

SURVEY OF 2010 CDP CASES

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I. CHALLENGING THE UNDERLYING LIABILITY IN CDP

A. - Cannot Challenge Liability:

1. *Mueller v. Commissioner*, TC Memo 2010-10

Cannot challenge liability in CDP-lien hearing if received 90 day letter for 6020b return. (Frivolous argument: payment of taxes is voluntary.)(pro se)

2. *Westcott v. Commissioner*, TC Memo 2010-36

A CDP lien request did not consider the underlying liability because there was a prior levy CDP where TPH did not dispute the liability. TPW did not participate in the levy CDP but still had the “opportunity” to do so. TP could not require IRS to offset the 1998 income by the 1999 loss. IRS SJ Motion granted.

3. *Martinez v. Commissioner*, TC Memo 2010-181

IRS would not consider liability in CDP because TP failed to timely petition Tax Court after 90 day letter. Proof of petition filing was dubious. TP filed 656L, liability offer, rejected because equity in assets.

4. *Martinez v. Commissioner*, TC Memo 2010-1148

90 day letter returned unclaimed. TP said he was homeless. Can't dispute liability if 90 day letter delivered to PO Box and not picked up.

5. *US v. Michael*, 105 AFTR 2d 2786 (E.D. Mich. 2010)

IRS sued to enforce a settlement in Tax Court case. TP had filed CDP to correct the amount to the Tax Court settlement but did not pay. SJ for IRS to enforce amount of Tax Court judgment.

6. *Van Camp v. Commr.*, 106 AFTR 2d 5319(9th Cir. 2010)

TP cannot dispute liability if Tax Court stipulated decision. TP failed to raise whether the assessment was timely in the CDP hearing, therefore that issue was waived.

7. *Henry v. Commr.*, 106 AFTR 2d 7305 (7th Cir. 2010)

Tax Court has no jurisdiction to review an offset of a refund against a deficiency, can only review a levy.

8. *Emmed LLC v. Commr.*, TC Memo 2010-136

TP could not dispute liability because prior SJ for IRS on that issue. TP did not propose collection alternatives.

B. YES- Dispute Liability in CDP

9. *Barnes v. Commissioner*, TC Memo 2010-30

Because the TP did not receive the 90 day letter even though it was “unclaimed”, since there was no proof that TP deliberately refused delivery, the court denied the IRS Motion for SJ and remanded to appeals to consider whether the assessment of the tax was appropriate. (The ASO denied a face to face hearing saying the TP was a “frivolous filer”, then sent the case to Indiana for a face to face hearing when the TP lived in KY. (Pro se)

10. *Blank v. Commissioner*, TC Summ. Op. 2010-10

IRS Motion for SJ denied because the IRS records did not support their allegation that there was a 90 day letter - only that assessment was made by exam, therefore the Court would look at the underlying liability. The Court severed the 2005 portion of the case because it was strictly a 90 day letter petition. (Pro se)

11. *Mason v. Commissioner*, 132 TC 34

The TP could dispute the underlying trust fund liability if he did not receive the 60 day letter and the Tax Court reviews the liability de novo.

12. *Barry v. Commissioner*, TC Memo 2010-57

The TP claimed that the corporation paid the employment taxes through the bankruptcy and that he did not receive the 60 day letter. The Court reviewed the

underlying liability and held that there was no proof that the trust fund portion had been paid. (Pro se)

13. *Selph v. Commissioner*, TC Summ. Op. 2010-20

The IRS issued a notice of determination without a face to face hearing because the ASO would not give the TP's additional time to provide information due to a tropical storm. The TP's disputed the FTF and FTP penalties based on reasonable cause - health issues. Held: Abate penalties for 2 years after health issues, but not 1 year prior to health issues. (Pro se)

14. *Ken Ryan, Inc. v. Commissioner*, T.C. Summ. Op. 2010-18

S-Corp disputed failure to deposit penalties in CDP based on reasonable cause because they relied on CPA who advised could issue annual paycheck to sole SH, with loans throughout year as long as duty to repay. Held; abate penalties for reasonable cause. De novo review.

15. *Service Employees Intl Union, 100 Oak St. Corp. v. US*, 2010 US App. LEXIS 5507 (9th Cir. 2010)

Labor union filed CDP protesting late filing penalties for information returns, claiming reasonable cause because the returns were prepared and signed but forgot to send. The case was dismissed by the Tax Court for lack of jurisdiction. The District Court said there was no reasonable cause but the reduced the penalties based on discretion. Held: the D. Ct. can't reduce penalties based on discretion - either all or nothing unless there is an accepted OIC.

16. *Medical Practice Solutions v. Commissioner*, TC Memo 2010-98

(Round three) Individual was liable for all employment taxes of single member LLC, and this time Appeals verified procedures followed: timely assessment, notice and demand, unpaid, notice of lien and levy.

17. *Bayse v. Commr.*, TC Summ Op 2010-118

IRS assessed tax while Tax Court case pending, the Court dismissed the CDP and held IRS liable for costs.

18. *Byk v. Commr.*, TC Summ Op 2010-37

CDP re: 941 taxes. IRS could not explain IRS transcript. The Court found the assessment invalid.

19. *Billum v. Commr.* , TC Memo 2010-280

Court found that the criminal plea tax amounts did not limit the civil liabilities. The Court reiterated that a nominee has no CDP rights, only CAP.

20. *535 Ramon Inc. v. Commr.*, 135 TC 17 (2010)

CA told the IRS that the TP had not paid FUTA, IRS assessed for the credit amount. TP could not prove that the payroll service got the tax and paid the IRS for this company.

21. *Independent Staffing Solutions v. Commr.* TC Memo 2010-102

Embezzlement does not relieve the company of payroll tax liability. (And TP had no facts or support for embezzlement.)

22. *Swanton v. Commr.*, TC Memo 2010-140

TP husband was allowed to dispute TF liability because notice was returned by post office. TP wife could not dispute liability because she failed to respond to first levy notice. TP husband lost on facts- can't rely on CPA.)

23. 2010 IRS NTPCCA 201040005

Can dispute underlying liability in CDP for carryback years.

II. GOOD, BAD AND WORSE

A. CDP and Statute of Limitations:

24. *US v. Ledford*, 2010 US Dist LEXIS 19547 (D. Ct. Colo. 2010)

The IRS sued to reduce the tax lien to judgment and foreclose, the TP claimed the statute of limitations had expired. Held: The CDP and appeal to Tax Court extended the statute of limitations, thus the US Motion for SJ was granted. (The TP had created a trust to hide assets and was indicted on conspiracy to defraud the IRS previously.)

25. *Faubion v. US*, 2010 US Dist LEXIS 2274 (D. Ct. AZ 2010)

The TP sued for a refund. The IRS had filed a nominee/transferee/alter ego lien and the TP requested CDP. Held: 2 year Statute of limitations had expired. Court used CDP as proof of knowledge by TP.

26. *Jordan v. Commissioner*, 2010 USTC LEXIS 1 (2010)

TP raised the statute of limitations as an argument in CDP. TP: H did not sign 900 waiver. The Court gave de novo review of liability question even though there was a prior audit. The Court further looked beyond the administrative record. Held: Even if the TPH signature was forged, the TP's entered into an IA based on the extention and cannot repudiate the waiver. The case was remanded to appeals to determine if there had been a 90 day letter and whether the underlying liability could be considered.

27. *Gonzalez v. Commissioner*, TC Memo 2010-8

TP claimed hardship in CDP levy proceeding. Held: IRS could levy because even though there may be hardship, the statute of limitations on collection was about to expire and there was available property which could be seized to satisfy the liability. (No payments on liability for 10 years, no proof that property was listed for sale - only for sale signs posted.

28. *US v. Kollman*, 2010 US Dist. LEXIS 19716 (D. Ct. Ore. 2010)

The IRS sued to reduce the tax lien to judgement. The TP claimed the statute of limitations had expired and that the tax was not correct because the IRS had disregarded the amended returns filed after 6020b returns. Held: CDP extended the statute of limitations during pendency plus 30 days, but the IRS must re-calculate the tax using the amended returns. (See also, *US v. Kosmas*, 2010 US Dist LEXIS 133292 (MD FL 2010) and *US v. Edelman*, 2010 US App. LEXIS 26043(10th Cir. 2010).

29. *US v. Wallace*, 105 AFTR 2d 2827 (S.D. OH 2010)

IRS filed suit to reduce lien to judgment (3 days before SOL). TP husband claimed innocent spouse but IRS denied because of 2 year rule, and did not petition Tax Court. District Court has no jurisdiction over innocent spouse unless refund claim and granted judgment for IRS.

30. *US v. Crossen*, 106 AFTR 2d 5829 (D. MA 2010)

In a suit to reduce the tax lien to judgment and foreclose, the Court granted the TP's motion for summary judgement on a portion of the taxes because the statute of limitations had expired due to the change in OIC suspensions of the statute. The Court also held that the wife's ½ of the property had priority over all other parties.

B. CDP and Offers in Compromise

31. *Rodriguez v. Government of Guam*, 2010 US Dist. LEXIS 9348 (D. Ct. Guam 2010)

TP filed an OIC with doubt as to liability. The Government issued a 90 day letter. TP filed a CDP and was denied relief because he had failed to protest the 90 day letter. The TP claimed the OIC was deemed accepted because it had not been rejected in the 2 year time frame. Held: Court denied the Government Motion for SJ because the OIC procedures were at issue, and the TP was allowed to name the director of tax of Guam in the suit. (2 year OIC rule)

32. *Fairlamb v. Commissioner*, TC Memo 2010-22

TP filed late returns after 6020b returns. TP filed CDP then submitted three OIC's, the third based on the number the ASO provided during the CDP, and with special circumstances - collection potential to age 70 rather than collection statute. Appeals manager rejected OIC, notice of determination: "TP can meet basic living expenses." Held: Inadequate reasons to reject OIC which AO had recommended - remand to Appeals. (Court: AO had no authority to disregard IRM that includes special circumstances of age, health, worklife, etc. There was no sound basis in fact or law for determination and cannot use TP bad history if OIC is based only on collectibility and not on ETA.) Court further denied IRS objection to use of exhibits and testimony as outside of administrative record because IRS did not submit certified copy of entire administrative record.

33. *Bartl v. Commissioner*, TC Memo 2010-43

Lien CDP with 2 OIC's submitted. TP claimed abuse of discretion because IRS rejected ETA OIC. Held: No abuse of discretion. Court analyzed ETA and the "undermine of public confidence" provision.

34. *Assured Source Inc. v. Commr.*, TC Memo 2010-243

OIC denied because unfiled returns and no 433B.

35. *Murphy v. Commr.*, TC Summ Op 2010-70

No OIC because equity in assets is greater than liability even though the company is not making profit, and IRS refused to remove the lien so the company could get liability insurance and surety bond. (See also, *Vela v. Commr.*, TC Memo 2010-100)

36. *West v. Commr.*, TC Memo 2010-250

TP did not get second bite at OIC which was rejected in levy CDP and then requested in lien CDP. Appeals did not even have to consider it.

37. *Ranuto v. Commr.*, TC Memo 2010-178

OIC rejected because unfiled return, IRS wanted non-TP wife's financials because house transferred from TP and history of non-compliance.

38. *Schropp v. Commr.*, TC Memo 2010-71

Attorney TP did not explain where his \$2 million in income over several years went and provided incomplete financials. OIC not considered by Appeals and OK for IRS not to make counteroffer.

39. *Caney v. Commr.*, TC Memo 2010-90

OK to use IRS national standards to evaluate OIC. Court found no impartiality even though IRS manager reviewing case had previously referred TP's attorney to OPM and attorney had referred manager to TIGTA.

40. *Philadelphia Housing Authority v. STA Painting Co.*,
2010 USDist LEXIS 134327 (E.D. PA 2010)

There is no judicial review for OIC except through CDP in Tax Court.

41. *Dalton v. Commr.*, 135 TC No. 20 (2010)

OIC was rejected because the IRS said there was a nominee issue. The court had jurisdiction over the nominee issue because of the rejected OIC in a CDP. The Court found abuse of discretion and no nominee. The property held in father's trust for the grandchildren could not be used to determine OIC, even though the TP lived there. (But see, *US v. Black*, 106 AFTR 2d 5419 (ED Wa. 2010) Nominee found in suit to reduce tax lien to judgment.)

C. CDP and Installment Agreements:

42. *Pearce v. Commissioner*, TC Memo 2010-56

The TP filed a levy CDP claiming that there was a pending installment agreement and the final notice was invalid. Held: there was no pending IA because the TP was not in compliance and the IA had been rejected, no appeal of the IA was filed. The notice of determination was upheld.

43. *Maselli v. Commissioner*, TC Memo 2010-19

The TP proposed an IA during the CDP hearing which was rejected because of inadequate information. ASO found property not listed on the 433 and gave a quick turnaround time for response and explanation. Held: no abuse of discretion because the ASO considered all the information submitted. Short turnaround time is ok. ASO just didn't want to help this TP.

44. *Coleman v. Commissioner*, TC Memo 2010-51

TP was pro se and got ASO that had been involved in prior case with TP. Case was transferred but TP failed to provide 433a. Held: no abuse of discretion when TP doesn't provide financials.

45. *Long v. Commissioner*, TC Memo 2010-7

TP filed levy CDP request with 433F requesting currently uncollectible. The ASO sent request for documents to wrong address. Case was remanded but TP failed to provide 433 and 2007 tax return. Held: no abuse of discretion if fail to provide information. (Practice note: is this malpractice because TP was represented?)

46. *Shaw v. Commr.*, TC Memo 2010-210

IRS rejected IA because the income was understated, expenses exceeded IRS standards and the TP has assets he could liquidate. (Income was \$58,000 per month)

47. *Taylor v. Commr.*, TC Memo 2010-213

OK to reject IA because no 433 and unfiled returns. (See also, *Mahlum v. Commr.*, TC Memo 2010-212, *Scherman v. Commr.*, TC Memo 2010-135, *Grabowski v. Commr.*, TC Summ Op 2010-81, *Pitts v. Commr.*, TC Memo 2010-101)

48. *Marascale v. Commr.*, TC Memo 2010-130

TP offered IA over 10 years. IRS rejected, wanted \$7700 per month for 4 years. Disposable income was \$12,600 per month. Court was puzzled that TP objected to IRS standards when the amount was almost the same as TP's.

D. CDP - Other

49. *Kanofsky v. Commissioner*, TC Memo 2010-46

TP challenged the tax and lost, appealed Tax Court decision. IRS issued Final Notice, TP filed CDP claiming the notice was invalid during the appeal of the Tax Court case. Held: IRC Section 7485(a)(1) provides that assessment is not stayed during appeal unless TP files a bond. TP failed to provide 433 and did not file overdue tax returns, notice of determination upheld. (Pro se)

50. *Mantell v. Commissioner*, TC Summ. Op. 2010-28

TP filed CDP for 2005 because IRS continually misapplied estimated tax payments to fiscal year TP. IRS applied payments to CDP year and abated penalties so that the CDP year was paid then the CDP was moot and there was no jurisdiction to challenge the misapplied payments in the other years.

51. *Roberts v. Commissioner*, T.C. Summ. Op 2010-21

TP filed an untimely levy CDP but lien notice was not sent to last known address. Court told TP to object to lien notice based on last known address. Held: levy CDP dismissed because not filed within 30 days of notice. Lien CDP was dismissed because notice was invalid and Reg. 301.6320-1(a)(2) requires IRS to issue a substitute and allow TP new opportunity for hearing.

52. *Hotchkiss v. Commissioner*, TC Memo 2010-32

TP dentist was a non-filer with 6020b returns for 93-96, filed 97-99 but didn't pay. Filed lien and levy CDP with OIC, 433A and B. AO saw TP was convicted of failure to file and evasion with nominee lien on ex-wife and CALLED CID AGENT. TP: ex-parte communication. Held: Not impermissible ex-parte communication because it was merely ministerial as the CID agent requested the financials to be faxed to him and they didn't discuss the substance of the case. (Do you believe it?) The Court did not question the fact that it was the AO that initiated the contact - not the CID agent.

53. *Rogers v. Commissioner*, TC Summ. Op 2010-13

TP requested innocent spouse relief in CDP hearing and IA. ASO denied relief. Held: Court looked at 6015(f) relief and determined that TPH was not entitled because only provision he satisfied was being divorced. Court gave TP 90 days to request an IA.

54. *Kaufman v. Commr.*, TC Memo 2010-89

CDP for lien and levy but TP husband died before hearing and his estate paid the tax. Widow wanted innocent spouse and refund. Court held that even if she was eligible for innocent spouse, there is no refund under 6015(b) and no refund under 6015(f) because she didn't pay the tax.

55. *Lantz v. Commr.*, 105 AFTR 2d 2780

Husband filed CDP, and checked the innocent spouse box, then died without pursuing it. The IRS denied the widow's claim for innocent spouse because it was filed beyond the 2 year rule. The 7th Circuit overruled the Tax Court and accepted the IRS 2 year rule even though it was not in the statute.

56. *Iljazi v. Commr.*, TC Summ Op 2010-59

Under the small case provisions of the Tax Court, innocent spouse relief was granted because the Court does not acknowledge the IRS's 2 year rule. The court did not allow the IRS to re-classify the case so that it could be appealed because the TP is the only one that can elect small case treatment.

57. *Benistar Admin Services v. US*, 2010 US Dist LEXIS 130790

The TP filed a lien and levy CDP objecting to the filing of the lien before the hearing. The Court found no 5th amendment violation.

58. *Appleton v. Commr.*, TC Memo 2010-225

Court held it is ok to file a lien during a receivership, but cannot levy.

59. *US v. Beeman*, 106 AFTR 2d 5459 (3d Cir. 2010)

The IRS can pursue summons enforcement even though there is a CDP pending for one tax year. (The IRS also levied the pension for the non-CDP years.)

60. *US v. Diversified Test Technologies, Inc.* (ND NY 2010)

The IRS sued to reduce a lien to judgment on recent tax years. Also got a permanent injunction requiring the TP to make 941 deposits, file monthly affidavits, timely returns, pay timely, and not make any other payments to other creditors without withheld taxes being paid. (One angry revenue officer.)

61. *Humphries v. Commr.*, 106 AFTR 2d 5676 (S.D. Fla. 2010)

TP sued for preliminary injunction because IRS levied during CDP. IRS claimed CDP filed by power of attorney that was withdrawn, and thus invalid. IRS

agreed not to issue further levies, but would not require refund of levied funds. No preliminary injunction.

62. *Brunwasser v. Commr.*, 2010US Dist LEXIS 55846 (WD Pa 2010)

OK for TP to ask for injunction while CDP pending. (Just not this case.)

63. *Huntington National Bank v. US*, 105 AFTR 2d 1816 (ND Oh 2010)

IRS levied on insurance and stock held by bank. The Court granted the preliminary injunction because the bank would suffer irreparable harm if the stock were liquidated or the insurance cashed out. The bank could wait to collect the death benefit, or re-invest for higher return. Bank had perfected security interest because they had control and assignment of insurance.

64. *Tucker v. Commr.*, 135 TC 6 (2010)

The Court denied the TP request for remand after he lost CDP case based on the fact that appeals are not Article III appointees.

65. *Sher v. Commr.*, 105 AFTR 2d 2952 (2nd Cir. 2010)

TP did not dispute liability in CDP. Court reviewed for abuse of discretion and determined that misapplication of payment is not disputed liability and not abuse of discretion.

66. *Pratt v. Commr.*, 106 AFTR 2d 7172 (N.D. Ok. 2010)

TP sued re: levy on payroll and requested to proceed “in forma pauperis”. Court dismissed for lack of jurisdiction because CDP is only judicial approach to levy.

67. *Anson v. Commr.*, TC Memo 2010-119

Untimely CDP was dismissed for lack of jurisdiction because CDP sent to last known address. TP failed to prove filed change of address with post office which would have been sufficient.

68. *McKenna v. Commr.*, TC Summ Op 2010-58

CDP objection to penalties. No abatement even though mentally ill alcoholic in charge of family finances who hid IRS notices under the couch. Held not reasonable cause to abate penalties. (See also, *Johnson-Thomas v. Commr.*, TC

Summ Op 2010-43 (no interest abatement in CDP because no IRS delays.); *McNair Eye Center, Inc. v. Commr.*, TC Memo 2010-81.)

69. *Marlow v. Commr.*, TC Memo 2010-113

IRS could not find admin file or signed waiver of assessment. TP testified that they never signed during audit. The Court held the assessment invalid and that appeals abused their discretion without having the records to verify the assessment.

70. Announcement 2011-6: The IRS is testing mediation and arbitration for OIC's and TF but not CDP's.

71. Announcement 2011-5 - The IRS will not include collection disputes in Fast Track Settlements for SB/SE.

III. Bankruptcy Issues.

72. *Ament v. Commissioner*, TC Memo 2010-28

TP protested TF taxes while corporation was in bankruptcy. IRS agreed not to take collection action while plan payments were being made. IRS filed lien and TP filed CDP asking TF to be abated and lien withdrawn, even though plan payments not current. ASO withdrew lien but would not abate TF. Held: affirmed notice of determination.

73. *In re Cassara*, 2010 Bankr. LEXIS 776 (Bankr. E.D. La. 2010)

TP filed late returns, OIC, CDP and request for penalty abatement. Eventually withdrew CDP request and filed bankruptcy on October 13, 2005 before the new law. TP schedule IRS debt, but failed to list IRS on mailing matrix. US atty was noticed per local rules, but not IRS. Held: Tax was not discharged because IRS had no notice and bankruptcy estate assets had been disbursed to other creditors. Disgorgement would be prejudicial to IRS and other creditors. (?malpractice?) (Under old law, only OIC during 240 days suspends time from for bankruptcy.)

74. *Abir v. US*, 2010 Bankr LEXIS 377 (Bankr. E.D. NY 2010)

TP's filed returns for 2000 through 2004 during 2005. TP's filed CDP in July 2005 and withdrew it in June 2007. TP's filed joint Chapter 11 bankruptcy March 7, 2006 which was dismissed November 2006. An involuntary Chapter 11

against TPH was filed on September 12, 2007 and dismissed in December 2007. And finally a joint involuntary Chapter 7 was filed on February 4, 2008. IRS: not discharged because of 3 year rule, and willful evasion. Held: No discharge for TPH - 3 year rule suspended during CDP and 2 prior bankruptcies. No discharge for TPW - 3 year rule and 240 day rule. (?malpractice?) This case is governed by new bankruptcy law extensions.

75. *Wadleigh v. Commr.*, 134 TC 14 (2010)

The IRS filed a tax lien against the wrong year, which the IRS withdrew. TP filed bankruptcy and listed his pension as exempt to the extent it was included in the bankruptcy estate but contended it was “excluded” under 541(c)(2). IRS levied the pension even though TP was not yet collecting it. In a CDP, the IRS included the income from the pension even after TP’ retirement date. The Court held that the secret unfiled lien attached to the excluded pension and that Appeals cannot assume that the TP will continue to work after retirement in determining the collection potential.

76. *Gross v. Commr.*, TC Memo 2010-176

Because the TP excluded the pension in the bankruptcy, the secret lien attached and the fact that the IRS did not object to the exemption is not relevant.

77. *Becker v. Commr.*, TC Memo 2010-120

TP CPA filed Ch 11 before 1995. Continued to operate practice during the bankruptcy. TP filed 1040's, not 1041's, reporting all the income, but not paying. The IRS did not file Admin claim and plan was confirmed. The court held that only the income from the DR’s services would be non-dischargeable. All other income from the business would be a discharged administrative expense.

78. *Johnson v. Commr.*, TC Summ Op 2010-69

Post Chapter 13 tax is not discharged in the bankruptcy. The DR could not dispute the tax in a CDP because he had an opportunity to dispute it in the second bankruptcy.

79. *Leathley v. Commr.*, TC Memo 2010-194

The TP tried to argue in a CDP that bankruptcy discharged penalties and interest on non-dischargeable late-filed returns. The Court held that the penalties not the interest were discharged.

80. *Colvin v. Commr.*, TC Memo 2010-235

Unassessed tax is not discharged in a bankruptcy.

81. *Bryant v. Commr.*, 106 AFTR 2d 6735 (6th Cir. 2010)

Overpayment of tax for year of bankruptcy is allocated to pre and post bankruptcy. The TP cannot designate the application because it is not a voluntary payment.

82. *US v. Hudson*, 106 AFTR 2d 7017 (2nd Cir. 2010)

An attorney appearing pro se cannot recover attorney's fees because they are not paid or incurred.

83. *In re Thain*, 106 AFTR 2d 5677 (Bankr. D. Id 2010)

Although the IRS violated the stay, the DR did not get Section 7433 damages because he did not exhaust administrative remedies by filing a written claim with Special Procedures describing the violation and injuries.

84. *Rae v. US*, 436 BR 266 (Bankr. D. CT. 2010)

TP sued in bankruptcy court for "priceless damages". The court declined to determine the tax because it was a no asset Chapter 7 and the TP did not file a CDP to exhaust his administrative remedies.

85. *Acker v. US*, 106 AFTR 2d 6495 (Bankr. E.D. Tx 2010)

The IRS filed an adversary proceeding to determine that the taxes were not discharged because of evasion to pay. The TP lived an opulent lifestyle, filed multiple bankruptcies, OIC's, refused to testify under oath, put assets in his mother's name and lied on his 433A. The Court found this was willful evasion to pay.

IV. Delay in CDP (No face to face CDP's if unfiled returns or frivolous arguments)

86. *Holmes v. Commissioner*, TC Memo 2010-50

TP contested the tax liability in Tax Court and received a Section 6673 penalty. Filed CDP with frivolous arguments, ASO explained potential penalty. Held: \$10,000 Section 6673 penalty. (Third such penalty for TP.) (Pro se)

87. *Sams v. Commissioner*, TC Summ. Op. 2010-32

TP filed CDP request asking for credit from late filed returns. Held: Court cannot consider liability if prior opportunity, even if Appeals does. No credit because of statute of limitations and appeals determination of currently uncollectible upheld. (Pro se).

88. *Turner v. Commissioner*, TC Memo 2010-44

TP filed CDP lien request with protestor arguments. Held: IRS Motion for SJ granted. TP not entitled to face to face if no meritorious issues. Court threatened 6673 penalties.

89. *Constantine v. Commissioner*, TC Summ. Op. 2010-24

TP filed CDP levy request but did not provide financials or participate in telephone hearing. Notice of determination warned of penalties. IRS moved for remand for face to face hearing, where TP made frivolous arguments and did not provide financials, but requested currently uncollectible. After second determination letter, TP filed late returns with OIC and 433. Held: Motion for SJ granted, but no penalties because TP reformed. (Pro se)

90. *Precourt v. Commissioner*, TC Memo 2010-24

TP filed 8 Tax Court cases (both 90 day letter and CDP) and 3 District Court cases for which he did not appear at 5 and had no evidence at others. Held: Prior penalties under 6673 - \$22500. This case dismissed with \$25,000 6673 penalty. (Pro se).

91. *Doose v. Commissioner*, TC Memo 2010-18

TP filed CDP claiming the levy was illegal. He deducted the levied amounts for prior taxes from income on current return. Held: TP arguments have no merit, notice of determination was upheld.

92. *Hebert v. Commissioner*, TC Memo 2010-14

CDP with frivolous arguments does not get face to face hearing. Court warned of 6673 penalty.

93. *Bennet-Bey v. Commissioner*, 2010 US Dist. LEXIS 8867 (D. Ct. D.C. 2010)

TP appealed CDP in District Court claiming that he is exempt from tax because he is Moorish. Held: Dismiss for lack of subject matter jurisdiction, failure to state a claim, and no jurisdiction for CDP in District Court.

94. *US v. Springer*, 2010 US Dist. LEXIS 18802 (N.D. Ok. 2010)

IRS sued to reduce tax lien to judgment and foreclose alter ego/nominee. This taxpayer filed CDP, appealed to D. Ct., got dismissed, appealed to S. Ct. then filed second CDP, appealed in Tax Court, then claimed statute of limitations expired in this case. Held: tax liens valid because of CDP tolling, ok to foreclose nominee lien.

95. *Pollinger v. IRS Oversight Board*, 2010 US App LEXIS 966 (11th Cir. 2010)

The District Court judgment was vacated because there was no jurisdiction. The case was remanded to dismiss for lack of jurisdictions. Even though the TP made frivolous arguments there were no sanctions because he was pro se.

96. *Blaga v. Commr.*, TC Memo 2010-170

TP filed a frivolous amended return requesting refunds. IRS assessed 6702 penalty which was sustained in a CDP hearing.

97. *Barrington v. US*, 2010 US App LEXIS 24760 (D.C. Cir. 2010)

The Tax Court imposed sanctions because the TP disputed the taxes in a CDP after a 90 day letter.

98. *Oropeza v. Commr.*, 106 AFTR 2d 6908 (9th Cir. 2010)

Tax Court imposed \$10,000 sanction for frivolous arguments which was upheld by the 9th Circuit.

99. *Lindberg v. Commr.*, TC Memo 2010-67

The IRS imposed a frivolous return penalty under 6702 and asked for sanctions under 6673 for frivolous arguments. Both were upheld on Summary Judgment.

100. *US v. Boyd*, 105 AFTR 2d 2397 (10th Cir. 2010)

The Tax Court imposed a sanction for delay which was affirmed by the 10th Circuit for a tax protestor who was denied a face to face CDP, and criminally convicted for false returns and false refunds.

101. *Tinnerman v. Commr.*, TC Memo 2010-150

IRS assessed a frivolous return penalty which was appealed to the District Court and lost. The IRS then assessed a fraudulent failure to file penalty for later

years and a \$10,000 6673 penalty. The IRS then requested a 6673 penalty to be asserted against the attorney that argued the CDP case. The Court declined but warned the attorney of the impact of Rule 3.1 of Model Rules of Professional Conduct.