

Internal Revenue Service  
Albuquerque Appeals

[REDACTED]

Date: MAY 27 2003

Phillip [REDACTED]

[REDACTED]  
[REDACTED]

Department of The Treasury

Person to Contact:

[REDACTED]

Contact Person ID#:

[REDACTED]

Telephone Numbers:

TEL [REDACTED]

FAX [REDACTED]

Refer Reply to:

AP:G:ALB:JM

Taxpayer Identification No.:

[REDACTED]

Tax Period(s) Ended:

December 31, 2000

In Re:

Due Process Appeal (Equivalent  
Hearing)

**DECISION LETTER**  
**CONCERNING EQUIVALENT HEARING UNDER SECTION 6320 and/or 6330 of the**  
**Internal Revenue Code**

Dear Mr. [REDACTED]

We have reviewed the proposed collection action for the period(s) shown above. This letter is our decision on your case. A summary of our decision is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

Your due process hearing request was not filed within the time prescribed under Section 6320 and/or 6330. However, you received a hearing equivalent to a due process hearing except that there is no right to dispute a decision by the Appeals Office in court under IRC Sections 6320 and/or 6330.

Your case will be returned to the originating IRS office for action consistent with the decision summarized below and described on the attached pages(s).

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

Our decision is that the Director of the Service Center was incorrect when he/she determined that the levy should be served.


Sincerely,



John C. LaCoke  
Appeals Team Manager

I don't waive my right to return to Appeals for another hearing if my circumstances change. I understand that I must first exhaust my administrative remedies before I request the hearing.

I don't give up any other administrative appeal rights I'm entitled to, such as appeal rights under the Collection Appeals Program (CAP).

  
\_\_\_\_\_  
Taxpayer Signature

5/12/03  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Spouse's Signature (If applicable)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Taxpayer's Authorized Representative (If Applicable)

\_\_\_\_\_  
Date

Summary Notice of Determination:

Appeals has verified whether applicable laws and administrative procedures have been met, has considered the issues raised, and has balanced the proposed collection action with the legitimate concerns that such action be no more intrusive than necessary as required by IRC Section 6330(c)(3). The determination of Appeals is:

***There is no valid assessment for the tax period ending December 31, 2000 because the return was submitted without signatures. Therefore, administrative procedures were not followed correctly and a levy should not have been served. The levy will be released and the assessed tax for the period ending December 31, 2000 will be abated.***

\_\_\_\_\_  
Team Manager, Office of Appeals

\_\_\_\_\_  
Date

**Attachment 3193:**

**Appeals Case Memorandum  
Collection Due Process  
(Equivalent Hearing)**

**The Issue:**

The taxpayer has requested a Collection Due Process Hearing under the provisions of **IRC §6330** in response to “Final Notice – Notice of Intent to Levy and Notice of Your Right to a Hearing.”

**Verification of Legal and Procedural Requirements:**

A review of the best information available including the Secretary’s computer records indicates that all legal requirements have not been met and all administrative procedures have not been followed. It appears the assessments have not been properly made and are incorrect. All required notices have been sent to the taxpayer including the Notice and Demand for the balance due as required by **IRC §6303** that was mailed to the taxpayer’s last known address. The Final Notice was mailed to the taxpayer by certified mail – return receipt requested on August 15, 2002. The request for a Collection Due Process Hearing was not timely when submitted on Form 12153 that was postmarked on December 30, 2002. Although the taxpayer’s request for a hearing was not timely, the taxpayer received an equivalent hearing without judicial recourse.

**Relevant Issues Raised by the Taxpayer and Discussion:**

The taxpayer states in his letter dated May 6, 2003, “in early 2002, my then wife Jackie Sierra and I were already separated and in the process of dissolving our marriage. Because of the marital turmoil we were undergoing, Jackie and I were unsure in what manner we should file a federal income tax return: jointly or married filing separately under New Mexico community property laws. We decided to have returns professionally prepared under both filing statuses, and to decide later which return(s) we would file.”

“As best I can determine, it appears the paid preparer (sic) erroneously mailed the draft joint return to the Service. Yet that draft joint return was not signed by either me or Jackie.”

The Service sent the taxpayers Letter 12C regarding the unsigned draft joint return and informed the taxpayers they would need to sign the Letter 12C agreeing to the assessment under penalties of perjury. The taxpayers did not sign Letter 12C.

**Balancing the need for the efficient collection of taxes with the legitimate concerns of the taxpayer that any collection action be no more intrusive than necessary:**

The Director of the Service Center sent all required notices to the taxpayer including the notice of intent to levy.

As requested by the taxpayer, a face-to-face conference was scheduled for March 18, 2003 at 9:00 A.M. I received a fax and a voice message from the taxpayer stating he was unable to meet on this date. I sent the taxpayer a letter of confirmation rescheduling the conference. A conference was held on April 14, 2003. The taxpayer requested the release of the continuous wage levy against his wages issued by the Service Center. The taxpayer indicated that the assessment should never have been made since there were no signatures on the return and therefore the levy was served erroneously.

*Per Treasury Regulation section 1.6013-1(a)(2) "A joint return of a husband and wife...shall be signed by both spouses."*

*Per IRC §6062. Failure to sign tax return.—The IRS properly determined that a husband's filing status was married filing separately because he and his wife did not file a valid joint return the tax year at issue. Although the IRS received a Form 1040 purporting to be the couple's joint return, the document was not a valid return because it was not signed by either spouse. The signature of the husbands' return preparer did not qualify as the signature of a duly authorized agent under Reg. §1.6061-1(A). Finally, since neither spouse signed the return, it did not qualify for the exception to the signature requirement that accepted joint returns signed by only one spouse so long as both spouses intend to file jointly."*

I spoke with an attorney in Area Counsel requesting an opinion. He agreed with my findings that the assessment was invalid and that the tax should be abated.

A review of the original tax return for the period ending December 31, 2000 clearly showed there were no signatures by the taxpayer(s). The transcript of the taxpayer's account indicates that the assessments were based on the unsigned return. The assessment was invalid and the outstanding balances cannot be collected. Therefore, the levy is also invalid and should be released.

**The collection action of a continuous wage levy was and is incorrect. It is the determination of the Appeals Office that the Director of the Service Center was not correct when he/she determined that a levy should be served because there was no valid assessment; therefore the levy should be released.**