



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-260420

March 3, 1995

The Honorable Jesse Helms
United States Senate

Dear Senator Helms:

This letter responds to your December 19, 1994, request for information to assist your office in connection with several issues raised in a letter you received from Mr. David Nuttle, a constituent from North Carolina.

To develop the information contained in this letter, we reviewed the relevant sections of the Internal Revenue Code and related regulations. We also reviewed the legislative history of the Taxpayer Bill of Rights and other proposed legislation relating to taxpayer rights measures. Additionally, we obtained and reviewed recent changes to IRS' Problem Resolution Handbook regarding hardship relief.

Mr. Nuttle's first issue dealt with a Motion for Special Depositions, filed in the U.S. District Court for the District of New Mexico (Civil No. 93-807M), in which he alleges that Internal Revenue Service (IRS) personnel have tried to destroy his efforts to develop an alternative energy fuel to replace petroleum. Mr. Nuttle asked that you request a GAO investigation of this matter. We do not, as a matter of policy, get involved in individual taxpayer complaints. However, Mr. Nuttle may want to contact IRS' Taxpayer Ombudsman. Although the material provided by Mr. Nuttle indicates that he has been in contact with an IRS Problem Resolution Officer in Richmond, Virginia, the Ombudsman's office in Washington, DC is responsible for administering the Problem Resolution Program and is ultimately responsible for resolving taxpayers complaints. Any correspondence should be directed to the Taxpayer Ombudsman, 1111 Constitution Avenue, NW, Room 3107, Washington, DC 20224.

Mr. Nuttle raises other issues discussed in our report entitled Tax Administration: IRS Implementation of the 1988 Taxpayer Bill of Rights (GAO/GGD-92-23) dated December 10, 1991. Mr. Nuttle asked about the intent of

GAO/GGD-95-87R Information on Tax Liens Imposed by IRS

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Congress with respect to the Taxpayer Bill of Rights, especially as to the criteria for granting hardship relief. As mentioned above, the Taxpayer Ombudsman in the National Office of the IRS administers the IRS Problem Resolution Program. This program is intended to resolve a variety of tax administration problems that have not been remedied through the normal operating procedures at the IRS. The Problem Resolution Program can offer a taxpayer relief in the form of an administrative injunction, called a taxpayer assistance order, which stays various administrative actions.

The Taxpayer Bill of Rights gave the Taxpayer Ombudsman the statutory authority to issue a taxpayer assistance order, if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. The legislative history of the provision does not contain much guidance concerning the meaning of "hardship". IRS regulations specify that the meaning of "significant hardship" includes "serious privation" caused to the taxpayer by the administrative action, but specifies that "mere economic or personal inconvenience to the taxpayer does not constitute significant hardship."¹

IRS believes that making the determination as to whether a taxpayer is suffering or is about to suffer a significant hardship is unavoidably subjective and must be done on a case-by-case basis. IRS' Problem Resolution Program Handbook provides IRS employees with a series of examples to use in deciding if a particular case involves a significant hardship. For example, IRS employees are to consider whether the taxpayer will be able to retain housing, obtain food for self and family, and be able to obtain essential medical treatment, among other factors to consider. The relevant pages from the Handbook are enclosed.

Mr. Nuttle's letter to you raised several questions about tax liens imposed by IRS and how such liens might be removed. The following paragraphs discuss those issues in some detail.

A general tax lien arises when a tax assessment has been made and the taxpayer has been given notice and demand for payment, but has failed to pay. A notice of tax lien provides public notice that a taxpayer owes the government money. Once a lien is imposed, however, it cannot be removed except under one of the circumstances discussed below.

As a result of the Taxpayer Bill of Rights, any person whose property is encumbered by a tax lien is permitted to administratively appeal the filing of the lien on the ground that it was filed erroneously. Using this procedure, the taxpayer can

¹Reg. Section 301.7811-1.

apply for a special certificate of release of lien that indicates that the filing of the lien was a mistake. This certificate is intended to ensure that the public record shows that the filing of the notice of lien was not the result of the taxpayer's actions and to help repair the taxpayer's credit record.

In addition, there are four other possible avenues of relief from a tax lien. They are: (1) a certificate of nonattachment; (2) a certificate of release of lien; (3) a certificate of discharge; and (4) a certificate of subordination. Each is discussed below.

A certificate of nonattachment can be issued when the wrong person appears to be identified in a Notice of Federal Tax Lien. If the filing of the lien was erroneous, the IRS must, to the extent practicable, issue a certificate of release within 14 days of the time of the determination that the filing was erroneous.

A certificate of release of lien must be issued if the liability plus interest has been satisfied or has become legally unenforceable, or if the IRS accepts the taxpayer's bond conditioned on payment of the full amount due within an agreed time. One of the ways in which a lien becomes unenforceable is when the statute of limitations on collection has expired. The certificate of release of lien must be issued within 30 days after the liability is satisfied or has become unenforceable or the bond is accepted. Taxpayers can sue for direct economic damages plus the cost of the legal action if the IRS knowingly or negligently fails to issue a certificate of release of lien.

A certificate of discharge releases certain specified property from the tax lien. The lien continues to exist, but the particular property is not subject to the lien. For example, a certificate of discharge can be issued if the fair market value of the taxpayer's other property is worth more than twice the sum of the unsatisfied tax obligation plus all other liens on the property which have priority over the tax lien.

Finally, under certain circumstances, the IRS may agree to issue a certificate of subordination, where a later lien will be allowed to take precedence over the federal tax lien. Such a certificate may be issued, for example, if the service believes that doing so will facilitate collection of the tax and will increase the amount ultimately realized.

Mr. Nuttle also asked for information about any action Congress has taken to clarify the Internal Revenue Code to provide IRS with specific authority to withdraw a notice of a lien when it is in the best interests of the taxpayer and the government. We had suggested in the report mentioned above that Congress might want to take such action.

It is important to distinguish between the methods for dealing with a lien, as discussed above, and the issue here which involves only withdrawal of the public notice of the lien, not removal of the lien itself. For example, as discussed in our report, notice of a lien might have been recorded as a result of an administrative error in processing an installment agreement for a taxpayer to pay delinquent taxes, although both IRS and the taxpayer had agreed that no notice would be filed. In such a case, potential creditors who check whether a tax lien is on file might not deal with the taxpayer if a notice of lien is on the public record. Consequently, the taxpayer might be deprived of an opportunity to obtain the funds needed to pay the tax. Thus, withdrawing the notice of the lien, not the lien itself, could be beneficial to both the taxpayer and to IRS.

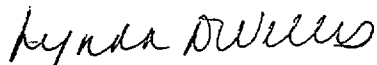
IRS believes, and we agree, that the Internal Revenue Code seems to prohibit IRS from withdrawing the notice of lien in such instances. Therefore, we suggested in the report mentioned earlier that Congress amend the Code to provide IRS with specific authority to withdraw a notice of lien in situations where such action would be advantageous to both IRS and the taxpayer.

In 1992, Congress twice approved taxpayer rights measures that included provisions that would have given IRS increased flexibility in providing relief from lien filings, including withdrawing notices of lien in situations where withdrawal of the notice would be in the best interest of both the taxpayer and the government. However, for reasons having nothing to do with the lien provisions, both measures were vetoed by then President Bush.

More recently, on January 23, 1995, proposed legislation was again introduced in Congress--S.258 in the Senate and H.R. 661 in the House of Representatives--that includes a lien provision similar to the provisions in the 1992 legislation discussed above. The bills were referred to the Senate Finance and Ways and Means Committees respectively, but as of this date, no action has been taken on them.

We hope this information is helpful in responding to Mr. Nuttle. If there are further questions, please contact me on (202) 512-8633 or John Lovelady of my staff on (202) 512-9058.

Sincerely yours,



Lynda D. Willis
Associate Director, Tax Policy and
Administration Issues

Enclosure

Chapter (10)00

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Application for Taxpayer Assistance Order Processing

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Background

(1) The Technical and Miscellaneous Revenue Act of 1988 was signed into law on November 10, 1988.

(a) Part of that act is the Omnibus Taxpayer Bill of Rights, which includes IRC Section 7811.

1 This Section provides the authority for the Taxpayer Ombudsman or his/her designee to issue Taxpayer Assistance Orders (TAO).

2 Section 7811 also states that the Ombudsman may initiate an application on behalf of the taxpayer, even in the absence of an application from the taxpayer.

(b) This chapter establishes procedures to assure that taxpayers are protected and receive full benefit from the provisions of this act.

(c) The procedures address the handling and control of Applications for Taxpayer Assistance Orders (ATAO), the suspension of enforcement actions while the account is reviewed, statute extensions, and the issuance of Taxpayer Assistance Orders.

(2) In implementing the ATAO program, the Internal Revenue Service recognized that taxpayers may experience significant hardships, caused by mistakes or unintended actions by either the Service, the taxpayer, or both, and that there can be hardships which in no way were caused by the Service, but where we can provide relief.

(a) Therefore, while IRC Section 7811 only specifically covers situations where "a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered," the ATAO procedures outlined below cover a broader range of problems.

(b) Delegation Order No. 239, Delegation of Authority to Issue and the Authority to Modify or Rescind Taxpayer Assistance Orders (TAOs) on Issues not Included in Section 7811 of the Internal Revenue Code, (see Exhibit (10)00-2) discusses actions the Service can take to assist taxpayers with significant hardships, regardless of the cause; e.g., issuing amended refunds, arranging audit reconsiderations, expediting the processing of claims, etc.

(3) The ATAO procedure consists of a two phase decision-making process:

(a) Decide if significant hardship exists: and.

(b) Determine what action to take based on the review of the case.

(4) The ATAO program can not be used to circumvent provisions of the Internal Revenue Code, even if the application of the Code results in a significant hardship.

(a) Thus, if a taxpayer files a claim for refund after the statute has expired, a TAO cannot be used to secure the refund, even though the taxpayer is suffering a significant hardship. Similarly, if administrative appeals procedures exist, the taxpayer should use those procedures.

(b) However, if time constraints prevent those procedures from being appropriate and/or a hardship would occur before the normal procedures could provide the relief, an ATAO would be appropriate.

(5) The ATAO program is designed to deal with problems involving the Service's action or lack of action.

(a) To a high degree this involves how the Service administers the Code. For example, if the taxpayer is experiencing a significant hardship because of a levy, an ATAO would be appropriate to review the case to try to find a solution that does not cause a significant hardship.

(b) The ATAO program does not, however, deal with the technical aspect of tax accounts. For example, an ATAO cannot be used to change the determination on an audit deficiency.

(6) ATAOs should not be initiated by employees to bypass normal procedures unless the conditions of the case indicate normal procedures cannot resolve the problem timely or if they will intensify the hardship.

(a) If that is the case an ATAO would be appropriate.

(b) When in doubt, it is always correct to invoke the stop and review aspect of an ATAO.

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General ATAO Procedures and Program Time Frames

(1) The ATAO process is built around a two-step process.

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a) First, the PRO determines whether the taxpayer is suffering or about to suffer a significant hardship.

(b) Second, the PRO takes action based on that determination:

1 If there is a significant hardship, the PRO decides whether the IRS action should be changed, based on a review of the facts by the PRO and the function.

2 If there is no significant hardship, the PRO decides the appropriate disposition of the application.

(2) Except as noted in subsequent procedures and instructions, the following is a general outline of the ATAO process.

(a) Most applications are worked using this general process from receipt to resolution.

(b) **Note:** Though the PRO is responsible for administering the ATAO program and has been delegated the authority to issue TAOs, many of the actions taken on ATAOs can be done by members of the PRO's staff.

(3) Functional employees will forward Applications for ATAOs to the PRO immediately upon preparation or receipt.

(a) The PRO will review the application within one work day of receipt in the PRO's office to determine whether significant hardship is evident and the taxpayer's problem warrants ATAO handling.

(b) The PRO will also advise the taxpayer the ATAO was received within one work day of receipt in the PRO's office.

(4) Applications that do not meet significant hardship criteria are either worked as regular PRP cases, referred to the appropriate function for resolution, or answered by the PRO directly. Applications should be entered onto PROMIS using the appropriate ATAO code. See Exhibit (10)00-3.

(5) In general, applications that meet significant hardship criteria are worked as ATAOs.

(a) Each ATAO should be controlled on PROMIS within one work day of receipt by the PRO's office and on IDRS within two work days of receipt by PRP.

(b) Following the PRO's review, ATAO code 04 should be entered on PROMIS if the case is still open.

(6) The PRO's staff has two work days from receipt in the PRO's office to contact the responsible function to advise it of the ATAO.

(a) If the application involves an enforcement action that has not been completed, the

action will be suspended until a final decision on relieving the hardship is made on the case.

(c) The function should complete its review within two work days of receipt from the PRO's office.

1 If the review will take more than two work days, the function and the PRO's office should agree upon a final target date.

2 The function will also decide whether an extension to the appropriate statute of limitations should be posted to the master file at this time.

(c) If the PRO and the function agree on a final resolution, the PRO's office will notify the taxpayer or his/her representative.

(7) If the PRO disagrees with the function's findings and further discussion will not resolve the issues at that level,

a) the PRO will discuss the issue with the responsible functional management official, at division level.

(b) If the disagreement cannot be resolved, the PRO has one work day to issue a Form 9102, Taxpayer Assistance Order, instructing the function to take a specified action.

(c) The function will either comply with the action ordered on the TAO or request, within one work day of its issuance, that the director modify or rescind the TAO.

(d) The director should complete his/her review within one work day.

(8) See Exhibit (10)00-4, The ATAO Two-Step Process-Questions and Answers, and Exhibit (10)00-5, ATAO Time Frames, for additional information.

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Definition of Significant Hardship

(1) Significant hardship, as it applies to ATAO's, generally involves a subjective determination.

(a) Numerous factors must be considered when deciding whether a taxpayer's problem warrants ATAO handling.

(b) Each determination must be made on a case by case basis after reviewing the pertinent facts and circumstances, as provided by the taxpayer, on IDRS, or on AIMS.

(c) Good judgment is the most important element in reaching a fair and reasonable decision.

(2) The Problem Resolution Officer is responsible for determining whether the taxpayer's situation outlined on the application qualifies as a significant hardship.

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(a) Members of the PRO's staff may review Forms 911 to verify the presence of significant hardship.

(b) However, *only the PRO* can decide that hardship is *not* present.

(3) It is not necessary to verify the significant hardship claimed by the taxpayer; however, judgment should be used if there is serious doubt or suspected potential abuse.

(4) When deciding the presence of significant hardship, any application *should be accepted* unless there is a clear reason not to do so.

(a) Do not spend a lot of time in making the determination. *Any doubt should be decided in the favor of the taxpayer.*

1 In some instances it is difficult to determine if the taxpayer's situation qualifies as a significant hardship.

2 Additionally, no application should be automatically denied.

(b) Accounts that contain Potentially Dangerous Taxpayer (PDT) or Illegal Tax Protestor (ITP) indicators should be reviewed for significant hardship using the same criteria as for any other application.

(c) *The determination that significant hardship exists does not guarantee relief for the taxpayer.* It does mean the taxpayer's case will be reviewed by the PRO and the function before the PRO makes a decision on the appropriate action.

(5) The following are some of the points to consider when deciding whether the taxpayer's situation constitutes a significant hardship.

(a) Will the taxpayer be able to *retain housing*?

(b) Will the taxpayer be able to *obtain food* for self and/or family?

(c) Will the taxpayer be able to *retain utilities* for his/her residence?

(d) Will the taxpayer be able to *retain or obtain transportation* to and from work?

(e) Will the taxpayer *become unemployed or lose his or her source of income* as a result of the Service's action?

(f) Will the taxpayer be able to obtain *essential medical treatment and/or medication* for self and/or family?

(g) Will the taxpayer be able to obtain *reasonable clothing and/or shoes* for self and/or family?

(h) Will the taxpayer sustain an *avoidable loss of education* for self and/or family; e.g., lose a scholarship, appointment, or be suspended from a special school?

(i) Will *irreparable damage* be caused to the taxpayer's credit rating because of an erroneous action or nonconsideration of alternative action(s)?

(j) Will the taxpayer experience serious financial hardship, such as the *inability to meet payroll and/or imminent bankruptcy*?

(k) Is the taxpayer *overwhelmed* by the *enormity* of the tax situation he or she is in, as demonstrated by crying, despair, threat of personal harm, etc?

(6) The determination of significant hardship should be reached based on the issue of significant hardship along *without* considering the following issues:

(a) *who is "at fault"* (who caused the hardship or contributed to the problem);

(b) *past actions and events* (such as the prior history of the taxpayer);

(c) *the type of tax* (taxpayers with trust fund liabilities can experience significant hardships too), or;

(d) *the prospect of resolution* (even if there is no prospect of relief or no reasonable alternative actions are available),

1 an application in a true significant hardship situation should be accepted for consideration).

2 For example, if a taxpayer is experiencing a significant hardship and asks for a refund that is barred because of the statute, the determination should be that a hardship exists, but relief is barred rather than that no hardship exists *because we cannot provide relief.*

(7) There will be instances where a taxpayer's situation has the hallmark of a significant hardship, but where there is no current or pending IRS action.

(a) In most cases, PRP will assure that action is taken to resolve the taxpayer's problem, either as a PRP case (ATAO codes 02 or 13a) or as a referral to a function (ATAO codes 03 or 13b).

(b) Problems that may be worked in this manner include, but are not limited to, first and second notice inquiries and most refund inquiries.

(c) However, when the PRO judges that significant hardship exists, despite the lack of imminence, and expedite handling is warranted, the case should be worked as an ATAO. These cases include, but are not limited to, situations where the taxpayer is overwhelmed by the enormity of the tax situation.

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Problem Resolution Program Handbook

(d) Problems that should be worked as a PRP case include those where the Service action is not imminent and the application meets PRP criteria (see text 622).

1 When problems are worked as PRP cases or are referred to a function (codes 02.03 or 13), the caseworker should tell the taxpayers how their cases are being worked, but the issue of significant hardship does not need to be raised.

2 It can be acknowledged that the taxpayer is experiencing a personal hardship (if appropriate); however, because there is no current or imminent pending enforcement action, the taxpayer's concerns can be addressed through the Problem Resolution Program or the function, as appropriate.

(8) It is important that personal values or opinions do not bias the determination of significant hardship. For example, if a taxpayer is in need of medical treatment and the Service can provide relief, the nature of the medical treatment should not prevent the case from being reviewed.

(9) Enforcement action, in and of itself, is not a significant hardship without additional factors.

(10) There may be instances where an enforcement action causes unintended significant hardships, thus warranting ATAO handling.

(a) For example, because of a wage levy, a taxpayer has been notified by his employer that he is being fired because it is company policy that employees must keep their financial obligations current.

(b) Since this situation creates a significant hardship, it would qualify for an ATAO if the Service employee contacted by the taxpayer cannot or will not relieve the significant hardship after learning of this information.

(c) There may also be instances that warrant ATAO handling where enforcement actions are not involved.

1 For example, a taxpayer who is experiencing a significant hardship and desperately needs a refund requested on an amended return which has not been received because the account has a scrambled SSN and the refund cannot be issued for several weeks while the service center works to unscramble the accounts.

2 Since the taxpayer is experiencing or about to experience a significant hardship, an ATAO would be appropriate to expedite the

correction of the SSN and the issuance of the refund.

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General Guidelines

(1) Form 911, Application for Taxpayer Assistance Order to Relieve Hardship, is the form taxpayers or their representatives can use to apply for a review of their cases when they are suffering or are about to suffer a significant hardship.

(a) Taxpayers or their representatives can apply in a letter or by telephone.

(b) Additionally, any IRS employee can identify a problem that warrants ATAO handling, even if the taxpayer does not specifically request it.

1 Telephone requests and internally identified cases should be recorded on Form 911.

2 Letter requests should also be recorded on Form 911, with the letter attached to the back and "See Letter" entered on box 12 of the form.

(c) Applications and information may be accepted from a third party; but caution must be used to avoid improper disclosure of information.

(2) Taxpayers or their representatives should file the applications with the PRO in the district where they live.

(a) There will be times, however, when taxpayers will file ATAOs with offices outside their districts or service centers (e.g., taxpayers may call toll-free sites located in other districts or taxpayers who filed electronically may contact the service center where their returns were filed).

(b) In most instances the PRO in a taxpayer's home district should handle the case (including refund inquiries on electronically filed returns).

(c) However, there may be instances when enforcement actions have been initiated in other districts (e.g., by ACS) and, therefore, it would be best to handle the application outside the taxpayer's home districts.

1 When this happens, the PRO in the receiving office will immediately call the PRO in the district where the action was initiated to discuss the application.

2 The PRO who can best serve the taxpayer will work the application as though it had been received in that district and will use the original ATAO received date.

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