

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

CC-2011-005

November 22, 2010

**Subject:** Considering Economic Hardship in  
Determining the Appropriateness of  
a Levy

**Cancel Date:** Upon incorporation  
into the CCDM

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## Purpose

In Vinatieri v. Commissioner, 133 T.C. No. 16 (2009), the Tax Court found that Appeals abused its discretion by upholding a proposed levy after the settlement officer concluded that the levy would create an economic hardship for the taxpayer. In light of the holding in Vinatieri, this Notice provides instructions regarding Tax Court Collection Due Process levy cases in which economic hardship is raised.

## Background

Section 6330 requires the Service (except in the situations described in section 6330(f)) to provide written notification of its intent to levy on any property or right to property of a taxpayer at least 30 days prior to the levy and to inform the taxpayer of the right to a CDP hearing with the Office of Appeals (the section 6330 notice). In a CDP hearing, the settlement or appeals officer conducting the hearing verifies that the requirements of applicable law and administrative procedure have been met, considers issues raised by the taxpayer, including challenges to the appropriateness of collection and offers of collection alternatives, and determines whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. Section 6330(c)(3). If the taxpayer disagrees with the final notice of determination issued by Appeals, the taxpayer has, in accordance with section 6330(d)(1), 30 days to appeal the determination to the Tax Court.

In Vinatieri, the Service sent a section 6330 notice to the taxpayer, and the taxpayer timely requested a CDP hearing. During the CDP hearing, the taxpayer provided financial information showing that her income did not exceed her allowable monthly expenses and her only asset was a 1996 Toyota Corolla. The settlement officer determined that any levy action would prevent the taxpayer from meeting necessary living expenses. The settlement officer also determined that the taxpayer met the criteria to have her account placed in Currently Not Collectible status but that she had not filed her 2005 and 2007 income tax returns. See IRM 5.16.1.2.9(8). Appeals issued a notice of determination upholding the levy and stating, "since unfiled returns exist, the

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