Can You Challenge A Liability Under The Collection Due Process Procedures?

By David M. Fogel, CPA[1]

I. INTRODUCTION

Consider the following scenario. A new client contacts you about collection notices that she has been receiving from the Internal Revenue Service (IRS). You learn that she failed to file tax returns for the years 2000 through 2005. She tells you that she received notices of deficiency from the IRS for these years, but she just ignored them, and the time for filing a petition with the United States Tax Court has expired. She also tells you that she has ignored several collection notices, but the "Final Notice of Intent to Levy and Notice of Your Right to a Hearing" that she received last week got her attention. She also tells you that although she has plenty of money and can probably pay the amount owed, she believes that she doesn't owe nearly as much tax as the IRS claims.

You agree to represent her, and you timely file a Form 12153 ("Request for a Collection Due Process or Equivalent Hearing") with the IRS. You contact a CPA, who prepares her delinquent returns. At the Appeals hearing, you submit the returns as evidence that your client owes much less tax than shown in the notices of deficiency. The IRS Appeals Settlement Officer informs you that since your client had a previous opportunity to challenge the liability (i.e., she could have filed a petition with the U.S. Tax Court in response to the notice of deficiency), she cannot now challenge the liability in the Collection proceeding.

IRS Appeals issues a Notice of Determination that sustains the levy notice, and you file a petition in U.S. Tax Court. In the petition, you indicate that the nature of the dispute involves only the amount of the liability. The IRS attorney informs you that he will be filing a motion for summary judgment on the grounds that since only the liability is in dispute, and since your client had a previous opportunity to challenge that liability, summary judgment should be granted in favor of the IRS.

How can you avoid this result? The purpose of this article is to explain the Collection Due Process procedures, focusing upon how such procedures apply when you want to challenge the liability.

II. COLLECTION DUE PROCESS PROCEDURES

Before January 19, 1999, the IRS was not required to notify a taxpayer when a Notice of Federal Tax Lien ("NFTL") was filed against that taxpayer's property. Section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA '98")[2] added §6320 to the Internal Revenue Code ("Code"). Section 6320 requires the IRS to provide a written notification to the taxpayer of the filing of a NFTL. Such section also requires the IRS to notify the taxpayer of his or her right to a Collection Due Process ("CDP") hearing. In practice, this notification is given by Letter 3172 ("Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC §6320").

Similarly, before January 19, 1999, taxpayers had no statutory hearing rights after receiving a notice of intent to levy under Code §6331(d). Section 3401 of RRA '98 also added §6330 to the Code, which requires the IRS in most instances to provide a written notification to the taxpayer of its intent to levy on the taxpayer's property or right to property. Such section requires the notification to advise the taxpayer of his or her right to a CDP hearing before the levy is made. In practice, this notification is given by either Letter 1058 or by Letter LT11 ("Final Notice of Intent to Levy and Notice of Your Right to a Hearing"). Letter 1058 is issued by field collection in cases assigned to a Revenue Officer, and Letter LT-11 is issued by a Service Center's Automated Collection System[3]. A taxpayer is usually given a non-CDP notice of intent to levy under §6331(d) prior to being given a CDP notice of intent to levy and right to a hearing under §6330. A taxpayer cannot request a CDP hearing from the §6331(d) non-CDP notice.

Once the IRS issues the lien or levy notice giving the taxpayer the right to a hearing, the taxpayer has 30 days in which to request the hearing.[4] The request must be in writing[5] and it must contain certain items.[6] Taxpayers are encouraged to use Form 12153 to request the hearing.[7]

The CDP hearing is held by the IRS's Office of Appeals.[8] At the Appeals hearing, the taxpayer may raise any relevant issue, including spousal defenses, the appropriateness of the collection action, and collection alternatives such as an installment agreement or offer in compromise.[9] In addition, the taxpayer may raise arguments concerning the underlying tax liability if he or she did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.[10]

Following the hearing, the Appeals Office must make a determination as to whether the proposed lien or levy action may proceed. In so doing, the Appeals Office is required to take into consideration (1) the verification that the requirements of applicable law and administrative procedures have been met, (2) the relevant issues raised by the taxpayer, (3) the taxpayer's challenges to the tax liability, where permitted and (4) whether the proposed lien or levy action appropriately balances the need for efficient collection of taxes with a taxpayer's concerns regarding the intrusiveness of the proposed lien or levy action.[11]

If the CDP hearing does not resolve the dispute, then the taxpayer is entitled to seek judicial review by filing a petition with the U.S. Tax Court within 30 days after the Appeals Office issues its Notice of Determination.[12] Where the validity of the underlying tax liability is properly at issue, the Court will review the matter *de novo.*[13] Where the underlying tax liability is not properly at issue, the Tax Court will review the administrative determination of the Appeals Office for abuse of discretion.[14]

A taxpayer whose request for a CDP hearing is not submitted within the 30-day period is not entitled to a CDP hearing, but may nevertheless request an administrative hearing with Appeals, which is called an "equivalent hearing."[15] To obtain the "equivalent hearing," the taxpayer must submit a request for the CDP hearing within one year of the lien or levy notice.[16] The "equivalent hearing" will generally follow Appeals' procedures for a CDP hearing, except that Appeals will not issue a Notice of Determination. Instead, Appeals will issue a Decision Letter.[17] A taxpayer may not seek judicial review of the Decision Letter.[18]

California law is similar to federal law concerning proposed liens and levies. Under California law, a notice must be issued to the taxpayer before filing or recording a lien, or making a levy, on the taxpayer's property.[19] For proposed liens, the lien will not be filed or recorded if the taxpayer demonstrates within 30 days of the date of the notice that filing or recording the lien would be in error.[20] Within 15 days of filing or recording a lien, or within 30 days of a notice of proposed levy, the taxpayer may file a request with the Taxpayer' Rights Advocate for an independent departmental administrative review of the lien or proposed levy, and at the review, the taxpayer may raise the same types of issues as under federal law.[21] A taxpayer may not raise any issue at the levy review that was raised and considered at a previous levy review or in any other administrative or judicial proceeding in which the taxpayer meaningfully participated.[22]

III. CHALLENGING THE LIABILITY

As indicated above, if the taxpayer did not receive a notice of deficiency or did not otherwise have a previous opportunity to dispute the tax liability, then the taxpayer may challenge the tax liability at the CDP hearing.[23] How is this rule applied?

A. Notice Of Deficiency

One situation in which a taxpayer may challenge the tax liability at the CDP hearing is where the taxpayer did not receive a notice of deficiency.[24] For example, if the tax liability is the unpaid liability reported on the taxpayer's return, then the taxpayer may challenge the liability at the CDP hearing.[25]

Where the IRS sent a notice of deficiency, the taxpayer is considered to have received it if it was received in time to petition the Tax Court for a redetermination of the deficiency.[26] The IRS has the burden of proving by a preponderance of the evidence that the receipt requirement has been satisfied.[27]

If there is no direct evidence proving that the taxpayer actually received the notice of deficiency, then the IRS must rely on the presumptions of official regularity and delivery to meet its burden of proof.[28] The presumptions of regularity and delivery arise if the record reflects that the notice of deficiency was properly mailed to the taxpayer.[29] The presumptions of official regularity and delivery may be rebutted if the notice of deficiency is returned to the IRS marked "undeliverable" or "unclaimed."[30] but not if the taxpayer took any action to thwart delivery.[31]

A taxpayer who signed an agreement form for the proposed audit adjustments (*e.g.,* Form 870) has decided not to receive a notice of deficiency, and therefore, will not be able to challenge the tax liability at a subsequent CDP hearing.[32]

In the scenario described above, since the client received notices of deficiency and did not file a petition with the Tax Court, she missed her opportunity to dispute the liability, and therefore she can't challenge the liability at the CDP proceeding. Most IRS Appeals Settlement Officers and IRS Counsel attorneys will take this position in the absence of extraordinary circumstances. However, Appeals Settlement Officers have discretion in this area and may consider arguments concerning the tax liability even if the taxpayer missed a previous opportunity to challenge it.[33]

B. Other Previous Opportunities To Challenge The Liability

Another situation in which a taxpayer may challenge the tax liability at the CDP hearing is where the taxpayer was not given a previous opportunity to appeal a proposed assessment of taxes for which the notice of deficiency procedures do not apply. For example, if the IRS made an assessment of additional employment taxes due to an imminent expiration of the statute of limitations and did not send the taxpayer a 30-day letter offering an opportunity to appeal, then the taxpayer may challenge the assessment at the CDP hearing.[34]

An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals offered either before or after assessment of the liability.[35] The taxpayer (or representative) must have received a letter offering a hearing with Appeals or must have actually participated in such a hearing to bar the taxpayer from challenging the underlying tax liability in the subsequent CDP hearing.[36] However, an opportunity for a conference with Appeals before assessment of a tax subject to the deficiency procedures (i.e., receipt of a 30-day letter for a proposed income tax deficiency) is not considered a prior opportunity.[37]

If the taxpayer previously received a lien or levy notice for the same tax and taxable period that gave the taxpayer the right to a CDP hearing, then such a notice is considered a prior opportunity to dispute the liability, and therefore, the taxpayer may not challenge that liability in a subsequent CDP hearing.[38]

C. Audit Reconsideration

Audit reconsideration is the process that the IRS uses to reevaluate the results of a prior audit where additional tax was assessed and remains unpaid.[39] There is no statutory or regulatory authority for an audit reconsideration. Requests for audit reconsideration are screened stringently, and the IRS might deny the request for any number of reasons.[40]

To qualify for an audit reconsideration, the taxpayer must have filed a return for the year at issue, and the taxpayer must provide additional information not considered during the original audit.[41] To request an audit reconsideration, the taxpayer (or representative) should contact the office or agent who conducted the original audit.[42]

Taxpayers who still dispute the tax liability after the audit reconsideration may appeal the results to the IRS's Office of Appeals.[43] However, taxpayers do not have the right to delay Appeals' consideration of a request for a CDP hearing while the audit reconsideration is pending.[44]

An audit reconsideration conducted before the CDP hearing will preclude the taxpayer from challenging the underlying tax liability if the taxpayer was offered the opportunity for a conference with Appeals to dispute the results of the audit reconsideration.[45]

D. Offer In Compromise—Doubt As To Liability

An Offer in Compromise based on Doubt as to Liability (OICDATL) may be filed to contest an assessed liability. An OICDATL is filed using Form 656L, and is generally worked by Examination similar to an audit reconsideration.[46] If the OICDATL does not resolve the dispute, then the taxpayer may appeal the Examiner's determination on the OICDATL to the IRS's Office of Appeals.[47]

The main differences between an audit reconsideration and an OICDATL are that there is statutory and regulatory authority for an OICDATL[48] and the taxpayer need not satisfy all of the conditions of an audit reconsideration (such as filing a return) to have the OICDATL considered.

Like a request for an audit reconsideration, consideration of an OICDATL before the CDP hearing will also preclude a challenge to the underlying tax liability if the taxpayer was offered the opportunity for a conference with Appeals to dispute Examiner's determination on the OICDATL.[49] The taxpayer does not have the right to have an OICDATL considered in the context of a CDP proceeding if the taxpayer previously received a notice of deficiency or otherwise had an opportunity to dispute the liability.[50] So, it is important to file the OICDATL as early as possible in the process.

If the dispute over the liability is resolved after filing the OICDATL, then there usually is no further need for the CDP proceeding to continue.[51] If there is no tax liability to collect, then the NFTL will be released or the proposed levy will be abandoned.[52] If the CDP case has proceeded as far as Tax Court, then the case will be dismissed as moot.[53]

In the scenario described above, if you file an OICDATL at the same time that you file Form 12153 to request the CDP hearing, it is possible that the OICDATL could be considered before the CDP hearing at Appeals. The Appeals Settlement Officer may even exercise discretion and consider the OICDATL even though the Settlement Officer would be completely correct in precluding a challenge to the tax liability. If the liability issue has not been resolved by the time the Appeals Office issues its Notice of Determination, and if the only issue in dispute is the liability, in the absence of unusual circumstances I do not suggest filing a petition with the Tax Court. Filing a petition under such circumstances could be viewed as a delay tactic and could subject the taxpayer to a penalty.[54]

IV. MY CLIENT—DOC HOLLIDAY

The following is a ***true story.***

Doc Holliday (not his real name) owns a dental practice. During the year 2000, he paid wages to his employees, and he withheld income tax, social security tax and Medicare tax from these wages. Doc Holliday timely filed his federal payroll tax returns (Forms 941 and 940) and reported the taxes withheld along with his share of the taxes. In January 2001, Doc Holliday issued W2 forms to the employees, and he also sent copies to the Social Security Administration as required. Unknown to Doc Holliday at the time, the W2 forms showed that he had withheld $14,741 more in federal income tax than was actually withheld.

The Internal Revenue Service conducts a compliance program known as the "Combined Annual Wage Reporting" (CAWR) program. Under this program, the IRS compares the amounts of federal income tax withholding reported by

employers on Forms 941 with amounts reported by the employer on Forms W2. In instances where the W2 forms report larger amounts of federal income tax withholding, FICA tax withholding and Medicare tax withholding than the amounts reported on Forms 941, the IRS assesses the additional taxes against the employer.

As a result of this program, in March 2004 (one month before the statute of limitation was due to expire), the IRS assessed the $14,741, plus penalties and interest, and began sending out notices to Doc Holliday to collect the balance owed. At this point, Doc Holliday went back and reviewed his payroll records and discovered that although his Forms 941s were correct, the W2 forms showed more income tax than was actually withheld. He attempted to resolve this discrepancy with the IRS Service Center, but his attempts proved as fruitless as trying to negotiate with the Clantons and the McLaurys.

Publication 594 ("The IRS Collection Process"), included by the IRS with its billing notices, informed the good doctor that the IRS had a "special program" to help him with his tax problems. The publication urged him to contact the IRS's Taxpayer Advocate Service (TAS). So, that's exactly what he did.

Doc Holliday provided TAS with his W2s, 941s and payroll records, demonstrating that the W2 forms had overstated the amount of federal income tax withheld. He also prepared corrected W2 forms and provided them to TAS.

In September 2005, the IRS sent Doc Holliday Letter LT11 ("Final Notice of Intent to Levy and Notice of Your Right to a Hearing"). The notice urged him to call the IRS's Automated Collection Service (ACS) immediately. ACS advised the good doctor that his collection case was under consideration by TAS, that collection would be suspended pending resolution by TAS, so there was no need to request a hearing. Following ACS's advice, Doc Holliday did not request a hearing. This turned out to be a mistake because in January 2006, TAS closed his case without making any adjustments.

In March 2006, the IRS sent Doc Holliday Letter 3172 ("Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC §6320"). This time, the good doctor filed Form 12153 and requested a hearing. In the hearing, the Appeals Settlement Officer told him that since his employees had already filed their individual income tax returns and claimed the withholding tax shown on the W2 forms, and since the expiration of the statute of limitations prevented the IRS from assessing the overstated withholding tax against his employees, the IRS would not allow Doc Holliday to correct his W2 forms, and they would not agree to abate the $14,741 tax assessment. In other words, the IRS was going to make him pay the additional tax, plus penalties and interest, even though they agreed that he really didn't owe it.

This was so frustrating to him that Doc Holliday decided to "fight it out at the O.K. Corral" (i.e., go to court). After Appeals issued him a Notice of Determination sustaining the filing of the federal tax lien, he filed a petition in Tax Court. His argument in the petition was that he was not liable for the additional tax, penalties and interest.

The IRS attorney assigned to the case noticed that Doc Holliday had a previous opportunity to contest the liability for the tax after he had received the "Final Notice of Intent to Levy and Notice of Your Right to a Hearing" in September 2005. The attorney knew that a taxpayer is precluded from challenging the underlying tax liability in a CDP case if he or she had an earlier opportunity to dispute it. So, the IRS attorney filed a motion for summary judgment. Doc Holliday filed a reply to the motion in which he told the Tax Court that ACS had advised him that he didn't have to request a hearing in response to the previous levy notice, so any failure to dispute the liability was the IRS's fault. Reasoning that ACS may have, in fact, precluded the good doctor from filing a request for a hearing on the previous levy notice, the Tax Court denied the IRS's motion for summary judgment.

At this point, Doc Holliday hired me to represent him. In my discussions with the IRS attorney, I learned that despite having their motion denied, the IRS still intended to argue in trial that Doc Holliday could not challenge the liability in the CDP proceeding.

Since the IRS's position was that Doc Holliday could not challenge the liability in the CDP proceeding, I decided that the proper course of action was to file an OICDATL to challenge the tax liability outside of the CDP proceeding. I prepared the OICDATL and we filed it with the IRS.

As stated above, the IRS's position on the liability issue was that since Doc Holliday's employees had already filed their individual income tax returns and claimed the withholding tax shown on the W2 forms, and since the expiration of the statute of limitations prevented the IRS from assessing the overstated withholding tax against his employees, the IRS would not allow the good doctor to correct his W2 forms, and they would not agree to abate the $14,741 employment tax assessment.

Well, I discovered that this was not IRS policy. In my research, I found an IRS Legal Memorandum (ILM 199411 dated June 23, 1994) in which the IRS concluded that in a situation exactly like Doc Holliday's, there is no time limit for a taxpayer to correct the W2 forms or to file an abatement claim in response to a CAWR assessment.

So, I included a reference to this legal memorandum in the OICDATL. The OICDATL was routed to Appeals, and after the Appeals Officer consulted with the IRS attorney on the effect of the legal memorandum, they decided to drop the entire case and abate the assessment.

After the assessment was abated, the IRS attorney filed a motion with the Tax Court to dismiss the CDP proceeding on the ground that it was moot.

Clearly, there were exceptional circumstances here. The taxpayer had a prior opportunity to challenge the liability by requesting a CDP hearing in response to the September 2005 levy notice, but ACS eroded that opportunity by advising the good doctor that he should not request a hearing since TAS was considering the problem.

V. CONCLUSION

Some of you may have clients that failed to file a petition with the Tax Court in response to receiving a notice of deficiency regarding income tax, or failed to request a hearing with IRS Appeals after receiving a 30-day letter for other types of taxes. In these situations, the IRS assesses the tax, plus any penalties and interest, and begins collection activities. This article points out that there may be a way to resolve the liability issue in the context of a CDP proceeding.

ENDNOTES

1. David M. Fogel is a self-employed non-attorney tax consultant and an associate member of the Taxation Section of the State Bar of California and the Taxation Section of the Sacramento County Bar. He represents clients in tax controversy matters before the various tax authorities. He also provides tax research and consulting services to other tax practitioners. David has more than 34 years of experience in tax controversies, including 26 years working for the IRS (8 years as a Tax Auditor and Revenue Agent, 18 years as an Appeals Officer), and 6 years as a tax advisor for two Sacramento law firms. He has authored more than 40 articles on a variety of technical tax issues. David is a Certified Public Accountant, an Enrolled Agent, and is also admitted to practice before the United States Tax Court. He can be reached at dfogel@surewest.net or on the Internet at www.fogelcpa.com.

2. Pub. L. No. 105–206, 112 Stat. 685 (1998).

3. IRS Service Centers might also issue one of the following notices that give the taxpayer the right to a hearing: CP 90 ("Final Notice of Intent to Levy"), CP 92 ("Notice of Levy upon Your State Tax Refund"), or CP 242 ("Notice of Levy upon Your State Tax Refund").

4. IRC §6330(a)(2) and (3).

5. Treas. Reg. §§301.6320–1(c)(2), Q&A-C2 and 301.6330–1(c)(2), Q&A-C2.

6. *Id.*, Q&A-C1(ii).

7. *Id.*, Q&A-C1(iv).

8. IRC §6330(b).

9. IRC §6330(c)(2)(A).

10. IRC §6330(c)(2)(B).

11. IRC §6330(c)(3).

12. IRC §6330(d).

13. *See Sego v. Commissioner,* 114 T.C. 604, 610 (2000).

14. *Id. See* also *Lunsford v. Commissioner,* 117 T.C. 183, 185 (2001); *Goza v. Commissioner,* 114 T.C. 176, 182 (2000).

15. Treas. Reg. §§301.6320–1(i)(1) and 301.6330–1(i)(1).

16. Treas. Reg. §§301.6320–1(i)(2) Q&A-I7 and 301.6330–1(i)(2) Q&A-I7.

17. Treas. Reg. §§301.6320–1(i)(1) and 301.6330–1(i)(1).

18. Treas. Reg. §§301.6320–1(i)(2) Q&A-I6 and 301.6330–1(i)(2) Q&A-I6; *Orum v. Commissioner,* 123 T.C. 1 (2004); *Moorhous v. Commissioner,* 116 T.C. 263 (2001).

19. California Revenue & Taxation Code (R&TC), §§7097(a), 21015.5(a)(2) and 21019(a). The only exception to this rule is where collection of the tax is in jeopardy.

20. R&TC §21019(b).

21. R&TC §§19225(a)(3)(B) and 21015.5(c).

22. R&TC §21015.5(c)(4).

23. IRC §6330(c)(2)(B).

24. *See, e.g., Butti v. Commissioner,* T.C. Memo 2008–82.

25. *See Montgomery v. Commissioner,* 122 T.C. 1 (2004).

26. Treas. Reg. §§301.6320–1(e)(3) Q&A-E2 and 301.6330–1(e)(3) Q&A-E2.

27. *See Sego v. Commissioner, supra.*

28. *See Sego v. Commissioner, supra* at 610 ("presumptions of official regularity and of delivery justify the conclusion that the statutory notice was sent and that attempts to deliver were made in the manner contended by respondent"); *Bailey v. Commissioner,* T.C. Memo 2005–241 (noting that there is "a strong presumption in the law that a properly addressed letter will be delivered, or offered for delivery, to the addressee"). *See* also *Figler v. Commissioner,* T.C. Memo 2005–230; *Carey v. Commissioner,* T.C. Memo 2002–209.

29. *Id.*

30. *See Lehmann v. Commissioner,* T.C. Memo 2005–90; *Tatum v. Commissioner,* T.C. Memo 2003–115

31. *See Sego v. Commissioner, supra; Carey v. Commissioner, supra; Baxter v. Commissioner,* T.C. Memo 2001–300.

32. *See Aguirre v. Commissioner,* 117 T.C. 324, 327 (2001); *Nichols v. Commissioner,* T.C. Memo 2007–5; *Deutsch v. Commissioner,* T.C. Memo 2006- 27; *Pomerantz v. Commissioner,* T.C. Memo 2005–295; *Perez v. Commissioner,* T.C. Memo 2002–274.

33. Treas. Reg. §§301.6320–1(e)(3), Q&A-E11 and 301.6330–1(e)(3), Q&A-E11 ("In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing.")

34. Other types of assessments that are not subject to the notice of deficiency procedures include excise tax, trust fund recovery penalty, preparer penalty and Code §6682 penalty.

35. Treas. Reg. §§301.6320–1(e)(3) Q&A-E2 and 301.6330–1(e)(3) Q&A-E2. *See* also, *e.g., Bailey v. Commissioner, supra; Pelliccio v. United States,* 253 F. Supp. 2d 258, 261–62 (D. Conn. 2003).

36. *See* Chief Counsel Notice CC-2006–019 (Aug. 18, 2006), p.27 (sec. IV.B.5.c.iv.(A)(1)).

37. Treas. Reg. §§301.6320–1(e)(3) Q&A-E2 and 301.6330–1(e)(3) Q&A-E2.

38. Treas. Reg. §§301.6320–1(e)(3) Q&A-E7 and 301.6330–1(e)(3) Q&A-E7; *Bell v. Commissioner,* 126 T.C. 356 (2006).

39. *See* Internal Revenue Manual (IRM) §4.13.1.2. See also IRS Publication 3598 ("What You Should Know About The Audit Reconsideration Process").

40. *See* IRM §§4.13.1.8 (reasons for rejecting a request for audit reconsideration) and 4.13.2.1.2 (audit reconsideration criteria not met).

41. *See* IRM §4.13.1.4.

42. *See* IRM §4.13.2.

43. *See* IRM §4.13.6.1.

44. *See Jones v. Commissioner,* T.C. Memo 2007–142.

45. *See Bailey v. Commissioner, supra.*

46. *See* IRM §§4.18.2 and 5.8.4.2.

47. *See* IRM §4.18.2.8 (4).

48. IRC §7122 and Treas. Reg. §301.7122–1(b).

49. *See Baltic v. Commissioner,* 129 T.C. 178, 183 (2007); *Yesse v. Commissioner,* T.C. Memo 2008–157.

50. *Id. See* also *Hajiyani v. Commissioner,* T.C. Memo 2005–198 n.3.; *contra Siquieros v. United States,* 2005–1 USTC (CCH) ¶50,244, 94 A.F.T.R.2d (RIA) 2004–5518, 2004 WL 2011367 (W.D.Tex. 2004), affd. 124 Fed. Appx. 279 (5th Cir. 2005) (finding that the taxpayer's offer based on doubt as to liability was not synonymous with a challenge to the underlying liability).

51. *See* Chief Counsel Notice CC-2006–019, *supra* p.55 (sec. V.I.1.).

52. *Id.*

53. *Id.,* citing *Greene-Thapedi v. Commissioner,* 126 T.C. 1 (2006); *Gerakios v. Commissioner,* T.C. Memo 2004–203; *Chocallo v. Commissioner,* T.C. Memo 2004–152.

54. IRC §6673(a)(1) authorizes the Tax Court to impose a penalty, not in excess of $25,000, on a taxpayer if the Tax Court finds that the taxpayer has instituted or maintained the proceeding primarily for delay, or that the taxpayer's position in the proceeding is frivolous or groundless. *See Burke v. Commissioner,* 124 T.C. 189 (2005); *Pierson v. Commissioner,* 115 T.C. 576 (2000); *Forbes v. Commissioner,* T.C. Memo 2006–10, which are examples of CDP cases where the court has imposed the penalty.