

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

§ 1871. Notice and Opportunity for Hearing Before Levy.

(a) *Requirement of notice before levy.*

(1) No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax specified in paragraph (3)(A) relates.

(2) Time and method for notice. The notice required under paragraph (1) shall be:

(A) Given in person;

(B) Left at the dwelling or usual place of business of such person; or

(C) Sent by certified or registered mail, return receipt requested, to such person's last known address;

Not less than 30 days before the day of the first levy with respect to the amount of the unpaid tax for the taxable period.

(3) Information included with notice. The notice required under paragraph (1) shall include in simple and nontechnical terms:

(A) The amount of unpaid tax;

(B) The right of the person to request a hearing during the 30-day period under paragraph (2); and

(C) The proposed action by the Secretary and the rights of the person with respect to such action, including a brief statement which sets forth:

(i) The provisions of this title relating to levy and sale of property;

(ii) The procedures applicable to the levy and sale of property under this title;

(iii) The administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) The alternatives available to taxpayers which could prevent levy on property (including installment agreements under section 1854); and

(v) The provisions of this title and procedures relating to redemption of property and release of liens on property.

(b) *Right to fair hearing.*

(1) In general. If the person requests a hearing under subsection (a)(3)(B), such hearing shall be held by the Technical, Research, and Appeals Branch of the Division of Revenue and Taxation.

(2) One hearing per period. A person shall be entitled to only one hearing under this section with respect to the taxable period to which the unpaid tax specified in subsection (a)(3)(A) relates.

(3) Impartial officer. The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax specified in subsection (a)(3)(A) before the first hearing under this section or section 1861. A taxpayer may waive the requirement of this paragraph.

(c) *Matters considered at hearing.* In the case of any hearing conducted under this section:

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

(1) Requirement of investigation. The appeals officer shall at the hearing obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met.

(2) Issues at hearing.

(A) In general. The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including:

- (i) Appropriate spousal defenses;
- (ii) Challenges to the appropriateness of collection actions; and
- (iii) Offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.

(B) Underlying liability. The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.

(3) Basis for the determination. The determination by an appeals officer under this subsection shall take into consideration:

- (A) The verification presented under paragraph (1);
- (B) The issues raised under paragraph (2); and
- (C) Whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.

(4) Certain issues precluded. An issue may not be raised at the hearing if:

(A) The issue was raised and considered at a previous hearing under section 1861 or in any other previous administrative or judicial proceeding; and

(B) The person seeking to raise the issue participated meaningfully in such hearing or proceeding.

This paragraph shall not apply to any issue with respect to which subsection (d)(2)(B) applies.

(d) *Proceeding after hearing*.

(1) Judicial review of determination. The person may, within 30 days of a determination under this section, appeal such determination to the Commonwealth Superior Court.

(2) Jurisdiction retained at Revenue and Tax Appeals Branch. The Technical, Research, and Appeals Branch shall retain jurisdiction with respect to any determination made under this section, including subsequent hearings requested by the person who requested the original hearing on issues regarding:

(A) Collection actions taken or proposed with respect to such determination; and

(B) After the person has exhausted all administrative remedies, a change in circumstances with respect to such person which affects such determination.

(e) *Suspension of collections and statute of limitations*.

TITLE 4: ECONOMIC RESOURCES
DIVISION 1: REVENUE AND TAXATION

(1) In general. Except as provided in paragraph (2), if a hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing and the running of any period of limitations under section 18102 (relating to collection after assessment), section 18105 (relating to criminal prosecutions), or section 18106 (relating to other suits) shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. The beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the Commonwealth Superior Court. The Commonwealth Superior Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1) and then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates.

(2) Levy upon appeal. Paragraph (1) shall not apply to a levy action while an appeal is pending if the underlying tax liability is not at issue in the appeal and the court determines that the Secretary has shown good cause not to suspend the levy.

(f) *Jeopardy and refund collection*. If:

(1) The Secretary has made a finding under the last sentence of section 1872(a) that the collection of tax is in jeopardy; or

(2) The Secretary has served a levy on the CNMI Treasury to collect a CNMI tax liability from a CNMI tax refund, this section shall not apply, except that the taxpayer shall be given the opportunity for the hearing described in this section within a reasonable period of time after the levy.

Source: PL 14-35, § 4 (1870), modified.

Commission Comment: In the subsections ((b)(3), (c)(4)(A), (e)(1), and (f)(1) above, the Commission changed the section numbers originally referenced in PL 14-35 to the proper renumbered section numbers pursuant to its authority by 1 CMC § 3806(c).