

No Returns, No Problem: Tax Court Rules in Case of First Impression That IRS Must Consider “Economic Hardship” in Pre-Levy CDP Cases

By Hale E. Sheppard

Hale E. Sheppard examines a recent Tax Court case holding that, during the pre-levy CDP hearing, the Settlement Officer must conduct an analysis to determine if the proposed levy would lead to “economic hardship” under Code Sec. 6343, even if the taxpayer has neglected her tax filing duties.

Introduction

As the economy continues to struggle, many people are unable to meet their basic needs, much less pay their federal taxes on time. All too often those who cannot fully pay their taxes compound the problem by not filing their tax returns. The thought process, flawed as it is, goes something like this: If I don't file my tax returns showing my tax liability, perhaps the IRS will not know how much I owe, and collection actions will be delayed. Another common variation on this theme is the following: I should have paid more than enough taxes through wage withholding, so filing a tax return isn't necessary. Other taxpayers, utterly demoralized by their financial plight, simply surrender. They stop filing returns and paying taxes altogether, hoping that their problems will miraculously vanish.

For tax practitioners, these strategies and beliefs should immediately appear specious on a number of levels. What may not be so obvious, particularly to beleaguered taxpayers, is that not filing tax returns

renders the opposite of the intended result. It backfires, so to speak. Specifically, if a taxpayer fails to file all necessary tax returns, the IRS refuses to even consider a “collection alternative,” which is something other than immediate, full payment by a taxpayer of all outstanding tax debts. In other words, in cases where a taxpayer is not in compliance with her return filing requirements for all years, the IRS generally rebuffs from the outset her request for an installment agreement (*i.e.*, payment plan) or offer-in-compromise (*i.e.*, settlement offer). The IRS's denial of collection alternatives from non-compliant taxpayers has applied equally to all cases, regardless of whether they are within the context of a Collection Due Process (CDP) hearing. However, with the recent release of a Tax Court decision, *K.A. Vinatieri*, dramatic changes may occur.¹

Overview of the IRS Tax Collection Process

To grasp the importance of *Vinatieri*, it is first necessary to understand the relevant process, jargon and law.

CDP Process in General

Once taxes have been assessed, collection ensues. If a taxpayer is unwilling or unable to satisfy her tax li-

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ability in a voluntary fashion, the IRS employs its own methods to help the process along. These often include sending multiple collection notices, filing a federal tax lien, and initiating direct contact through a Revenue Officer. In cases where full payment is not forthcoming despite these maneuvers, the IRS may resort to levying, or threatening to levy, the taxpayer’s property.

Thanks to certain taxpayer protections introduced into law in the late 1990s, the IRS must send a Final Notice of Intent to Levy to a taxpayer at least 30 days before it seizes and sells her property to satisfy tax debts.² The law requires that such notice inform the taxpayer, in simple and nontechnical terms, of her right to a pre-levy CDP hearing.³ To request such a hearing, the taxpayer ordinarily files a Form 12153 (*Request for a Collection Due Process or Equivalent Hearing*).⁴ The taxpayer is entitled to raise at the CDP hearing any relevant issue relating to the unpaid tax or proposed levy.⁵ This includes “collection alternatives,” such as installment agreements and offers-in-compromise.⁶

Soon after filing a CDP hearing request, the taxpayer generally receives from the IRS a letter entitled “Appeals Received Your Request for a Collection Due Process Hearing.”⁷ This correspondence sets a date and time for the hearing, gives a general overview of the CDP process and imposes strict conditions on collection alternatives. With respect to alternatives, the letter ordinarily contains the following demands:

For me to consider alternative collection methods such as an installment agreement or offer-in-compromise, you must provide [a completed Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, and/or a Form 433-B, Collection Information Statement for Businesses]. *In addition, you must have filed all federal tax returns required to be filed.*

Lest there be any doubt on this score, the letter goes on to state that the IRS “cannot consider collection alternatives [at the CDP hearing] without this information.”

In other cases, the IRS sends the taxpayer a Letter 3884C. Like the letter entitled “Appeals Received Your Request for a Collection Due Process Hearing,” this IRS correspondence informs the taxpayer that a prerequisite to addressing any collection alternatives at the CDP hearing is being current with all federal tax filings. Immediately after acknowledging receipt of the taxpayer’s CDP hearing request, the letter

warns the taxpayer that the IRS “cannot consider your request for an installment agreement until [certain] tax returns are filed.”

Origins of the Filing-Compliance Requirement

The need for a taxpayer to be in full filing compliance in order to discuss collection alternatives during a CDP hearing derives from the IRS’s own rules, found in the INTERNAL REVENUE MANUAL.⁸ It also originates from the regulations under Code Sec. 6330, which broadly state that “[t]axpayers will be expected to provide all relevant information, including financial statements, for its consideration of the facts and issues involved in the [CDP] hearing.”⁹ The regulations contain additional information on this topic. In outlining what matters may be discussed during a CDP hearing, the regulations include a broad, general statement: “A collection alternative is not available [at the CDP hearing] unless the alternative would be available to other taxpayers in similar circumstances.”¹⁰ For further guidance in this regard, express reference is made to another area of the regulations, passed in late 2006, that deals with how a CDP hearing should be conducted and when face-to-face hearings are appropriate. This portion of the regulations establishes the taxpayer filing requirement:

A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, “Offer in Compromise,” no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations.¹¹

Understanding the purpose of the preceding regulations is useful. The preamble to the 2006 regulations explains the IRS’s mindset regarding the taxpayer filing requirement.

The intention of this rule is to permit the denial of a face-to-face conference to discuss a collection alternative for which the taxpayer is not eligible. A lack of eligibility under IRS policy is

tioned to a taxpayer's compliance with the Federal tax laws, not to the taxpayer's financial circumstances or ability to request the most appropriate alternative. For example, if the taxpayer has not filed all required tax returns, the taxpayer is not eligible for an offer to compromise or an installment agreement.¹²

Citing Noncompliance for Upholding Collection Actions

At a pre-levy CDP hearing, the relevant IRS employee (*i.e.*, an Appeals Officer or Settlement Officer) is tasked with deciding whether the seizure of the taxpayer's assets, as proposed by the Revenue Officer handling the case, is appropriate. In doing so, the Settlement Officer must (i) confirm that the IRS has met all applicable laws and administrative procedures; (ii) consider any proper issues raised by the taxpayer at the hearing, including collection alternatives; and (iii) determine whether the IRS's proposed levy action balances the need for efficient tax collection with the legitimate concern that any collection action not be more intrusive than necessary.¹³

It should come as no surprise to tax practitioners that the Settlement Officer more often than not concludes that the proposed levy is proper and, therefore, the IRS may proceed at will. The Settlement Officer then issues a Notice of Determination to memorialize her decision.¹⁴ Frequently, one of the principal justifications listed in the Notice of Determination for upholding the levy is noncompliance by the taxpayer. Say, for instance, the CDP hearing involves tax years 2003 through 2005, but the Settlement Officer learns from reviewing the IRS account transcripts that the taxpayer neglected to file her tax return for 2008. Relying on the regulations under Code Sec. 6330 that require a taxpayer to be current on her filing obligations, the Settlement Officer summarily dispenses with the case based on this technicality, without addressing legitimate issues raised by the taxpayer during the CDP hearing. Consequently, the Settlement Officer never contemplates the appropriateness of an installment agreement or offer-in-compromise, even though the financial data provided by the taxpayer might indicate that allowing one of these collection alternatives would be the rational solution.

A recent report by the U.S. Government Accountability Office (GAO) puts the magnitude of this situation into perspective.¹⁵ According to the GAO, in cases where the IRS sustained the proposed collec-

tion action, "Appeals upheld the lien filing or levy 46 percent of the time because Appeals determined that taxpayers did not comply with filing requirements, did not pay their liabilities for certain tax periods, or both."¹⁶ The frequency with which the IRS denies requests for collection alternatives based on non-compliance becomes evident when one realizes that, as of 2005, the IRS handled approximately 28,000 CDP cases per year.¹⁷ One would assume that the volume of CDP cases has since increased as a result of recent nationwide economic woes.

What Options Remain for the Taxpayer?

Down but not altogether out, the taxpayer still has some options. She could seek further review, this time from the judiciary. Specifically, if the taxpayer is dissatisfied with the holdings in the Notice of Determination, she can file a petition with the U.S. Tax Court before the IRS carries out the levy.¹⁸

Moreover, in situations where the IRS has levied already, the taxpayer can file a request for a release of the levy under Code Sec. 6343.¹⁹ The law provides that the IRS must release a levy if it creates "economic hardship" in light of the taxpayer's financial condition.²⁰ Expanding on this notion, the regulations under Code Sec. 6343 explain that economic hardship exists where effectuating the levy, in whole or in part, would cause a taxpayer to be unable to pay her reasonable living expenses.²¹ The regulations also clarify that the IRS will be the one to determine what constitutes a reasonable amount for basic living expenses, which varies according to the unique circumstances of each taxpayer.²²

The IRS is authorized to release the levy, even if the taxpayer does not specifically request it. Indeed, the regulations empower the IRS to release a levy *sua sponte* based on information it receives about the taxpayer's condition from third parties.²³

Case of First Impression on Tax Collection Matters

The Tax Court recently decided a case, *Vinatieri*, which could have a significant impact in the area of federal tax collection.²⁴ The pivotal facts and holdings are described below.

The IRS sent the taxpayer a Final Notice of Intent to Levy regarding unpaid taxes from her federal income tax return for 2002. In response, the taxpayer filed a timely request for a CDP hear-

ing. The hearing was held, *via* correspondence and telephone, with a Settlement Officer. During the process, the taxpayer explained that she had “nothing,” suffered from a terminal illness (*i.e.*, pulmonary fibrosis), and could only find part-time employment because of her health condition. The Settlement Officer informed the taxpayer that she might be able to depict her account as currently not collectible (CNC), which would temporarily halt IRS collection actions. According to the INTERNAL REVENUE MANUAL, designating a case CNC is appropriate where the taxpayer has limited assets or income, but a levy action would trigger an economic hardship.²⁵ The Settlement Officer asked the taxpayer to submit the requisite financial data to determine if her situation merited CNC treatment. The economic materials supplied by the taxpayer showed that she had monthly income of \$800, monthly expenses of \$800, \$14 cash on hand, a 1996 Toyota Corolla with approximately 250,000 miles and no other assets of any significance.

The Settlement Officer independently confirmed that this was an accurate portrayal of the taxpayer’s situation and determined that the taxpayer met the criteria to have her account placed in CNC status. However, because the IRS had no record of the taxpayer filing tax returns for two subsequent years, 2005 and 2007, the Settlement Officer concluded that she was prohibited from considering a collection alternative. Consistent with this conclusion, the Settlement Officer, with full approval of the IRS Appeals team manager overseeing her, then issued a Notice of Determination upholding the proposed levy. The attachment to the Notice of Determination stated “since unfiled tax returns exist, the only alternative at present is to take enforced action by levying your assets.” Importantly, neither the Notice of Determination nor the attachment thereto reflected the fact that levying would create an economic hardship for the taxpayer, as stated by the Settlement Officer in her daily log and as supported by the financial information from the taxpayer.

The taxpayer filed a timely petition with the Tax Court disputing the Notice of Determination regarding her unpaid taxes from 2002. The IRS,

in turn, filed a Motion for Summary Judgment, asking the court to determine that the Settlement Officer did not abuse her discretion in issuing the unfavorable Notice of Determination because the taxpayer did not comply with the filing requirements for later years, 2005 and 2007. The court then ordered the taxpayer to file a response, which she did in the form of a letter. The tragic state in which the taxpayer found herself was clear from her letter to the court: She could not afford a lawyer, the nearest legal aid society was more than 30 miles away, her former husband was involved with alcohol and

drugs, she cared for five children, she was doing janitorial work at a strip mall because it was the only position she could find where she could take her young child with her, she divorced her husband after he threatened her and her daughter with violence, she depended on food stamps to eat, the doctor diagnosed her with pulmonary fibrosis and predicted that she had approximately 10 years to live, she earned no more than \$800 per month, she had no phone, her clothes had holes in them, and she even cut her own hair.

The Tax Court began its analysis by explaining that, under Code Sec. 6343 and the corresponding regulations, the IRS must release a levy that is creating an economic hardship due to the financial condition of the taxpayer. The court then explained the CDP procedures under Code Sec. 6330, at the conclusion of which it made the following ruling:

When a taxpayer establishes in a pre-levy collection hearing under Section 6330 that the proposed levy would create an economic hardship, it is unreasonable for the settlement officer to determine to proceed with the levy which Section 6343(a)(1)(D) would require the IRS to immediately release. Rather than proceed with the levy, the settlement officer should consider alternatives to the levy.

The Tax Court acknowledged that the IRS cited numerous cases in which the court had previously found reasonable the IRS’s policy of requiring taxpayers seeking collection alternatives to be current with their filing obligations. However, the

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court concluded that such cases were distinguishable in that they all involved situations where the taxpayers had sufficient funds to meet their basic living expenses. Establishing *Vinatieri* as a case of first impression, the court pointed out that its own research identified no prior cases addressing the filing requirement in the context of a levy action involving economic hardship under Code Sec. 6343. The court also underscored that neither Code Sec. 6343 nor the corresponding regulations condition a levy release that is creating economic hardship on a taxpayer's tax filing and payment compliance. On this basis, the court made the following general and specific rulings, respectively:

A determination in a hardship case to proceed with a levy [under Section 6330] that must immediately be released [under Section 6343] is unreasonable and undermines public confidence that tax laws are being administered fairly. *In a Section 6330 pre-levy hearing, if the taxpayer has provided information that establishes the proposed levy will create an economic hardship, the settlement officer cannot go forward with the levy and must consider an alternative.*

Proceeding with the levy [in the *Vinatieri* case] would be unreasonable because Section 6343 would require its immediate release, and the determination to do so was arbitrary. The determination to proceed with the levy was wrong as a matter of law and, therefore, was an abuse of discretion.

For the reasons set forth above, the court denied the IRS's Motion for Summary Judgment.

Significance of *Vinatieri*

The recent decision in *Vinatieri* triggers a number of interesting observations and questions.

First, this case affirms the adage that small cases can create big law. As explained above, if a taxpayer receives an unfavorable Notice of Determination, she generally has the right to seek review by the Tax Court.²⁶ This is accomplished by filing an appropriate Petition within 30 days.²⁷ Provided that the amount of unpaid tax is \$50,000 or less, the taxpayer may elect to have the dispute treated as a "small tax case" and placed on the Tax Court's "S" calendar.²⁸ Characterization as a

small case, of course, has advantages and disadvantages. On the positive side, small cases are conducted "as informally as possible," and the Tax Court will admit and consider any evidence presented by the taxpayer that has probative value.²⁹ Moreover, since neither legal briefs nor oral arguments are ordinarily required, and since the taxpayer may participate without legal representation, small tax cases tend to be simpler and less expensive.³⁰ On the downside, decisions by the Tax Court in "S" cases cannot be appealed to another court and they cannot be cited as legal precedent in future cases.³¹ The taxpayer in *Vinatieri*, whose tax liability was well under the \$50,000 threshold and who could not afford an attorney, logically chose to have her dispute treated as a "small tax case." The taxpayer's election was initially respected; however, the Tax Court, on its own accord, later issued an order converting the case from a small case to a regular one.³² Why the change of status? According to the Tax Court, it realized that "the issues presented in [*Vinatieri*] may provide precedent for the disposition of a number of other cases," so characterization as a small case, which would preclude it from being cited by other taxpayers as binding legal precedent, would be inappropriate.³³

Second, the holdings in *Vinatieri*, which now have precedential value, are broader than they might appear at first glance. The IRS presumably will attempt to minimize the importance of the case, taking the position that it only applies to a narrow set of unique circumstances. This portrayal, however, would be contrary to the express language of the decision. It is true that the Tax Court made a specific ruling that the Notice of Determination issued to the taxpayer in *Vinatieri* constituted an abuse of the IRS's discretion, but the decision also contained other, broader determinations. Importantly, the Tax Court held that "[i]n a Section 6330 pre-levy hearing, if the taxpayer has provided information that establishes the proposed levy will create economic hardship, the settlement officer CANNOT go forward with the levy and MUST consider an alternative."³⁴ This ruling plainly applies to *any* pre-levy CDP hearing in which a taxpayer supplies the IRS with information showing that enforcing the levy would cause economic hardship.

Third, in rendering its decision involving the interplay between pre-levy CDP hearings under

Code Sec. 6330 and post-levy releases under Code Sec. 6343, the Tax Court did not address the regulations under Code Sec. 6330. As discussed previously, these regulations, promulgated by the IRS, expressly state that taxpayers who have not “filed required returns” will not be granted a face-to-face CDP hearing concerning a collection alternative.³⁵ The regulations indicate that the filing requirement is ostensibly rooted in equitable treatment of taxpayers. The IRS’s policy is to reject requests for collection alternatives from noncompliant taxpayers outside the confines of a CDP hearing; therefore, according to the IRS, noncompliant taxpayers who propose collection alternatives in connection with a CDP hearing should get the same result.³⁶ If the absence of a discussion of the Code Sec. 6330 regulations in *Vinatieri* were challenged on appeal, it might not alter things, as the hierarchy among tax statutes and regulations is well established.

Fourth, the *Vinatieri* decision finds support in the inaction of Congress. The GAO prepared a report for the Senate Finance Committee in 2006 regarding the state of the CDP process.³⁷ This document identified several impediments to an efficient CDP process, among them requests for collection alternatives by noncompliant taxpayers.³⁸ The IRS’s stated position in the report was quite interesting. According to Office of Chief Counsel, “under the current statute [*i.e.*, Code Sec. 6330] IRS may not deny a taxpayer’s request for a CDP hearing even if the taxpayer only wants a collection alternative and has not met basic filing requirements.”³⁹ The report further confirmed the IRS’s belief that “where a taxpayer raises no other allowable arguments to the lien filing or levy except a collection alternative, IRS *may not administratively* require that taxpayer to comply with the same basic eligibility requirements that are imposed on non-CDP taxpayers before the case can be forwarded to Appeals for review of its acceptability.”⁴⁰ Moreover, IRS officials recognized that “a *statutory* change [*i.e.*, by Congress] would be needed to require taxpayers to file all required returns before transferring cases to Appeals for review.”⁴¹ The GAO

report then made several suggestions to Congress that were consistent with the IRS’s observations of its own limitations under Code Sec. 6330. Importantly, the GAO recommended the following:

In order to leverage IRS resources more efficiently, Congress should consider requiring taxpayers that seek collection alternatives, such as [offers-in-compromise and installment agreements], and that raise no other allowable issues to comply with the basic eligibility criteria, that is, file all required tax returns before Appeals reviews their cases.⁴²

More taxpayers, fortified by *Vinatieri*, just might file Petitions with the Tax Court on the basis that the Appeals Office failed to conduct a proper “economic hardship” analysis.

Congress, therefore, was clearly on notice of the issue as early as October 2006. However, as of the time that *Vinatieri* was decided, over three years later in December 2009, no relevant congressional changes to Code Sec. 6330 had occurred.

This inaction could be attributable to many things, but it is telling nonetheless. It is also interesting that despite the clear positions stated in the GAO report about the need for a *statutory* change by Congress of Code Sec. 6330, the IRS proceeded to issue regulations under this tax provision *administratively* changing the rules for non-compliant taxpayers.⁴³ As noted above, the opinion in *Vinatieri* did not address such regulations.

Finally, a broad interpretation of *Vinatieri* could dramatically change the tax collection process. Provided the taxpayer supplies the IRS with appropriate financial data during the pre-levy CDP hearing, *Vinatieri* holds that the Settlement Officer must conduct an analysis to determine if the proposed levy would lead to “economic hardship” under Code Sec. 6343, even if the taxpayer has neglected her tax filing duties. Logically, then, those taxpayers who are in filing compliance at the time of the CDP hearing should also be in the position to force the Settlement Officer to do an “economic hardship” analysis. In effect, *Vinatieri* could be construed to require the IRS to conduct an “economic hardship” in *all* CDP hearings. This would mean that the IRS could no longer essentially jettison 46 percent of CDP hearing requests based on taxpayer nonfiling, as it currently does.⁴⁴

Compelling the IRS Appeals Office to always gauge “economic hardship” would entail quite a lot. In making this financial determination, the regulations instruct the IRS to consider any information provided by the taxpayer, including (i) the taxpayer’s age; (ii) her current employment status, work history, and earning capacity; (iii) the number of dependents claimed by the taxpayer, or her status as a dependent of someone else; (iv) the amount of money the taxpayer reasonable needs for food, clothing, housing, medical expenses, health insurance, transportation, current tax payments, alimony, child support or other court-ordered payments; (v) the expenses necessary for the taxpayer’s production of income, such as dues for a trade union or professional organization, or childcare payments that allow her to be gainfully employed; (vi) the cost of living in the area where the taxpayer resides; (vii) the property exempt from levy that is available to help pay the taxpayer’s expenses; (viii) any extraordinary circumstances of the taxpayer, such as special education expenses, medical catastrophes, or natural disasters; and (ix) any other factor raised by the taxpayer that affects the economic hardship analysis.⁴⁵ Completing and properly documenting an extensive “economic hardship” analysis in all CDP cases might require a significant amount of IRS resources, which could further strain a system that is already heavily burdened.

Let’s examine some relevant figures. A recent GAO report found that the Appeals Office handles

approximately 28,000 CDP cases annually, representing about one-quarter of the total workload of the Appeals Office.⁴⁶ Of those cases in which the proposed liens or levies were upheld, 46 percent involved noncompliant taxpayers whose sole reason for requesting a CDP hearing was to pursue an installment agreement or offer-in-compromise.⁴⁷ The GAO estimates that the Appeals Office devoted nearly 122,000 hours each year to these types of cases, which corresponds to slightly over \$3.5 million in salary costs.⁴⁸ If the Appeals Office must conduct an “economic hardship” analysis in all CDP cases as a result of *Vinatieri*, the large percentage of cases that were swiftly resolved before because of noncompliance would require additional attention. Visions come to mind of cases, CDP and non-CDP alike, stagnating in the Appeals Office for years. The Tax Court could become busier, too. According to the GAO report, only about two percent of all taxpayers who receive unfavorable Notices of Determination contest them in court.⁴⁹ More taxpayers, fortified by *Vinatieri*, just might file Petitions with the Tax Court on the basis that the Appeals Office failed to conduct a proper “economic hardship” analysis.

Conclusion

The number of CDP cases is likely to climb as the U.S. economy continues to struggle and taxpayers are experiencing tough times. Accordingly, many tax practitioners and taxpayers will be eagerly following the impact of *Vinatieri* on the IRS collection process.

ENDNOTES

¹ *K.A. Vinatieri*, 133 TC —, No. 16, Dec. 58,026 (Dec. 21, 2009).

² Code Sec. 6330(a).

³ Code Sec. 6330(a)(3)(B).

⁴ Reg. §301.6330-1(c)(2), Q-C1 & A-C1(iv).

⁵ Code Sec. 6330(c)(2)(A).

⁶ Code Sec. 6330(c)(2)(A)(iii).

⁷ IRS Letter 4441; see IRM §8.22.3.6.1 (Dec. 16, 2009).

⁸ See, e.g., IRM §5.14.1.1.1 (Sept. 26, 2008), IRM §5.8.3.13 (Sept. 23, 2008).

⁹ Reg. §301.6330-1(e)(1).

¹⁰ Reg. §301.6330-1(e)(3), Q-E6, A-E6. This regulation cross-references Reg. §301.6330-1(d)(2), A-D8.

¹¹ Reg. §301.6330-1(d)(2), Q-D8, A-D8.

¹² T.D. 9291, 71 FR 60829 (Oct. 17, 2006).

¹³ Code Sec. 6330(c)(3).

¹⁴ A Notice of Determination Concerning Collection Action(s) Under Code Sec. 6320 and/or 6330 is also known as a Letter 3193.

¹⁵ U.S. Government Accountability Office.

Little Evidence of Procedural Errors in Collection Due Process Appeal Cases, But Opportunities Exist to Improve the Program. GAO-07-112 (2006) [hereinafter referred to as “GAO Report”].

¹⁶ GAO Report, at 14 and 32. See also GAO Report, at 4, 12, 15, 29–30.

¹⁷ GAO Report, at 1.

¹⁸ Code Sec. 6330(d); U.S. Tax Court Rule 331(b). This petition is called a “Petition for Lien or Levy Action Under Section 6320(c) or 6330(d),” as applicable.

¹⁹ Code Sec. 6343; Reg. §301.6343-1.

²⁰ Code Sec. 6343(a)(1)(D).

²¹ Reg. §301.6343-1(b)(4)(i).

²² *Id.*

²³ Reg. §301.6343-1(a).

²⁴ *Vinatieri*, *supra* note 1.

²⁵ IRM §1.2.14.1.14 (Nov. 19, 1980) (IRS Policy Statement 5-71); IRM §5.16.1.1(2) (May 5, 2009); IRM §5.16.1.2.9 (May 5, 2009).

²⁶ Code Sec. 6330(d)(1).

²⁷ U.S. Tax Court Rule 331(b). The petition is called a “Petition for Lien or Levy Action Under Section 6320(c) or 6330(d),” as applicable.

²⁸ Code Sec. 7463(f)(2); Tax Court Rule 170. The Tax Court must concur with the taxpayer’s election.

²⁹ Tax Court Rule 174(b).

³⁰ Tax Court Rules 172 and 174(b).

³¹ Code Sec. 7463(b).

³² Tax Court Rule 171(c) states that the Tax Court, on its own or on the motion of a party to the case, may issue any order any time before the trial commences directing that the “S” designation be removed.

³³ *Vinatieri*, *supra* note 1, Docket No. 15895-08S. Order dated November 2, 2009.

³⁴ *Vinatieri*, *supra* note 1.

³⁵ Reg. §301.6330-1(d)(2), Q-D8, A-D8; See also T.D. 9291, 71 FR 60829 (Oct. 17, 2006).

ENDNOTES

³⁶ Reg. §301.6330-1(d)(2), Q-D8, A-D8; See also T.D. 9291, 71 FR 60829 (Oct. 17, 2006).

³⁷ GAO Report.

³⁸ GAO Report, at 6–8, 30, 33–34.

³⁹ GAO Report, at 30.

⁴⁰ GAO Report, at 30, note 39.

⁴¹ GAO Report, at 7.

⁴² GAO Report, at 34–35.

⁴³ T.D. 9291, 71 FR 60829 (Oct. 17, 2006); Reg. §301.6330-1(e)(3), Q-E6, A-E6; Reg. §301.6330-1(d)(2), Q-D8, A-D8.

⁴⁴ GAO Report, at 4, 12, 14–15, 29–30, 32.

⁴⁵ Reg. §301.6343-1(b)(4)(ii).

⁴⁶ GAO Report, at 1.

⁴⁷ GAO Report, at 32.

⁴⁸ GAO Report, at 32.

⁴⁹ GAO Report, at 15.

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