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NOTES

DON'T TREAT ME LIKE THAT: WHY TAXPAYERS WITH CANADIAN TAX LIABILITIES BEING COLLECTED BY THE IRS SHOULD BE ENTITLED TO CDP HEARINGS

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INTRODUCTION

The Internal Revenue Service (IRS) is not immune from making mistakes during the collection process. For instance, the Treasury Inspector General for Tax Administration (TIGTA) identified over 11,000 collection due process (CDP) violations in issuing levies for the period July 1, 2021, through June 30, 2022, including over 10,000 violations where a levy was erroneously issued while a CDP hearing was pending.¹ As a result of these violations, the IRS received over \$4 million in erroneous levy payments.² Similarly, TIGTA found 200 potential taxpayers in federally declared disaster zones who received erroneous notices or demands for payment, including seven taxpayers who had a notice of federal tax lien (NFTL) filed against them while they were in the

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1. TREASURY INSPECTOR GEN. FOR TAX ADMIN., FISCAL YEAR 2023 STATUTORY REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN ISSUING LEVIES 4 (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/202330066fr.pdf> [<https://perma.cc/PP9R-D3US>] [hereinafter 2023 REPORT ON COMPLIANCE WITH LEVIES]. *See also* TREASURY INSPECTOR GEN. FOR TAX ADMIN., FISCAL YEAR 2024 STATUTORY REVIEW OF COMPLIANCE WITH LEGAL GUIDELINES WHEN ISSUING LEVIES 5 (2024), <https://www.tigta.gov/sites/default/files/reports/2024-09/2024300056fr.pdf> [<https://perma.cc/7WKF-AG9Z>] [hereinafter 2024 REPORT ON COMPLIANCE WITH LEVIES] (finding 213 CDP violations in issuing levies during the period July 1, 2022, through June 30, 2023).

2. 2023 REPORT ON COMPLIANCE WITH LEVIES, *supra* note 1, at 6, 10–12. *See also* 2024 REPORT ON COMPLIANCE WITH LEVIES, *supra* note 1, at 7, 8, 11 (finding almost \$500,000 in erroneous levy payments received by the IRS during the period July 1, 2022, through June 30, 2023).

Hurricane Ian disaster area.³ As the TIGTA noted, an NFTL “places undue burden and stress on a taxpayer that has recently been affected by a hurricane.”⁴

Even though the CDP process itself is not immune from mistakes, CDP hearings still serve as an important bulwark against improper IRS collection actions.⁵ The CDP statutes were created to increase fairness to taxpayers and provide statutory due process rights to taxpayers facing collection actions by the IRS.⁶ Under the statutes, taxpayers ordinarily have the right to a hearing where they can raise issues, such as the appropriateness of the IRS collection action or collection alternatives.⁷

However, in August 2024, in a seven-to-six decision, the United States Tax Court held that taxpayers with Canadian tax liabilities do not have the right to a CDP hearing.⁸ Under the Convention Between the United States of America and Canada with Respect to Taxes on Income and on Capital (the Treaty), revenue agencies of both nations are authorized to collect revenue claims on the other’s behalf.⁹ Thus, the Canadian Revenue Agency (CRA) may send a mutual collection assistance request (MCAR) to the Internal Revenue Service (IRS).¹⁰ After the IRS collects the Canadian revenue claim, it will remit the amount collected to the CRA.¹¹ The IRS is to collect the Canadian revenue claim as though it were its own revenue claim “finally determined in accordance with the laws applicable to the collection of the requested State’s own taxes.”¹²

3. TREASURY INSPECTOR GEN. FOR TAX ADMIN., FISCAL YEAR 2024 STATUTORY REVIEW OF COMPLIANCE WITH NOTICE OF FEDERAL TAX LIEN FILING COLLECTION DUE PROCESS PROCEDURES 14 (2024), <https://www.tigta.gov/sites/default/files/reports/2024-08/2024300037fr.pdf> [<https://perma.cc/UY28-GBM6>].

4. *Id.*

5. NAT’L TAXPAYER ADVOC., ANNUAL REPORT TO CONGRESS 505 (2018), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1_MLI_05_AppealsCDP.pdf [<https://perma.cc/5GE3-WPVF>] [hereinafter 2018 REPORT TO CONGRESS]. See also Leslie Book, *Collection Due Process at Twenty-Five: A Still Important and Needed Check on IRS Collection Power*, 20 PITT. TAX REV. 145, 147 (2022) (noting that “CDP provides a needed systemic check on the IRS’s still broad collection powers”); Pippa Browde, *A Reflection on Tax Collecting: Opening a Can of Worms to Clean Up a Collection Due Process Jurisdictional Mess*, 65 DRAKE L. REV. 51, 64 (2016) (explaining how some scholars and policymakers argue that CDP provides “increased taxpayer protections against intrusive government collection actions”).

6. S. REP. NO. 105-174, at 67 (1998).

7. 26 U.S.C. §§ 6330(c)(2)(A), 6320(c).

8. *Ryckman v. Comm’r*, 163 T.C. 46, 59 (2024). The taxpayer, Ryckman, appealed the Tax Court’s decision to the Ninth Circuit. Notice of Appeal, *Ryckman v. Comm’r*, No. 24-7351 (9th Cir. Dec. 4, 2024). However, Ryckman later filed a motion to voluntarily dismiss the appeal, which the Ninth Circuit granted. Motion to Voluntarily Dismiss Appeal, *Ryckman*, No. 24-7351 (9th Cir. Feb. 10, 2025); Order, *Ryckman*, No. 24-7351 (9th Cir. Feb. 24, 2025).

9. Convention With Respect to Taxes on Income and Capital, Can.-U.S., art. XXVI A, Sep. 26, 1980, T.I.A.S. No. 11,087, as amended by the Protocols signed on June 14, 1983, T.I.A.S. No. 11,087 (Protocol 1), Mar. 28, 1984, T.I.A.S. No. 11,087 (Protocol 2), Mar. 17, 1995, T.I.A.S. No. 97-1216 (Protocol 3), July 29, 1997, T.I.A.S. No. 97-1216 (Protocol 4), and Sep. 21, 2007, T.I.A.S. No. 08-1215.2 (Protocol 5) [hereinafter Canada-U.S. Income Tax Convention].

10. *Id.* art. XXVI A(6).

11. *Id.*

12. *Id.* art. XXVI A(3).

The Tax Court concluded that the Treaty forecloses any right to a CDP hearing that is provided by statute.¹³ Specifically, the Tax Court held that “when the United States accepts a Canadian revenue claim, it must collect the revenue claim as it would a U.S. tax assessment for which the taxpayer’s administrative and judicial rights to restrain collection, *including* rights to a CDP hearing, have lapsed or been exhausted.”¹⁴ Thus, when the IRS filed an NFTL against the taxpayer, the Treaty precluded her from having a CDP hearing.¹⁵ The dissenting opinion, on the other hand, concluded that the taxpayer was entitled to a CDP hearing.¹⁶ The dissent reasoned that the Treaty may be harmonized with the CDP provisions, drawing “a distinction between the substance of the revenue claim underlying the request for assistance and the procedures by which the claim is to be collected.”¹⁷

This Note argues that the IRS violates taxpayers’ statutory due process rights when it collects Canadian tax liabilities without providing taxpayers with the opportunity for a CDP hearing. Part I provides an overview of the relevant Treaty and CDP statute provisions. Part II considers how the courts examine due process as it relates to the Treaty. Part III examines the legislative history of the CDP statutes. Part IV discusses case law on the CDP statutes. Part V argues that the Treaty may be read harmoniously with the CDP provisions, resulting in taxpayers with Canadian tax liabilities being entitled to CDP hearings. Finally, Part VI argues that the CDP provisions should control if they cannot be harmonized with the Treaty.

I. OVERVIEW OF THE RELEVANT AUTHORITIES

The issue of whether taxpayers with Canadian tax liabilities are entitled to CDP hearings is governed by two main authorities: the Treaty and the CDP statutes. This section will discuss the relevant portions of both.

A. *The United States-Canada Income Tax Treaty*

The Treaty was created in 1980 to address the interaction between the United States and Canada as it pertains to tax law.¹⁸ It replaced the existing income tax convention with Canada, first signed in 1942, which was the second oldest tax convention with the United States in force.¹⁹

In 1995, the Treaty was amended to enable the United States and Canada to collect revenue claims on each other’s behalf.²⁰ At the time, the only other U.S.

13. *Ryckman*, 163 T.C. at 59.

14. *Id.* at 58.

15. *Id.* at 59.

16. *Id.* at 76 (Urda, J., dissenting).

17. *Id.* at 72.

18. Canada-U.S. Income Tax Convention, *supra* note 9, at Letter of Submittal, at 2.

19. *Id.* at Letter to the President, at 3, para. 2.

20. *Id.* art. XXVI A.

treaties containing mutual collection assistance provisions were the treaties with the Netherlands, France, and Sweden.²¹ The addition of the mutual collection assistance provisions was a departure from existing U.S. treaty policy, as both the prior version of the Treaty and the U.S. model treaty lacked the collection assistance provision.²²

In considering whether to provide collection assistance to other nations, the Senate Committee of Foreign Relations found it important to evaluate “the substantive and procedural elements of the other government’s taxes, as well as an analysis of broader policy issues, such as the relative compatibility of the other government’s legal systems and individual protection with those of the United States.”²³ The Committee ultimately justified the added provisions “because of the special and unusually compatible relationship between the United States and Canada.”²⁴

The Treaty’s collection assistance provisions refer to the “applicant State,” which is the state requesting assistance in the collection of its revenue claim.²⁵ These provisions also refer to the “requested State,” which is the state that collects the revenue claim pursuant to the Treaty.²⁶ To request assistance in collecting a revenue claim, the applicant must certify that its revenue claim is “finally determined.”²⁷ In this context, the Treaty defines “finally determined” as “when the applicant State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.”²⁸

When the requested state accepts an MCAR, it is then to collect the revenue claim “as though such revenue claim were the requested State’s own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State’s own taxes.”²⁹ For example, when the United States accepts a revenue claim from Canada, “the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received.”³⁰ However, this provision is subject to the condition that “[a] revenue claim of an applicant State accepted for

21. S. EXEC. DOC. NO. 104-9, at 8 (1995); Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Neth.-U.S., art. XXX, Dec. 18, 1992, 2291 U.N.T.S. 3; Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, Fr.-U.S., art. 28, Aug. 31, 1994, 1963 U.N.T.S. 67 [hereinafter France-U.S. Income Tax Convention]; Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Swed.-U.S., art. 27, Sep. 1, 1994, T.I.A.S. 06-831 [hereinafter Sweden-U.S. Income Tax Convention].

22. S. EXEC. DOC. NO. 104-9, at 8.

23. *Id.* at 45.

24. *Id.*

25. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A.

26. *Id.*

27. *Id.* art. XXVI A(2).

28. *Id.*

29. *Id.* art. XXVI A(3).

30. *Id.* art. XXVI A(4).

collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.”³¹

The Treaty does not create or provide “any rights of administrative or judicial review of the applicant State’s finally determined revenue claim by the requested State, based on any such rights that may be available under the laws of either Contracting State.”³² Additionally, neither state is required “to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).”³³ Having given an overview of the United States-Canada Income Tax Treaty, the following subsection provides an overview of the relevant portions of the collection due process statutes.

B. Collection Due Process Statutes

The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) created the right to a CDP hearing.³⁴ Through the CDP statutes, Congress intended to provide taxpayers with protections similar to those that they would have in dealing with other types of creditors.³⁵ Generally, Congress intended for the CDP statutes to increase fairness for taxpayers.³⁶

The CDP hearing itself is an informal process that may be conducted in-person, by telephone, or by correspondence.³⁷ As an informal hearing, “[t]axpayers do not have the right to examine witnesses and cannot compel the production of documents or third parties, nor do they have an absolute right to demand a record of the proceedings.”³⁸ After the hearing, the taxpayer will be issued a written notice of determination.³⁹

Under IRC §§ 6320 and 6330, the CDP statutes, taxpayers are entitled to a fair hearing after the IRS issues either an NFTL or proposes a levy to collect a tax liability.⁴⁰ The hearing is held by the Independent Office of Appeals (Appeals) within the IRS.⁴¹ The taxpayer is entitled to only one CDP hearing per taxable period,⁴² and usually taxable periods last one year.⁴³

31. *Id.* art. XXVI A(7).

32. *Id.* art. XXVI A(5).

33. *Id.* art. XXVI A(10)(b).

34. Danshera Cords, *How Much Process is Due? I.R.C. Sections 6320 and 6330 Collection Due Process Hearings*, 29 VT. L. REV. 51, 53 (2004).

35. S. REP. NO. 105-174, at 67 (1998).

36. *Id.*

37. Book, *supra* note 5, at 158.

38. *Id.*

39. *Id.*

40. 26 U.S.C. §§ 6320(b), 6330(b).

41. 26 U.S.C. §§ 6320(b)(1), 6330(b)(1).

42. 26 U.S.C. §§ 6320(b)(2), 6330(b)(2).

43. Bryan T. Camp, *The Failure of Adversarial Process in the Administrative State*, 84 IND. L.J. 57, 59 (2009).

The Appeals officer is to obtain verification that “the requirements of any applicable law or administrative procedure have been met.”⁴⁴ At the CDP hearing, taxpayers may raise various issues including: “(i) appropriate spousal defenses; (ii) challenges to the appropriateness of collection actions; and (iii) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer-in-compromise.”⁴⁵ Taxpayers may also challenge “the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability.”⁴⁶

Before the Appeals officers make a determination, they are to consider whether the requirements of any applicable law or administrative procedure have been met, the issues the taxpayer raised at the hearing, and “whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be *no more intrusive than necessary*.”⁴⁷ After the IRS issues its decision, the taxpayer, within thirty days, may “petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter).”⁴⁸

Taxpayers are fully or partially sustained in sixty-eight percent of CDP appeals.⁴⁹ Taxpayers were successful in negotiating collection alternatives with the IRS in sixteen percent of CDP hearings.⁵⁰ Thus, CDP hearings serve an important role in allowing taxpayers to voice their concerns over IRS collection actions before collection transpires.⁵¹ When the United States collects a Canadian tax liability, it is to collect the liability under U.S. laws.⁵² Thus, taxpayers with Canadian tax liabilities and taxpayers with U.S. tax liabilities are both subject to the exact same collection procedures provided for by IRC §§ 6201 and 6301.⁵³ Without CDP hearings, taxpayers with Canadian tax liabilities are deprived of an important process that is useful in identifying and mitigating improper collection actions.⁵⁴

44. 26 U.S.C. §§ 6330(c)(1), 6320(c).

45. 26 U.S.C. §§ 6330(c)(2)(A), 6320(c).

46. 26 U.S.C. §§ 6330(c)(2)(B), 6320(c).

47. 26 U.S.C. §§ 6330(c)(3), 6320(c) (emphasis added).

48. 26 U.S.C. §§ 6330(d)(1), 6320(c).

49. NAT'L TAXPAYER ADVOC., ANNUAL REPORT TO CONGRESS 91 (2015), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_Most-Serious-Problems.pdf [<https://perma.cc/B5CA-DB8R>] [hereinafter 2015 ANNUAL REPORT TO CONGRESS].

50. U.S. GOV'T ACCOUNTABILITY OFF., GAO-07-112, LITTLE EVIDENCE OF PROCEDURAL ERRORS IN COLLECTION DUE PROCESS APPEAL CASES, BUT OPPORTUNITIES EXIST TO IMPROVE THE PROGRAM 3 (2006), <https://www.gao.gov/assets/gao-07-112.pdf> [<https://perma.cc/ULS9-8KLK>].

51. 2018 REPORT TO CONGRESS, *supra* note 5, at 505.

52. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(4).

53. *See generally* Ryckman v. Comm'r, 163 T.C. 46, 55 (2024).

54. 2018 REPORT TO CONGRESS, *supra* note 5, at 505; Book, *supra* note 5, at 177 (explaining that “CDP exposed an erroneous policy that would likely have continued unabated”); Steve R.

II. CASES INVOLVING THE TREATY AND DUE PROCESS

Although other cases involving the Treaty have found due process claims inapplicable,⁵⁵ those cases are distinguishable from *Ryckman v. Commissioner*. The United States Constitution sets forth a right to due process that applies in many circumstances, including as it pertains to taxes.⁵⁶ The Due Process Clause of the Fifth Amendment creates constitutional due process rights, and the CDP statutes provide their own statutory due process rights.⁵⁷ Specifically, the CDP statutes require notice after an NFTL is filed or before a levy is made and provide for the right to a fair hearing.⁵⁸ Because the CDP statutes provide their own independent basis for due process protections, it is possible to violate the CDP statutes without violating the Due Process Clause. By prohibiting CDP hearings for taxpayers with Canadian tax liabilities, the IRS is violating their statutory due process rights rather than their constitutional due process rights.

A. Cases Involving the Due Process Clause

The Fifth Amendment's Due Process Clause provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law."⁵⁹ From the Due Process Clause, courts have required procedural due process, which generally requires notice and the opportunity for a hearing, prior to the deprivation of a protected interest in certain circumstances.⁶⁰ However, the Supreme Court has long held that the United States has a right to "collect its internal revenue by summary administrative proceedings."⁶¹ Likewise, the Supreme Court has held that due process is not denied where only property rights are involved "if the opportunity given for the ultimate judicial determination of the liability is adequate."⁶² Money paid as taxes, as a property right, is subject to this condition.⁶³ The Supreme Court determined that the collection of revenue is an essential government need, justifying the delay of a

Johnson, *Reforming Federal Tax Litigation: An Agenda*, 41 FLA. ST. U. L. REV. 205, 267 (2013) (explaining that CDP hearings "act as a tripwire alerting the IRS to, and prodding it to correct, its breaches of tax collection rules"). *But see* Browde, *supra* note 5, at 64 (noting that "critics have claimed that CDP wastes government resources, is used by tax protestors as a tool to delay or impede tax administration, and is generally unwieldy and unworkable").

55. *Dewees v. United States*, 272 F. Supp. 3d 96, 102 (D.D.C. 2017); *Retfalvi v. United States*, 335 F. Supp. 3d 791, 801 (E.D.N.C. 2018), *aff'd*, 930 F.3d 600 (4th Cir. 2019).

56. *Phillips v. Comm'r*, 283 U.S. 589, 596–97 (1931).

57. 26 U.S.C. §§ 6320, 6330.

58. *Id.*

59. U.S. CONST. amend. V.

60. Leslie Book, *The Collection Due Process Rights: A Misstep or A Step in the Right Direction?*, 41 HOUS. L. REV. 1145, 1175 (2004).

61. *Phillips*, 283 U.S. at 595.

62. *Id.* at 596–97.

63. *Id.* at 597–98.

hearing.⁶⁴ Similarly, the Ninth Circuit has held that “[t]he prompt collection of taxes is necessary for the nation’s continued existence and is an important governmental interest that justifies postponing notice and an opportunity for a hearing.”⁶⁵

In *Deweese v. United States*, the IRS assessed a \$120,000 penalty against Dewees.⁶⁶ The CRA later notified Dewees that it was withholding his Canadian tax refund because of his tax liability owed to the IRS.⁶⁷ Dewees sent a check to the CRA in satisfaction of this tax liability and accrued interest.⁶⁸ He then filed a claim for refund in the United States, and his refund was then rejected.⁶⁹

Deweese subsequently filed suit in a United States District Court, arguing in part that the Treaty was unconstitutional for violating the Due Process Clause of the Fifth Amendment.⁷⁰ Dewees argued that “he was denied adequate due process because he had no opportunity to appeal his penalty ‘through administrative means or the U.S. Tax Court’ before it was collected.”⁷¹

The district court noted that “[m]ere postponement of an opportunity to challenge the imposition of a tax penalty ‘is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate.’”⁷² The court concluded that “[t]he ability to challenge tax penalties in *district courts* under § 1346(a)(1) fulfills the Fifth Amendment’s requirements.”⁷³ Thus, the Treaty did not violate the Fifth Amendment’s Due Process Clause.⁷⁴

In *Retfalvi v. United States*, Retfalvi was given notice of a tax assessment by the CRA.⁷⁵ He filed a timely administrative appeal with the CRA, which was denied.⁷⁶ In its denial, the CRA informed Retfalvi that he had ninety days to file an appeal with the Canadian Tax Court.⁷⁷ Retfalvi failed to do so, resulting in a final tax liability.⁷⁸ The CRA later sent a request to the IRS to collect the tax liability pursuant to the Treaty.⁷⁹ The IRS subsequently notified Retfalvi of its proposed levy.⁸⁰ Retfalvi requested a CDP hearing, which was denied by the IRS.⁸¹ Instead, the IRS informed Retfalvi that “he was entitled to a limited

64. *Id.* at 597.

65. *Stonecipher v. Bray*, 653 F.2d 398, 403 (9th Cir. 1981).

66. 272 F. Supp. 3d 96, 99 (D.D.C. 2017).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 99–100.

71. *Id.* at 102.

72. *Id.* at 101 (quoting *Phillips v. Comm’r*, 283 U.S. 589, 596–97 (1931)).

73. *Id.* at 102.

74. *Id.*

75. 930 F.3d 600, 604 (4th Cir. 2019).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 604–05.

hearing under the Collection Appeals Program.”⁸² However, the IRS denied the request for an appeal under the Collection Appeals Program (CAP) because the “Appeals Office does not have the authority to adjust a foreign tax liability.”⁸³

Retfalvi paid the tax liability, filed a claim for refund with the IRS, and filed suit in a United States District Court after the request for refund was denied.⁸⁴ He argued that the Treaty was unconstitutional because it violated his due process rights under the Fifth Amendment.⁸⁵ The district court noted that “[a] foreign judgment ‘cannot be enforced in a U.S. court unless it was obtained under a system with procedures compatible with the requirements of due process of law.’”⁸⁶ However, there is no requirement that “the foreign country’s procedures exactly conform with the procedures available in the United States.”⁸⁷

The court concluded that the Treaty did not deprive Retfalvi of his constitutional due process rights simply because Canada does not afford the exact same rights to administrative and judicial review as the CDP statute provides.⁸⁸ Retfalvi was entitled to appeal to the Canadian Tax Court.⁸⁹ The Due Process Clause does not mandate that taxpayers be provided with specific procedures or that the procedures of the foreign country mirror the procedures provided under U.S. law.⁹⁰ Therefore, the court held that the Treaty did not violate the Due Process Clause.⁹¹ Even though taxpayers with Canadian tax liabilities are not entitled to CDP hearings under the Due Process Clause, that does not necessarily mean that they are not entitled to CDP hearings altogether.

B. The Ryckman Case

In *Ryckman v. Commissioner*, the taxpayer did not argue that taxpayers with Canadian tax liabilities are entitled to CDP hearings based on the Due Process Clause.⁹² Instead, she argued that she was entitled to a CDP hearing based on the CDP statutes,⁹³ which independently require notice and provide the right to a fair hearing.⁹⁴

82. *Id.* at 605.

83. *Id.*

84. *Id.*

85. Retfalvi v. United States, 335 F. Supp. 3d 791, 795–96 (E.D.N.C. 2018), *aff’d*, 930 F.3d 600 (4th Cir. 2019).

86. *Id.* at 801 (quoting *Int’l Transactions, Ltd. v. Embotelladora Agral Regiomontana, SA de CV*, 347 F.3d 589, 594 (5th Cir. 2003)).

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. 163 T.C. 46 (2024).

93. *Id.* at 55.

94. 26 U.S.C. §§ 6330, 6320.

The CRA assessed approximately \$200,000 of tax liability to Ryckman.⁹⁵ In 2017, the CRA sent the IRS an MCAR pursuant to the Treaty.⁹⁶ The IRS accepted the MCAR and sent Ryckman a letter notifying her that an NFTL was filed against her.⁹⁷ In the letter, Ryckman was informed that she had “the right to a hearing to discuss collection options.”⁹⁸ The letter also stated that Ryckman did not have the right to a CDP hearing provided for by IRC § 6320(b).⁹⁹ Nonetheless, Ryckman requested a CDP hearing; she indicated that she was unable to pay the full balance of the NFTL and would like to pay the balance by installment agreement.¹⁰⁰ The IRS denied her request for the CDP hearing “[b]ecause the foreign tax liability is treated as a finally determined U.S. tax liability.”¹⁰¹

Ryckman then petitioned to the United States Tax Court, arguing that she was entitled to a CDP hearing.¹⁰² The majority focused on the Treaty provision which provides “that an accepted revenue claim ‘shall be collected by the requested State as though such revenue claim were the requested State’s own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State’s own taxes.’”¹⁰³ Using this provision, the majority concluded “that when the United States accepts a Canadian revenue claim, the claim must be treated as a U.S. tax assessment for which all rights to restrain collection have lapsed or been exhausted.”¹⁰⁴ The majority also determined that, because CDP hearings restrain collection, the Canadian revenue claim must be collected by the IRS “as though the taxpayer has exhausted all CDP rights.”¹⁰⁵ CDP hearings can restrain a collection action if, for instance, the taxpayer challenges the appropriateness of the collection action or offers collection alternatives.¹⁰⁶ The majority held that the Treaty “does not conflict with either CDP statute.”¹⁰⁷ The court considered the fact that a taxpayer’s right to a CDP hearing may be limited in certain circumstances.¹⁰⁸ Moreover, the majority considered the fact that neither CDP statute contains a provision stating that it applies notwithstanding any other law.¹⁰⁹ Thus, the court concluded that Ryckman was not entitled to the CDP hearing because she “had

95. *Ryckman*, 163 T.C. at 47.

96. *Id.*

97. *Id.* at 48.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 49.

103. *Id.* at 58.

104. *Id.*

105. *Id.* at 59.

106. 26 U.S.C. §§ 6330(c)(2)(A), 6320(c).

107. *Ryckman*, 163 T.C. at 61.

108. *Id.* at 61–62.

109. *Id.* at 62.

no additional administrative or judicial rights in the United States under the CDP statutes with respect to the NFTL.”¹¹⁰

The concurring opinion joined the majority opinion in full, writing separately to argue that the majority opinion faithfully interpreted the text of the Treaty.¹¹¹ Because the Treaty explicitly states that it does not create or provide any rights of administrative or judicial review, the concurring opinion reasoned that the majority opinion properly followed the plain text of the Treaty in prohibiting taxpayers with Canadian tax liabilities from CDP hearings.¹¹² The concurrence criticized the dissent’s interpretation of the Treaty as one that “would impermissibly expand the scope of the Treaty and create benefits unsupported by its plain text.”¹¹³

Like the majority, the dissent concluded that the CDP statutes could be read harmoniously with the Treaty.¹¹⁴ The dissent, however, reasoned that the substance of the revenue claim is determined by the law of the applicant country while the procedures by which the claim is collected are determined by the law of the requested country.¹¹⁵ Accordingly, the dissent determined that “the normal collection procedures of the requested state apply.”¹¹⁶ In the dissent’s view, taxpayers with Canadian tax liabilities are “entitled to the protections outlined in [the CDP statutes] before the IRS moves to collect by lien or levy.”¹¹⁷

The taxpayer’s argument in *Ryckman* was not based on the Due Process Clause, but on a statutory right created by the CDP statutes.¹¹⁸ In this way, the argument made in *Ryckman* is markedly different from those made in both *Deweese* and *Retfalvi*. Case law under the Due Process Clause holds that the government is justified in delaying notice and a hearing until after the deprivation of property for purposes of collecting tax.¹¹⁹ Congress, however, was unsatisfied with this case law and ultimately protected individual rights in the collection process.¹²⁰ The case law “overstate[d] the government’s interest in prompt payment of taxes.”¹²¹ The CDP statutes were created to provide protections in the collection process where the Due Process Clause did not.¹²² Therefore, the CDP statutes provide their own independent basis for their due process protections, completely separate from the Due Process Clause.

110. *Id.* at 64.

111. *Id.* at 64–65 (Jones, J., concurring).

112. *Id.* at 66–67.

113. *Id.* at 67.

114. *Id.* at 76 (Urda, J., dissenting).

115. *Id.* at 72.

116. *Id.* at 74.

117. *Id.* at 76.

118. *Id.* at 55 (majority opinion).

119. *Phillips v. Comm’r*, 283 U.S. 589, 597 (1931).

120. Book, *supra* note 60, at 1181.

121. *Id.*

122. *Id.*

III. THE LEGISLATIVE HISTORY OF THE CDP STATUTES SUPPORTS AFFORDING CDP HEARINGS TO TAXPAYERS WITH CANADIAN TAX LIABILITIES

When Congress was creating the CDP statutes, it set forth reasons for their enactment that are also relevant to taxpayers with Canadian tax liabilities. Therefore, the CDP statutes' legislative history supports affording CDP hearings to taxpayers with Canadian tax liabilities.

A. Legislative History of the CDP Statutes

The right to CDP hearings was first created by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98).¹²³ The Senate Finance Committee hearings preceding the enactment showcased great displeasure with how the IRS was operating.¹²⁴ Statutory reform, including the creation of the CDP hearings, resulted from these meetings.¹²⁵ Specifically, the reform was triggered by inflammatory testimony given during the hearings, which alleged abuse by the IRS in its collection activities.¹²⁶

For instance, the Chairman of the Senate Finance Committee, Senator William Roth, stated at one of the hearings that:

In some instances, the first time a taxpayer is aware of any enforcement action by the IRS is when his or her bank calls to notify that funds have been frozen. The IRS can take these actions in many cases without giving the taxpayer notice or opportunity to be heard.¹²⁷

A witness also provided the following testimony:

The collection appeals process we think ought to be beefed up and allowed to be a true appellate review of the judgment and conduct of the revenue officers involved. Right now, it is strictly a procedural review and it does not have much of an impact. I think the lack of use by practitioners and taxpayers alike indicate that they view that as really not a legitimate forum.¹²⁸

123. Cords, *supra* note 34, at 53.

124. *Id.* at 51.

125. *Id.* at 52.

126. *Id.*

127. *Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Fin.*, 105th Cong. 105–190, at 2 (1997) (statement of Sen. William V. Roth, Jr., Chairman, S. Comm. on Fin.).

128. *Id.* at 26 (statement of Joseph F. Lane, Enrolled Agent, Chairman, Nat'l Govt. Relations Comm., The Nat'l Ass'n of Enrolled Agents).

Investigations of the IRS revealed that it had followed all applicable rules and regulations in 337 of 467 cases alleging seizure abuses against taxpayers.¹²⁹ The remaining 130 cases involved violations “such as not investigating all alternatives to seizure, seizing an asset that could result in a significant hardship to the taxpayer who owed the tax, and not making enough attempts to contact the taxpayer personally before making the seizure.”¹³⁰ Chairman Roth responded to these results by stating they were “a stunning confession of the sins of the IRS.”¹³¹ Some have criticized the basis for RRA 98.¹³² However, RRA 98 established foundational taxpayer rights, such as the right “to challenge the IRS’s position and be heard,” and the importance of those rights “exists even if there was or is little evidence that IRS Collection employees were reckless or intentional in disregarding taxpayer interests and rights in tax collection.”¹³³

The Senate Report on RRA 98 provided the following explanation for the creation of the CDP provisions:

The Committee believes that taxpayers are entitled to protections in dealing with the IRS that are similar to those they would have in dealing with any other creditor. Accordingly, the Committee believes that the IRS should afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property. When collection of tax is in jeopardy, the Committee believes it is appropriate to provide notice and a hearing promptly after the deprivation of property. The Committee believes that following procedures designed to afford taxpayers due process in collections will increase fairness to taxpayers.¹³⁴

The Senate Report states that the IRS is to verify “that all statutory, regulatory, and administrative requirements for the proposed collection action have been met.”¹³⁵ This verification is to include the following:

- (1) the revenue officer recommending the collection action has verified the taxpayer’s liability;
- (2) the estimated expenses of levy and sale will not exceed the value of the property to be seized;

129. Bryan T. Camp, *Tax Administration as Inquisitorial Process and the Partial Paradigm Shift in the IRS Restructuring and Reform Act of 1998*, 56 FLA. L. REV. 1, 90 (2004).

130. *Id.*

131. *Id.* at 90–91.

132. *Id.* at 91 (stating that “the actual factual case for reform was lukewarm at best”); Cords, *supra* note 34, at 52 (noting that “[m]uch of the testimony presented at the hearings has since been either disputed or entirely discredited”).

133. Book, *supra* note 5, at 194.

134. S. REP. NO. 105-174, at 67 (1998).

135. *Id.* at 68.

- (3) the revenue officer has determined that there is sufficient equity in the property to be seized to yield net proceeds from sale to apply to the unpaid tax liabilities; and
- (4) with respect to the seizure of the assets of a going business, the revenue officer recommending the collection action has thoroughly considered the facts of the case, including the availability of alternative collection methods, before recommending the collection action.¹³⁶

Similarly, the Senate Report also states that taxpayers are allowed to raise any relevant issue at CDP hearings, including:

- (1) challenges to the underlying liability as to existence or amount;
- (2) appropriate spousal defenses;
- (3) challenges to the appropriateness of collection actions; and
- (4) collection alternatives, which could include the posting of a bond, substitution of other assets, an installment agreement or an offer-in-compromise.¹³⁷

B. Application to Taxpayers with Canadian Tax Liabilities

The same abuses that Congress sought to reduce through the CDP statutes could affect taxpayers with Canadian tax liabilities. For instance, the IRS could fail to investigate all alternatives to seizure, or its seizure of an asset could result in significant hardship to the taxpayer.¹³⁸ Under the Treaty, the United States is to collect Canadian tax liabilities in accordance with its own laws.¹³⁹ Thus, there is no reason why these same concerns would not be applicable to taxpayers with Canadian tax liabilities when these taxpayers are subject to the exact same collection procedures by the IRS.

The verification to be conducted during a CDP hearing is relevant to taxpayers with Canadian tax liabilities. For example, it is possible for the estimated expenses of levy and sale to exceed the value of the property seized from a taxpayer with a Canadian tax liability.¹⁴⁰ Taxpayers with Canadian tax liabilities, like other taxpayers, may have properties with insufficient equity to yield net proceeds from the sale. Likewise, a taxpayer with a Canadian tax liability may have assets of a going business subject to seizure. Issues that taxpayers can raise at CDP hearings, including spousal defenses, challenges to the appropriateness of collection actions, and collection alternatives,¹⁴¹ are also

136. *Id.*

137. *Id.*

138. Camp, *supra* note 129, at 90.

139. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(4).

140. See generally Creighton R. Meland, Jr., *Omnibus Taxpayers' Bill of Rights Act: Taxpayers' Remedy or Political Placebo?*, 86 MICH. L. REV. 1787, 1808-09 (1988) (describing how the IRS can make uneconomical levies when collecting tax liabilities).

141. 26 U.S.C. § 6330(c)(2)(A), 6320(c).

relevant to taxpayers with Canadian tax liabilities. Even though taxpayers with Canadian tax liabilities are unable to challenge the substantive validity of the liability,¹⁴² there are other verifications conducted through CDP hearings and issues that may be raised during the hearings that would be useful. In fact, only thirty-seven percent of taxpayers question the existence of the liability at CDP hearings.¹⁴³ Almost one-third of taxpayers request collection alternatives and more than one-fourth of taxpayers question the appropriateness of the collection action at CDP hearings.¹⁴⁴ An example of this is set forth in *Ryckman*: the taxpayer did not challenge the underlying liability, but instead wanted a CDP hearing to propose an installment agreement.¹⁴⁵ In short, CDP hearings serve purposes other than to question the substantive liability, and those other purposes would be equally useful to taxpayers with Canadian tax liabilities.

By creating the CDP regime, Congress sought to give taxpayers “protections in dealing with the IRS that are similar to those they would have in dealing with any other creditor.”¹⁴⁶ Congress also wanted the CDP statutes to increase fairness for taxpayers.¹⁴⁷ Taxpayers have successfully negotiated collection alternatives in sixteen percent of CDP hearings.¹⁴⁸ CDP hearings, therefore, “provide instrumental protections for taxpayers to meaningfully address the appropriateness of IRS collection actions.”¹⁴⁹ Just as CDP hearings have been used to increase fairness and to provide protections for taxpayers with U.S. tax liabilities, they too can increase fairness and protections for taxpayers with Canadian tax liabilities being collected by the IRS.

C. Collection Appeals Program

At the time Congress created the CDP statutes, the IRS had already instituted the collection appeals program (CAP) to review collection actions.¹⁵⁰ Even with CAP, Congress still thought it necessary to create the CDP statutes to provide additional protections to taxpayers in dealing with the IRS.¹⁵¹ CAP is available where CDP is not available.¹⁵² For example, a review under CAP is available to taxpayers where the IRS is collecting a tax liability pursuant to an MCAR.¹⁵³ However, the mere fact that taxpayers with Canadian tax liabilities

142. *Ryckman v. Comm’r*, 163 T.C. 46, 73 (2024) (Urda, J., dissenting).

143. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 50, at 4–5.

144. *Id.*

145. *Ryckman*, 163 T.C. at 48.

146. S. REP. NO. 105-174, at 67 (1998).

147. *Id.*

148. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 50, at 3.

149. 2018 REPORT TO CONGRESS, *supra* note 5, at 505.

150. S. REP. NO. 105-174, at 92.

151. *Id.* at 67.

152. IRM 8.24.1.2(2) (Sep. 28, 2021).

153. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

are entitled to a review under CAP¹⁵⁴ should not mean that those taxpayers are not entitled to the additional protections provided by CDP hearings.

Like CDP hearings, CAP allows taxpayers to appeal certain collection actions.¹⁵⁵ CAP was first implemented by the IRS in 1996 and was initially limited to liens, levies, and seizures.¹⁵⁶ CAP is not mandated by statute, though the legislative history of RRA 98 indicates congressional intent that CAP be continued.¹⁵⁷

Under CAP, taxpayers may appeal a levy that has or will be taken, an NFTL that has or will be filed, and rejected, proposed, or terminated installment agreements.¹⁵⁸ An Appeals officer with the IRS Independent Office of Appeals will review the “appropriateness of the action proposed or taken based on law, regulations, policy and procedures after considering all of the relevant facts and circumstances.”¹⁵⁹ The Appeals officer does not consider collection alternatives.¹⁶⁰ A review under CAP is limited, involving swift resolutions.¹⁶¹ In fact, it is Appeals’ goal to complete CAP cases within five business days after the case is assigned to an Appeals officer.¹⁶² For more complicated cases, it is Appeals’ goal to have those completed within fifteen business days.¹⁶³

Even though both CDP and CAP allow an appeal of IRS collection actions, there are a number of differences between CDP and CAP.¹⁶⁴ Under the CDP statutes, a taxpayer may petition the Appeals officer’s determination to the Tax Court.¹⁶⁵ On the other hand, Appeals’ administrative decision under CAP is final, and the taxpayer does not have the right to seek judicial review of the administrative decision.¹⁶⁶ This is significant because the IRS is enjoined from its collection actions while the petition to the Tax Court is pending.¹⁶⁷ Hence, CDP hearings provide an additional safeguard as the taxpayer is not subject to a collection action until after judicial review. Additionally, CDP allows the taxpayer to raise collection alternatives.¹⁶⁸ Taxpayers appealing under CAP may not raise collection alternatives, as the review is limited to the “appropriateness of the issue under appeal.”¹⁶⁹ So although taxpayers appealing under CDP can

154. *Id.*

155. IRM 8.24.1.3(2) (Sep. 28, 2021).

156. IRM 8.24.1.1.1(1) (Sep. 3, 2019).

157. IRM 8.24.1.1.1(2) (Sep. 3, 2019); S. REP. NO. 105-174, at 92 (1998).

158. IRM 8.24.1.3(2) (Sep. 28, 2021).

159. IRM 8.24.1.2(5)(c) (Sep. 28, 2021).

160. IRM 8.24.1.2(5)(d) (Sep. 28, 2021).

161. IRM 8.24.1.3(7) (Sep. 28, 2021).

162. IRM 8.24.1.3(6) (Sep. 28, 2021).

163. IRM 8.24.1.3(8) (Sep. 28, 2021).

164. IRM 8.24.1.2 (Sep. 28, 2021).

165. 26 U.S.C. §§ 6330(d)(1), 6320(c).

166. IRM 8.24.1.2(4) (September 28, 2021).

167. 26 U.S.C. §§ 6330(e)(1), 6320(c).

168. 26 U.S.C. §§ 6330(c)(2)(iii), 6320(c).

169. IRM 8.24.1.2(5)(d) (Sep. 28, 2021).

propose an offer-in-compromise (OIC),¹⁷⁰ appeals under CAP cannot consider rejections of OICs.¹⁷¹

The differences between CAP and CDP have caused markedly different results for taxpayers who appeal through the two regimes.¹⁷² Notably, taxpayers are either fully or partially successful in sixty-eight percent of CDP appeals compared to only twenty-two percent of CAP appeals.¹⁷³ It comes as no surprise that CAP utilization is only about ten percent of CDP utilization.¹⁷⁴

Because of its limited review, CAP has been criticized as being “so circumscribed by the procedural limitations imposed that it really does not constitute a true appellate process.”¹⁷⁵ Furthermore, CAP has been criticized for jeopardizing “the fundamental rights of taxpayers *to appeal an IRS decision in an independent forum, to challenge the IRS’s position and be heard, to a fair and just tax system, and to privacy.*”¹⁷⁶

When Congress was creating the CDP statutes, it was aware that the IRS had already instituted CAP.¹⁷⁷ Nonetheless, Congress still thought it necessary to create the CDP statutes to provide taxpayers with additional protections.¹⁷⁸ Congress specifically intended to expand taxpayer rights by creating CDP appeals.¹⁷⁹ Despite the fact that taxpayers with Canadian tax liabilities are entitled to appeal collection actions through CAP,¹⁸⁰ they should still be entitled to CDP hearings given the limited review under CAP and the fact that Congress wanted to provide additional protections beyond CAP in creating the CDP appeals process. By being limited to CAP, taxpayers with Canadian tax liabilities are without an adequate, independent forum to challenge improper IRS collection actions.¹⁸¹

IV. CASE LAW CONCERNING THE CDP STATUTES SUPPORTS AFFORDING CDP HEARINGS TO TAXPAYERS WITH CANADIAN TAX LIABILITIES

Case law on the CDP statutes illustrates the importance of CDP hearings in providing a venue for taxpayers to challenge IRS collection actions. The IRS is not infallible. Just as taxpayers with U.S. tax liabilities are subject to improper collection actions, taxpayers with Canadian tax liabilities being collected by the

170. 26 U.S.C. §§ 6330(c)(2)(iii), 6320(c).

171. IRM 5.1.9.4.1(1) (Aug. 27, 2021).

172. 2015 ANNUAL REPORT TO CONGRESS, *supra* note 49, at 91.

173. *Id.*

174. *Id.* at 98.

175. *Id.* at 93.

176. *Id.*

177. S. REP. NO. 105-174, at 92 (1998).

178. *Id.* at 67.

179. 2015 ANNUAL REPORT TO CONGRESS, *supra* note 49, at 93; Book, *supra* note 5, at 155–56.

180. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

181. 2015 ANNUAL REPORT TO CONGRESS, *supra* note 49, at 93.

IRS are also subject to improper collection actions.¹⁸² For this reason, those taxpayers should also be entitled to CDP hearings.

A. Case Law on the Purpose of CDP Hearings

Providing CDP hearings to taxpayers with Canadian tax liabilities aligns with the purpose of CDP hearings, as taxpayers would be able to raise legitimate concerns over collection actions at CDP hearings.

In *Zuch v. Commissioner*, the Third Circuit noted that Congress, in creating the CDP statutes, granted “all taxpayers in a CDP hearing the ability to raise issues relating to the unpaid tax or proposed levy.”¹⁸³ Only qualifying taxpayers are also entitled to raise a challenge to the underlying liability at a CDP hearing.¹⁸⁴ The CDP statutes were intended to provide “taxpayers a forum to *challenge* a lien or levy and account[] for different circumstances in which that need may arise.”¹⁸⁵

The majority opinion in *Ryckman* acknowledges that Ryckman is a taxpayer, despite having a Canadian tax liability, since the word “tax” as it is used in the CDP statutes also applies to foreign taxes being collected by the IRS.¹⁸⁶ And while the Third Circuit was not considering taxpayers with Canadian tax liabilities in *Zuch*, the decision reveals Congress’s intent that CDP hearings be used to raise issues regarding collection activities; the only qualification was for raising issues on the underlying liability.¹⁸⁷ Just as issues regarding collection actions would apply to taxpayers with U.S. tax liabilities, they would also apply to taxpayers with Canadian tax liabilities. Accordingly, taxpayers with Canadian tax liabilities should be given a forum to challenge an NFTL or a levy, since they are subject to the same conditions that would be considered by a taxpayer with a U.S. tax liability at a CDP hearing.¹⁸⁸

Additionally, *Zuch* noted that Congress intended for the IRS to observe all applicable laws and administrative procedures in collecting tax liabilities.¹⁸⁹ This could be accomplished at a CDP hearing for a taxpayer with a Canadian tax liability by confirming that the MCAR was pursuant to the Treaty.¹⁹⁰ All in all, affording CDP hearings to taxpayers with Canadian tax liabilities would grant those taxpayers the opportunity to raise legitimate concerns about IRS

182. See generally Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(4)(a) (providing that the United States is to collect the revenue claim as it would an assessment under its own laws).

183. 97 F.4th 81, 88 (3d Cir. 2024), *rev’d and remanded*, 605 U.S. 422 (2025).

184. *Id.*

185. *Id.* at 98.

186. *Ryckman v. Comm’r*, 163 T.C. 46, 55 (2024).

187. *Zuch*, 97 F.4th at 88.

188. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(4).

189. *Zuch*, 97 F.4th at 98.

190. *Ryckman*, 163 T.C. at 76 (Urda, J., dissenting).

collection actions and help ensure that the IRS is only collecting the liabilities pursuant to the Treaty.

B. The Balancing Test Requirement

CDP hearings provide a safeguard against unnecessarily intrusive collection actions.¹⁹¹ The CDP statutes require that the Appeals officer balance the efficient collection of taxes with the taxpayer's concerns over the intrusiveness of the collection action.¹⁹² By depriving taxpayers with Canadian tax liabilities of CDP hearings, those taxpayers are less protected against intrusive collection actions undertaken by the IRS.

In *Budish v. Commissioner*, Budish owned a sculpting company that was reliant on a foundry to provide materials and provide castings for sculptures.¹⁹³ Budish incurred a tax liability, and the IRS subsequently notified Budish of its intent to collect the liability by levy.¹⁹⁴ Budish requested a CDP hearing and did not dispute the underlying liability.¹⁹⁵ He offered an installment agreement of \$5,500 per month, but he stipulated that the IRS could not file an NFTL.¹⁹⁶ Instead, the Appeals officer offered to grant the installment agreement with an NFTL.¹⁹⁷ Budish was concerned that an NFTL would disrupt his relationship with the foundry, from which he received thirty to fifty percent discounts.¹⁹⁸ Moreover, he was concerned that he would then be required to make up-front payments to the foundry.¹⁹⁹ Consequently, Budish rejected the offer and the Appeals officer subsequently recommended that the proposed levy be sustained.²⁰⁰

Under the CDP statutes, the Appeals officer, prior to making a determination, is to consider “whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.”²⁰¹ In *Budish*, the Appeals officer did not provide any analysis for her conclusion that the levy action balances the need for the efficient collection of taxes with Budish's concern that it would be unnecessarily intrusive.²⁰² The court determined that the “Appeals officer gave little, if any, consideration to petitioner's arguments and, instead, decided a notice of lien should be filed

191. 2018 REPORT TO CONGRESS, *supra* note 5, at 505.

192. 26 U.S.C. §§ 6330(c)(3)(C), 6320(c).

193. T.C. Memo. 2014-239, 2014 WL 6645470, at *4 (2014).

194. *Id.* at *4–5.

195. *Id.* at *5.

196. *Id.* at *6.

197. *Id.* at *8.

198. *Id.* at *7.

199. *Id.*

200. *Id.* at *8.

201. 26 U.S.C. §§ 6330(c)(3)(C), 6320(c).

202. *Budish*, 2014 WL 6645470, at *22.

because of her mistaken belief that she lacked discretion to do otherwise under the IRM.”²⁰³ As a result, the Appeals officer was found to have abused her discretion in sustaining the levy against Budish, and the case was remanded for further consideration.²⁰⁴

Budish illustrates the importance of the balancing requirement of IRC § 6330(c)(3)(C). Without such a requirement, taxpayers would be subject to unnecessarily intrusive collections. Taxpayers with Canadian tax liabilities, however, would not be able to raise these concerns at a CDP hearing under the majority’s holding in *Ryckman*.²⁰⁵ The IRS is not infallible, as evidenced by the Appeals officer in *Budish* failing to meet the requirements of IRC § 6330(c)(3)(C) and her mistaken belief that she lacked discretion under the Internal Revenue Manual (IRM).²⁰⁶ And while the IRS may still make mistakes in conducting CDP hearings, they serve as an important safeguard against improper collection actions.²⁰⁷ Taxpayers with Canadian tax liabilities should therefore be entitled to CDP hearings.

The next section of this Note will consider the text of the Treaty, first looking at how, as written, individuals with Canadian tax liabilities are already entitled to CDP hearings, second considering how the IRS’s own actions support entitlement to CDP hearings, and finally how looking at the interpretation of other treaties creates this entitlement.

V. THE TREATY MAY BE READ HARMONIOUSLY WITH THE CDP PROVISIONS

A. The Provisions Within the Assistance in Collection Article of the Treaty Support Providing CDP Hearings

Taken as a whole, the provisions within the Assistance in Collection article of the Treaty support providing CDP hearings to taxpayers with Canadian tax liabilities. Treaty interpretation begins “with the text of the treaty and the context in which the written words are used.”²⁰⁸ Courts attempt to construe treaties and statutes to give effect to both if they relate to the same subject.²⁰⁹ When deciding non-tax cases, the Supreme Court “has sought to read statutes in harmony with treaties and rejected constructions of terms that would unnecessarily create conflict between the two.”²¹⁰

203. *Id.* at *24.

204. *Id.* at *24–25.

205. *Ryckman v. Comm’r*, 163 T.C. 46, 59 (2024).

206. *Budish*, 2014 WL 6645470, at *24. *See also* *Wadleigh v. Comm’r*, 134 T.C. 280 (2010); *Seminole Nursing Home, Inc. v. Comm’r*, T.C. Memo. 2017-102, 2017 WL 2438683 (2017); *Cox v. United States*, 345 F. Supp. 2d 1218 (W.D. Okla. 2004); *Lofgren Trucking Serv., Inc. v. United States*, 508 F. Supp. 2d 734 (D. Minn. 2007).

207. 2018 REPORT TO CONGRESS, *supra* note 5, at 505.

208. *Air France v. Saks*, 470 U.S. 392, 397 (1985) (citing *Maximov v. United States*, 373 U.S. 49, 53–54 (1963)).

209. *Toulouse v. Comm’r*, 157 T.C. 49, 58 (2021).

210. *Adams Challenge (UK), Ltd. v. Comm’r*, 154 T.C. 37, 62 n.18 (2020).

The Treaty provides that “a revenue claim is finally determined when the *applicant* State has the right under its internal law to collect the revenue claim and all administrative and judicial rights of the taxpayer to restrain collection in the applicant State have lapsed or been exhausted.”²¹¹ It then goes on to provide that the requested state shall collect the revenue claim “as though such revenue claim were the requested State’s own revenue claim finally determined in accordance with the laws applicable to the collection of the requested State’s own taxes.”²¹² The Treaty’s definition of “finally determined” only applies to the *applicant* state;²¹³ it does not necessarily mean that a revenue claim is finally determined in the requested state only when all administrative and judicial rights have lapsed or been exhausted.²¹⁴ It is possible to differentiate between the substance of the revenue claim and the procedures used to collect upon it.²¹⁵

While the substance of the revenue claim is to be governed by the applicant state’s laws, the procedures by which it is collected are governed by the laws of the requested state.²¹⁶ The Treaty provides that the requested state is to collect the revenue claim in accordance with its own collection laws.²¹⁷ Thus, it is possible to interpret “finally determined” as it pertains to the requested state to refer to the substantive liability of the revenue claim, meaning that its validity cannot be challenged in the requested state.²¹⁸ Separating the procedure from the substance allows the requested state to collect the revenue claim in accordance with its own laws, as the requested state would simply treat the liability as valid. Such an interpretation would properly give effect to both the Treaty and the CDP statutes.

Furthermore, the Treaty provides that it does not “impos[e] on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).”²¹⁹ This provision indicates the Treaty’s intention to treat the procedural collection policies as separate from the substance of the liability. As the IRS provides CDP hearings when collecting its own taxes,²²⁰ it would be carrying out administrative measures differently by not providing CDP hearings when collecting on a Canadian tax liability. By providing CDP hearings to taxpayers with Canadian tax liabilities, there would be no variance between the administrative measures used to collect U.S. and Canadian tax liabilities.

211. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(2) (emphasis added).

212. *Id.* art. XXVI A(3).

213. *Id.* art. XXVI A(2).

214. *Ryckman v. Comm’r*, 163 T.C. 46, 73–74 (2024) (Urda, J., dissenting).

215. *Id.* at 72.

216. *Id.*; *see generally* Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(3).

217. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(2).

218. *Ryckman*, 163 T.C. at 73–74 (Urda, J., dissenting).

219. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(10)(b).

220. 26 U.S.C. §§ 6320(b), 6330(b).

In another provision, the Treaty states that when the IRS accepts an MCAR, “the revenue claim shall be treated by the United States as an assessment under United States laws against the taxpayer as of the time the application is received.”²²¹ This provision reflects the intent that the collection procedure will be governed by U.S. laws. Under U.S. laws, taxpayers are entitled to CDP hearings.²²² Taken as a whole, other provisions of the Treaty buttress the notion that the United States is to collect Canadian tax liabilities just like it would its own tax liabilities.²²³ The United States can collect a finally determined Canadian revenue claim, of which its substantive validity cannot be challenged, and still grant the taxpayer a CDP hearing.

Another provision of the Treaty is that “[a] revenue claim of an applicant State accepted for collection shall not have in the requested State any priority accorded to the revenue claims of the requested State.”²²⁴ On average, it takes fifty-nine days for the taxpayer’s request for a CDP hearing to be transferred to the Independent Office of Appeals.²²⁵ Most CDP hearings occur within six months after the taxpayer has requested a hearing.²²⁶ However, the amount of time it takes for a CDP hearing to be conducted varies because “all CDP cases are different and the time required to properly handle a CDP hearing request depends on the complexity of the issues raised by that case.”²²⁷ In total, the average time it takes for a CDP case to be resolved, from the taxpayer’s request until the determination, is 252 days.²²⁸ For CDP hearings where the taxpayer ultimately petitions the case to the Tax Court, the average is 339 days from request to determination.²²⁹ As taxpayers are allowed to enjoin the collection action while awaiting the CDP determination,²³⁰ taxpayers with Canadian tax liabilities would be subject to collection actions far sooner than taxpayers with U.S. tax liabilities. Hence, Canadian tax liabilities would effectively be given priority over U.S. tax liabilities, contrary to the provision in the Treaty. Entitling taxpayers with Canadian tax liabilities to CDP hearings is consistent with other provisions of the Treaty. Foreclosing the right to CDP hearings to taxpayers with Canadian tax liabilities needlessly creates a conflict not only with the CDP statutes, but also with other provisions of the Treaty.

Moreover, the Treaty provides that it does not create or provide “any rights of administrative or judicial review of the applicant State’s finally determined revenue claim by the requested State, based on any such rights that may be

221. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(4)(a).

222. 26 U.S.C. §§ 6320(b), 6330(b).

223. *Ryckman*, 163 T.C. at 72–74 (Urda, J., dissenting).

224. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(7).

225. U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-659, OPPORTUNITIES EXIST TO IMPROVE MONITORING AND TRANSPARENCY OF APPEAL RESOLUTION TIMELINESS 28 (2018), <https://www.gao.gov/assets/gao-18-659.pdf> [<https://perma.cc/PX6D-VSRU>].

226. Cords, *supra* note 34, at 62.

227. *Id.*

228. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 225, at 28.

229. Camp, *supra* note 43, at 87 n.149.

230. 26 U.S.C. §§ 6330(e)(1), 6320(c); Book, *supra* note 60, at 1156.

available under the laws of either Contracting State.”²³¹ The majority reasoned that entitling taxpayers to CDP hearings would conflict with this provision.²³² However, it is the CDP statutes, not the Treaty, that create the right to the CDP hearings.²³³ Hence, there is no conflict with this provision. The majority held that the United States is to collect the revenue claim “as it would a U.S. tax assessment for which the taxpayer’s administrative and judicial rights to restrain collection . . . have lapsed or been exhausted.”²³⁴ However, this interpretation renders Article XXVI A(5) superfluous. If taxpayers have no administrative and judicial rights in the requested state, then the Treaty could not possibly create or provide such rights. Instead, this provision indicates that taxpayers are entitled to administrative and judicial review in the requested state; the provision simply states that the Treaty itself does not create those rights.

Additionally, the majority concluded that it would be unreasonable to interpret the Treaty “as providing an additional administrative or judicial forum in the United States when the opportunity for such appeals in Canada has been exhausted.”²³⁵ When the CRA issues a tax assessment, taxpayers may file an administrative appeal and then appeal to the Canadian Tax Court.²³⁶ Under the Treaty, a person is also able to write to either the Secretary of the Treasury or the Minister of National Revenue, depending on the residency and nationality of the person, when the person believes “that the actions of one or both of the Contracting States result or will result for him in *taxation* not in accordance with the provisions of this Convention.”²³⁷ However, both of these options provide an opportunity to challenge the substantive liability of the revenue claim, not the IRS’s collection action.²³⁸ Therefore, it is not unreasonable to afford an additional administrative or judicial forum in the United States limited to the appropriateness of the IRS’s collection action, which the taxpayer had no prior opportunity to challenge in Canada.²³⁹

B. The Non-Discrimination Article Supports Providing CDP Hearings

In addition to the provisions within the Assistance in Collection article of the Treaty, the Non-Discrimination article further supports providing CDP hearings to taxpayers with Canadian tax liabilities. Treaty interpretation begins

231. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(5).

232. *Ryckman v. Comm’r*, 163 T.C. 46, 59–60 (2024).

233. 26 U.S.C. §§ 6320(b), 6330(b).

234. *Ryckman*, 163 T.C. at 58.

235. *Id.*

236. *See, e.g., Retfalvi v. United States*, 930 F.3d 600, 604 (4th Cir. 2019).

237. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI(1), art. III(1)(g) (emphasis added).

238. *See Retfalvi*, 930 F.3d at 604; Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI(1).

239. *See Retfalvi*, 930 F.3d at 604–05. *See also Ryckman*, 163 T.C. at 76 (Urda, J., dissenting) (noting that Congress “has not seen fit to strip away American procedural safeguards where a close Treaty partner has conducted its own proceedings”).

“with the text of the treaty and the context in which the written words are used.”²⁴⁰ Non-discrimination provisions exist in income tax treaties to treat the nationals of both countries on a level playing field.²⁴¹ Specifically, the Treaty provides:

Citizens of a Contracting State, who are residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is *other or more burdensome* than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected.²⁴²

Under the non-discrimination provisions within U.S. income tax treaties, the United States “cannot impose more burdensome taxes or related requirements on the other country’s taxpayers than it imposes on its own persons.”²⁴³ Differences in procedural rules may constitute a violation of the non-discrimination provision.²⁴⁴ However, differences in enforcement and collection mechanisms may be justified because “foreign taxpayers are subject to limited tax jurisdiction in the source country, and frequently have few (if any) assets located there.”²⁴⁵ To constitute a violation on the non-discrimination provision, the difference in treatment must put “the person or entity at a substantively significant disadvantage in relation to domestic or domestically owned taxpayers.”²⁴⁶

Although CDP hearings are not a requirement, they do provide a mechanism by which taxpayers may raise spousal defenses, challenge the appropriateness of collection actions, and offer collection alternatives.²⁴⁷ And even though taxpayers with Canadian tax liabilities are permitted to a review under CAP,²⁴⁸ they are not allowed to raise collection alternatives under CAP.²⁴⁹ Moreover, taxpayers appealing under the CDP statutes are entitled to enjoin

240. *Air France v. Saks*, 470 U.S. 392, 397 (1985) (citing *Maximov v. United States*, 373 U.S. 49, 53–54 (1963)).

241. Sanford H. Goldberg & Peter A. Glicklich, *Treaty-Based Nondiscrimination: Now You See It Now You Don’t*, 1 FLA. TAX REV. 51, 53 (1992).

242. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXV(1) (emphasis added).

243. Ernest R. Larkins, *U.S. Income Tax Treaties in Research and Planning: A Primer*, 18 VA. TAX REV. 133, 187 (1998).

244. Goldberg & Glicklich, *supra* note 241, at 63. *But see* Mary C. Bennett, *The David R. Tillinghast Lecture Nondiscrimination in International Tax Law: A Concept in Search of a Principle*, 59 TAX L. REV. 439, 439 (2006) (noting that non-discrimination claims have had “very little success” in U.S. courts); Goldberg & Glicklich, *supra* note 241, at 108 (noting that while non-discrimination provisions “include rather sweeping terms, they appear to be read narrowly”).

245. Goldberg & Glicklich, *supra* note 241, at 63.

246. *Id.*

247. 26 U.S.C. §§ 6330(c)(2)(A), 6320(c).

248. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

249. IRM 8.24.1.2(5)(d) (Sep. 28, 2021).

collection actions until the CDP hearing has concluded and while their petition to the Tax Court is pending.²⁵⁰ Under CAP, however, the administrative decision is final and the taxpayer cannot seek judicial review of the administrative decision.²⁵¹ It takes on average 252 days for a CDP case to be resolved within IRS Appeals.²⁵² Hence, taxpayers with Canadian tax liabilities are subjected to more burdensome treatment because they are not permitted to raise issues that taxpayers with U.S. tax liabilities are permitted to raise, and they face collection actions far sooner than taxpayers with U.S. tax liabilities who request a CDP hearing.

Additionally, taxpayers with Canadian tax liabilities are in similar circumstances as taxpayers with U.S. tax liabilities. There is little guidance defining the meaning of the phrase “in the same circumstances.”²⁵³ There are, however, commentaries for the 1977 draft of the Organization for Economic Cooperation and Development Model Double Taxation Convention on Income and on Capital (1977 OECD Model), which contains a typical U.S. non-discrimination provision.²⁵⁴ In the commentaries to the 1977 OECD Model, “in the same circumstances” refers to taxpayers in “*substantially similar circumstances both in law and in fact.*”²⁵⁵

The United States is to collect a Canadian revenue claim as it would its own revenue claim.²⁵⁶ Because taxpayers with Canadian tax liabilities are subject these same collection mechanisms, they are in substantially similar circumstances. Accordingly, they should not be subject to more burdensome treatment under the non-discrimination provision of the Treaty.²⁵⁷

C. Actions Taken by the IRS Support Providing CDP Hearings

Courts construe treaties more liberally than private agreements.²⁵⁸ When interpreting a treaty, courts “may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties.”²⁵⁹ The Supreme Court has “considered as ‘aids to its interpretation’ the negotiation and drafting history of the treaty as well as ‘the postratification understanding’ of signatory nations.”²⁶⁰ Additionally, courts also consider the conduct of countries “since their conduct generally evinces their understanding

250. 26 U.S.C. §§ 6330(e)(1), 6320(c).

251. IRM 8.24.1.2(4)–(5) (Sep. 28, 2021).

252. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 225, at 28.

253. Goldberg & Glicklich, *supra* note 241, at 86–87.

254. *Id.*

255. *Id.*

256. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(3).

257. *Id.* art. XXV(1).

258. *Air France v. Saks*, 470 U.S. 392, 396 (1985).

259. *Id.* (quoting *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 431–32 (1943)).

260. *Medellin v. Texas*, 552 U.S. 491, 507 (2008) (quoting *Zicherman v. Korean Airlines Co.*, 516 U.S. 217, 226 (1996)).

of the agreement they signed.”²⁶¹ Although it is not conclusive, “the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight.”²⁶² IRS guidance memoranda have been used “to show the IRS’ position.”²⁶³

After the CDP hearings were created, the IRS considered whether the hearings applied to taxpayers with foreign tax liabilities, including Canadian tax liabilities.²⁶⁴ Specifically, the IRS considered “whether the treaty requirement that a liability be ‘finally determined’ may be reconciled to the pre-levy notice and hearing rights of taxpayers under sec. 6330.”²⁶⁵ The IRS concluded that “sec. 6330 applies to treaty levies but that only issues concerning the Service’s administrative collection procedures (e.g., challenges as to whether the procedural requirements have been met for the Service’s use of summonses, liens, and/or levies) and not issues concerning the liability itself, may be raised at a hearing.”²⁶⁶ Thus, the IRS’s poststratification understanding supports the interpretation that the Treaty can be harmonized with the CDP statutes. Under this interpretation, taxpayers with Canadian tax liabilities are entitled to CDP hearings, but they may not challenge the validity of the liability at the hearing.

However, the current IRS position is that a taxpayer with a foreign tax liability being collected by the IRS is not entitled to a CDP hearing “because the tax liability at issue is a foreign tax liability.”²⁶⁷ The IRS does allow for such a taxpayer to “request review under the Collection Appeals Program (CAP).”²⁶⁸ The majority opinion in *Ryckman* notes that this has been the IRS’s position since 2005.²⁶⁹

The *Ryckman* majority held that the IRS must collect Canadian revenue claims “as it would a U.S. tax assessment for which the taxpayer’s administrative and judicial rights to restrain collection . . . have lapsed or been exhausted.”²⁷⁰ Despite this, CAP is an administrative review program.²⁷¹ CAP allows an Appeals officer to review the appropriateness of a collection action and reverse the collection action if it is inappropriate.²⁷² Thus, the IRS’s current position still affords administrative rights to taxpayers with foreign tax liabilities,²⁷³ contrary to the majority’s holding.²⁷⁴ Even though the IRS’s current position does not entitle taxpayers with Canadian tax liabilities to CDP

261. *United States v. Stuart*, 489 U.S. 353, 369 (1989).

262. *Id.* (quoting *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184–85 (1982)).

263. *Adams Challenge (UK), Ltd. v. Comm’r*, 156 T.C. 16, 43 n.14 (2021).

264. I.R.S. Chief Couns. Mem. 199939034, 1999 WL 779472 (Oct. 1, 1999).

265. *Id.*

266. *Id.*

267. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

268. *Id.*

269. *Ryckman v. Comm’r*, 163 T.C. 46, 57 n.7 (2024).

270. *Id.* at 58.

271. *Offiler v. Comm’r*, 114 T.C. 492, 494 (2000).

272. IRM 8.24.1.2(5)(c) (Sep. 28, 2021).

273. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

274. *Ryckman*, 163 T.C. at 58.

hearings, it is still at odds with the majority's holding. Therefore, under the IRS's current postratification understanding, taxpayers are entitled to administrative review, meaning that a Canadian revenue claim can be finally determined in the United States when taxpayers still have the right to administrative and judicial review.²⁷⁵

The IRS allows only CAP for taxpayers with other foreign liabilities being collected by the IRS pursuant to an MCAR.²⁷⁶ However, some of the treaties with other countries use different language than the Treaty.²⁷⁷ For instance, the treaty with France states that the requested state is to collect the revenue claim "in accordance with the laws applicable to the enforcement and collection of its own taxes."²⁷⁸ By the same token, the treaty with Sweden provides that the requested state is to collect the revenue claim "in accordance with the laws applicable to the enforcement and collection of its own taxes."²⁷⁹ Thus, the treaties with these countries lack the "finally determined" language as it pertains to the requested state's collection of a revenue claim. The majority opinion in *Ryckman* specifically determined that the Treaty foreclosed on CDP rights because the requested state is to treat the revenue claim as finally determined under its own laws.²⁸⁰ Since these other treaties do not contain the same "finally determined" language for the requested state, the *Ryckman* majority would likely determine that these other treaties would not foreclose on CDP rights. However, the IRS treats all taxpayers with liabilities being collected pursuant to an MCAR the same: they are all entitled only to CAP, not CDP.²⁸¹ Therefore, the IRS's current position is erroneous, even according to the majority's reasoning. For this reason, it is more appropriate to consider the IRS's initial stance, which supports providing CDP hearings to taxpayers with Canadian tax liabilities.²⁸²

D. Other Treaties Support Providing CDP Hearings

Given that courts interpret treaties more liberally than private agreements,²⁸³ it is appropriate to look to other sources in treaty interpretation. The United States Tax Court has "found the Treasury Department's technical explanations of income tax treaties helpful in interpreting treaty provisions."²⁸⁴ Courts have

275. *Id.* at 75 (Urda, J., dissenting).

276. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

277. France-U.S. Income Tax Convention, *supra* note 21, art. 28(2); Sweden-U.S. Income Tax Convention, *supra* note 21, art. 27(2).

278. France-U.S. Income Tax Convention, *supra* note 21, art. 28(2).

279. Sweden-U.S. Income Tax Convention, *supra* note 21, art. 27(2).

280. *Ryckman*, 163 T.C. at 58.

281. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

282. I.R.S. Chief Couns. Mem. 199939034, *supra* note 264.

283. *Air France v. Saks*, 470 U.S. 392, 396 (1985).

284. *Smith v. Comm'r*, 159 T.C. 33, 39 n.11 (2022).

also considered Senate Reports in interpreting treaties.²⁸⁵ The following paragraphs discuss each of these in turn.

First, the Treasury Department's technical explanation of the Treaty with Japan is relevant. The Convention Between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (United States-Japan Treaty) similarly defines a finally determined revenue claim as "when the applicant State has the right under its domestic law to collect the revenue claim and all applicable administrative and judicial rights of the taxpayer to dispute or appeal the revenue claim have lapsed or been exhausted."²⁸⁶ However, the Technical Explanation for the United States-Japan Treaty further provides that:

the existence of administrative or judicial rights available to the taxpayer in connection with the finally determined revenue claim that arise after collection actions have begun, such as collection due process rights (CDP) and collection appeals rights (CAP), shall not be interpreted by Japan to mean that such revenue claim is not finally determined under U.S. principles.²⁸⁷

Thus, the United States-Japan Treaty does not preclude taxpayers with a U.S. tax liability being collected by Japan from exercising their CDP or CAP rights.²⁸⁸ Accordingly, the United States-Japan Treaty suggests that a revenue claim can be finally determined even though the taxpayer still has the right to a CDP hearing. As the majority notes, the provision in the United States-Japan Treaty is not exactly the same as the one in the Treaty.²⁸⁹ According to the majority, "[i]t is telling that the words 'finally determined' were removed from the collection procedures in the Japan-U.S. Convention."²⁹⁰ While the two treaties are different, the United States-Japan Treaty nevertheless reveals that taxpayers with a U.S. tax liability can have a finally determined tax liability and still have the right to a CDP hearing.²⁹¹

Additionally, the Senate Report of the Treaty is also illuminative. When adopting the Treaty, the Senate Committee on Foreign Relations stated that the Treaty was similar to the Convention on Mutual Administrative Assistance in

285. *United States v. Stuart*, 489 U.S. 353, 366–67 (1989).

286. Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Japan-U.S., art. 27(5), Nov. 6, 2003, T.I.A.S. No. 04-330, as Amended by the Protocols signed on November 6, 2003, T.I.A.S. No. 04-330, and January 24, 2013, S. Treaty Doc. No. 114-1.

287. Treasury Department Technical Explanation of the 2013 Protocol Amending the U.S.-Japan Income Tax Treaty, at 23–24, <https://home.treasury.gov/system/files/131/Treaty-Japan-Pr2-TE-10-29-2015.pdf> [<https://perma.cc/YDS7-SW3Z>].

288. *Id.* at 24.

289. *Ryckman v. Comm'r*, 163 T.C. 46, 63 n.12 (2024).

290. *Id.*

291. *Id.* at 75 (Urda, J., dissenting).

Tax Matters (the Mutual Assistance Treaty).²⁹² The Mutual Assistance Treaty provides for assistance in collection by providing that “[a]t the request of the applicant State, the requested State shall . . . take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.”²⁹³ The Senate Committee on Foreign Relations distinguished the Mutual Assistance Treaty from the Treaty only in that the Mutual Assistance Treaty involved multiple parties and the negotiating considerations may have differed.²⁹⁴ Hence, there is no mention of the fact that the Treaty contains “finally determined” language and the Mutual Assistance Treaty does not. The fact that the Senate Committee on Foreign Relations compared the two treaties without noting this distinction indicates that the effect of “finally determined” on the procedures used to collect tax liabilities is minimal.

Overall, the text of the Treaty, initial actions undertaken by the IRS, the United States-Japan Treaty, and the Mutual Assistance Treaty all support entitling taxpayers with Canadian tax liabilities to CDP hearings. There is no conflict between the Treaty and the CDP statutes, as both can be implemented harmoniously.

VI. THE CDP PROVISIONS CONTROL IF THEY CANNOT BE HARMONIZED WITH THE TREATY

Even if the Treaty and the CDP statutes are in conflict, the CDP statutes must govern, and taxpayers with Canadian tax liabilities should be entitled to CDP hearings.

A. The Majority Opinion in Ryckman Creates a Conflict

The majority opinion concludes that the Treaty forecloses the default right to a CDP hearing “in the context of Canadian revenue claims accepted by the IRS.”²⁹⁵ However, the CDP statutes provide for a right to a hearing without any limitation for the IRS collecting foreign tax liabilities.²⁹⁶ Thus, the majority opinion creates a conflict between the Treaty and the CDP statutes by denying rights provided for in the CDP statutes based upon the provisions in the Treaty.²⁹⁷

The majority opinion seeks to reconcile this conflict based upon the fact that “[n]either CDP statute provides that its provisions apply notwithstanding any other law.”²⁹⁸ However, as the dissent notes, “where Congress has wished to

292. S. EXEC. DOC. NO. 104-9, at 44–45 (1995).

293. Convention on Mutual Administrative Assistance in Tax Matters, art. 11(1), June 28, 1989, T.I.A.S. No. 95-401.

294. S. EXEC. DOC. NO. 104-9, at 45.

295. *Ryckman*, 163 T.C. at 62.

296. 26 U.S.C. §§ 6320(b), 6330(b).

297. *Ryckman*, 163 T.C. at 59; 26 U.S.C. §§ 6320(b), 6330(b).

298. *Ryckman*, 163 T.C. at 62.

preserve earlier agreements with other nations in the face of conflicting subsequent legislation, it has added text to that effect, which it did not do here.”²⁹⁹ For instance, 28 U.S.C. § 1604 provides immunity to foreign states from the jurisdiction of U.S. courts, but it also notes that this immunity is “[s]ubject to existing international agreements to which the United States is a party at the time of enactment of this Act.”³⁰⁰ Therefore, the fact that the CDP statutes omit any language stating that they apply notwithstanding any other law is not a legitimate reason for concluding that there is no conflict; Congress could have also included language stating that the CDP statutes were subject to the Treaty.

B. The CDP Statutes Should Control

If a statute and treaty “pertain to the same subject matter but manifest an irreconcilable conflict, ‘the last expression of the sovereign will . . . control.’”³⁰¹ A statute and treaty conflict with one another if “there is ‘a clear repugnancy’ between the statute and the treaty.”³⁰² The Supreme Court has also “held ‘that an Act of Congress . . . is on a full parity with a treaty, and that when a statute which is subsequent in time is inconsistent with a treaty, the statute to the extent of conflict renders the treaty null.’”³⁰³ Regardless of the existence of a treaty, the “United States is *always* ‘at liberty to make . . . such laws as [it] think[s] proper.’”³⁰⁴

The Treaty was amended to provide for assistance in collection in 1995.³⁰⁵ The right to a CDP hearing was initially created in 1998 as part of RRA 98.³⁰⁶ Hence, the CDP statutes are the later enacted authority. As such, the CDP statutes should control in the case of conflict.³⁰⁷ Because the majority’s holding declines to extend the right to a CDP hearing to taxpayers with Canadian tax liabilities,³⁰⁸ it conflicts with the CDP statutes. The Treaty, as the later enacted authority, should not be used to foreclose on the rights provided by the CDP statutes, including the right to a hearing.

299. *Id.* at 69 (Urda, J., dissenting).

300. 28 U.S.C. § 1604.

301. *Adams Challenge (UK), Ltd. v. Comm’r*, 156 T.C. 16, 44 (2021) (quoting *Chae Chan Ping v. United States*, 130 U.S. 581, 600 (1889)).

302. *Id.* at 45 (quoting *Georgia v. Pa. R.R. Co.*, 324 U.S. 439, 457 (1945)).

303. *Breard v. Greene*, 523 U.S. 371, 376 (1998) (quoting *Reid v. Covert*, 354 U.S. 1, 18 (1957) (plurality opinion)).

304. *Medellin v. Texas*, 552 U.S. 491, 509 n.5 (2008) (quoting *Todok v. Union State Bank of Harvard, Neb.*, 281 U.S. 449, 453 (1930)).

305. Canada-U.S. Income Tax Convention, *supra* note 9, art. XXVI A(5).

306. Cords, *supra* note 34, at 53.

307. *Adams Challenge (UK), Ltd. v. Comm’r*, 156 T.C. 16, 44 (2021) (quoting *Chae Chan Ping v. United States*, 130 U.S. 581, 600 (1889)).

308. *Ryckman v. Comm’r*, 163 T.C. 46, 64 (2024).

CONCLUSION

In *Ryckman v. Commissioner*, the United States Tax Court held that taxpayers with Canadian tax liabilities are not entitled to collection due process (CDP) hearings.³⁰⁹ The court ruled that the Treaty foreclosed any right to CDP hearings for those taxpayers.³¹⁰ However, the majority opinion's interpretation of the Treaty needlessly created a conflict between the CDP statutes and the Treaty.

This Note argued that taxpayers with Canadian tax liabilities being collected by the IRS should be entitled to CDP hearings. By prohibiting taxpayers with Canadian tax liabilities from challenging IRS collection actions at CDP hearings, their statutory due process rights are violated. This Note first provided the relevant provisions of the Treaty and the CDP statutes. It then looked at how courts have decided cases involving the Treaty and due process arguments made by taxpayers, drawing a distinction between the Due Process Clause and the statutory due process rights provided by the CDP statutes. Using the legislative history behind the enactment of the CDP statutes, this Note examined how taxpayers with Canadian tax liabilities could benefit from the same protections Congress meant to confer to taxpayers. Further, case law in cases involving CDP statutes illustrates the importance of CDP hearings in protecting taxpayers from improper IRS collection actions. This Note argued that the Treaty may be read harmoniously with the CDP statutes such that taxpayers with Canadian tax liabilities would be entitled to CDP hearings. In the alternative, this Note argued that taxpayers with Canadian tax liabilities should still be entitled to CDP hearings if the Treaty and the CDP statutes cannot be harmonized.

As this Note discussed, due process rights are important for taxpayers facing deprivation of property. CDP hearings serve an important role in staving off improper IRS collection actions.³¹¹ Without CDP hearings, taxpayers with Canadian tax liabilities are limited to the collection appeals program (CAP),³¹² which has been criticized for failing to provide meaningful review of IRS collection actions.³¹³ The IRS, though it has many dedicated workers, is not infallible. Without CDP hearings and their important function in protecting against improper collection actions, taxpayers with Canadian tax liabilities face a greater likelihood of the IRS taking improper collection actions against them. For this reason, it is important that all taxpayers who are subject to collection actions by the IRS, including those taxpayers with Canadian tax liabilities, receive an opportunity to be heard.

309. *Id.*

310. *Id.* at 59.

311. Book, *supra* note 5, at 147.

312. IRM 5.21.7.4.1(10)(b) (June 3, 2020).

313. 2015 ANNUAL REPORT TO CONGRESS, *supra* note 49, at 93.