



MORGAN D. KING EDITOR

The King Law Letter

NEWS - EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS

SEPTEMBER 9 2015 LAW LETTER # 2



IMPORTANT PRODUCT ANNOUNCEMENTS

UPDATE NOW AVAILABLE!

King & Deining

LAWYER'S GUIDE TO IRS

COLLECTION DUE PROCESS APPEALS

& Equivalency hearings

2015 RELEASE # 2

By Morgan D. King, Esq. - Neil Deining, Esq. - Reba Wingfield, Esq - Nicolas Corry, Esq,

Step-by-step guide to handling IRS Collection Due Process appeals

This release updates the 2015 # 1 release. More cases and more clarification of law and procedure.

[SEE TABLE OF CONTENTS-](#)

[GET MORE INFORMATION](#)

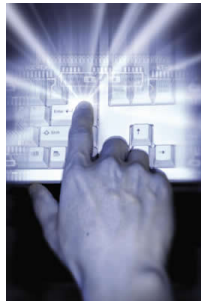
[ABOUT THE AUTHORS & EDITORS](#)

WHAT THEY SAY ...

**Robert Helman, E.A.
Tracy, California**

I believe your book is the best and most comprehensive treatment of the subject available.

No collections practitioner should be without it. And the flow-chart is first-rate.



There is a lot of collection appeals material on the web, but very little, ... that puts it all together in a way that facilitates planning--until your book was published.

240 pages | + Web update page | + CD

Companion books often purchased with Collection Due Process include King Greenberg Legal Guide to IRS Offers - in - Compromise, and King's Discharging Taxes in Bankruptcy. Visit [King Tax Library](#).

**CLICK TO ORDER
Guide to CDP**

VISIT KING LAW PUBLISHING



EXCERPT

Lawyers' Guide to IRS

***Collection Due Process Appeals
and Equivalency Hearings***

Release 2015 # 2 (09/09/15)

Part 7 EQUIVALENCY HEARINGS

New:

7.5 JUDICIAL REVIEW OF EQUIVALENCY HEARINGS

a. Basic rule

The general rule is that, unlike Collection Due Process determinations, equivalency hearings

are not subject to judicial review. IRM # 8.22.4.3(5). 26 CFR # 301.6330-1, # 301.6226f)-1. The basic rule is that, unlike a Collection Due Process hearing result, the taxpayer may not obtain judicial review, such as a petition to the U.S. Tax Court, of a final result in an equivalent hearing.

However, there are some circumstances in which the Tax Court will exert jurisdiction over an equivalent hearing result.

If the court can be convinced that a CDP hearing, which was held - or should have been held - was defective, such that the court could find that the taxpayer was deprived of a fair CDP hearing. In those cases the court, in effect, treats the equivalency hearing result as a CDP result, and hence has jurisdiction to review the determination.



In *Graham v. Commissioner of I.R.S.* [T.C. Memo 2008-129 (5/6/2008)] the taxpayer alleged he did not have a fair Collection Due Process hearing. The court granted the I.R.S. motion to dismiss as to some of the tax liabilities, but denied it as to others, saying " ... petitioner timely requested but was denied a collection hearing in response to a section 6320 notice of lien. The court said " ... where the Appeals officer, in a mistaken belief that the hearing request was untimely, conducts an equivalent hearing ... then issues a decision letter ... contains a statement that the taxpayer is not entitled to judicial review" the court found the rejection of the CDP invalid and the statement of jurisdiction for judicial review incorrect in these circumstances.

On that basis the court found the first two notices invalid because they were not mailed to the taxpayer's last known address, but found the third notice valid, and that the taxpayer did file a timely CDP request as to that notice. Hence, the taxpayer's request for a CDP hearing based on their timely filed papers was within the 30-day cutoff period for requesting a CDP hearing, and hence the taxpayer was entitled to a new CDP hearing.



THE LAW & CASE HOTWIRE

Add to *Guide to IRS Collection Due Process Appeals* section 1.6 Taxpayer's Last Known Address; also add new section 6.13 - denial to give taxpayer a CDP; a) Grounds to reject request for CDP Hearing; b) Where grounds for denial are found invalid.

Ryskamp v. Comm'r IRS (D.C. Cir. 2015) (May 1 2015)

HELD: Circuit court and Tax Court have jurisdiction to determine whether or not IRS denial of a CDP hearing was arbitrary, on the ground it believed the taxpayer's reasons for requesting it were "frivolous."

Standard of review was "abuse of discretion" or "arbitrary and capricious."

The court held for the plaintiff that the refusal to grant the CDP hearing was "arbitrary" because Appeals notice to taxpayer denying the CDP hearing did not specify the basis for the determination of "frivolous."

The IRS had stated " ... that its frivolousness determination is not subject to judicial review."

The Court disagreed:

"Subsection 6330(g) of the Code provides . . . that if any "portion of a request for a [CDP] hearing is frivolous or reflects the taxpayer's desire to delay or impede the administration of the federal tax laws, the Appeals Office may treat such portion as if it were never submitted, and it "shall not be subject to any further administrative or judicial review." *Id.* § 6330(g).

"The IRS Appeals Office denied Ryskamp a Collection Due Process hearing based on its unexplained determination that all the reasons he gave for requesting a hearing were frivolous and contends that its frivolousness determination is not subject to judicial review."

The tax court and the Circuit Court for the District of Columbia held that they have jurisdiction to conduct a review limited to whether the IRS correctly treated Ryskamp's arguments as frivolous."

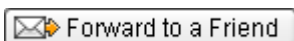
[CLICK FOR FULL TEXT OF OPINION](#)



Visit Morgan King



The King Law Letter is published by King Law Publishing (KingLawPublishing.com). It has three formats - the Bulletin (product & event announcements), the Law Letter (news and updates), and The TaxGram. King Law Publishing Box 2952 Dublin, CA. Morgan@morganking.com. 925 829-6460.



The Law Letter # 1 09/07/15
© Morgan D. King. All Rights Reserved.
TheLawLetter.com

[Forward email](#)



This email was sent to morgan@morganking.com by morgan@morganking.com | [Update Profile/Email Address](#) | Rapid removal with [SafeUnsubscribe™](#) | [About our service provider](#).



The Morgan King Company | Box 2951 | Dublin | CA | CA | 94568