



INDEPENDENT OFFICE
OF APPEALS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

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Expiration Date: 7/3/2026

Affected IRMs:

8.22.5

8.22.9

MEMORANDUM FOR: Director, Collection Appeals
Director, APS Collection

FROM: Patrick E. McGuire /s/ *Patrick E. McGuire*
Acting Director, Case and Operations Support

SUBJECT: Equitable Tolling in CDP

This memorandum provides guidance on consideration of equitable tolling and its effect on the timeliness of Collection Due Process (CDP) cases in the IRS Independent Office of Appeals (Appeals) until affected IRMs are published. Please ensure that this information is distributed to all impacted employees within your organization.

Purpose: To provide guidance regarding equitable tolling in relation to the timeliness of a request for a CDP hearing.

Background/Source(s) of Authority:

In *Boechler v. Commissioner* (596 U.S. 199 (2022)), the Supreme Court held that equitable tolling applies to the deadline for filing a petition for review of a CDP notice of determination. In *Organic Cannabis Foundation v. Commissioner* (161 T.C. No. 4 (2023)), the Tax Court held that the deadline for requesting a CDP hearing also is subject to equitable tolling, and that Appeals should determine whether equitable tolling is warranted in a particular case.

Procedural Change: Settlement Officers will consider equitable tolling criteria if the taxpayer raises the issue at any time during the hearing process. If the issue was raised in the CDP request, consideration of equitable tolling will become part of initial case review.

Effect on Other Documents: This guidance will be incorporated into the affected IRMs within two years from the date of this memo.

Effective Date: This guidance is effective as of the date of this memorandum.

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment(s):

Revisions to Appeals IRMs

cc: www.irs.gov

Revisions to the Appeals IRM:

8.22.5.3.2 (MM-DD-YYYY)

Equitable Tolling

(1) Equitable tolling pauses the running of, or “tolls,” a statutory period in cases where taxpayers pursued their rights diligently, but some extraordinary circumstance that was beyond their control prevented compliance with the statutory period. The 30-day deadline to request a timely CDP hearing and the one-year deadline to request an EH are subject to equitable tolling based on facts and circumstances of the case. This means a CDP request submitted after the 30-day deadline could be considered a timely request and a request for hearing submitted after the one-year deadline could be considered timely for an EH, if warranted. Taxpayers may raise tolling as an issue in the CDP request or at any time during the hearing process.

NOTE: Taxpayers are not required to specify the term “equitable tolling.” Any reasons given to support the CDP request being considered timely or that the request should be entitled to judicial review constitutes raising equitable tolling.

- (2) To be entitled to equitable tolling the taxpayer must prove both diligence and extraordinary circumstances.
- a. Diligence covers affairs within the taxpayer’s control.
 - b. Circumstances that caused the delay must be both extraordinary and beyond the taxpayer’s control.

NOTE: The Supreme Court has described the high bar required for equitable tolling, saying that equitable tolling should be applied only sparingly and not to cases involving a garden variety claim of excusable neglect.

- (3) Diligence must be proven with specific facts on a case-by-case basis, rather than by a conclusory assertion that the taxpayer acted diligently. Taxpayers cannot merely state they acted diligently or were diligent as a consequence of job title, such as a corporate officer.
- (4) Equitable tolling does not depend on missing a deadline by a set amount of time or number of days. The reason for missing the deadline must demonstrate the taxpayer was diligent and the circumstances were extraordinary and beyond the taxpayer’s control.
- (5) Courts have recognized that certain reasons, by themselves, do not justify the application of equitable tolling. For example:
- Filing as a pro se person (self-represented individual)
 - Confusion or misunderstanding about the law
 - Barely missing a filing deadline

EXAMPLE: Collection received the CDP request five days after the due date, but the postmark shows it was mailed only one day late. Unless taxpayers can show specific facts that extraordinary circumstances beyond their control prevented timely filing,

missing the deadline by a short amount of days, by itself, does not merit equitable tolling.

EXAMPLE: A taxpayer argues equitable tolling should apply to a CDP request that was several months late based on mental incapacity. The taxpayer was diagnosed with paranoid schizophrenia. A psychiatrist described the illness as crippling and exceedingly disorienting, noting the taxpayer was not getting help due to being severely impaired and paranoid. Tolling may be warranted if the taxpayer's mental condition limited the ability to reason and function in society to the point of being unable to make a timely hearing request.

EXAMPLE: The reason given for submitting a late CDP request was that the taxpayer simply couldn't get it filed on time. Equitable tolling is not warranted based solely on a conclusory assertion that the taxpayer couldn't file on time.

(6) Equitable tolling is not available in common situations. For example, courts have found that equitable tolling is not warranted where the person who missed the statutory deadline:

- (a) did not notify the agency of a change in address,
- (b) was not diligent in checking the mail,
- (c) could have filed on time,
- (d) did not understand the law, or
- (e) was represented by an attorney who made a mistake.

(7) If uncertainty remains after consulting the ATM and, if necessary, Area Technical Advisor, settlement officers may obtain legal advice from the Office of Chief Counsel to determine if equitable tolling applies to a particular situation. See Rev. Proc. 2012-18 §§ 2.02(3), (10).

8.22.5.3.2.1 (MM-DD-YYYY)

If Equitable Tolling Criteria are Not Met

- (1) If equitable tolling criteria are not met for the CDP deadline and you determine the taxpayer is entitled to an Equivalent Hearing (EH), continue with the EH. Clearly document how you reached this decision in the Case Activity Record (CAR). See IRM 8.22.9.6.6 on addressing this issue in the ACM. See IRM 8.22.5.3.1.2 if the taxpayer's request for a CDP hearing is untimely and the taxpayer did not request an EH.
- (2) If equitable tolling criteria are not met for an EH and there are no tax periods eligible for an EH, then you will convert the EH to a CDPTD and follow procedures in IRM 8.22.5.9.

8.22.5.3.2.2 (MM-DD-YYYY)

If Equitable Tolling Criteria are Met

- (1) If equitable tolling criteria are met for a timely request for a CDP hearing, then update the case summary card:
 - Remove feature code EH, if present

- Update statute code to SUSP
- Remove statute date
- Request APS input TC520 using the date of submission
- Enter 'ET' in the LOC7 field

(2) If equitable tolling criteria are met for an EH, but not a timely CDP, then update the case summary card:

- Add feature code EH, if not already present
- Update statute code to CSED
- Add correct statute date
- Request APS remove TC520 cc76/77, if present, and input TC971 AC278 using the date of submission.
- Enter 'ET' in the LOC7 field.

8.22.5.3.3 (previously 8.22.5.3.2) (MM-DD-YYYY)

Documentation Requirements - CDP Statute Controls and Verifications

This IRM and subsequent sections will be renumbered.

8.22.5.9 (MM-DD-YYYY)

Collection Due Process Timeliness Determinations (CDPTD)

(5) If a taxpayer raises the issue of equitable tolling in the CDP request, work with your manager to reassign it to a Settlement Officer.

NOTE: Taxpayers are not required to specify the term “equitable tolling.” Any reasons given to support the CDP request being considered timely or that the request should be entitled to judicial review constitutes raising equitable tolling.

(6) Renumbered from prior (5).

(7) Renumbered from prior (6).

(8) Removed.

(9) Removed.

8.22.9.5.5 (MM-DD-YYYY)

EH Decision Letter

(3) If the taxpayer never raised timeliness of the hearing request as an issue and did not argue that the EH should be treated as a timely request for a CDP hearing, document this in the Decision Letter and your Case Activity Record (CAR).

(4) Renumbered from prior (3). Subsequent paragraphs will be renumbered.

8.22.9.6.6 (MM-DD-YYYY)

Issues Raised

(1) Add to table:

If the issue is...	Then discuss...
Challenges to the timeliness of the CDP/EH request	Any evidence that BOTH equitable tolling criteria are or are not met: <ul style="list-style-type: none"> • Diligence. Taxpayers must provide specific facts that they acted diligently. Taxpayers must show

	<p>that they pursued their rights with reasonable diligence throughout the period of extraordinary circumstances. Maximum feasible diligence is not required.</p> <ul style="list-style-type: none"> • Extraordinary Circumstances. The taxpayer must demonstrate the circumstances that caused untimely submission were both extraordinary and beyond their control.
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8.22.9.15.1 (MM-DD-YYYY)

Deadline to Petition Tax Court

(5) Taxpayers who received a hearing equivalent to a CDP hearing and dispute Appeals' determination that their request for a CDP hearing was untimely may petition the Tax Court for consideration of timeliness based on equitable tolling.

8.22.9.16.1 (MM-DD-YYYY)

Receipt of Remand and Supplemental Hearing

(7) If the case was remanded for a determination regarding equitable tolling of the deadline to request a CDP hearing, address the issue by following IRM 8.22.5.3.2.

(8) Renumbered from prior (7). Subsequent subsections will be renumbered.