

Installment Agreement Appeals and Procedural Changes
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1. Historical background on collection appeals

a. IRS created the Collection Appeal Program (CAP) in 1996

1. Discretionary program created to deflect congressional pressure
2. Administrative appeal to challenge threatened or actual collection actions

A. Before or after the filing of a Notice of Federal Tax Lien,

B. Before or after levy or seizure action,

C. After the IRS initially rejects a proposed installment agreement,

D. Before or after the IRS modifies or terminates an existing installment agreement,

F. Denial of request for return of seized property, or

G. Denial of 3rd party's request for return of seized property – IRM part 8.24.1.3(2)

3. Appeals decisions under CAP are final and not subject to review

b. Taxpayer Bill of Rights Act 2 (1996), created the right to appeal the denial, rejection or termination of an installment agreement – IRC §§7122(e), 6331(k)(2) and 6159(e)

1. Appeal is statutory, not subject to IRS discretion

2. No separate statutory provision for judicial review

A. IRS treats them as CAP appeals

3. Judicial review available only under Collection Due Process (CDP) appeals

A. Installment agreement must have been a proposed collection alternative

B. Documents supporting IA must have been submitted

c. Despite CDP appeals, IRS maintains the CAP in place and functional

1. But it's discretionary

d. By treating installment agreement appeals as CAPs the IRS systematically denies taxpayers the right to an independent review

2. The statutory background

a. Code §6159

1. IRS has authority to enter into an installment agreement – IRC §6159(a)

2. Must remain in effect “for the term of the agreement” – IRC §6159(b)(1)

3. IRS may “alter, modify, or terminate” an agreement if,

A. The taxpayer provided incorrect or incomplete information,

B. Collection of the tax is in jeopardy,

C. The taxpayer's financial circumstances have substantially changed,

D. The taxpayer fails to make a required payment,

E. The taxpayer fails to pay any other tax due after the agreement is established, or

F. The taxpayer refuses to provide updated financial information if asked – IRC §§6159(b)(2), (3) and (4)

4. IRS is precluded from altering, modifying or terminating an installment agreement unless it provides “a notice of such action to the taxpayer not later than the day 30 days before the date of such action”

A. The notice must provide “an explanation why the Secretary intends to take such action” – IRC §6159(b)(5)

B. Notice CP523 communicates that an installment agreement was terminated

i. Explains that IRS will begin enforcement after 30 days from the date of the Notice

ii. Explains that you have the “right to request an appeal under the Collection Appeal Program”

iii. You are instructed to use Form 9423, *Collection Appeal Request*

5. IRS must establish procedures allowing “for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review” – IRC §6159(e)

b. Code §6331

1. Establishes the general authority to levy and seize assets

2. Creates certain limits to levy authority

3. Levy action is precluded when

A. An application for an installment agreement is pending,

B. If the request for an agreement is denied, during the 30-day period for appealing the denial,

C. If the request for an agreement is approved, during the period that the installment agreement is in effect,

D. If the installment agreement is terminated, during the 30-day period following the termination notice, and

E. If appeal is filed timely, while the appeal is pending – IRC §6331(k)(2)

4. Section 6331(k)(2) ties to §6159(e),

A. Taxpayer is allowed an independent appeal

B. Levy is precluded during the time for filing such appeal, and while the appeal is pending

c. Code §7122

1. The general authority for the Offer in Compromise (OIC)

2. §7122(e) repeats the language of §6159(e)

A. States that the IRS must establish procedures for an independent administrative review of any rejection of an OIC or installment agreement

B. Review is to be made before the rejection is communicated to the taxpayer

C. Procedures must allow for an appeal – IRC §§7122(e)(1) and (2)

3. Congress repeats itself three times

a. Three separate provisions mandate the IRS to

1. Establish appeal procedures to obtain an independent review of IRS's actions regarding installment agreements, and

2. Limit the right to collect while an appeal is pending

b. The inescapable conclusion is the right to appeal the modification or termination of an installment agreement is a statutory right

1. It is not discretionary

2. IRM part 8.24.1.1.2 (citing the above-referenced statutes) confirms that the right of appeal is a statutory right that exists as a matter of law

4. What the law *does not say* about installment agreement appeals

a. There are no restrictions in any of these three statutes

b. Taxpayers can raise any issue on appeal

1. The appeal can be carried out for any reason

c. Treasury Reg. §301.6159-1(e)(5) provides simply (cited in the IRM above):

“The taxpayer may administratively appeal the modification or termination” of an IA

d. Treasury Reg. §301.6159-1(e)(4) provides

“Upon receiving notice [of the termination], the taxpayer may provide information showing that the reason for the proposed modification or termination is incorrect.”

1. A termination can be incorrect for any number of reasons

2. The taxpayer has the right to challenge any or all of them

e. If Congress intended there to be restrictions, there would be restrictions in the law

5. How the IRS treats such appeals

a. IRS issues Notice CP523

1. The statutory notice required by §6331(k)(2)
 2. Taxpayer files Form 9423 within 30 days
 3. The case is forwarded to the Office of Appeals for consideration
- b. Appeals processes and disposes of the case as a CAP appeal – IRM part 8.24
1. Appeal is heard and resolved quickly, usually within five days or so
 2. Historically, Appeals imposed limits on issues that can be raised in a CAP appeal
- c. CAP appeal reviews are limited to the “legal and procedural requirements”
1. They do *not* review CAP appeals on the merits
 2. Nor does Appeals consider collection alternatives
- d. This self-imposed limitation derives from IRM part 8.24.1.2(5):
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- “Appeals’ review is for appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances.”
- e. Example: installment agreement is terminated for lack of payment
1. Taxpayer argues that he is no longer able to make the payment
 2. Historically, Appeals would not consider closing the case as uncollectible
 3. IRS might have the legal authority to issue the levy, but the circumstances suggest that it should not have done so
 4. Rather, Appeals would merely sustain levy action and send the case back to Collections

5. Taxpayer must argue for CNC status with RO

f. IRM part 8.24.1.2(5)(c) uses the phrase “after considering all of the relevant facts and circumstances...”

1. The reality is Appeals did no such thing

2. Appeals limited review to the “legal and procedural issues,” without regard to specific facts and circumstances, or the “appropriateness” of the action

3. Appeals never sought the best resolution to the case under the circumstances

4. IRM 8.24.1.1(5)(d), states

“Appeals does not consider alternatives to the issue under appeal, but solely determines the appropriateness of the issue under appeal.”

5. Appeals Officers are not to negotiate collection alternatives

6. The express wording of the IRM doesn't support Appeals' actions

g. The practical result is Appeals rubber stamps what Collections did

1. National Taxpayer Advocate's *2015 Annual Report to Congress* states that the CAP is so restricted “by the procedural limitations imposed that it really does not constitute a true appellate process.” See: NTA, *2015 Annual Report to Congress*, pg 93.

6. TFI launched a complaint to NTA; creates Systemic Advocacy issue

a. IRM changes effective 9-28-2021

1. IRM 8.24.1.1(5)(c):

“Note: For CAP IA appeals, consider the appropriateness of the monthly installment amount upon review of the taxpayer's financial information. See the example below for an illustration regarding a CAP IA case.”

2. IRM 8.24.1.1(5)(d) continues to claim that collection alternatives are not subject to CAP review, but IRS actions are reviewed on the basis of “appropriateness”

b. Examples

1. Rejected Installment Agreement

Taxpayer requests an IA for \$2,000 per month to resolve tax liabilities of approximately \$100,000. The taxpayer provides the requested financial documentation and they are in compliance with no issues precluding them from qualifying for an IA.

The RO rejects the proposal is rejected because Collection’s review of the financial documentation reflects they can pay \$3,000 per month. The Independent Reviewer concurs and the taxpayer files a CAP appeal to protest the denial.

Copies of the financials are forwarded to Appeals for the CAP hearing. The assigned Appeals hearing officer reviews the financial documentation and calculates the taxpayer has the ability to pay \$2,500 per month.

If the taxpayer is agreeable to a monthly IA of \$2,500, Appeals will direct Collection to arrange an IA for this amount. If the taxpayer is not agreeable to a monthly IA of \$2,500 and they insist on their original IA request of \$2,000 per month, Appeals will sustain Collection.

2. Proposed NFTL Filing

The taxpayer submits a CAP appeal request upon completion of the required managerial conference, which did not produce a resolution to the disagreement concerning the proposed NFTL filing. Appeals determines the taxpayer’s liability is under audit reconsideration and confirms with Examination that the balance is going to be reduced to an amount that would qualify the taxpayer for a streamlined IA.

Appeals does not sustain Collection's position and directs that Collection's lien determination will be deferred, pending Collection's consideration of a streamlined installment agreement. Having considered the appropriateness of the issue under appeal, the Appeals hearing officer **will not** negotiate the collection alternative(s) (e.g. installment agreement).

3. Levy

Taxpayer submits a CAP appeal, requesting a levy release. The taxpayer has a delinquent return but claims the levy is creating an economic hardship. Aside from the delinquent return, the taxpayer is cooperative, having provided the requested financials and supporting documentation to Collection.

Appeals reviews the financials forwarded by Collection and determines the levy is creating economic hardship. Considering IRC 6343(a)(1)(D), Appeals does not sustain Collection, directing that the levy be released. Having considered the appropriateness of the issue under appeal, the Appeals hearing officer **will not** consider any other case resolutions (e.g., collection alternatives or placing the account in CNC status).

7. Discussion of recent case experiences