

#29 AMEND IRC §§ 6320 AND 6330 TO PROVIDE COLLECTION DUE PROCESS RIGHTS TO THIRD PARTIES HOLDING LEGAL TITLE TO PROPERTY SUBJECT TO IRS COLLECTION ACTIONS

Present Law

Current law authorizes the IRS to file Notices of Federal Tax Lien (NFTLs) and issue levies against a taxpayer's property or rights to property, including property owned jointly, by certain third parties, or secured by certain creditors.¹¹¹ However, these third parties are not considered “taxpayers” for purposes of the Collection Due Process (CDP) notice and hearing procedures described in IRC §§ 6320 and 6330, and they are therefore not entitled to CDP rights. For that reason, the IRS does not issue CDP lien notices pursuant to IRC § 6320 or provide notice of proposed levies pursuant to IRC § 6330 to these third parties.

Reasons for Change

The purpose of CDP rights is to give taxpayers a meaningful hearing before the IRS levies their property or immediately after the IRS files a NFTL against their property. During the CDP hearing, a taxpayer has the right to raise defenses, challenge the appropriateness of collection actions, and propose collection alternatives. Third parties such as joint owners or alleged nominees, alter egos, and transferees, do not have these rights, and therefore, are not able to prove their ownership interest in the property until after a lien is filed or the property levied. Without the benefit of the protections afforded by IRC §§ 6320 and 6330, a third party against whom the IRS takes a collection action has limited remedies, and the remedies are provided only after the collection action has occurred. As a result, the collection process gives taxpayers who may owe significant liabilities the right to raise concerns and propose collection alternatives before a collection action is taken while denying joint owners and alleged nominees, alter egos, and transferees – who may be innocent third parties — those same rights. Amending the law to provide CDP rights to third parties who have legal title to the property would give an “affected third party” due process protections comparable to the person who is responsible for the tax.¹¹²

Recommendation

Amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to “affected third parties,” who hold legal title to property subject to IRS collection actions.¹¹³

111 See generally IRC §§ 6321, 6322, 6323(a), (f) and (h)(6), and 6331(a).

112 In the context of explaining the CDP provisions, Senate report accompanying its version of the RRA 98 legislation referred to “[t]he taxpayer (or affected third party).” S. Rep. No. 105-174, at 67 (1998) (emphasis added).

113 For more detail, see National Taxpayer Advocate 2012 Annual Report to Congress 544-552 (Legislative Recommendation: Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions).