CDP CHECKLIST FOR TAX COURT

Petitioner(s): _____ Docket No.: _____

I. JURISDICTION

A. Notice of Determination

Was a notice of determination issued in case?

☐ Yes (Continue.)

☐ No (File motion to dismiss for lack of jurisdiction, unless decision letter should be treated as notice of determination for jurisdictional purposes because request for hearing was timely.)

If "Yes," date notice of determination mailed: _____

Date petition mailed as shown on postmark: _____

Was petition postmarked or filed 30 days from mailing of notice of determination?

☐ Yes (Continue.)

☐ No (File motion to dismiss for lack of jurisdiction.)[1]

Type of tax at issue in notice of determination:

☐ Income/estate/gift (Continue.)

☐ Employment/ TFRP/§ 6702 penalty (File motion to dismiss for lack of jurisdiction.)

Does petitioner have an active bankruptcy case, the petition for which was filed prior to the filing of the Tax Court petition?

_____

[1] File a motion to dismiss only as to CDP determination if spousal relief was denied in CDP hearing, and the taxpayer filed within 90 days of the notice of determination denying spousal relief. See I.R.C. § 6015(e). If interest abatement has been denied in CDP hearing, then taxpayer has 180 days to file petition for review of denial. See IRC § 6404(h). If jeopardy assessment/levy review under § 7429 is properly part of CDP hearing, then taxpayer has 90 days after the 16th day following the § 7429 review request to file petition for review of jeopardy determination under § 7429(b)(2)(B).

☐ Yes (Call CBS Branch 2 to determine if should file a motion to dismiss for lack of jurisdiction.)

☐ No (Continue.)

Does petitioner have an active bankruptcy case, the petition for which was filed after the Tax Court petition was filed?

☐ Yes (File a Notice of Proceeding in Bankruptcy as detailed in CCDM 35.3.9.2.2, so the Tax Court will stay the proceeding.)

☐ No (Continue.)

B. CDP Notice on L3172 or L1058

Type of notice issued:

☐ L3172 (Lien) (§ 6320 Case)

☐ L1058 (Levy) (§ 6330 Case)[2]

Type of tax/periods on CDP notice: _____

Type of tax/periods at issue in petition: _____

File motion to dismiss for lack of jurisdiction as to type of tax and periods in petition that differ from type of tax and periods in CDP notice, even if the notice of determination includes the tax and period not on the CDP notice.

C. Request for CDP Hearing (Form 12153)

Date request for CDP hearing was mailed (postmark date): _____

Date which is 5 business days from date NFTL was filed + 30 days(§ 6320 Case)[3]	OR	Date which is 30 days from CDP notice mailing (§ 6330 Case) _____

Facsimile copy of NFTL filing can be obtained from Automated Lien System. If copy of L1058 or LT 11 is not in file, obtain transcript to find date of TC 971 AC 69.

---

[2] There are a number of computer-generated versions of the L1058, the most common being the LT 11, issued by the Automated Collection System.

[3] The 30-day period under § 6320 should not be measured from the date the NFTL is mailed for filing by the Automated Lien System, or from the date of the L3172.

Was request for CDP hearing timely?

☐ Yes (Continue.)
☐ No (File motion to dismiss for lack of jurisdiction.)

II. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

If petitioner only makes frivolous arguments and no allegation of error can be construed as stating a nonfrivolous claim, then file a motion to dismiss for failure to state a claim. The only document that may be submitted with this motion is the petition and any document attached to the petition. No other document may be submitted with this motion.

If a motion to dismiss for failure to state a claim is appropriate because petitioner only makes frivolous arguments, go to V.D.

III. ANSWER

File answer, if motion to dismiss for lack of jurisdiction or motion to dismiss for failure to state a claim is not appropriate or is denied.

Answer Due Date: _____

If tax liability is properly at issue, and respondent has burden of proof, then may need affirmative allegations (e.g., fraud, 25% omission of income, transferee). Respondent should also include affirmative allegations on issues for which he has the burden of proof, such as the assertion that liability is not properly at issue because of limitation of § 6330(c)(2)(B), as well as res judicata, collateral estoppel or any other affirmative defense. If reply is not filed in response to affirmative allegations or defenses within 45 days from the date of service of the answer, file T.C. Rule 37(c) motion within 45 days after the reply is due.

Was spousal relief under § 6015 requested in petition?
If yes, date notice was mailed to nonpetitioning spouse (as required by T.C. Rule 325):_____

Name of nonpetitioning spouse:_____
Last known address of nonpetitioning spouse: _____

IV. MOOTNESS

A. Full Payment

Has the liability been paid in full?

☐ Yes (File motion to dismiss on the ground of mootness, unless the

taxpayer is seeking refund under § 6404(h) or 6015(e).)

☐ No (Continue.)

B. Bankruptcy Discharge

Has petitioner received a bankruptcy discharge for the liability listed on the notice of determination?

☐ Yes (File a motion to dismiss on the ground of mootness if the taxes were discharged in a Chapter 7 bankruptcy case, there were no assets excluded from the estate and either (1) there was no NFTL filed prepetition, or (2) if there was a NFTL filed prepetition, there were no prepetition exempt or abandoned assets from which to collect. If the discharge was in a Chapter 11 or 13, please contact CBS Branch 2.)

☐ No (Continue.)

V. SUMMARY JUDGMENT

A. Challenge to Denial of Request for Spousal Relief under § 6015(b) or (c).

Is § 6015(b) or (c) spousal relief properly at issue? See Innocent Spouse Checklist.

☐ Yes (Proceed with trial preparation.)

☐ No (Continue.)

B. Challenge to Underlying Liability Raised in Petition

Is challenge based on frivolous arguments?

☐ Yes (File summary judgment motion. Go to V. C.)

☐ No (Continue.)

Was a deficiency notice issued and received by Petitioner?

☐ Yes (Liability not properly at issue. File summary judgment motion - need copy of deficiency notice and USPS Form 3877, and USPS Form 3849 or other evidence of attempts made to deliver certified mail. Go to V.C.)

☐ No (Continue.)

Was petitioner provided other opportunity to contest liability, either self-reported or deficiency notice (e.g., prior CDP notice (L3172 or L1058) or CDP hearing on same tax/period, or prior bankruptcy proceeding)?

☐ Yes (Liability not properly at issue. File summary judgment motion. Go to V.C.)

Explain and list documents in file to support finding:_____

_____

☐ No (Liability is properly at issue.)

If petitioner properly challenges his/her liability, and the basis is non-frivolous (*e.g.*, "I did not receive the income from XYZ" or "I have proof of deductions."), proceed with trial preparation. If transferee liability, see Transferee Liability checklist

C. Challenges Relating to Collection Determinations

File a motion for summary judgment with respect to the following issues raised in the petition (1) if liability is not properly at issue or liability challenge is based on frivolous arguments, (2) § 6015(b) or (c) relief is not properly at issue, and (3) there is no other dispute of material fact. If the taxpayer only raises frivolous arguments, go to V.D.

☐ Improper verification under § 6330(c)(3)(A) (e.g., invalid assessment procedure, notice and demand for payment not sent)

Documents obtained by Appeals to verify that all legal and administrative procedural requirements were satisfied (check all that apply):

☐ TXMOD-A transcript of account

☐ Form 4340

☐ MFTRX Transcript

☐ Collection file (e.g., ICS history)

☐ ACS screens

☐ Other:_____

_____

☐ Improper rejection of challenge to appropriateness of collection

☐ Liability discharged in bankruptcy

☐ Expiration of assessment statute of limitation

☐ Expiration of collection statute of limitation

☐ Account should be classified as "currently not collectible"

- ☐ Credits or overpayments should have been applied to the tax liability at issue
- ☐ Previously accepted offer in compromise improperly defaulted

☐ Improper rejection of collection alternative

- ☐ Offer in compromise
- ☐ Installment agreement
- ☐ Other
- ☐ Improper balancing under § 6330(c)(3)(C)

☐ Lack of impartial appeals officer

☐ Improper ex parte communication by appeals officer

☐ Improper preclusion of non-liability issue(s) under § 6330(c)(4)

☐ Jeopardy Assessment/Levy (See Jeopardy Checklist)

☐ Improper denial of § 6015(f) spousal relief. (See Innocent Spouse Checklist)

☐ Improper denial of interest abatement request. (See Interest Abatement Checklist)

☐ Misc:_____
_____

Review entire file (including not only the case history or notes regarding the face-to-face meeting with Appeals, but also the Form 12153, all correspondence and record of telephonic contacts) to determine all of the issues raised in the CDP hearing by the taxpayer and compare with the allegations raised in the Tax Court petition. List all allegations in the petition that were never raised in the CDP hearing:

_____
_____
_____
_____

To the extent issues are raised for the first time in petition, argue in summary judgment motion that petitioner may not raise these issues in the Court proceeding (or file motion to strike, if tax liability is properly at issue and challenge is non-frivolous, or if request for spousal relief under § 6015(b) or (c) is property at issue).

D. Motion to Permit Levy under Section 6330(e)(2)

If the taxpayer only raises frivolous argument, file a motion to permit levy under section 6330(e)(2) along with the motion for summary judgment. Do not file a motion to permit levy unless Collection is prepared to levy if and when the motion is granted. If

the motion is granted, promptly alert Collection so that it can coordinate with Appeals and proceed to levy.

VI. NECESSARY DOCUMENTS IN FILE (Check all that are applicable)

Documents needed to verify administrative and legal requirements met:

- ☐ TXMOD-A or transcript of account
- ☐ MFTRX Transcript
- ☐ Form 4340
- ☐ Collection file (e.g., ICS history)
- ☐ ACS screens

Copies of documents to be forwarded to NO with motion (see CC Notice 2005-08 or successive notice) (in all instances, make sure complete document is forwarded):

- ☐ Petition
- ☐ CDP Notice or copy of transcript reflecting mailing
- ☐ Request for CDP hearing (Form 12153)
- ☐ Notice of determination (or decision letter)
- ☐ Computer transcript of account used by appeals officer
- ☐ Case history/contact sheet
- ☐ Other exhibits to motion

Other documents and their uses:

- ☐ Facsimile copy of NFTL from Automated Lien System (for § 6320 case to determine if request for CDP hearing is timely)
- ☐ Copy of L1058 (CDP levy notice) (for § 6330 case to determine if request for CDP hearing is timely)
- ☐ Envelope for Form 12153 (CDP hearing request) (to determine if the request for CDP hearing was timely)
- ☐ Certified mail list, USPS Form 3877, for L3172 and L1058, and for § 6330 – case only, green card, USPS Form 3811 (receipt for certified mail) (if request for CDP hearing is untimely and a motion to dismiss for lack of jurisdiction will be filed)

☐ Certified Form 4340 (if liability is at issue or the judge requires it to review collection issues)

- [ ] Decision letter (for equivalent hearings) (to establish that no notice of determination was issued)
- [ ] Certified mail list, USPS Form 3877, for notice of determination (to establish that petition not timely)
- [ ] ENMOD transcript to establish changes of address entered into Service computer system (to establish last known address)
- [ ] INOLET transcript to establish petitioner's current address on system (to establish last known address)
- [ ] Last tax return filed prior to alleged address change can provide proof of prior address (to establish last known address). Facsimile copy of return may be available on RTVUE, if original return not available.
- [ ] Statutory notice of deficiency (if merits of tax are at issue)
- [ ] Certified mail list, USPS Form 3877, for the notice of deficiency (to establish when and to where it was mailed). By itself, the certified mail list does not prove the notice was received.
- [ ] USPS Form 3849 (delivery/reminder/receipt) for notice of deficiency to determine when delivery attempts were made or when notice was received
- [ ] Examination file (if merits of tax, based on deficiency, are at issue)