of Representative*. This form is available at your local IRS office, or by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov).

## HEARING AVAILABLE UNDER COLLECTION DUE PROCESS (CDP) For Lien and Levy Notices

You have the right to a CDP hearing by the IRS Office of Appeals for these collection actions: the first time a Notice of Federal Tax Lien is filed on a tax period; before we send the first levy on your property for a tax period; when we levy your state refund; and when we issue a jeopardy levy. You may contest the CDP decision in the Tax Court or an U.S. District Court, as appropriate.

**Lien Notice:** The IRS is required to notify you the first time a Notice of Federal Tax Lien is filed for each tax period. We have to notify you within 5 days after the lien notice filing. You then have 30 days, after that 5-day period, to request a hearing with the Office of Appeals. The lien notice you receive will indicate the date this 30-day period expires.

**Levy Notice:** For each tax period, the IRS is required to notify you the first time we intend to collect a tax liability by taking your property or rights to property. We do this by sending you a levy notice. We can't levy or seize your property within 30 days from the date this notice

is mailed, or given to you, or left at your home or office. During that 30-day period, you may request a hearing with the Office of Appeals. There are two exceptions to this notice of intent to levy provision. We may issue a levy without sending this notice or waiting 30 days when collection of the tax is in jeopardy. We may also levy on your state tax refund without sending a notice or waiting 30 days. You can request a hearing after the levy action for both of these instances.

### ***How do you request a hearing under Collection Due Process with the Office of Appeals?***

Complete Form 12153, *Request for a Collection Due Process Hearing*, and send it to us at the address shown on your lien or levy notice within 30 days. Check the IRS action(s) you disagree with, and explain why you disagree. If you received both a lien and a levy notice, you may appeal both actions. You must identify all of your reasons for disagreement with us at this time. You may raise issues relating to the unpaid tax including:

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- Appropriateness of collection actions
  - Collection alternatives such as installment agreement, offer in compromise, posting a bond or substitution of other assets
  - Appropriate spousal defenses
  - The existence or amount of the tax, but only if you did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.

You may not raise an issue that was raised and considered at a prior administrative or judicial hearing, if you participated meaningfully in the prior hearing or proceeding.

To preserve your right to go to court, you must send us the Form 12153 within 30 days. Form 12153 is also available by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov). Include a copy of your lien and/or levy notice. List all taxes and tax periods for which you are requesting a hearing. Under CDP, you are entitled to only one hearing relating to a lien notice and one hearing relating to a levy notice, for each taxable period. If you receive a subsequent lien or levy notice after you request a hearing on an earlier notice, Appeals can consider both matters at the same time

Before you formally appeal a lien or levy notice by sending us Form 12153, you may be able to work out a solution with the Collection function that took the action. To do so, contact the IRS employee whose name appears on the lien or levy notice and explain why you disagree with the action. This contact, however, does NOT extend the 30-day period to make a written request for a CDP hearing.

***What will happen when you request a CDP hearing with the Office of Appeals?***

After you request a hearing, you can still discuss your concerns with the office collecting the tax or filing the Notice of Federal Tax Lien. If you are able to resolve the issues with that office, you may withdraw your request for a hearing.

The Office of Appeals will contact you to schedule a hearing. Your hearing may be held either in person, by telephone or by correspondence.

Unless we have reason to believe that collection of the tax is in jeopardy, we will stop levy action during the 30 days after the levy notice and, if your appeal is timely, during the appeal process.

Your appeal is timely if you mail your request for a hearing to the address shown on our notice on or before the 30<sup>th</sup> day after the date of the levy notice or the date shown on the lien notice. If we receive a timely filed Form 12153, we will also suspend the 10-year collection statute of limitations until the date the determination is final or you withdraw, in writing, your request for a hearing.

At the conclusion of the hearing, Appeals will issue a written determination letter. If you agree with Appeals' determination, both you and the IRS are required to live up to the terms of the determination.

If you don't agree with Appeals' determination, you may request judicial review of the determination by initiating a case in a court of proper jurisdiction (United States Tax Court or United States District Court, depending on the circumstances) on or before the 30<sup>th</sup> day after the date of Appeals' determination. Once the Court rules, its decision will be binding on both you and the IRS.

The Office of Appeals will retain jurisdiction over its determinations and how they are carried out. You may also return to Appeals if your circumstances change and impact the original determination. However, you must exhaust your administrative remedies first.

If your appeal request is not timely, you will be allowed a hearing, but there will be no statutory suspension of collection action and you can't go to court if you disagree with Appeals' decision.

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# ADMINISTRATIVE COLLECTION APPEAL RIGHTS

## COLLECTION APPEALS PROGRAM (CAP)

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For liens, levies, seizures and installment agreements under the CAP procedure, you don't have the right to a judicial review of Appeals' decision.

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The CAP procedure is available under more circumstances than the Collection Due Process hearing procedure. It is important to note that you can't proceed to court if you don't agree with Appeals' decision in your CAP case. Collection actions you can appeal are:

**Notice of Federal Tax Lien.** You may appeal before or after the IRS files a lien. You may also appeal denied requests to withdraw a Notice of Federal Tax Lien, and denied discharges, subordinations, and non-attachments of a lien. If the IRS files a Notice of Federal Tax Lien, you may have additional Collection Due Process appeal rights. See the preceding information regarding Hearing Available under Collection Due Process.

**Notice of Levy.** You may appeal before or after the IRS places a levy on your wages, bank account or other property. Before a levy is issued, you may have additional Collection Due Process appeal rights. See the preceding information regarding Hearing Available Under Collection Due Process.

**Seizure of Property.** You may appeal before or after the IRS makes a seizure. If you request an appeal after the IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you, or left at your home or business.

**Denial or Termination of Installment Agreement.** You may appeal when you are notified that the IIRS intends to deny you an installment agreement. You may also appeal when we propose to terminate or terminate your installment agreement. The right to appeal denials or terminations of installment agreements is provided by law rather than provided by IRS administratively. As such, there are some differences between CAP for installment agreements and other CAP cases, such as levies etc.

### ***How do you appeal one of these IRS actions if your only collection contact has been a notice or telephone call?***

1. Call the IRS at the telephone number shown on your notice. Be prepared to explain which action(s) you disagree with and why you disagree. You must also offer your solution to your tax problem.
2. If you can't reach an agreement with the employee, tell the employee that you want to appeal their decision. The employee must honor your request and will refer you to a manager. The manager will either speak with you then, or will return your call within 24 hours.
3. Explain which action(s) you disagree with and why you disagree to the manager. The manager will make a decision on the case. If you don't agree with the manager's decision, your case will be forwarded to an Appeals Officer for review.

### ***How do you appeal one of these IRS collection actions if you have been contacted by a Revenue Officer?***

1. If you disagree with the decision of the Revenue Officer, and wish to appeal under CAP, you must first request a conference with a Collection manager.
2. If you do not resolve your disagreement with the Collection manager, you may request Appeals consideration by completing Form 9423, *Collection Appeal Request*. This form is available by calling 1-800-829-3676, or from our web site at [www.irs.gov](http://www.irs.gov). Check the action(s) you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem.
3. Submit the Form 9423 to that Collection Office.
4. The Collection Office must receive your appeal request for a lien, levy or seizure within 2 days of your conference with the Collection manager or we will resume collection action. For an appeal request for a denial or termination of an installment agreement, you have 30 days from the date of denial or termination of your installment agreement, to submit your request to the Collection Office.

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**Important:** The IRS can not levy until 30 days after the denial or termination of an Installment Agreement. If you appeal the denial or termination of an installment agreement within that 30-day period, we must stop levy action until your appeal is completed.

***What will happen when you appeal your case?***

**Lien, Levy and Seizure:** Normally, we will stop collection action on the tax periods the Appeal Officer is considering, unless we believe the collection of the tax is at risk.

**Installment Agreements:** The IRS can't levy until 30 days after the denial or termination of your agreement. If you appeal within that 30-day period, we will stop levy action until your appeal is completed.

Once the Appeals Officer makes a decision on your case, that decision is binding on both you and the IRS. This means that both you and the IRS are required to accept the decision and live up to its terms. You cannot obtain judicial review of an Appeals Officer's decision following a CAP hearing.

**Note:** Providing false information, failure to provide all pertinent information or fraud will void Appeals' decision.

## **APPEAL OF OTHER COLLECTION ACTIONS**

You may also appeal other Collection actions such as denied Offers in Compromise (OIC) or Trust Fund Recovery Penalties (TFRP) that the IRS is proposing. Other penalties are also appealable, if you made an abatement request that was denied.

For OICs and TFRPs, follow the protest requirements in Publication 5, *Your Appeal Rights and How To Prepare A Protest If You Don't Agree*.

The correspondence you receive on these types of cases will explain where you should send your protest. For other penalties, follow the instructions in the letter that denies your abatement



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