

Internal Revenue Service
IRS - Appeals Office
Attn:
6377 Riverside, Suite 110
RIVERSIDE, CA 92506

Date: **NOV 28 2011**


MOTTAHEDEH, PEYMON
DBA FREEDOM LAW SCHOOL
9582 BUTTEMERE RD
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Department of the Treasury

Person to Contact:

W. Robson
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Refer Reply to:

AP:FW:RIV:WDR


Tax Type/Form Number:

Employment/ Form 941, 940

In Re:

Collection Due Process Appeal
Tax Court

Tax Period(s) Ended:

03/1997 06/1997 09/1997 12/1997
03/1998 06/1998 09/1998 12/1998
03/1999 06/1999 09/1999 12/1999
03/2000 06/2000 09/2000 12/2000
03/2001 06/2001 09/2001 12/2001
03/2002 06/2002 09/2002 12/2002
03/2003 06/2003 09/2003 12/2003
03/2004 06/2004 09/2004 12/2004
03/2005 06/2005 09/2005 12/2005
03/2006 06/2006 09/2006 12/2006
03/2007 06/2007 09/2007 12/2007
03/2008 06/2008 09/2008 12/2008
03/2009 12/1997 12/1998 12/1999
12/2000 12/2001 12/2002 12/2003
12/2004 12/2005 12/2006 12/2007
12/2008

**SUPPLEMENTAL NOTICE OF DETERMINATION
CONCERNING COLLECTION ACTION(S) UNDER SECTION 6320 and/or 6330**

Dear Mr. Mottahedeh:

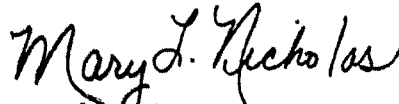
The determination summarized below and described in detail in the attachment supplements the Notice of Determination dated April 27, 2010. This supplement is being issued pursuant to the order of the Tax Court dated March 3, 2011 remanding the case to this appeals office. A copy of this supplement is also being sent to IRS, Associate Area Counsel.

If you have any questions, please contact the person whose name and telephone number are shown above.

Summary of Determination

It has been determined that the tax assessments should be abated and the Notice of Federal Tax Lien should be withdrawn.

Sincerely,

A handwritten signature in black ink that reads "Mary L. Nicholas". The signature is written in a cursive style with a large initial "M".

Mary Nicholas
Appeals Team Manager

cc: IRS Associate Area Counsel

Attachment to Supplemental Notice of Determination

Type of Tax	Tax Period	CDP Notice Date	CDP Request Postmarked
941	03-31-1997	12-22-2009	01-28-2010
941	06-30-1997	12-22-2009	01-28-2010
941	09-30-1997	12-22-2009	01-28-2010
941	12-31-1997	12-22-2009	01-28-2010
941	03-31-1998	12-22-2009	01-28-2010
941	06-30-1998	12-22-2009	01-28-2010
941	09-30-1998	12-22-2009	01-28-2010
941	12-31-1998	12-22-2009	01-28-2010
941	03-31-1999	12-22-2009	01-28-2010
941	06-30-1999	12-22-2009	01-28-2010
941	09-30-1999	12-22-2009	01-28-2010
941	12-31-1999	12-22-2009	01-28-2010
941	03-31-2000	12-22-2009	01-28-2010
941	06-30-2000	12-22-2009	01-28-2010
941	09-30-2000	12-22-2009	01-28-2010
941	12-31-2000	12-22-2009	01-28-2010
941	03-31-2001	12-22-2009	01-28-2010
941	06-30-2001	12-22-2009	01-28-2010
941	09-30-2001	12-22-2009	01-28-2010
941	12-31-2001	12-22-2009	01-28-2010
941	03-31-2002	12-22-2009	01-28-2010
941	06-30-2002	12-22-2009	01-28-2010
941	09-30-2002	12-22-2009	01-28-2010
941	12-31-2002	12-22-2009	01-28-2010
941	03-31-2003	12-22-2009	01-28-2010
941	06-30-2003	12-22-2009	01-28-2010
941	09-30-2003	12-22-2009	01-28-2010
941	12-31-2003	12-22-2009	01-28-2010
941	03-31-2004	12-22-2009	01-28-2010
941	06-30-2004	12-22-2009	01-28-2010
941	09-30-2004	12-22-2009	01-28-2010
941	12-31-2004	12-22-2009	01-28-2010
941	03-31-2005	12-22-2009	01-28-2010
941	06-30-2005	12-22-2009	01-28-2010
941	09-30-2005	12-22-2009	01-28-2010
941	12-31-2005	12-22-2009	01-28-2010
941	03-31-2006	12-22-2009	01-28-2010
941	06-30-2006	12-22-2009	01-28-2010
941	09-30-2006	12-22-2009	01-28-2010
941	12-31-2006	12-22-2009	01-28-2010
941	03-31-2007	12-22-2009	01-28-2010

941	06-30-2007	12-22-2009	01-28-2010
941	09-30-2007	12-22-2009	01-28-2010
941	12-31-2007	12-22-2009	01-28-2010
941	03-31-2008	12-22-2009	01-28-2010
941	06-30-2008	12-22-2009	01-28-2010
941	09-30-3008	12-22-2009	01-28-2010
941	12-31-2008	12-22-2009	01-28-2010
941	03-31-2009	12-22-2009	01-28-2010
940	12-31-1997	12-22-2009	01-28-2010
940	12-31-1998	12-22-2009	01-28-2010
940	12-31-1999	12-22-2009	01-28-2010
940	12-31-2000	12-22-2009	01-28-2010
940	12-31-2001	12-22-2009	01-28-2010
940	12-31-2002	12-22-2009	01-28-2010
940	12-31-2003	12-22-2009	01-28-2010
940	12-31-2004	12-22-2009	01-28-2010
940	12-31-2005	12-22-2009	01-28-2010
940	12-31-2006	12-22-2009	01-28-2010
940	12-31-2007	12-22-2009	01-28-2010
940	12-31-2008	12-22-2009	01-28-2010

SUMMARY AND RECOMMENDATION

You requested a hearing with Appeals under provisions of IRC 6320, as to the appropriateness of the filing of a Notice of Federal Tax Lien. The request was postmarked within the timeframe specified for a timely filing, and qualifies for a Collection Due Process Hearing. It has been determined that the tax assessments should be abated and the Notice of Federal Tax Lien should be withdrawn.

BRIEF BACKGROUND

On Form 12153, you marked Lien Withdrawal, and stated, "I'm challenging the IRS' evidence, procedures, and the tax liability for all taxes and tax periods in question."

In your U.S. Tax Court petition you noted, "The numbers used by IRS to construct these tax liabilities are baseless and arbitrary."

DISCUSSION AND ANALYSIS

1. Verification of legal and procedural requirements

This hearing was provided under IRC Section 6320, with respect to the filing of a Notice of Federal Tax Lien.

IRC 6321 creates a lien on the taxpayer's property if the taxpayer neglects or refuses to pay the tax after the tax is assessed and after notice and demand for payment, at his last known address, as provided for in IRC 6303. A review of the transcripts has confirmed the tax was assessed, and notice and demand was mailed to you at your last known address.

IRC 6320 provides that the Internal Revenue Service will notify a taxpayer of the filing of a notice of lien and of the right to a hearing before the IRS Office of Appeals with respect to the filing of a Notice of Federal Tax Lien. Letter 3172, dated on December 22, 2009, "Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320" were sent via certified mail, and the Service received a response from you that was postmarked on January 28, 2010. The time to respond given in Letter 3172, was January 29, 2010. The request was timely according to the date given in Letter 3172.

Section 6330(b) guarantees the right to a fair hearing by the Internal Revenue Office of Appeals. The hearing is to be conducted by an impartial officer who has had no previous dealing with respect to the unpaid tax. The Settlement Officer assigned to hear your case has had no prior involvement with respect to the above tax liability.

We find all legal and procedural requirements for the filing of the Notice of Federal Tax Lien have been satisfied.

Telephone conferences were held April 22, 2010 and on September 7, 2011.

A supplemental face to face conference was scheduled for June 2, 2011. This was rescheduled to August 23, 2011 to provide time for you to receive and review the IRS response to a Freedom of Information Act (FOIA) request. You requested a further rescheduling for a face to face conference to September 7, 2011, advising that you needed additional time to review the FOIA response. A face to face conference was scheduled, and agreed to by you, for September 7, 2011. On September 7, 2011, you telephoned the Settlement Officer and advised that after a review of the FOIA data, you have decided that you did not need a face to face conference, and that a correspondence conference would be acceptable.

2. Issues raised by the taxpayer

- **Challenges to the appropriateness of the underlying tax liability**

On Form 12153, you stated, "I'm challenging the IRS' evidence, procedures, and the tax liability for all taxes and tax periods in question."

In the Tax Court Petition, you noted, "The numbers used by IRS to construct these tax liabilities are baseless and arbitrary."

At conference you continued this challenge, stating that the assessments were not appropriate and should be abated.

In a letter dated September 16, 2011, you note, in part:

- Black's assessments are baseless, arbitrary conclusions that do not have any tendon or ligament of fact and should be set aside as such.
- Black's baseless and arbitrary assessments need no refutations by Peymon Mottahedeh for the assessments to be set aside by you.

A review of IRS records indicates that the tax assessments at issue were assessed by IRS Collection personnel under the authority of IRC 6020(b). Letter 1085, dated June 17, 2009, was sent advising of the proposed assessments. Instructions in the Letter advised that if you did not agree with the proposed assessments, to advise within thirty days of the letter. You so advised via letter dated July 17, 2009, and requested a meeting with the Collection Manager and the Revenue Officer to discuss the matter, and requested an Appeals conference in the event an agreement could not be reached with Collection. Due in part to conflicts with the Revenue Officer's schedule, and in part to conflicts with your schedule, the requested meeting was not held until January 20, 2010, about six months after your request.

Internal procedures contemplate referring the matter to the IRS Office of Appeals for an Appeals decision, prior to making any tax assessment. Collection personnel made the tax assessment on August 14, 2009. This was prior to the holding of the meeting you requested with the Collection Manager and the Revenue Officer; and prior to the matter being referred to the IRS Office of Appeals. A Notice of Federal Tax Lien was filed on or about December 22, 2009, also done prior to the holding of the requested meeting with the Collection Group Manger and the Revenue Officer, and prior to the matter being referred to the IRS Office Appeals.

Collection personnel did not follow internal procedures relative to the IRC 6020(b) assessment process, by not referring the matter to the IRS Office of Appeals prior to assessment. The taxes were assessed prematurely, and the Notice of Federal Tax Lien was filed prematurely.

On June 17, 2009, the Revenue Officer outlined the steps taken to determine the proposed tax liabilities using the IRC 6020(b) process:

- "06-17-2009: I prepared Letter 1085, Form 5604 and 61 – IRC 6020(b) returns.
- I determined that the Taxpayer has failed to file employment tax returns for his DBA, Freedom Law School. I secured an EIN – 30-0562297 from the EIN unit at the Cincinnati Campus.
- Based on information obtained from the Freedom Law School website I discerned that the Taxpayer started the business in late 1996. Since I was unsure of the exact date in 1996, I elected to start the 6020b returns from 01/01/1997.
- I am not aware of exactly how many employees the business employs, but I reasoned that based on the need to answer phones and correspondence, prepare and package various info packages offered by the school, and other needs of a business, there must be a certain amount of employees. Since I didn't know the exact amount, I elected to base the number of employees on the following; during a field call (on April 15, 2008) to the business address, I noted six cars parked directly in front of the business address. A check of California Department of Motor Vehicle records revealed none of the six cars were registered to the Taxpayer or any known relative. I assumed each car was used by a person who worked at Freedom Law School. Based on this, I assumed six employees. (Added by Appeals: The business address is the same as the residence address.)
- I was unaware of their wages, so I elected to assume the Taxpayer would pay the state required minimum wage. I researched and determined the minimum wage for each year of employment, 1997 through 2009. I also reasoned the employees would work full time, 40 hours a week.
- Based on the previous, I prepared 49 Form 941s representing the quarters from 01/01/1997 through 03/31/2009, and 12 Form 940s representing the years 1997 through 2008.
- With regards to 941s, I assumed 20% withholding of all wages.

- With regards to 940s, I only figured the tax on \$42,000 for each year; this represented \$7,000 wages per employee (6 x 7,000 = 42,000). This is consistent with the allowed exemptions for FUTA taxes.”

It is noted that, except for seeing six vehicles parked in front of your residence at a given time on one day, everything else is based on unsupported assumptions of the Revenue Officer.

Nothing is provided to support:

- That you have, or had, any employees.
- That there should be a direct correlation between the numbers of vehicles parked in front of the residence at a given time on one day, and the number of employees for the prior twelve years and three months.
- That there are sufficient business activities, and generated revenue, to provide work for six employees at 40 hours per week, for a residence based business, that appears to be largely a mailing of literature operation, with what appears to be irregularly scheduled offsite seminars.
- That the business has operated at the same level of employees for the prior twelve years and three months.

There does not appear to be a sufficient nexus between the assumptions made and the conclusions drawn.

There appears to be no evidentiary documentation, such as bank records, or other evidence, to support that the business generated revenues sufficient to support six full time employees for a span of twelve years.

There appears to be no evidence to support that there were any employees.

The assumptions made by Collection personnel do not appear to be supported by evidence.

Compliance appears to have little, or no evidence to support the assumptions made. The Government's case is almost completely based on the observation of six cars parked in front of your residence at a given time on one day, to support tax assessments of in excess of \$700,000 over a span of twelve years.

Compliance acted prematurely in causing the Returns to be assessed, and filing a Notice of Federal Tax Lien, by not providing you the opportunity to take the matter to the

IRS Office of Appeals prior to making the assessments, and filing the Notice of Federal Tax Lien.

The tax assessments should be abated and the Notice of Federal Tax Lien should be withdrawn.

- **Challenges to the appropriateness of the collection actions**

On Form 12153, you stated "I'm challenging the IRS' evidence, procedures, and the tax liability for all taxes and tax periods in question."

- **Collection Alternatives considered**

On Form 12153, you stated "I'm challenging the IRS' evidence, procedures, and the tax liability for all taxes and tax periods in question."

You requested that the Notice of Federal Tax Lien be withdrawn. No other alternatives to the filing of the Notice of Federal Tax Lien were proposed.

No Collection alternatives were proposed. You stated that you do not wish to have collection alternatives considered.

3. Balancing of need for efficient collection with taxpayer concern that the collection action be no more intrusive than necessary

It is determined that abating the tax assessments and withdrawing the Notice of Federal Tax Lien appropriately balances the need for efficient collection of taxes with your concern that any collection action be no more intrusive than necessary.