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Adviser's guide to doing business with the IRS

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The Adviser's Guide to **Doing Business With the IRS**

The Adviser's Guide to **Doing Business With the IRS**



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Wendy Kravit, CPA, MBA

The Adviser's Guide to

Doing Business With the IRS

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Preface

Introduction

This book offers practical insights and strategic how-tos for advising clients who have been contacted by the IRS. It covers the most effective methods for dealing with the IRS and helps practitioners determine which tactics would be the best to use in a given situation.

Organization

This book is organized to provide logical coverage of the topic by dealing sequentially with the progression of IRS contacts, from initial contacts and audits through the collection process. A discussion of IRS enforcement action including the filing of tax liens, levies, and seizure and sale of property is covered. We then take a look at various collection strategies including offers in compromise, installment agreements, and bankruptcy considerations, followed by a discussion of the trust fund recovery penalty under §6672. The book concludes with a discussion of issues facing tax practitioners and Circular 230.

The book is designed to be a permanent reference tool. We hope your reading of it enriches your professional knowledge and your practice.

Additional Information

There are numerous citations throughout the text to the Internal Revenue Manual (IRM). The IRM is the operational manual for the IRS. Most of it is available online at www.irs.gov.

We use the terms he and she alternately throughout the book (except when a particular person is mentioned) since both sexes are well represented throughout the profession.

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Chapter 1

Assessment Process

Introduction

Clients with tax collection problems frequently express one or both of the following concerns: they believe that they do not owe the asserted tax liability or they think that the liability has been incorrectly computed. They want to know how the asserted tax liability can be challenged. If they believe that they owe the debt, they want to know when the IRS may enforce collection of the debt and whether the IRS will levy on their assets.

An understanding of the concept of the administrative tax assessment is essential for addressing these concerns.

Private creditors are required to file a lawsuit and obtain a court judgment for the amount of the debt before they are entitled to enforce payment by executing against the debtor's property. Further, even when enforcing payment, judgment creditors under state law are often denied "self-help" remedies and restricted with regard to the property that is subject to execution.

This is not the case with the IRS. Once the IRS lawfully assesses the taxpayer, it can enforce payment almost immediately using its own agents and free of restrictions imposed by state law.

The authority of the IRS to assess taxpayers is not, however, unlimited. In many situations, the IRS is required to notify the taxpayer of the proposed assessment and to give the taxpayer the opportunity to have a hearing on the issue of the substantive liability.

The assessment process is the subject of this chapter.

Assessment Generally

IRC §6201 gives the Secretary of the Treasury authority to make inquiries, determinations, and assessments of all taxes including interest and penalties. This applies to all tax computations based upon returns that have been filed by the taxpayer. The assessment is made by an assessment officer signing a summary record of assessment at the service center. The assessment is a prerequisite for IRS collection and enforcement measures.

A taxpayer is entitled to obtain a copy of the record of assessment upon request.¹ The reason for making the request might be to confirm the fact of assessment or, more likely, to discover its date in order to determine whether the statute of limitations has run on either assessment or collection.

¹ IRC §6203.

There are various types of assessments:

- Summary
- Deficiency²
- Jeopardy³
- Termination⁴
- Receivership and bankruptcy⁵

Example 1-1

John Debtor comes to your office because he wants to clear an old IRS tax lien from his credit record. The IRS has ceased collection activity because John has minimal income. John thinks he might be able to borrow some money to pay off the debt. Upon obtaining a copy of the assessment and lien from the county clerk's office, you discover that there are three months remaining on the statute of limitations for collection. If John does nothing, the lien will automatically expire unless the IRS reduces the liability to a judgment under state law.

Summary Assessment

Summary assessment is not a term used in the Code. It is commonly used to refer to situations in which the IRS is permitted to assess the taxpayer without following deficiency or other preliminary procedures. The Internal Revenue Manual (IRM) defines assessments as tax increases that post to taxpayer accounts as a result of various occurrences, including the items described in this section.⁶

Deficiency Procedures

Generally, when the IRS proposes changes to an individual's tax obligation it must follow deficiency procedures.

If the IRS is required to follow deficiency procedures, it must send a notice to the taxpayer explaining the proposed assessment and offer the taxpayer an opportunity to respond. The 30-day letter is a non-statutory letter sent by the IRS advising the taxpayer that he or she will be granted an administrative appeal if the taxpayer, within 30 days of the date of the notice, protests or otherwise appropriately responds to the proposed assessment of tax.

If the taxpayer does not respond within 30 days, the IRS will subsequently issue a "Statutory Notice of Deficiency," commonly referred to as the "90-day letter" or "Stat Notice." A 90-day letter informs the taxpayer of his right to challenge the tax assessment in Tax Court. Once the 90 days have passed without a taxpayer response, the tax is assessed.

² IRC §6211 et seq.

³ IRC §6861 et seq.

⁴ IRC §6851.

⁵ IRC §6871.

⁶ IRM 25.6.5.2.

The IRS does not have to follow these procedures for any tax that may be summarily assessed. Certain types of assessment however, have their own procedures that must be followed.

Original Return

The tax liability shown on a filed return may be immediately assessed.⁷ If a taxpayer files a return without making a payment of the tax that is shown to be due, the IRS can proceed to enforce payment of the liability using its administrative collection procedures.

The taxpayer must have filed a valid tax return for the assessment to take place. A tax return is sufficient for establishing a statute of limitations period if it has all of these items:

- It has sufficient data to calculate a tax liability.
- It purports to be a tax return.
- It is an honest and reasonable attempt to satisfy the requirements of the tax law.
- It is signed under penalties of perjury.

An unsigned return is an invalid return; however, the Service has found it necessary to process unsigned balance due returns since 1970 in order to handle the large volume of unsigned payment returns it receives annually.

The Service's policy is to request a signature prior to processing an unsigned refund return rather than simply rejecting it and disallowing the claim for refund.⁸

A return that is filed on the wrong form may be a valid return for purposes of starting the period of limitations if it provides sufficient data to calculate a tax liability.

In *Atlantic Land & Improv. Co. v. United States*, 790 F.2d 853, 860,⁹ a FICA form was mistakenly filed instead of a Railroad Retirement Tax Act (RRTA) form. The court determined that the FICA return did not start the period of limitations on the employer's RRTA tax liability because the FICA return did not include all the information necessary to compute the RRTA tax.

However, it appears that if the company had filed an RRTA form instead of a FICA form, it would have been sufficient to start the period of limitations for the FICA tax because it would have had sufficient information to compute the tax.

Penalties

Most of the penalties the Code provides can be summarily assessed without the taxpayer first being given the opportunity to challenge the liability. Nonetheless, the IRS provides pre-assessment or post-assessment abatement or appeal procedures for many penalties.

⁷ IRC §6201(a)(1).

⁸ IRM 25.6.5.5.1.

⁹ 11th Cir. 1986.

Mathematical or Clerical Errors

If a filed return understates a tax liability because of a mathematical or clerical error, the correct tax can be assessed without resorting to deficiency procedures. The Code provides for a special procedure to be followed.

The taxpayer must be advised of the assessment, and the IRS must explain the error.¹⁰ The taxpayer is given a 60-day period commencing with the date of the notice to request abatement of the assessment. If the letter is addressed to a taxpayer who is out of the United States, the 60-day period is extended to 150 days. The IRS may not begin collection activity until the 60-day period is up. Once the 60 days has elapsed, however, the IRS does not have to follow deficiency procedures. It may immediately assess and attempt to collect the tax.

Certain Taxes

The deficiency procedures mandated by IRC §6212 et seq. apply only to income, estate, gift, generation-skipping, and the miscellaneous excise taxes of IRC Chapters 41 through 44. Other taxes, for example, the IRC §4999 excise tax on golden parachute payments and the employment taxes of Subtitle C, can be summarily assessed. Summarily assessable taxes also include the trust fund recovery penalty of IRC §6672, which, although it is not the practice of the IRS, can be assessed and collected by levy without giving the taxpayer an opportunity to assert any defenses.

Example 1-2

ABC Corporation treated its employees as independent contractors because it believed that it was reasonable. The state in which ABC operated audited the corporation and found that, under state law, the workers had been improperly classified and reclassified the workers as employees for purposes of state unemployment taxes. The state shared this information with the IRS, which then summarily assessed payroll taxes on ABC Corporation.

Payments and Deposits of Tax

The IRS can summarily assess any amounts paid as a tax or in respect of a tax.¹¹ This provision requires a taxpayer to exercise care when paying money to the IRS if the objective is to stop interest running on the tax debt rather than to relieve the IRS of its obligation to follow pre-assessment deficiency procedures.

Under the American Jobs Creation Act of 2004,¹² a taxpayer may make cash deposits with the IRS for items under dispute that have not yet been assessed. The IRS may apply the amount deposited to the taxpayer's income, estate, generation-skipping, and gift taxes, once those liabilities are assessed. Deposits may also be made against certain excise tax liabilities. Deposits made in accordance with IRC §6603 are not treated as being payments of tax and Tax Court jurisdiction is not lost when a deposit is made.

¹⁰ IRC §6213(b)(1).

¹¹ IRC §6213(b)(4).

¹² IRC §6603.

If the deposit is subsequently used to pay the tax, it is deemed paid as of the date that the deposit was made. Therefore, to the extent that the deposit is equal to the amount of tax that is eventually assessed and the deposit is not returned to the taxpayer before the tax is assessed, no underpayment interest accrues on the tax liability. Therefore, the making of a deposit stops the accrual of interest on that amount.

A deposit may only be made for a disputable item. Absent jeopardy, and provided the deposit has not yet been applied to the payment of tax, the IRS is required to return the deposit to the taxpayer upon written request. The deposit is repaid with interest provided that the deposit is with respect to a “disputable tax.” The interest is compounded daily at the federal short-term rate determined under IRC §6621(b).

The term “disputable item” for the purpose of IRC §6621 means “any item of income, gain, loss, deduction, or credit if the taxpayer...has a reasonable basis for its treatment of such item, and... reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such an item.” The reason why the payment of interest by the IRS on deposits is limited to situations in which there is a “disputable tax” is that the Treasury is concerned that, otherwise, the making of deposits with the IRS might become an investment vehicle. Any items set forth in a “30-day letter” are disputable for this purpose.

An amount paid as a cash deposit under IRC §6603 must be sent to the service center where the taxpayer files his return or to the IRS office where the return is under exam. It must be accompanied by a written statement that states the following information:¹³

- The type of tax.
- The year of the tax.
- A description of the item for which the taxpayer has a reasonable basis for the treatment of the item on its return and for which the taxpayer reasonably believes that the Service also has a reasonable basis for the disallowance of the time. A taxpayer may use a copy of a 30-day letter for this purpose.

A deposit may be made during an examination before the 30-day letter is issued. A taxpayer may use any reasonable method to compute what he considers to be the disputable tax. Any undesignated remittance that is made while the taxpayer is under examination, but before a liability is proposed to the taxpayer in writing (for example, before the issuance of a revenue agent's or examiner's report), will be treated by the Service as a deposit if the taxpayer has no outstanding liabilities. The taxpayer will be notified concerning the status of the remittance as a deposit, and may elect to have the deposit returned prior to the issuance of a revenue agent's or examiner's report.

This author strongly encourages that deposits be made at the local IRS office to ensure that the payment is properly entered as a deposit rather than as a payment of tax.

The distinction between making a payment of tax and making a cash deposit is important when considering the statute of limitations if the taxpayer wishes to make a refund claim. Refund

¹³ Rev. Proc. 2005-18.

claims of taxes paid are subject to the limitation periods set forth in IRC §6511(a). A claim for the refund of a deposit is not so subject, however.

In order to have the Service return a deposit to the taxpayer, Rev. Proc. 2005-18 instructs the taxpayer to submit a written statement to the IRS Service Center or the examining office where the deposit was made and request that the deposit be returned. The written statement must include the date and amount of the original deposit, the type of tax, and the tax year to which it was applied.

Before the enactment of IRC §6603, Rev. Proc. 84-58, 1984-2 C.B.501, set forth provisions under which a taxpayer could avoid the running of interest by making a cash deposit with the IRS. IRC §6603 is more favorable to the taxpayer than Rev. Proc. 84-58 because the former provides for the payment of interest to the taxpayer if, for example, the taxpayer prevails in its dispute with the IRS and the IRS returns the deposit to the taxpayer because no tax is owed. Rev. Proc. 2005-18 supercedes Rev. Proc. 84-58.

IRC §6213(b)(4) provides that any payments made to the IRS after a notice of deficiency has been issued will not cause the Tax Court to lose jurisdiction over the deficiency.

If tax is withheld and submitted to the Service prior to a tax assessment, is the payment a deposit or a tax for purposes of the statute of limitations? In *Baral v. Com'r*, 528 US 431 (2000), the Supreme Court held that, for statute of limitations purposes, tax withholding payments are deemed paid as tax on the due date of the taxpayer's income tax return.

In *Deaton v. Com'r*,¹⁴ the taxpayers argued that \$125,000 submitted with an extension to file their 1994 return (Form 4868) was a deposit and not payment of tax. They subsequently filed their 1994 return in 2000 showing a refund of \$50,211. The taxpayers argued that since no tax had been assessed at the time of the payment, the payment was in the nature of a deposit and therefore the statute of limitations for a refund of tax payment did not apply. The court held that an amount paid with an automatic extension of time to file was to be treated as a payment of tax for statute of limitations purposes.

Taxpayer Waiver

The IRS may immediately assess any taxes for which the taxpayer has signed a written waiver of restrictions on assessment.¹⁵ Form 870 is used for this purpose. This form is commonly executed at the conclusion of an audit when the taxpayer agrees with the adjustments.

In *Manko v. Com'r*, 126 T.C. 195,¹⁶ the taxpayer and the IRS entered into a closing agreement with respect to the tax treatment of specific items on the returns in question. The IRS then attempted to collect the tax, which it maintained it computed on the basis of the agreed items. The court held that the agreement did not waive restrictions on assessment and that the IRS would be required to follow deficiency procedures, beginning with the mailing of a notice of deficiency, as a prerequisite for collecting the asserted deficiency. Normally, in such a proceeding, the taxpayer would be bound by the agreement as to the specific items included in

¹⁴ 5th Cir. 2006.

¹⁵ IRC §6213(d).

¹⁶ 2006.

the closing agreement. The court noted that, had the closing agreement expressly addressed the amount of the tax due for the periods in question, the mailing of a notice of deficiency would have been unnecessary.

Deficiencies

In the case of income, estate, gift, generation-skipping, and many excise taxes, summary assessments may not be made where the IRS is asserting a deficiency. For this purpose, a deficiency is the difference between the tax liability shown on the return and that asserted by the IRS. In other words, if the IRS thinks that a return understates the true tax liability, it is not free to simply assess the excess amount and enforce payment.

If no return is filed, and no tax is paid, the asserted deficiency will be the amount of tax the IRS considers due.¹⁷

IRC §6020(b) Returns

The IRS has the authority to execute a return on behalf of a taxpayer who fails to file a return or files a fraudulent return.¹⁸ The Service prepares these returns using manual and automated procedures referred to as Automated Substitute for Return (ASFR) procedures. Under the ASFR procedures, the Service establishes a taxpayer account and simultaneously prepares and mails a 30-day letter to the taxpayer. The 30-day letter has an explanation of proposed adjustments and a tax calculation summary report attached. The letter is signed by the Chief of the Collection Branch. If the taxpayer fails to respond to the 30-day letter, the Service will issue a statutory notice of deficiency with the same explanations and tax summary.

Section 6020(b) provides that the return the IRS files is a valid return. However, a §6020(b) return is *not* a valid return for purposes of the statute of limitations, the election to file a separate return, or the failure to file penalty (Service Center Advice 199950033, October 20, 1999). A §6020(b) return is a valid return for purposes of the failure-to-pay penalty under §6651(a)(2).

The Internal Revenue Manual provides that Service employees such as revenue agents and tax auditors, as well as Revenue Officers and collection office function managers who are at least at the GS-9 level, may execute a §6020(b) return.¹⁹

Therefore, the issuance of a §6020(b) return by the Service is a collection device. Since it does not begin to toll the statute of limitations and because it undoubtedly does not contain otherwise allowable deductions, a taxpayer should, upon receipt of such a notice, immediately file a proper return.

Following is a sample IRS letter for a non-filed F940. Note that it requests a tax return or a signature from the taxpayer. It is always best to prepare the proper return and submit it.

¹⁷ Treas. Reg. §301-6211-1(a).

¹⁸ IRC §6020(b)(1).

¹⁹ I.R.M., Handbook No. 1229, Handbook of Delegation Orders, Order No. 182. See also I.R.M. 5290-5293.3.

Exhibit 1-1

INTERNAL REVENUE SERVICE SB OR SE
Internal Revenue Service
Ogden, UT 84201-0048

Department of the Treasury Employer
Identification Number:

Forms:

Tax Period(s) Ended:

Person to Contact: A6020b Representative
Contact Telephone Number: 801-620-4647
(6am-4pm Mountain Time)
Fax Number: 801-620-4750

Dear

We have reviewed your tax records and found no record of you filing the tax returns identified above. We believe you are liable and have prepared a tax return for the tax period(s) in question. If you agree that the tax liability shown is correct, please sign each form and return it to us. If you do not agree with our findings, you have 45 days (90 days if this letter is addressed outside the United States) to do one of the following:

1. Prepare and sign tax returns which you believe show your correct tax liability and return them to us (if you choose to file a Form 940 claiming a reduced rate of assessment you must attach a copy of the state certification showing the amount of contributions paid or the return may be processed at the standard unemployment tax rate of 6.2 percent); or
2. Mail us any additional information you would like us to consider; or
3. Request a conference.

What Will Happen if You Do Not Respond to This Letter?

The Internal Revenue Code Section 6020(b) gives us the authority to prepare and file tax returns on your behalf. Therefore, if we do not hear from you within 45 days from the date of this letter (90 days if this letter is addressed to you outside the United States), we will process the enclosed tax returns that we have prepared for you. You will then be billed for the amount of tax due, plus any additional penalties and interest. You need to check your records to ensure that all tax returns you are liable for have been filed.

If you have any question and want to call us, please use the telephone number shown above and a representative will be able to help you. Since there will be a long distance charge to you if you are beyond the immediate dialing area of the service center, you may prefer to write to us. If you write, please include your telephone number and the most convenient time to call you in case we need more information. Your appeal rights are explained in the enclosed Publication 5.

Sincerely yours, Collection Operations
Manager

Enclosures: Completed Tax Returns
Appeal Rights (Publication 5) Envelope

Letter 1085 (A6020b)*

*Rev. 02-05.

Amended Returns

If a taxpayer files an amended return showing additional tax due, it is this greater tax liability that is deemed to be the tax shown on the return for the purpose of calculating the deficiency.²⁰ There is no statutory provision that authorizes the IRS to accept amended returns. Therefore, the IRS is free to ignore an amended return showing a reduced tax liability. Amended returns are accepted is at the discretion of the IRS. There are no provisions to appeal the rejection of an amended return except in cases of IRS abuse.²¹

In practice, the IRS generally accepts amended returns showing a decrease in tax, although significant changes may likely result in an examination of the return.

An amended return filed before the due date for the return is considered a superseding return by the IRS and therefore will be processed as the original return.

Jeopardy and Termination Assessments

The statutory structure described above has been shaped to give the taxpayer a measure of protection against arbitrary assessment and collection by the IRS. Congress has determined it necessary, however, to give the IRS the power to assess and collect tax without first following deficiency procedures in emergency situations in which delay might jeopardize the collection of the tax.

IRC §§6851-6864 are the Code provisions authorizing and relating to jeopardy and termination assessments.

Jeopardy assessment provisions of the Code authorize the immediate assessment of a tax liability in circumstances such as where the taxpayer is about to remove himself or his assets from the United States. The IRS is then allowed to immediately assess and levy on the taxpayer. However, this action requires written approval by the IRS Chief Counsel (or his delegate).

Claim for Refund

In the case of income, estate, gift, and generation-skipping taxes, if the taxpayer fails to timely file a Tax Court petition or if deficiency procedures do not apply, the taxpayer's only means of challenging the liability generally is to pay the tax and file a claim for a refund. IRC §6402(a) gives the IRS the authority to refund an overpayment.

Statutory Requirements for Refund Claim

Upon receipt of a claim for refund, the IRS may pay it, audit it, or disallow it.

A refund claim must meet statutory requirements for it to be eligible for consideration by the IRS. If refund litigation is to be maintained, the claim must also satisfy various requirements for federal court jurisdiction.

²⁰ Treas. Reg. §301.6211-1(a).

²¹ *Koch v. Alexander*, 561F2d, 1115, 1118 (4th Cir. 1977).

Claim

A claim for refund must be filed in writing.²² In the case of income taxes, the claim must be made on Form 1040X for individuals and 1120X for corporations. Claims for refunds of taxes other than income taxes must be made on Form 843. The claim is required to set forth in detail the grounds for the entitlement to a refund.²³ The requirements for a valid refund claim are not automatically met by the filing of the right form. The taxpayer must give a detailed explanation of the facts and law justifying his claim.²⁴

Timing

In the case of most taxes, the claim for a refund is required to be filed within three years after the return is filed or within two years after the tax is paid, whichever is later.²⁵ If no tax return was filed, the claim must be made within two years of the date the tax was paid.

There are, however, a large number of specific exceptions and limitations. Under the Internal Revenue Service Restructuring and Reform Act of 1998, IRC §6511 provides that the running of the limitation period relating to refund claims is suspended while the individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment.²⁶ The exception does not apply where the individual has a guardian. This provision is applicable to "open" refund claims on the date of enactment.

There are also extended claim deadlines in the cases of bad debts (seven years) and net operating loss carrybacks.

Example 1-3

Charles filed his 2007 tax return on April 15, 2008. In 2010, he received a K-1 for a partnership that reported additional income. He amended his 2007 tax return on November 15, 2010 and paid an additional \$2,000 in tax.

On July 30, 2011, he discovered that he had made an error on his original tax return and amended his return again, applying for a refund of \$3,000.

The statute of limitations on his original return has expired; however, the statute of limitations on the additional \$2,000 that he paid on November 15, 2010 extends for two additional years. Therefore, Charles may receive a refund of \$2,000.

Full Payment Rule

In the context of refund litigation in federal courts, the most important issue that has arisen is whether the taxpayer is required to make full payment of the tax issue in order to have his day in

²² IRC §7422(a).

²³ Treas. Reg. §301.6402-2(b)(1).

²⁴ See *Beckwith Realty, Inc. v. U.S.* 896 F.2d 860 (4th Cir. 1990).

²⁵ IRC §6511(a).

²⁶ Rev. Proc. 99-21.

court. In *Flora v. United States*, 362 U.S. 145,²⁷ the United States Supreme Court determined that full payment is necessary for a refund action in federal court to be maintained.

Under *Flora*, prepayment of interest is unnecessary unless the issue is the computation of interest itself.

In the case of divisible taxes such as excise and employment taxes which accrue transaction by transaction, the full payment rule requires that only the tax with respect to a single transaction needs to be paid. In *Steele v. United States*, 280 F.2d 89,²⁸ the court determined that payment of the withholding taxes for one employee for one period was adequate to bring a refund suit for the return.

The full payment rule has been modified by statute in the case of certain assessable penalties. For example, in the case of the IRC §6694 income tax preparer penalty, a payment of 15 percent of the amount assessed will suffice to secure federal court jurisdiction of a refund suit.

Appeals Conference and Federal Court Suit

The procedure followed by the IRS upon receipt of a claim for a refund will depend upon the basis of the claim and whether the issue was previously the subject of an appeals conference. In certain situations, the claim will lead to an audit and the opportunity for an appeals conference.

If the claim is disallowed, the IRS will issue a notice of disallowance or request the taxpayer to sign Form 2297, which is the waiver of the right to be served with that notice. The notice of the waiver marks the beginning of the two-year period within which the taxpayer must file a refund action in either the federal district court or the Claims Court.²⁹

IRC §6402 provides that in the case of a disallowance of a claim for refund, the IRS is required to provide the taxpayer with an explanation for the disallowance.

The taxpayer may not commence a refund suit within the six-month period following the filing of the refund claim unless a notice of disallowance is issued during that period, in which event the suit may be immediately commenced.³⁰

Effect on Taxpayer Remedies of IRC §6330

The Internal Revenue Service Restructuring and Reform Act of 1998 added IRC §6330 to the Internal Revenue Code. This grants taxpayers the right to appeal a lien or levy and to challenge the substantive tax liability in the proceeding “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.” The circumstances under which a taxpayer will not have received a notice of deficiency with respect to a substantive tax liability are somewhat limited.

²⁷ 1960.

²⁸ 8th Cir. 1960.

²⁹ IRC §6532(a).

³⁰ IRC §6532(a)(1).

Assessment Statute of Limitations

As has been discussed, the general rule of IRC §6501 is that an assessment of tax or a proceeding in court for the collection of tax must be made within three years of the later of the date the return was filed or its due date for filing without regard to extensions. The limitation period also applies to additions to tax such as interest and penalties because these are assessed and collected in the same manner as taxes.³¹

The general rule is, however, qualified by a number of exceptions and special applications. Most importantly, the limitation period does not begin to run until a proper return is filed. Further, the limitation period does not operate in the case of taxpayer fraud.³²

The limitation period is six years if a taxpayer omits 25 percent or more of gross income from an income tax return. There are analogous provisions for estate, gift, and excise taxes.³³ This six-year rule has been the subject of some litigation recently. In several cases before the U.S. Tax Court and the Courts of Appeals, the courts found that an overstatement of basis that resulted in an understatement of income was not an omission of gross income for purposes of the six-year rule. In each of these cases: *Intermountain Insurance Service of Vail, LLC*, 134 TC No. 11; *Bakersfield Energy Partners, LP*, CA-9 2009-1 USCT 50,448; and *Salman Ranch Ltd.*, CA-FC, 2009-2 USTC 50,528 the courts ruled against the IRS in applying the six-year statute where the taxpayer had overstated basis in a capital transaction.

On December 15, 2010, the IRS issued T.D. 9511 describing final regulations under IRC §6229(c)(2) and §6501(e) clarifying the definition of omission from gross income. The final regulations state that an overstatement of the basis of a sold asset creates an omission of income subject to the six-year rule.

IRC §6501(c)(7) gives the IRS 60 days from receipt to assess tax when an amended return showing an amount due is filed at any time during the final 60 days of the expiration of the statute of limitations.

The limitation period may be extended in the case of taxes other than estate tax by written agreement of the parties, provided the agreement is entered into before the limitation period would otherwise have expired.³⁴ IRC §6502(c) provides that when the IRS requests the taxpayer to agree to an extension of the assessment limitation period, it is required to notify the taxpayer of his or her right to refuse to extend the assessment limitation period and to limit the extension to particular issues or to a particular period of time.

Statute of Limitations on Assessment—Flow Through Entities

Partnerships are subject to the audit rules under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. IRC §6221 states that items related to partnerships are audited at the partnership level rather than at the partner level, with certain exceptions. IRC §6229 provides that any items on a return that relate to a partnership are subject to the statute of limitations on

³¹ IRC §6665(a)(1).

³² IRC §6501(c)(1).

³³ IRC §6501(e).

³⁴ IRC §6501(c)(4).

the partnership return. Therefore, it is the partnership return, and not the individual return, that generally sets the statute of limitations for assessment.

There is a small partnership exception to the TEFRA rules. A partnership qualifies for the exception if it has 10 or fewer partners and each partner is an individual U.S. resident, a C Corporation or an estate of a deceased partner.

A partnership that qualifies as an exception to the TEFRA rules may elect to have the rules apply to it nonetheless by making an election. The election cannot be revoked without IRS consent.

The election is made by completing and attaching Form 8893 to the partnership return in the year in which the election is made. The election is good for all succeeding years.

The TEFRA rules do not apply to S Corporations. Therefore, each shareholder's 1040 is the return that governs the statute of limitations for the items that flow through from the 1120S.

Suspension of the Statute of Limitations

The limitation period on assessment will be suspended in the case of a notice of deficiency or in bankruptcy.

If a notice of deficiency is sent to the taxpayer, the limitation period is tolled for the period during which the IRS is prohibited from assessing or collecting the tax plus 60 days.³⁵ Therefore, the statute of limitation period is suspended from the time the notice of deficiency is sent until the determination of the Tax Court becomes final (plus 60 days) or until the issue is concluded in some other way, such as by the taxpayer failing to file a Tax Court petition during the requisite period.

The IRS is not stayed from assessing a tax by reason of bankruptcy. IRC §6503(h) serves to toll only the collection limitation period for the duration of a bankruptcy proceeding. Please see practice points 1-1 on the following page.

Summary

Assessment is an administrative act that records the taxpayer's liability. In the case of income, estate, gift, generation-skipping, and many excise taxes, summary assessment may not be made where the IRS is asserting a deficiency. The general rule of IRC §6501 is that an assessment of tax or a proceeding in court for the collection of tax must be made within three years of the later of the date the return was filed or its due date for filing without regard to extensions. An untimely claim for refund will not be paid.

³⁵ IRC§6503(a)(1).

Practice Points 1-1

The following is a summary of practice points to bear in mind in connection with the assessment of tax:

- Assessment is a prerequisite for the enforced collection of taxes.
 - Therefore, it is important for the tax advisor to understand whether the client has been assessed and whether he or she can lawfully be assessed without further procedures.
 - The assessment can be easily determined by ordering a transcript of the client's return.
- Administrative appeal is the cheapest and simplest means by which the taxpayer can get relief.
 - The practitioner should consider whether the appeal is available in the client's circumstances.
- Since assessment is a prerequisite for enforced collection, a tax liability becomes uncollectible once the assessment limitation period has expired.
 - Always check the limitation period.
 - Clients cannot be relied upon to accurately recall whether they signed a consent to extend the limitation period.
- Remember that whether a tax can be assessed will depend upon the kind of tax or penalty that it is.
- Exercise care in situations where the IRS can assess a tax liability, such as
 - When a payment of tax is made.
 - When a return reporting a tax liability is filed.
 - When a taxpayer is invited to waive restrictions on assessment.
 - When the taxpayer does not respond to a notice of deficiency.
- Refund procedures.
 - Circumstances under which the full payment rule is, and is not, applicable for court jurisdiction.
 - The refund claim statute of limitations.

Chapter 2

Examination and Appeals

Introduction

For many of our clients, a letter from the IRS requesting clarification of an item reported on a return creates terror. The IRS does its part to help foster that. It attempts to time press releases about tax evasion cases during filing season to help bolster compliance. After all, promoting compliance with the tax law is one of the IRS's missions.

The audit process is not defined in the Tax Code. The IRS conducts audits in the way that it thinks will be most efficient to assess tax on unreported income or overstated deductions. There is no one way to handle an audit because no two IRS examiners are the same and no two taxpayers are the same.

The IRS makes it quite clear that the responsibility of a tax preparer is to determine and report the correct amount of tax. When a preparer signs a tax return, he is declaring, under penalties of perjury, that the return and its schedules are true, correct, and complete based upon all information of which the preparer has knowledge. The tax auditor is also attempting to determine the correct amount of tax based upon all the available information. So, in theory, we have the same goals.

A thorough knowledge of the examination process and the various types of audits will help preparers represent their clients and guide them through the process.

This chapter looks at Service Center Examinations, Office Audits, and Field Examinations and will take you, the preparer, through the steps needed to successfully get your clients through the process. It concludes with a discussion of the Appeals process.

The Return Selection Process

There are many different ways a return may be selected for audit. The most common method is the DIF (Discriminant Function) score. The DIF score is a mathematical formula used to score income tax returns as to examination potential. These formulas are developed based upon the National Research Program (NRP) available data. Each return measured under DIF receives a DIF score. Generally, the higher the score, the greater the audit potential. The highest scored returns are made available to Examination upon request. DIF mathematical formulas are confidential and for official use only. The IRM states that a DIF score assigned to a return should not be disclosed to the taxpayer.³⁶

³⁶ IRM 4.1.3.2.

The following types of returns are computer scored under the DIF System:

- Individual Returns
- Corporation Returns
- S Corporation Returns
- Partnership Returns
- Fiduciary Returns

Returns may also be selected as part of a special project or for research by the IRS. Individual revenue agents may also request returns for audit from the Service Center if they discover information that suggests there may be audit potential during the exam of another taxpayer.

Not all returns selected by the computer are automatically audited. IRS personnel typically will inspect returns selected for audit by the DIF score before deciding to proceed.

Correspondence Audits

Most individuals that will have contact with the IRS are likely to have that contact in the form of a Service Center Audit. Typically, the taxpayer will receive a CP 2000 notice that requires a timely response. Explanations and supporting documents are mailed to the appropriate Service Center until the issue is resolved. The entire audit may be done by correspondence.

The CP 2000 Notice—See Exhibit 2-1

The IRS is increasing the number of correspondence audits. Many of them are initiated due to mismatching of third-party information with items reported on the return. The IRS reports that Schedule D items, capital gains and losses, tend to be a high-problem area.

The Service Center may also issue CP 2000 notices requesting receipts to verify other expenses such as charitable contributions.

Clients should be instructed to immediately bring any letters or notices they receive from the IRS to their preparers. Many CPAs put such a clause in their engagement letter. Speed is of the essence here because the taxpayer only has 30 days from the date of the notice to respond to the IRS.

The CP 2000 letter is a 30-day notice of an assessment of tax. Failure to have the response at the IRS Service Center by the date indicated on the letter will usually result in the amount being assessed. Once assessed, the taxpayer will have to follow the procedures outlined in the 90-day letter and petition the tax court. The response to the letter is supposed to be received by the Service Center within 30 days.

If the taxpayer cannot completely respond to the notice by the date indicated on the letter, he must notify the IRS. He or his representative may call the number at the top of the notice or write the Service Center. In either event, this must be done before the 30-day period has expired. The IRS may allow an additional 30 days to wait for a response, or longer if it is a complicated issue. However, no response by the due date will usually result in the 90-day letter being issued. A Tax

Court petition will most likely end up in Appeals first. However, a lot of trouble can be avoided by ensuring that the IRS has been contacted within that 30-day window.

Upon receipt of the CP 2000 by the taxpayer, it is generally advisable to prepare a Form 2848, *Power of Attorney*, and submit it to the IRS as soon as possible. If the client wishes to attempt to save money by handling the response herself, it is a good idea to submit the POA so that it is on record in case the preparer should need to become involved.

The CP 2000 offers the taxpayer the opportunity to examine the information that the IRS has received and compare it to her records. The taxpayer may agree totally, disagree totally, or agree partially with the IRS proposal. If the taxpayer finds that she made an error on the original return she may complete an amended return, write “CP2000” across the top of the 1040X and submit it with the response form to the address shown on the notice. Do not simply file an amended return to the Service Center. Or, she may mark that she agrees with the changes and sign the form. The signature represents a waiver of the right to appeal and a consent to the assessment of the tax. The next document she will receive from the IRS will be a bill. Or, the taxpayer may enclose a check with the form to stop interest and penalties from accruing.

If the response is fairly simple, such as simply having to show the IRS where some income was reported on the return, the taxpayer or his representative may call the IRS and provide that information. If the notice was generated from Brookhaven, Ogden, or Philadelphia, the phone number to call is 800-829-8310. If the notice was generated from Atlanta, Austin, or Fresno, the number to call is 800-829-3009.

If written evidence needs to be submitted, it should be submitted to the address indicated in the letter. Make copies of all relevant documents and submit them with the explanation and a copy of the original CP 2000.

The CP 2000 arrives with an envelope for the taxpayer to use to submit her response. While the envelope is generally too small to be of practical use, it does contain some important information—a barcode that helps to expedite delivery to the right place at the Service Center. Therefore, if the response is being submitted in another envelope, cutting that address and barcode from the return envelope provided and affixing it to your envelope will help to expedite the process. The notice will also have a fax number that you can use to submit the information.

A taxpayer’s correspondence audit is not necessarily assigned to one person at the Service Center. If there are multiple communications, it is imperative that each correspondence be properly identified and labeled so that it will be associated with prior correspondence.

Office Audits

In the case of an office audit, a taxpayer is typically sent a letter that his return has been selected for audit. The letter details the items on the return that are being examined and requests that the taxpayer produce specific records pertaining to those items in person at an IRS office at a specified time on a particular date.

The date and time of the audit is easily changed. The IRS does not expect most people to be available at the random date and time that it chose to put on the letter. Therefore, there is no

negative connotation placed upon a taxpayer or representative who calls to change the appointment.

An Overview of the Typical IRS Office Audit

Prior to meeting with the taxpayer or his representative, the IRS Tax Auditor should have inspected the return and the classification check sheet created during the classification process when the return was selected for audit. While the audits are often confined to the items on the classification checklist (which are the same items that are detailed in the letter to the taxpayer), IRM 4.10.2.6.1 instructs the auditor that the scope of the examination should not be limited to the classified items if other significant issues are revealed during the examination. Therefore, an audit may be expanded depending on what the auditor discovers. The IRM urges the auditor to get managerial permission before expanding the scope of the audit. If the scope of the audit is expanded to another tax period, the taxpayer is to be notified in writing.

Office audits are not as complex as field examinations. Most office audits are allotted initial time slots of a few hours. The examiner has a worksheet that he will fill out upon examining the evidence that the taxpayer or representative presents for the items listed on the audit letter.

Preparing for an Office Audit

Generally, the meeting at the IRS office is fairly informal and relaxed. Most office audits do not involve complex issues and the auditor is verifying gross income and documentation to verify deductions. The auditor has to complete a form to create his report. He uses Form 4700 to record what he has seen and verified. The key to a successful office audit outcome is organization. A representative should have thoroughly reviewed all documentation that will be presented to the auditor. If there are multiple receipts to verify a particular expense, they should be organized together preferably with an adding machine tape to show the totals. The auditor may test some of the tapes to verify the accuracy.

Common areas for an office audit include itemized deductions, employee business deductions, and less complex Schedule C and Schedule E issues.

The representative should have a copy of the Power of Attorney with him even if it has already been submitted. The POA should include all open tax years for the taxpayer. If the auditor finds a significant issue in one year, he is very likely to look at the same issue in any other years that are currently open by statute.

The auditor will generally go through his check sheet. If there is disagreement between the representative and the auditor regarding the final audit findings, the representative may request a meeting with the auditor's manager. If no adjustments are made, the case will be closed and a "no change" letter will be issued to the taxpayer. If there are adjustments to be made to the return, obtain a copy of the report and review it with the taxpayer. Do not sign reports on behalf of your client, always discuss the report with the client and, if agreed, have the client sign the report.

If the taxpayer agrees with the adjustment, he may sign and pay the tax immediately or sign the form, consenting to the assessment, and wait for a bill. If the total amount due is less than \$100,000, the taxpayer will have 21 calendar days to pay the bill without incurring additional

interest. If the amount is at least \$100,000 or more, he may pay the bill within 10 business days without incurring additional interest charges.

Handling Audit Disagreements

IRS Publication 556 outlines taxpayer appeal options.

As mentioned earlier, the first step to be taken to resolve a disagreement with the auditor is to meet with the auditor's manager. However, if that resolution is not satisfactory, there are different options available depending upon the amount of money in dispute. The examiner will write up the case explaining your objection and close it out. A case is closed subject to managerial approval.

The taxpayer will receive a "30-day letter." The letter proposes the adjustments that the auditor found and requests that the taxpayer either sign his agreement to the assessment of the additional tax or request an appeal.

If the taxpayer does not respond to the 30-day letter, he will receive a "90-day letter." The 90-day letter is a "statutory notice of deficiency." It contains information and instructions for filing a Tax Court petition. If the taxpayer does not respond to the 90-day letter and does not file a tax court petition, the tax will be assessed.

Field Examinations

Field examinations are handled by revenue agents and are generally more complex audits involving a business. Usually these are done at either the taxpayer's place of business or the representative's office. The taxpayer may be initially contacted by the agent by telephone or letter, depending on the practices of that area. Once a Power of Attorney has been submitted to the IRS all communications should be done through the representative.

The agent will submit a rather exhaustive request of books and records that he wants to examine to the taxpayer on an IDR, Information Document Request Form. Obviously, he will not be able to examine all of those records on the first day, so it is not unreasonable to ask him which records he really expects to be examining for that first day. Assuming the audit will take more than one day, he will typically issue a new IDR at the end of that first day detailing more specific records requests.

Often an issue arises because the revenue agent wants to speak to the taxpayer even though the representative has a valid Power of Attorney on file.

IRM 4.10.1.6.1 states that "Honoring a valid power-of-attorney submitted by a taxpayer is always required unless the criteria for bypassing the power-of-attorney has been met."

Furthermore, IRM 4.10.4.3.3.2 provides the following information to IRS auditors:

Internal Revenue Code section 7521(c) states that an examiner cannot require a taxpayer to accompany an authorized representative to an examination interview in the absence of an administrative summons. However, the taxpayer's voluntary presence can be requested through the representative as a means to expedite the examination process. Should an examiner find that a representative has unreasonably delayed or hindered an

examination, an examiner can bypass the representative and deal directly with the taxpayer.

Revenue agents are trained to request an interview with the taxpayer. However, if the representative is well prepared and knowledgeable about the taxpayer's business and sources of income such a meeting should not be necessary.

The initial interview will include questions concerning possible nontaxable sources of funds as well as unreported sources of income. Therefore, the representative should be familiar enough with his client's financial picture to be able to answer questions regarding loans, family gifts, inheritances, and so on.

IRM 4.10.1.3.3.3 instructs the auditor to conduct a tour of the business site. The agent is instructed to visit the principal location and any other locations acquired during the period under examination. This is not required for office audits, although a visit may be conducted if appropriate. The purpose of the tour is for the revenue agent to gain familiarity with the taxpayer's business operations and internal controls, identify potential sources of unreported income and to confirm the existence of assets.

Field audits of small businesses usually last several days or longer, depending upon the complexity of the business. The agent will have conducted a survey of the return before the visit; however, he will determine the scope of the audit based upon the initial interview and subsequent findings.

The IRS publishes Audit Technique Guides (ATGs) to assist their employees in the audit of various types of businesses. A list of the ATGs available at this publishing is listed in exhibit 2-3. These guides are available on the IRS website at www.irs.gov. Enter "ATG" into the search box. The latest IRS listing is in exhibit 2-3. For example, the ATG for the Construction Industry is 196 pages long and includes such topics as method of accounting and contracting bonding.

The revenue agent will tie out income with the bank statements. Therefore, the representative should be prepared to explain any discrepancies between bank deposits and gross income as reported on the tax return.

Revenue agents have some flexibility in handling the examination. There can be more negotiation with a revenue agent when dealing with uncertainties in the tax law or the application of penalties.

The revenue agent will usually review his report with the taxpayer or representative at the end of the audit and discuss his findings. At that time, he will ask for a signature to consent to the assessment of the tax. If an item cannot be resolved at the agent level, a conference with his manager should be requested. Most issues can be settled at the agent or manager level. However, if this is not the case, the issue(s) may go to appeals.

The taxpayer will receive the same 30-day and 90-day letters as discussed above.

Extending the Statute of Limitations

If there is less than one year left on the statute of limitations on a return that is in the examination process, it is very likely that the examiner will ask the taxpayer to consent to extend the statute of

limitations. The taxpayer usually has very little choice in the matter. If he refuses, the IRS will simply close out the case, disallowing everything that is in doubt, and send the taxpayer a 30-day letter.

Delays During the Examination

Sometimes a representative may find that an examination they are working on has stalled. He has had the initial or perhaps several meetings with the examiner and then does not hear from the examiner for quite some time. This could be the result of several different scenarios:

- The IRS employee has been reassigned temporarily to some other activity.
- The IRS employee is undergoing additional training.
- The IRS employee is simply working on other cases.
- The IRS employee has left the Service and the case is being reassigned to another auditor.
- The case is being referred to the Criminal Investigation Division.

Unfortunately, there is often little you can do about the first 4 of these items except to contact the Service and ask about the delay. IRC §6404(e) provides that abatement of interest is available when attributable in whole or in part to an unreasonable error or delay by an officer or employee of the Internal Revenue Service while performing a ministerial or managerial act.

Reg. §301.6404-2 defines and provides some examples. A managerial act means an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to the management of personnel. A decision concerning the proper application of federal tax law is not a managerial act. Therefore, if an agent takes some time researching the tax law for a particular issue, this does not constitute an unreasonable delay. The Reg. also points out that a delay in implementing an improved computer system is not a managerial act which would allow the abatement of interest.

A ministerial act means a procedural or mechanical act that does not involve the exercise of judgment or discretion that occurs during the processing of a taxpayer's case after the examination has been completed. The Regs. contain some examples:

- *Example 1*—A taxpayer moves from one state to another and the IRS selects the taxpayer's return for audit and sends the audit letter to the old address. The representative sends a letter requesting that the audit be transferred to the IRS district where the taxpayer currently resides. The group manager timely approves the request. The transfer of the case is now a ministerial act and interest attributable to an unreasonable delay in transferring the case is abatable.
- *Example 3*—A revenue agent is sent to a training course for an extended period of time and the agent's supervisor decides not to reassign the agent's cases. No work is done on the case while the agent is in training. The decisions to send the revenue agent to training and not reassign the cases are not ministerial acts, however they are managerial acts and

the Commissioner may, at his discretion, abate interest attributable to an unreasonable delay resulting from these decisions.

- *Example 6*—A revenue agent has completed an examination of an income tax return but, before the notice of deficiency is prepared, a clerical employee misplaces the taxpayer's case file. This is a managerial act and interest attributable to an unreasonable delay may be abated.
- *Example 8*—A taxpayer claims a loss on his tax return and the IRS sends out a notice of its intent to examine the return. However, a decision is made to not commence the audit until another return has been processed because the statute of limitations is about to expire on the other return. This is a general administrative decision and interest attributable to a delay caused by this decision cannot be abated.
- *Example 9*—During an examination of an income tax return, there is a disagreement between the taxpayer and the agent regarding an issue on the return. Advice is requested in a timely manner from the Office of Chief Counsel on the issue of the tax law. Since the decision to request advice is a decision concerning the proper application of federal tax law, it is neither a ministerial nor a managerial act. Consequently, interest attributable to the delay resulting from this decision cannot be abated. However, if the attorney who is assigned the response is granted leave for an extended period of time and the case is not reassigned, interest attributable to that delay is abatable.

Referrals to CID

Revenue agents are instructed to refer a case to the Criminal Investigation Division when they suspect criminal fraud has occurred. The referral process takes some time. Keeping in mind that typically a taxpayer's tax preparer is called as a witness for the prosecution, this would be a good time to refer your client to a tax attorney.

Privileged Taxpayer Communications to Certified Public Accountants

The Internal Revenue Service Restructuring and Reform Act of 1998 created IRC §7525, which extends, in part, what was previously the attorney-client privilege, as it applied to communications between taxpayers and their attorneys, to all persons authorized to practice before the IRS. The privilege is limited to noncriminal proceedings and does not apply to communications regarding corporate tax shelters. The exclusion for criminal proceedings is very significant because it is frequently with respect to criminal matters, or matters that may become the subject of a criminal investigation, that the privilege is most important. The attorney-client privilege is, itself, limited in scope (such as where the taxpayer uses the attorney to perpetrate a tax fraud), and the Conference Report makes clear that limitations on the attorney-client privilege also apply to the privilege under IRC §7525.

Appeals

Appeal Protests

If an audit cannot be resolved at the office-audit or field-audit level, the next step in the process is to request an appeals conference. The procedures for requesting an appeals conference differ

depending upon the amount of money involved. Sometimes it can take a very long time for a case to get through the appeals process, and interest will continue to accrue. It is worth considering whether or not the taxpayer would like to make a deposit with the IRS to stop the accrual of interest in the event that he may owe money at the end of the process.

The 30-day letter contains instructions for requesting an appeals conference.

If the total disputed amount for any tax period is not more than \$25,000, the taxpayer may make a small appeals case request instead of filing a formal written protest. A small appeals case may be held by correspondence, telephone, or at a conference at IRS discretion.

Employee plans, exempt organizations, and all partnerships and S corporations must file written protests for all appeals cases.

A protest must contain the following items:

- Taxpayer name, address, and telephone number
- A statement that the taxpayer wishes to appeal the IRS findings
- A copy of the IRS letter with the proposed changes
- The tax periods or years involved
- An explanation of which items and why the taxpayer does not agree with the IRS findings
- Any facts, law, or authority supporting the taxpayer's position
- The protest must be signed by the taxpayer with the following perjury statement:
 - "Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."

When the protest is prepared by a representative, the representative must sign a statement stating that he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

The Appeals Officer

Appeals officers are trained to be impartial. They are not allowed ex parte communications with the IRS examiner. The object of the appellate conference is to settle the case. Appeals officers are trained in the rules of evidence, and during the conference they will evaluate the tax law regarding the issue as well as whether or not this is a case that the IRS would want to see in court. The officer will also consider the hazards of litigation. This includes the costs of litigation as well as the likelihood that the IRS will prevail.

The Appeals Conference

The appeals conference is typically an informal conference. The revenue agent or tax auditor will not be present. The appeals officer will use the information that the agent wrote up in the case

workpapers. The representative should be well prepared to argue those issues. Most cases are settled in appeals.

Appeals has great flexibility to settle cases. The Appeals Officer may split or trade issues with the taxpayer.

Once an agreement is reached and if the taxpayer will owe money, he will be asked to sign a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*.

The IRS may request that a Form 870-AD be signed instead of the normal Form 870, particularly if there were substantial negotiations and mutual concessions. Form 870-AD contains pledges against reopening tax issues. Also, the 870-AD is effective only upon acceptance by or on behalf of the Commissioner of Internal Revenue. No claim may be filed for the years stated on the form. This may result in problems if a subsequent year has a NOL carryback to a year settled with an 870-AD.

Finally, Appeals may request a closing agreement to settle a case. A closing agreement is considered a contract with finality as to the issues and years in dispute. Reg. §301.7121-1(a) provides that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage by consummation of such an agreement. A closing agreement contains the provision that the matters that have been decided are final and conclusive and may not be reopened except in the event of fraud, malfeasance, or misrepresentation of material fact.

A relatively new program also exists, Post-Appeals Mediation. Additional information on this program is available from Wendy Ryan at the IRS: 202-435-5671.

If the case is not settled, the taxpayer will eventually receive a 90-day letter with instructions to petition the United States Tax Court. The rules for writing a Tax Court petition are available at www.ustaxcourt.gov.

Often, a taxpayer who attempts to petition the tax court and bypass the appeals process will see her case referred back to Appeals for an attempt to settle before going to court.

Fast Track Settlement

In 2003, the Service created a fast track settlement (FTS) process to help resolve disputes. This process originated with the Large and Medium Sized Businesses (LMSB) Audit program and has been extended to the SB or SE (Small Business or Self-Employed) group.

If the taxpayer does not agree with the finding of an examination, his first step should be to consult with the examiner's supervisor. If this does not resolve the issue, the taxpayer may, before going to Appeals, request Fast Track Settlement. In this situation, the case actually stays within the SB or SE examining unit and an Appeals or Settlement Officer who has been trained in mediation attempts to help the taxpayer and the IRS resolve the issue(s). Neither party is required to accept an outcome. The IRS attempts to complete the process within approximately 40 days. The taxpayer may withdraw from FTS at any time.

To request Fast Track Settlement, the IRS (usually the examiner's manager) and the taxpayer complete Form 13369. A formal written protest is not required. Most cases not docketed in court qualify for Fast Track Settlement except for cases where

- There is no legal precedent,
- There is disagreement between various judicial circuits on the issue,
- ACS cases,
- Cases in the Collection Appeals Program, and
- Frivolous arguments.

Rev. Proc. 2003-41 provides guidance to the Fast Track program. It provides that the FTS procedure should only be initiated after an issue has been fully developed and where the issues in dispute can be managed within a 30–40 day time frame.

Either the taxpayer or the Service may suggest participation in the FTS program. This is generally done at the conclusion of the examination.

The Appeals Manager must approve acceptance of the case into FTS.

The mediation process is an informal one. The taxpayer and the Service will be present at the meeting to present their cases. The FTS Appeals Official does not have settlement authority and does not render a decision. The object of the process is to obtain resolution and agreement between the taxpayer and the Service. Since the FTS Appeals Officer is not acting as an Appeals Officer, the prohibition against *ex parte* communication does not exist. This process is one of mediation, not of determination.

The nationwide contact for the FTS program at the IRS is Nancy Talajkowski at 415-227-5007. The IRS is eager for this program to succeed as they have had very good results in resolving cases with mediation.

The IRS issued Announcement 2011-5 on December 30, 2010 to announce an extension of the Fast Track Settlement for Small Business or Self Employed Division taxpayers beginning on December 1, 2010 for the following locations: Chicago, IL; Houston, TX; St. Paul, MN; Philadelphia, PA; Central New Jersey and San Diego, Laguna Niguel and Riverside, CA. In the announcement the IRS states that other locations may be added.

A case is eligible for participation if:

- The issues are fully developed
- The taxpayer has stated a position in writing (or filed a small case request where the total amount for a tax period is less than \$25,000)
- There are a limited number of unagreed issues

SB or SE Fast Track Settlement procedures are not available for:

- Collection Appeals Program, Collection Due Process, Offer In Compromise and Trust Fund Recovery cases (except if the Service provides specific guidance)
- Correspondence examination cases worked solely in a Campus or Service Center site
- Cases in which the taxpayer has failed to respond to Service communications and no documentation has been previously submitted for consideration by Compliance
- TEFRA partnership cases
- Frivolous issues

If one issue is not eligible for the program, all issues in the case will not be eligible for the program.

If the case is not settled during the FTS, the taxpayer retains the option of requesting that the issue be heard through the traditional Appeals process.

Burden of Proof in Tax Proceedings

IRC §7491 provides that in any court proceeding, the IRS has the burden of proof with respect to a factual issue regarding the determination of a federal tax liability provided the taxpayer

- Supplies credible evidence to support his or her position;
- Complies with the Code and Regulations with regard to the substantiation of any tax item;
- Cooperates with reasonable requests by the IRS for witnesses, information, documents, meetings, and interviews. According to the Conference Report, cooperation will include exhausting administrative remedies such as appeals but will not include agreeing to extend the assessment limitation period.

The practical effect of this Code Section is difficult to assess. According to the Conference Report, the credible evidence which the taxpayer is required to advance in order to shift the burden of proof must be such that a critical fact finder could decide the case on its basis in the absence of contrary evidence. The effect of this provision may depend upon how courts interpret this and the other requirements placed upon the taxpayer. This Code Section may also present dilemmas for tax advisors. In administrative proceedings, the requirement that the taxpayer "cooperate" with the IRS in order to prevent a shifting of the burden of proof may cut against the manner of presentation of the taxpayer's case that would otherwise be adopted. Also, the IRS is likely to respond to the provision by making more extensive demands for information at the administrative level. Tax advisors need to walk a fine line.

In any case in which there is no examination, the provision is to apply to court proceedings arising in connection with taxable periods or events beginning or occurring after the date of enactment. The taxpayer must prove to the court that he has met the above tests in order to have

the burden of proof shift to the government. Failure to keep adequate records will cause the taxpayer to fail in the attempt.³⁷

Summary

There are three primary examination procedures: Service Center Examinations, Office Audits, and Field Examinations. The IRS is increasing the use of the correspondence audits. It is important to timely respond to correspondence audits in order to avoid a statutory assessment.

It is important that the representative come to an audit well prepared. If the taxpayer and the IRS cannot come to an agreement after an examination, the Appeals Process is generally the next step before going to court. The Appeals Process is designed to be impartial and most unagreed audit cases will be resolved there.

³⁷ *Parrish v. Commissioner*, KTC 1999-130 (8th Cir. 1999).

Exhibit 2-1

CP2000 2006



Department of Treasury
Internal Revenue Service
 4800 BUFORD HWY
 CHAMBLEE, GA 39901-0021

AUR Control:

Notice: CP2000
Notice Date: July 21, 2008

Social Security Number:

Form: 1040
Tax Year: 2006

To call for assistance:

1-800-829-3009 Toll Free
 between 7:00 AM - 8:00 PM

To FAX information:

1-877-477-0967 Toll Free

Contact:

Office of D Kidd

B A & I M TAXPAYER
 2205 XXXXX CT
 B VA 24060-6

You Must Return the Response Form by August 20, 2008.

1 Why are you getting this notice?

The income and payment information (e.g., income tax withheld, wages, miscellaneous income, interest, etc.) that we have on file does not match entries on your 2006 Form 1040. If this information is correct, you will owe \$10,222.

The proposed changes to your tax are listed below.

Summary of Proposed Changes

2006 Tax Increase	\$ 7,737
Payment Increase	\$ 0
Penalties - may not include all applicable penalties	\$ 1,547
Interest - if paid by August 20, 2008	\$ 938
Proposed Balance Due	\$ 10,222

2 What steps should you take?

Following these steps can help you understand this notice.

1. Review your 2006 tax return.
2. Compare your return to the information in the *Explanation Section* — page 5.
3. Decide if the information in the *Explanation Section* is correct.
4. Check the answers to *Frequently Asked Questions* — page 2.
5. Complete and return the *Response Form* in the enclosed envelope — page 3.
6. Complete and return the *Installment Agreement Request* (enclosed) if you need to set up a payment plan.
7. Review your rights in *The Examination Process Booklet* (enclosed).

3 What happens if you don't respond by August 20, 2008?

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We will send you a final notice, followed by a bill. During this time, interest will increase and certain penalties may apply.

{SP1A}

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Frequently Asked Questions

Why did it take IRS so long to contact me?

Tax years generally end on December 31, but we may not receive complete information from employers, banks, businesses, and other payers until much later.

Will I need to file amended returns (federal/state/local) if I agree with some or all of the proposed changes?

1. You do not need to file an amended federal tax return to include the proposed changes shown on this notice. We will correct this tax year when we receive your response. If you choose to file an amended tax return, write "CP2000" along the top of the 1040X, attach it behind the Response Form page and send to the address shown on this notice.
2. If the changes on this notice apply to your state tax return, file an amended state/local tax return as soon as possible. We send information about changes based on this notice to your state and local tax agencies.
3. File amended returns for any prior or subsequent tax years in which the same error occurred. You'll limit the penalty and interest you owe.

What should I do if I am currently in bankruptcy?

If you filed for bankruptcy, please complete and return the response page, including any applicable supporting documentation if you checked Option 2 or Option 3. Please be sure to also include a copy of your bankruptcy petition.

What steps do I take if I do not agree?

We need you to tell us why you do not agree and send us information to support your statement. Please refer to *The Examination Process* Booklet (enclosed) for tips about what information you should send with your response.

What if I need more time to collect my supporting documentation?

If you cannot respond by August 20, 2008, please call us at 1-800-829-3009 to request an extension. *Remember: If the tax increase is correct, then we will add interest and penalties to your bill during the extension.*

Why do I have to pay interest and penalties?

We are required by law to charge interest and penalties, if applicable, on all tax owed that is not paid in full by its due date (usually April 15). By law, interest will continue to increase until you have fully paid the tax owed and certain penalties may apply.

CP2000 2006

How can I prevent an error in the future?

1. Include all income you've received during the year on your tax return.
2. Wait to file your return until you receive all income statements to be sure your return is complete. If you do not receive an income statement in time to meet the April 15th deadline, estimate the amount of income using pay stubs, bank statements, etc.
3. Check the records (for example, W-2s, 1098s, 1099s, etc.) you receive from your employer, mortgage company, bank, or other source of income to be sure the information they're reporting is correct. (Some states pay taxable unemployment benefits, so report that as income as well.)
4. If you receive any additional information after you filed your return, you should amend your return with the corrected information as soon as possible to avoid any interest or penalties.
5. Keep accurate and complete records. Normally, keeping your records for three years is sufficient.

What if I have more questions?

If we haven't answered your question here, you can find other Frequently Asked Questions on our website, <http://www.irs.gov/>, or you can call 1-800-829-4477, topic 652, for pre-recorded responses.

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Response Form

1. **Review the Explanation Section to decide whether you agree or do not agree with IRS's proposed changes.**
2. **Complete and return the Response Form by August 20, 2008.**
3. **If you need additional time, call us at 1-800-829-3009.**

STEP A	Check only one of the three options. Then, go to Step B.						
<p><i>If you agree with the changes IRS is proposing, return this form with your FULL or PARTIAL payment along with the completed Installment Agreement Request for the remaining balance (if applicable).</i></p>							
<p><input type="checkbox"/> OPTION 1 I Agree with All Changes</p> <p>I agree with the changes to my 2006 tax return.</p> <p>I understand that I owe \$ 10,222 in additional tax, penalties, and interest.</p> <p>I understand that the law requires IRS to charge interest on taxes that are not paid in full by April 17, 2007. In addition, I understand that the IRS will charge interest until I have paid the tax in full. Certain penalties may also apply.</p> <p>I understand that I can challenge these changes in the U.S. Tax Court only if IRS determines after the date I sign this form that I owe additional taxes for 2006.</p> <p>I understand that I can file for a refund at a later date.</p> <p>I understand that both myself and my spouse must sign below.</p> <p>_____</p> <table><tr><td>Signature</td><td>Date</td><td>Spouse's</td></tr><tr><td>Signature</td><td>Date</td><td></td></tr></table>		Signature	Date	Spouse's	Signature	Date	
Signature	Date	Spouse's					
Signature	Date						
<p><i>If you do not agree with the changes IRS is proposing, return this form. When you return this form, include a signed statement that explains what you do not agree with. Also include copies of any documents, such as a corrected W-2, 1099, or missing forms, that support your statement.</i></p>							
<p><input type="checkbox"/> OPTION 2 I Do Not Agree with Some of the Changes</p> <p>I've enclosed documentation to support the entries on my original return.</p>							
<p><input type="checkbox"/> OPTION 3 I Do Not Agree with Any of the Changes</p> <p>I've enclosed documentation to support the entries on my original return.</p>							

STEP B	Check the applicable payment options. Then, go to Step C.
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Tip! Pay as much as you can now to keep penalty and interest charges low.

Make your check or money order payable to "United States Treasury." Write "Tax Year 2006 CP2000," this Social Security Number XXX-XX-XXXX, and your phone number on your check or money order.

OPTION 1 | I'm paying the full amount of **\$ 10,222**.

OPTION 2 | I'm making a payment of \$ _____ because either:

- I'm paying the amount I agree with or
- I'm making a partial payment at this time

OPTION 3 | I'd like to request a payment plan to pay the tax I owe.
Complete the Installment Agreement Request (Form 9465) and mail it along with this form.

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STEP C		Contact Information
1. Please verify your address and note any corrections below. <i>(Print clearly.)</i>		
B A & I M TAXPAYER 2205 XXXXX CT B VA 24060-	Make corrections below	
2. Please list your phone numbers and the best time to call below.		
Home	Best Time to Call	
Work	Best Time to Call	
3. If you would like to authorize someone, in addition to you and your Spouse, to contact IRS concerning this notice, please include the person's contact information and sign below.		
Name	Phone	
Address		
I authorize the person listed above to discuss information with and provide information to IRS about this notice.		

Signature	Date	Spouse's
Signature	Date	
<p><i>The authority granted in Step C is limited as indicated by the statement above the signature line. The contact may not sign returns, enter into agreements, or otherwise represent you before the IRS. If you want to have a designee with expanded authorization, see IRS Publication 947, Practice Before the IRS and Power of Attorney.</i></p>		

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Before Mailing | *Please make sure you have:*

- Completed Steps A, B, and C (both sides of this form).
- Included this form and your payment (if applicable) in the envelope provided.
- Included the *Installment Agreement Request* (if applicable) in the envelope provided.
- Made a copy for your records of the *Response Form* and the *Installment Agreement Request* if you used it.
- Checked that the IRS address shows through the envelope window.

Please Fold Here. Do not detach. Please be sure our address shows through the envelope window.

AUR Control Number:

Notice Number: CP2000
Notice Date: 07/21/2008

INTERNAL REVENUE SERVICE
ATLANTA IRS CENTER
4800 BUFORD HWY
CHAMBLEE, GA 39901-0021

B A & I M TAXPAYER
2205 XXXXX CT
B VA 24060-6489056

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Explanation Section

- How to Review This Section**
1. Compare your records with the records we received under **Information Reported to IRS**.
 2. Review the **Reasons for the Changes** to see why we changed your return.
 3. Proceed to **Changes to Your Return** to see how your new tax was calculated.
 4. Once you have fully reviewed the **Explanation Section**, please complete and return the **Response Form** in the envelope provided.

1. Information Reported to IRS that differs from the amounts shown on your return.

This section tells you specifically what income information IRS has received about you from others (including your employers, banks, mortgage holders, etc.). The information listed below does not match the information you listed on your tax return. Use this table to compare the data IRS has received from others to the information you listed on your tax return to understand where the discrepancy, or difference, occurred. To assist you in reviewing your income amounts, the table may include both reported and unreported amounts from the same payer.

If this information is correct, your tax increase is **\$ 7,737 plus all applicable penalties, interest and payment adjustments such as federal tax withholding, excess social security tax withheld, etc.** If you pay in full by **August 20, 2008**, you'll owe **\$ 10,222**.

Item No.	Issue	Received From	Account Information	Amount Reported to IRS by Others	Amount Included on Your Return	Difference
1	SECURITIES	TOTAL BOND MKT INDEX INV THE VANGUARD GROUP INC PO BOX 2600 VALLEY FORGE PA	REDEMPTION SSN XXX-XX-XXXX Form 1099-B Sales Date 10-02-2006	\$ 11,029	\$ 0	\$ 11,029
2	SECURITIES	TOTAL STOCK MKT IDX INV THE VANGUARD GROUP INC PO BOX 2600 VALLEY FORGE PA	REDEMPTION SSN XXX-XX-XXXX Form 1099-B Sales Date 10-02-2006	\$ 19,941	\$ 0	\$ 19,941
		SECURITIES Total		\$ 30,970	\$ 0	\$ 30,970

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2. Reasons for the Changes

This section provides explanations to help you understand the proposed changes to your tax return.

The paragraphs that follow provide explanations for:

- the items listed in Section 1. *Information Reported to IRS*
- the changes to your tax computation listed in Section 3. *Changes to Your Return*
- the penalty and interest charges listed in Section 3. *Changes to Your Return*
- *Payment Instructions*
- *Additional Information* that will help you understand this notice and what action you need to take to resolve the tax discrepancy

Within each subsection below, the paragraphs are organized by topic to help you review them.

These paragraphs explain the items listed in Section 1. *Information Reported to IRS.*

Other Income

Request for additional information

COST BASIS OF STOCK SOLD

We used a zero cost basis because we were not able to determine the cost or the adjusted basis of the stock sold. Please provide a completed Schedule D, Capital Gains & Losses with your response showing:

- the asset name,
- the date you acquired the asset and
- the cost or adjusted basis

for each Form 1099-B, Statement for Recipients of Proceeds from Broker and Barter Transactions, shown on the attached pages of this notice.

General

MISIDENTIFIED INCOME

If any of the income shown on this notice is not yours, send us the name, address, and social security number of the person who received the income.

Please notify the payers to correct their records to show the name and social security number of the person who actually received the income, so that future reports to us are accurate.

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Other Income

General

FORM W-2 OR 1099 NOT RECEIVED

The law requires you to report your income correctly. If your payers did not send you a yearly income statement (Form W-2, Form 1099, etc.), you must use the information you have (pay stubs, monthly income statements, deposit slips, etc.) to estimate the total amount of income you received during the year.

Tax & Credits

Tax Computation

REFIGURED TAX BASED ON SCHEDULE D COMPUTATION

We refigured your tax using the Schedule D tax computation.

Penalty & Interest Charges

Penalties

ACCURACY PENALTY FOR SUBSTANTIAL TAX UNDERSTATEMENT - IRC SECTION 6662(d)

If we increase your tax, and the increase exceeds 10% of the corrected tax and is also equal to or greater than \$5,000, the law requires an accuracy-related penalty due to substantial understatement of tax. The penalty is 20% of your tax increase. The penalty may be reduced or not charged if you:

- * Provide the substantial authority (such as, Internal Revenue Code, Regulations, Revenue Rulings, Revenue Procedures, etc.) you used to decide how to treat your income or deduction, or
- * Tell us where on your return you clearly show the facts supporting your treatment of the income or deduction, or
- * Submit a signed statement that clearly outlines the facts supporting your treatment of the understated income.

Interest Charges

INTEREST PERIOD - IRC SECTION 6601

We are required by law to charge interest on unpaid tax from the due date of the tax return to the date the tax is paid in full. The law requires that interest continue to be charged on the unpaid balance, including penalties, until paid in full.

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Penalty & Interest Charges

For More Information about Your Penalty & Interest Charges

DETAILED PENALTY/INTEREST COMPUTATION
If you require a detailed penalty or interest computation for this notice,
please call the toll-free telephone number listed on page 1.

Additional Information

FORMS OR SCHEDULES AVAILABILITY
If you need forms or schedules to respond to this notice you may get
them by:

- * Visiting local offices and some public libraries
- * Calling 1-800-TAX-FORM (1-800-829-3676) or
- * Visiting the IRS Web site at www.irs.gov.

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3. Changes to Your Return

Note: We only show the items that have been affected by the information we received in the following chart. All other items are correct as shown on your return. Unless noted, line numbers always refer to the line number on your tax return.

Changes to Your Income and Deductions	Shown on Return	Reported to IRS, or as Corrected	Difference
SECURITIES	\$ 0	\$ 30,970	\$ 30,970
	Income Net Difference		\$ 30,970
	Total Change to Taxable Income		\$ 30,970

Changes to Your Tax Computation	Shown on Return	As Corrected by IRS	Difference
Taxable Income, line 43	\$ 78,814	\$ 109,784	\$ 30,970
Tax, line 44	\$ 12,803	\$ 20,540	\$ 7,737
Total Tax, line 63	\$ 12,803	\$ 20,540	\$ 7,737
	Net Tax Increase		\$ 7,737

Summary of Proposed Changes		
Amount of Tax Increase		\$ 7,737
Accuracy-Related Penalty, IRC Section 6662(a)		\$ 1,547
Interest, IRC Section 6601, From 04/17/2007 To 08/20/2008		\$ 938
Total Amount You Owe		\$ 10,222

CP2000 2006

ATLANTA IRS CENTER

AO12

07/21/2008

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Page 10

CP2000 (Rev. 11/2004)

Exhibit 2-2

IRS Auditors' Guide to Handling a Correspondence Audit (Provided by IRS)

An agreed taxpayer response should include: Taxpayer signature; if the account is joint, both taxpayers must sign.

- Date of response.
- A completed Form 9465, Installment Agreement Request, if needed.

Note. Do not include comments or remarks on the Response page of the notice.

A partial agreed response should include:

- A clear explanation of why the taxpayer *does not agree* with each income issue.
- A clear indication of the income the taxpayer agrees with.
- Any supporting documentation.
 - Example: Taxpayer should provide a completed Schedule D in addressing unreported stock.

A disagreed response should include:

- An explanation of why the taxpayer disagrees, and
- Any supporting documentation.

Payments received with any responses to AUR notices are removed and posted. The responses are then forwarded to AUR.

If	Then
The taxpayer has agreed, signed and dated the response.	The taxpayer's account is assessed.
The taxpayer checked agreed, but included written remarks on the Response page, or checked disagreed.	The taxpayer account remains open to address to the written comments included on the Response page.
The taxpayer attached Form 9465 requesting an Installment plan.	The Form 9465 is forwarded to a collection function to establish the agreement. That function will also contact the taxpayer about the payment plan.
The taxpayer disagrees with all of the income and attaches supporting documentation.	The case can be closed with no changes made to the taxpayer's account.
The taxpayer disagrees with some of the income and attaches required documentation.	A revised proposal of changes to the taxpayer account will be issued for the taxpayer's signature.
The taxpayer agrees with the entire proposed changes to the account, signs and dates the Response page, but also	A letter is sent to the taxpayer requesting a new signature.

includes remarks on the Response page.	
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Exhibit 2-3

Audit Techniques Guides (ATGs)

The Audit Techniques Guides (ATGs) focus on developing highly trained examiners for a particular market segment. These Guides contain examination techniques, common and unique industry issues, business practices, industry terminology, and other information to assist examiners in performing examinations.

This list is dated December 20, 2010.

Aerospace Industry

Publication Date: 01/2005

The Service has prepared a comprehensive audit technique guide to assist examiners in evaluating research credit in the aerospace industry. The guide focuses on the particular unique aspects of the industry and provides examiners tools and tests to utilize in evaluating and auditing research credit.

Air Transportation Audit Technique Guide

Publication Date: 04/2008

Overview of excise tax paid for transportation of persons or property by air.

Capitalization v Repairs

Publication Date: 11/2010

The ATG provides techniques for reviewing and examining capitalization v repairs issues.

Cash Intensive Businesses Audit Techniques Guide

Publication Date: 04/2010

Businesses that have substantial cash transactions are included in the consolidated Cash Intensive Businesses Audit Techniques Guide. Some of these businesses include bail bonds, beauty shops, car washes, check cashing establishments, coin operated amusements, laundromats, scrap metal, and some convenience stores. Guidance is also provided on examination of income, interview techniques, and evaluation of evidence.

Child Care Provider Audit Technique Guide

Publication Date: 3/30/2009

The Child Care Provider Audit Technique Guide is intended to provide guidance to the examiner who is auditing a taxpayer in this industry and to provide tax related guidance to taxpayers and other professionals in this industry.

Coal Excise Tax

Publication Date: 05/2005

Provides excise tax agents with specific tools to examine issues relating to domestically produced coal.

Commercial Banking

Publication Date: 5/2001

Overview of the industry. Discusses potential issues and terminology unique to banking.

Construction Industry

Publication Date: 05/2009

Overview of the industry including a glossary. Discusses types of contracts; types of contractors; methods of accounting; and joint ventures. This updated guide includes the filing locations for Rev. Proc. 92-29 elections (Ch. 7); includes contractor square footage costs (Ch. 11); and common errors in look-back interest filings (Ch. 5).

Cost Segregation Audit Techniques Guide

Publication Date: 01/14/2005

The Service has prepared a comprehensive audit techniques guide to assist examiners in evaluating cost segregation studies submitted by taxpayers in support of depreciation deductions. The guide is also beneficial for taxpayers and practitioners in preparing these studies.

Credit for Increasing Research Activities (that is Research Tax Credit) IRC §41

Publication Date: 06/2005

This Audit Techniques Guide sets forth the Research Credit Technical Advisors' suggested guidelines for auditing research credit issues.

Executive Compensation—Fringe Benefits Audit Techniques Guide

Publication Date: 02/04/2005

Corporate executives often receive extraordinary fringe benefits that are not provided to other corporate employees. Any property or service that an executive receives in lieu of or in addition to regular taxable wages is a fringe benefit that may be subject to taxation.

Factoring of Receivables Audit Techniques Guide

Publication Date: 06/2006

This audit techniques guide focuses on a strategy in which multinational corporations use factoring of accounts receivable among related parties to avoid U.S. taxation by shifting income offshore and reducing U.S. income by deducting expenses related to the same income.

Farmers Audit Techniques Guide

Publication Date: 07/2006

The Agriculture Industry Audit Techniques Guide (ATG) focuses on developing highly trained examiners for the Agricultural market segment. The Guide contain examination techniques, common and unique industry issues, business practices, industry terminology and other information to assist examiners in performing examinations.

Foreign Insurance Excise Tax Audit Techniques Guide

Publication Date: 04/2008

This audit techniques guide was designed to assist the examiner in conducting audits where Excise Tax of Foreign Insurance transactions may be due.

Golden Parachutes Audit Techniques Guide

Publication Date: 02/04/2005

The Service has prepared a comprehensive audit techniques guide to assist examiners in evaluating parachute examinations. The parachute examination can occur during the examination of either the corporation's or the individual's return.

Hardwood Timber Industry

Publication Date: 2/1998

Provides general and technical information useful to examiners in classifying, preplanning and examining returns relating to this industry.

Inland Waterways

Publication Date: 12/2008

This audit technique guide is intended to provide assistance to the examiner who is auditing a taxpayer for which the use of the Inland Waterways is an issue.

IRC 162(m) Salary Deduction Limitation Audit Techniques Guide

Publication Date: 02/04/2005

Every publicly held corporation maintains its executive compensation records differently. Likewise, every publicly held corporation maintains different methods for compensating its executives. As the examining agent, you must first learn the identity of the individual(s) within the corporation who are most familiar with how the executive compensation records are maintained.

IRC § 183: Activities Not Engaged in For Profit Audit Techniques Guide

Publication Date: 06/19/2009

This audit technique guide (ATG) has been developed to provide guidance to Revenue Agents and Tax Compliance Officers in pursuing the application of IRC §183, Activities Not Engaged in for Profit (sometimes referred to as the “hobby loss rule”).

The Laundromat Industry

Publication Date: 6/2000

Provides an explanation of water consumption analysis for reconstructing unreported income from the operation of a laundromat. This method is to be used only when there is a reasonable indication of unreported income.

Lawsuit Awards and Settlements

Publication Date: 01/2001

This guide focuses on taxability of law suit awards and settlements.

Ministers Audit Technique Guide

Publication Date: 04/23/2009

The Ministers Audit Technique Guide is intended to provide guidance to the examiner who is auditing a taxpayer who is a minister and to provide tax related guidance to taxpayers and other professionals in this industry.

New Markets Tax Credit

Publication Date: 05/2010

The New Markets Tax Credit (NMTC) Program, enacted by Congress as part of the Community Renewal Tax Relief Act of 2000, is incorporated as section 45D of the Internal Revenue Code. This Code section permits individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified community development entities (CDEs).

New Vehicle Dealership Audit Technique Guide

Publication Date: 1/2005

This guide will give you the key to a quick and competent closure of any new vehicle dealership examination which hinges on narrowing the scope of the examination to items that may prove productive.

Non-Qualified Deferred Compensation Audit Technique Guide

Publication Date: 02/04/2005

The Service has prepared a comprehensive audit techniques guide to assist examiners in evaluating non-qualified deferred compensation. A nonqualified deferred compensation (NQDC) plan is any elective or nonelective plan, agreement, method, or arrangement between an employer and an employee (or service recipient and service provider) to pay the employee compensation sometime in the future.

Obligations Not Registered Form Audit Technique Guide

Publication Date: 6/2006

Obligations Not in Registered Form

Obligations Not in Registered Form D Audit Technique Guide

Publication Date: 06/2006

Obligations Not in Registered Form D

Oil and Gas Industry

Publication Date: 5/1996

Provides information on basic operations and common terminology. Includes reference to royalty owners and an introduction to financial products.

Ozone Depleting Chemicals (ODC) Excise Tax Audit Techniques Guide

Publication Date: 9/2007

This is the Audit Techniques Guide for Ozone Depleting Chemicals (ODC).

Partnerships

Publication Date: See Table of Contents for Publication or Revision Date of the Individual Chapters

The focus is on issues that fall within sections 701 through 761 of the Code (Subchapter K). Subchapter K deals primarily with the formation, operation, and termination of partnerships. Many issues arise during the initial or final year of the partnership.

Passive Activity Losses

Publication Date: 02/2005

Provides examiners with specific guidance on potential audit issues, issue identification and lead sheets and other job aids.

Placer Mining

Publication Date: 7/1999

Provides guidelines for the examination of taxpayers in this industry. Focuses on small mining operations represented as sole proprietorships on Schedule C, but can be adapted for partnership and corporate returns.

The Port Project

Publication Date: 8/1995

Provides examiners assistance in auditing industries related to coastal and inland waterways.

Poultry Industry

Publication Date: 12/2002

The purpose of this guide is to highlight issues that are specific to or have a large impact on the poultry industry. Most of the issues in this guide relate directly to the major companies rather than the individual farmers. However, one chapter has been devoted to the issues normally found in conjunction with a poultry grower audit.

Reforestation Industry

Publication Date: 8/1995

Overview of the industry. Discusses some issues that may be encountered, including employment taxes; poor accounting records; and so on.

Rehabilitation Tax Credit

Publication Date: 12/2002

Provides examiners with audit aids (that is, issue checksheet, pro forma Information Document Request, and standardized audit reports, and so on.) which assist in identifying and addressing common rehab tax credit issues.

Research Credit Claims Audit Techniques Guide (RCCATG): Credit for Increasing Research Activities § 41

Publication Date: See table of contents for publication or revision date for the individual chapters, exhibits, and letters & forms. This guide provides guidance on the handling and evaluation of research credit claims.

Retail Industry

Publication Date: 2/2009

Overview of the Retail Industry.

Sections 48A and 48B—Advanced Coal and Gasification Project Credits

Publication Date: 5/2009

Section 46 provides that the amount of investment credit for purposes of § 38 for any taxable year is the sum of the credits listed in § 46. Section 1307(a) of the Energy Tax Incentives Act of 2005, Pub. L. 109-58, 119 Stat. 594 (August 8, 2005), amended § 46 to add two new credits to that list: the qualifying advanced coal project credit, (section 48A) and the qualifying gasification project credit, (section 48B).

Split Dollar Life Insurance Audit Techniques Guide

Publication Date: 03/07/2005

Split-dollar life insurance arrangements can be a key feature of executive compensation packages. Over the years, the Service has provided limited guidance regarding the taxation of these arrangements. Beginning in 2001, transitional guidance on the valuation of split-dollar life insurance arrangements was provided in the form of notices and proposed regulations in anticipation of final regulations.

Sports Franchises

Publication Date: 8/1999

Focuses on major league franchises. Potential issues may include revenue (sponsorship, broadcast, season tickets), strike fund payments, stadium issues, player contracts, purchase or sale of franchise, league expansion, and so on.

Stock Based Compensation Audit Techniques Guide

Publication Date: 02/04/2005

The Service has prepared a comprehensive audit techniques guide to assist examiners in evaluating stock-based compensation. Stock-based compensation generally consists of either the transferring of stock or the issuance of stock options to an employee or independent contractor.

Structured Settlement Factoring Audit Technique Guide (ATG)

Publication Date: 11/2006

Structured Settlement Factoring

Swine Farm Industry

Publication Date: 12/2002

Overview of the industry includes methods of accounting (accrual vs. cash), farm price inventory, unit livestock price, prepaid feed, income from discharge of indebtedness, selection fees, depreciation, grower issues, penalties, research credits, employment taxes, and excise taxes.

Tobacco Industry

Publication Date: 3/1996

Focuses on techniques for examining tobacco farmers, dealers and warehouse operations.

Veterinary Medicine

Publication Date: 4/2005

Overview of industry includes discussion of types of business entities (especially personal service corporation); cash vs. accrual method of accounting; and inventory vs. supplies.

Exhibit 2-4

Examination Workpapers

Taxpayer's name, address, SSN (<i>Use pre-addressed label or show changes for both spouses if a joint return audit</i>)		Date	Year(s)	
		Examiner		Grade
		Taxpayer(s)	Home Phone	Work Phone
		Reviewer		
A	Initial Interview 1 Examination technique: <input type="checkbox"/> Correspondence <input type="checkbox"/> Undeliverable mail <input type="checkbox"/> No show <input type="checkbox"/> Interview with: _____		Representative - Power of Attorney <input type="checkbox"/> Yes <input type="checkbox"/> No Name _____	
	2. Receipt of Publication 1 <input type="checkbox"/> 3. Appeal rights and Privacy Act explained <input type="checkbox"/> 4. Innocent spouse (Pub. 971) <input type="checkbox"/> 5. Continue on Form 4700-A, B or C		B Closed No Change Issue: <input type="checkbox"/> Letter 590 <input type="checkbox"/> Letter 1156 <input type="checkbox"/> Other Examiner _____	

EQMS Auditing Standards (Rev. 5/95) - IRM Exhibit 4910-1

1. Consideration Large, Unusual, or Questionable Items 2. Probes for Unreported Income 3. Required Filing Checks 4. Examination Depth and Records Examined 5. Continue on Form 4700-A, B or C	6. Penalties Properly Considered 7. Workpapers Support Conclusions 8. Report Writing Procedures Followed 9. Time Span/Time Charged
---	---

C Was consideration given to all applicable auditing standards?
 YES
 If no, indicate the standard(s) not given consideration, and the reasons why consideration was not given:

Service Center Tax Examiners-Refer to Center Examination Quality Measurement System (CEQMS) Auditing Standards in IRM Exhibit 4010-2

D Examination Reminders 1. Proforma Worksheets utilized where applicable 2. Alternate minimum tax 3. Inspection of prior and subsequent year return, IRM 4215 4. Probe for unreported deductions and credits 5. Scope of Examination, IRM 4253.2 6. Automatic adjustments resulting from AGI change(s) 7. "Burned Out" Tax Shelters - IRM 4236(13) 8. Amounts claimed for See/Special Fuels - IRC 6426/6421 9. Health Care Continuation Coverage Under COBRA - IRC 49908	Case Processing Reminders 1. Claim Case - Form 2297 and 3363 2. Information Reports (IRM 4219) - Form 5346 3. FICA, Self-Employment or Tip Income Adjustments Forms 885-E, 885-F, and 885-T 4. Inequities, Abuses, Loopholes - Form 3558 5. Inadequate Records Notices (IRM 4271) 6. Special Handling Notice 3198
--	---

	CHECK COMPLETED			COMMENT IN	
	YES	NO	N/A	F4700 SUPPLEMENT	F4700 BUSINESS SUPPLEMENT
E	1. All Required Returns (of THIS T/P)				
	.. Prior				
	.. Subsequent				
	.. Compliance Items:				
	Information Returns				
	Questionable W-4's				
	Forms 8300				
Any Other Returns					
2. All Related Returns (of ANOTHER T/P)					

Continuation of Examination Workpapers

(Items to be considered, explored, verified)	Year	Per Return	Corrected	Adjustment	Workpapers Index

F

(Items to be considered, explored, verified)	Year	Per Return	Corrected	Adjustment	Workpapers Index

G

(Items to be considered, explored, verified)	Year	Per Return	Corrected	Adjustment	Workpapers Index

H

(Items to be considered, explored, verified)	Year	Per Return	Corrected	Adjustment	Workpapers Index

I

Exhibit 2-5

Form 4549 (Rev. March 2005)		Department of the Treasury-Internal Revenue Service Income Tax Examination Changes		Page <u>1</u> of <u>2</u>
Name and Address of Taxpayer [REDACTED]		Taxpayer Identification Number [REDACTED]		Return Form No. 1040
		Person with whom examination changes were discussed.	Name and Title: [REDACTED]	
1. Adjustments to Income		Period End 11/31/2003	Period End 12/31/2004	Period End
a. Sch C1 - Gross Receipts or Sales		25,696.00		
b. Sch C1 - Depreciation and Sec. 179 Expense		(12,462.00)		
c. Sch C1 - Cost of Goods Sold		(15,587.00)		
d. SE AGI Adjustment		97.00		
e. Sch E-Inv/Loss-Partnership/S Corps-Passive/Non-Passive			196,965.00	
f. Itemized Deductions			5,365.00	
g.				
h.				
i.				
j.				
k.				
l.				
m.				
n.				
o.				
p.				
2. Total Adjustments		(1,276.00)	202,333.00	
3. Taxable Income Per Return or as Previously Adjusted		25,448.00	(75,233.00)	
4. Corrected Taxable Income		24,172.00	127,995.00	
Tax Method		TAX TABLE	SCHEDULE D	
Filing Status		Joint	Joint	
5. Tax		2,926.00	25,166.00	
6. Additional Taxes / Alternative Minimum Tax				
7. Corrected Tax Liability		2,926.00	25,166.00	
8. Less				
Credits	a.			
	b.			
	c.			
	d.			
9. Balance (Line 7 less Lines 8a through 8d)		2,926.00	25,166.00	
10. Plus				
Other	a. Self Employment Tax	4,116.00		
Taxes	b.			
	c.			
	d.			
11. Total Corrected Tax Liability (Line 9 plus Lines 10a through 10d)		7,042.00	25,166.00	
12. Total Tax Shown on Return or as Previously Adjusted		7,124.00	0.00	
13. Adjustments to:				
	a.			
	b.			
	c.			
14. Deficiency-Increase in Tax or (Overassessment-Decrease in Tax) (Line 11 less Line 12 adjusted by Lines 13a plus 13b)		(382.00)	25,166.00	
15. Adjustments to Prepayment Credits - Increase (Decrease)				
16. Balance Due or (Overpayment) - (Line 14 adjusted by Line 15) (Excluding interest and penalties)		(382.00)	25,166.00	

The Internal Revenue Service has agreements with state tax agencies under which information about federal tax, including increases or decreases, is exchanged with the states. If this change affects the amount of your state income tax, you should amend your state return by filing the necessary forms.

You may be subject to backup withholding if you underreport your interest, dividend, or patronage dividend income you earned and do not pay the required tax. The IRS may order backup withholding (withholding of a percentage of your dividend and/or interest income) if the tax remains unpaid after it has been assessed and four notices have been issued to you over a 120-day period.

Exhibit 2-6

Agreement to Mediate

OMB No. 1545-1844

To: Appeals Team Manager	Date
---------------------------------	------

Compliance Officer Information *(The person to contact in Compliance about this case)*

Name	Title
Office telephone number	ID/Badge number
Taxpayer's Identification Number (TIN)	Year(s)
Source (FE/OE/CO, etc.)	MFT
Type of Tax (1040, 1120 Emp., etc) or Collection Issue (CDP, OIC etc)	

Taxpayer's name	Phone (Include Area Code)
-----------------	---------------------------

Home street address (P.O. Boxes are not allowed)

City	State	ZIP code
------	-------	----------

Representative's name	Firm name
-----------------------	-----------

Office street address (P.O. Boxes are not allowed)

City	State	ZIP code
------	-------	----------

Office phone number (Include Area Code)	FAX number (Include Area Code)
---	--------------------------------

IRS and Treasury employees who participate in any way in the mediation process and any person under contract to the IRS invited to participate, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including I.R.C. sections 6103, 7213, 7213A, and 7431. See also 5 U.S.C. section 574. The parties also acknowledge that IRS and all other Treasury employees involved in the mediation are bound by I.R.C. section 7214(a)(8) and must report information concerning violations of any revenue law to the Secretary. The Mediator will have the right to ask either party for additional information if deemed necessary for a full understanding of the issues being mediated. A copy of any submission a party gives to the mediator will be provided simultaneously to the other party.

The Taxpayer consents to the disclosure by the IRS of the Taxpayer's returns and return information incident to the mediation to any participant or observer for the Taxpayer, including persons providing expert assistance for the IRS. If the mediation agreement is executed by a person pursuant to a power of attorney executed by the Taxpayer, that power of attorney must clearly express the Taxpayer's grant of authority to consent to disclose the Taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to this agreement.

Taxpayer's signature	Date signed
Taxpayer's signature	Date signed
Taxpayer's Representative signature	Date signed
Compliance Officer's signature	Date signed

Other Participants *(if applicable)*

Name	Position or Affiliation	Phone (Include Area Code)
Name	Position or Affiliation	Phone (Include Area Code)
Name	Position or Affiliation	Phone (Include Area Code)

Privacy and Paperwork Reduction Act Notice

The Privacy Act of 1974 requires that when we ask you for information we tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory.

We are requesting this information under the authority of 26 U.S.C. 7801 and the Restructuring and Reform Act (RRA Section 3468) under Section 7123 of the Internal Revenue Code. The primary purpose of this form is to obtain acknowledgement that you agree to adhere to the mediation rules, agree to the disclosures authorized by you or your representative's signature on the form, and consent to all conditions authorized by the form. Information on this form may be disclosed as authorized by you and section 6103 of the Internal Revenue Code. Providing the information is voluntary. Not providing all or part of the information may preclude or impede participation in the mediation process.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You must give us the information if you wish to participate in the mediation process.

You are not required to provide information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax return and return information are confidential, as required by Code section 6103.

The time needed to complete this form will vary depending on the circumstances. The estimated average time is 3 minutes. If you have any comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. DO NOT send the completed Form 13369 to the Tax Forms Committee.

Exhibit 2-7

Sample Examination Letters

Letter 525—General 30-Day Letter

This letter accompanies a report giving you a computation of the proposed adjustments to your tax return. It informs you of the courses of action to take if you do not agree with the proposed adjustments. The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 531—Notice of Deficiency

This letter is notice of the Commissioner's determination that you owe additional tax or other amounts for the tax year(s) identified in the letter. The Internal Revenue Code authorizes the Commissioner to send this notice. The letter explains how to dispute the adjustments in the notice of deficiency if you do not agree. To dispute the adjustments without payment, you file a petition with the Tax Court within 90 days from the notice date.

Letter 692—Request for Consideration of Additional Findings

This letter accompanies a report giving you a computation of the proposed adjustments to your tax return. It informs you of the courses of action to take if you do not agree with the proposed adjustments. The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how to file a protest. You need to file your protest within 15 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 915—Letter to Transmit Examination Report

This letter explains adjustments in amount of tax. The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 950—30 Day Letter-Straight Deficiency or Over-Assessment

This letter is used for unagreed, straight deficiency, straight overassessment or mixed deficiency and overassessment field examination cases. This letter may be used for various types of tax. The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 1153—Trust Funds Recovery Penalty Letter

This letter explains that the IRS's efforts to collect the federal employment or excise taxes due from the business named on the letter have not resulted in full payment of the liability. Therefore, the IRS proposes to assess a penalty against you. If you agree with this penalty for each tax period shown, you are asked to sign Part 1 of the enclosed Form 2751 and return it to the person or office that sent you the letter. If you do not agree you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how you file a protest. You need to file your protest within 60 days from the date of the letter in order to appeal this decision with the Office of Appeals.

Letter 3016—IRC Section 6015 Preliminary Determination Letter (30 Day)

This is a preliminary letter giving you 30 days to appeal the determination for innocent spouse relief under IRC Section 6015. The letter explains that if you do not agree with the determination you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter explains how you file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 3391—30-Day Nonfiler Letter

This letter advises you the IRS believes you are liable for filing tax returns for the periods identified in the letter. It includes a report giving you a computation of the proposed adjustments to your tax return and explains the adjustments. The letter explains that if you agree with the adjustments, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publications explain how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 3727—30-Day Letter Notifying Taxpayer No Change to Original Report Disallowing EIC Based on Failure to Meet Residency Test for Children Claimed

This letter explains why the IRS will not allow your earned income credit (EIC). The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publication explains how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Letter 3728—30-Day Letter Notifying Taxpayer No Change to Original Report Partially Disallowing EIC Based on Failure to Meet Residency Test for 1 Child

This letter explains why the IRS can only give you part of your earned income credit (EIC). The letter explains that if you agree with the adjustment, you sign and return the agreement form. If you do not agree, you can submit a request for appeal or protest to the office or individual that sent you the letter. The letter or referenced publication explains how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Chapter 3

Advising Delinquent Taxpayers

Introduction

The Internal Revenue Service Restructuring and Reform Act of 1998 represented the culmination of several years of Congressional criticism of IRS collection procedures. Many provisions offer a welcome measure of justice to delinquent taxpayers while even more give real opportunities to knowledgeable tax advisors to advance their clients' interests in tax collection matters. In this climate, it may be possible for practitioners to secure more favorable treatment for delinquent taxpayers than at any time in the recent past.

In dealing with taxpayer delinquencies, it is vital to consider whether the IRS is entitled to assess the taxpayer. If the taxpayer has been assessed, the filing of a Notice of Federal Tax Lien (NFTL) and seizure of the taxpayer's assets may be imminent. Determining the status for the taxpayer's account therefore is critical to providing good counsel.

Steps in the Representation Process

Classifications of Taxpayer's Assessment Status

When a taxpayer receives a bill from the IRS there are different actions to consider depending upon the nature of the notice.

If the asserted delinquency is subject to the deficiency procedures, the practitioner and client must determine if the asserted tax delinquency is correct and whether or not an appeal will be pursued. In this case, however, collection activity is not an immediate concern because of the time required for the deficiency procedures to be completed. If the 30-day Notice of Deficiency goes unanswered, the IRS will issue the 90-day Statutory Notice of Deficiency before the tax can be assessed. Therefore, if the notice appears to be correct the taxpayer can buy time by simply not responding.

If the tax is an amount that can be summarily assessed, as discussed in chapter 1, the IRS will offer a preassessment appeal. An example is the trust fund recovery penalty of IRC §6672. In such cases, pursuing an appeal will at least slow things down a little.

If the liability is immediately assessable, either because deficiency procedures have been followed or because they are unnecessary, the IRS can file a Notice of Federal Tax Lien (NFTL) and levy on the taxpayer's property and rights to property within the time periods set forth in the Code. In this situation, the tax practitioner can usually assume the taxpayer has been assessed, although she should obtain a record of the assessment if issues appear to be present, such as the running of the assessment or collection statutory periods.

Power of Attorney

One of the first steps in the representation process is to obtain a federal tax power of attorney from the taxpayer. This should always be done at the initial client interview if the client wants representation before the IRS.

The IRS will deal with, and send notices to, a representative of the taxpayer, provided a power of attorney is on file and the representative is eligible to practice before the IRS under Treas. Reg. §601.502.

Form 2848 is the form for power of attorney. Any form is acceptable, however, provided it meets the requirements of Treas. Reg. §601.503. The IRS will accept faxed Forms 2848, which provide for very fast filing of the power.³⁸

Practitioners that sign up for services at the IRS website³⁹ may now electronically file F2848. Eligible tax professionals can complete disclosure authorization forms, and view and modify existing forms, all online. Disclosure authorization allows tax professionals to electronically submit Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. Disclosure authorization expedites processing and issues a real-time acknowledgement of accepted submissions.

Representatives should ensure when completing Form 2848 that the terms of the power are sufficiently broad for the matter at hand and specify the periods to which it will apply. The IRS will not process a power of attorney with open dates specified (for example, 2009 and all succeeding tax years).

Although the IRS undertakes to send notices to authorized representatives, the failure to do so does not invalidate the notice if it was sent to the taxpayer.⁴⁰ The IRS reserves the right to bypass the authorized representative if she unreasonably delays the proceeding.⁴¹

Collection Statute of Limitations

If the tax advisor establishes that the taxpayer has properly been assessed, she should then check that the limitation period on collection has not expired. This can be done by requesting a tax history (MFTRA-X).

IRC §6502(a) provides that enforced collection of a tax liability, either by levy or by a proceeding in court, must take place within a ten-year period following the assessment.

In *United States v. Donovan*, 2003-2 USTC, the taxpayer apparently did not review the tax history before submitting an offer in compromise two months before the statute of limitations was about to expire. As a result, he called attention to his case and the IRS filed a suit for judgment extending the statute of limitations for collection. This was relatively easy for the IRS to do in a timely fashion since submitting an offer in compromise tolls the statute.

³⁸ Treas. Reg. §601.504(c)(4).

³⁹ www.irs.gov.

⁴⁰ Treas. Reg. §601.506(a).

⁴¹ Treas. Reg. §601.506(b).

If administrative collection measures are employed, the relevant act that must be performed within the limitation period is the levy or seizure. The date of the levy or seizure for this purpose is the date on which the notice of seizure provided for in IRC §6335(a) is delivered to the taxpayer or the owner of the property.

If the IRS brings an action in court to reduce the tax liability to a judgment, the act that must be performed within the limitation period is the filing of the complaint. If the IRS does this, the debt remains collectible for the time the judgment remains in effect under state law. In New York and New Jersey, for example, that period is 20 years.

Several acts also serve to extend the statute of limitations on collection. These include offers in compromise, installment agreements, the filing of a taxpayer assistance order, collection due process hearings and other circumstances where the IRS cannot levy due to the pendency of some hearing or refund suit, including bankruptcy. Each of these items will be discussed individually throughout the book.

EXTENSION OF THE COLLECTION LIMITATION PERIOD

IRC §6502(a) generally provides that the ten-year collection limitation period may not be extended by agreement. There are exceptions to the general rule. One exception is where the taxpayer and the IRS have entered into an installment agreement. This exception is discussed in more detail in chapter 5. Another exception is where the IRS has levied upon the taxpayer's property within the collection limitation period. In this situation, the IRS and the taxpayer may enter into a written agreement after the expiration of the collection limitation period under which the IRS agrees to release the property from the levy and the taxpayer agrees to an extension of the limitation period.

If the client has entered into an installment agreement, the IRS may require that the taxpayer execute a Form 900 if the agreement extends beyond the end of the collection limitation period.

See Treas. Reg. 301.6502-1(d)(2) for an example of a situation in which the collection limitation period is validly extended by consent in connection with an installment agreement and then further extended pursuant to IRC §6503(h) by reason of the taxpayer's bankruptcy filing.

Obtaining a Transcript

One of the first steps a representative should take in a collection case is to obtain a transcript of the taxpayer's federal tax liabilities. This can usually be obtained from the Collection Division agent (Revenue Officer) responsible for the matter or directly from the district or local office. Inaccuracies and errors are not uncommon, and the advisor should attempt to check the calculations.

The IRS has created an electronic system to speed resolution of client issues for tax professionals:

- *Electronic Account Resolution*—Tax professionals using EAR can quickly resolve clients' account problems by electronically sending and receiving inquiries about individual or business account problems, refunds, installment agreements, missing payments or notices. Tax professionals must have a power of attorney (Form 2848 only)

on file before inquiring into a client's account. Responses are delivered to a secure electronic mailbox within three business days.

- *Transcript Delivery System*—TDS resolves clients' need for return and account information quickly in a secure, online session. It allows eligible tax professionals, with a power of attorney (Form 2848 only) on file, to request and receive account transcripts, wage and income transcripts, tax return transcripts, and verification of non-filing letters for individual taxpayers and account transcripts for business taxpayers.

To use these services, a tax professional must register and complete an application. Details and registration information are on the IRS website under the "Tax Professionals" heading.

Preliminary Contact with Collection Division Agent

A very early step in representing a taxpayer with a collection problem should be to contact the Collection Division agent assigned to the case. If there is currently none, an agent may be assigned to the case if a request is made to the group manager in the relevant IRS office. The objective of the contact should be to prevent the agent from levying on the taxpayer's property or perhaps filing a notice of federal tax lien before the taxpayer has the opportunity to make a proposal about how the matter is to be resolved. Most Revenue Officers will not be interested in handling a case unless the deficiency is substantial. Therefore, most smaller cases are now handled through the Automated Collection Service (ACS).

Keep in mind that the primary duty of the Collection Division is to collect tax, not debate the appropriateness of the assessment. Once a tax is assessed the Revenue Officer typically assumes it is correct. His job is to collect the money. He will always initially ask for payment in full. Although your client probably cannot comply with this request, submitting some funds as often as possible to the Revenue Officer, especially in the case of a business, is an effective method to prove to the Revenue Officer that the business has some means to pay at least some of the tax and therefore should not be shut down or seized.

Enjoining IRS from Collecting Delinquent Tax

Persons who have been assessed tax delinquencies frequently feel they do not owe the tax or have otherwise been unjustly treated by the IRS. They often ask their advisors whether the IRS can be legally prevented from filing a federal tax lien or levying on the taxpayer's property.

The answer is nearly always "no." IRC §7421 provides that no suit shall be maintained for the purpose of restraining the assessment or collection of a tax except where certain deficiency procedures have been violated or other conditions exist. The Supreme Court has indicated that a court might have jurisdiction to issue an injunction against the IRS where irreparable harm is threatened to the taxpayer. Courts virtually always find, however, that the taxpayer's only remedy for an unlawful collection action is a suit for damages against the IRS after the fact.

There are, however, some statutory exceptions to the general rule that the IRS may not be enjoined from enforcing collection of a tax liability. The Internal Revenue Service Restructuring and Reform Act of 1998 added some exceptions. IRC §6331(i) sets forth the following exceptions:

- Where a refund action is pending and the taxpayer is subject to a divisible tax such as the trust fund recovery penalty or payroll taxes and the taxpayer has made a partial payment of the liability in order to obtain court jurisdiction;
- Where an application for an offer in compromise is pending; and
- Where an application for an installment agreement is pending.

In each of these situations, the IRS may not institute collection activity nor levy against the taxpayer.

Taxpayer Rights in Collection Actions

IRC §6326 requires the IRS to provide administrative appeal rights to taxpayers against the filing of a NFTL. The IRS has provided for administrative appeals against the filing of a NFTL or the seizure of property.

Taxpayer Interviews with the IRS

At some point the client and a representative will attend an interview with IRS personnel. The following law is applicable to such interviews.

RECORDING

IRC §7521(a) provides that either the IRS or the taxpayer can make an audio recording of any taxpayer interview “relating to the determination or collection of any tax.” The provisions regarding notice and other administrative arrangements are set forth in IRS Notice 89-51, 1989-1 C.B. 691.

SUSPENSION OF INTERVIEWS

IRC §7521(b) provides that a taxpayer may suspend any interview with IRS personnel to take the advice of any professional authorized to practice before the IRS. The IRS will then reschedule the interview for a later date. This does not apply, however, if the interview is held pursuant to the issue of an administrative summons or if the interview is pursuant to a criminal investigation.

This does not mean, of course, that taxpayers must answer all the questions put to them when they are summonsed or that there is no right to representation in criminal investigation interviews. Taxpayers may decline to answer questions on constitutional (particularly Fifth Amendment) grounds, and, as a practical matter, criminal investigators will give taxpayers the opportunity to consult with counsel if that request is made.

PRESENCE OF TAXPAYER

Except where an administrative summons is issued or where the proceeding is a criminal investigation, the IRS is not entitled to require taxpayers, rather than their authorized representative, to attend a taxpayer interview. In many situations, however, it will be impossible to make progress on a tax collection matter unless the taxpayer is present. In trust fund recovery penalty investigations, for example, agents are instructed to make every effort to talk personally with the presumptive responsible person.

Practitioner Hot Line

The Practitioner Hot Line assists practitioners with account-related inquiries such as the crediting of payments or penalty abatements. The practitioner must have a power of attorney on file. A list of Practitioner Hot Line telephone numbers is set forth in IRS Publication 1320.

NATIONAL TAXPAYER ADVOCATE

The Office of the Taxpayer Ombudsman was renamed the National Taxpayer Advocate under the Internal Revenue Service Restructuring and Reform Act of 1998. The Taxpayer Advocate operates largely independently of the IRS and reports only to the Commissioner of Internal Revenue. The National Taxpayer Advocate is appointed by the Secretary of the Treasury from three candidates selected by the IRS Oversight Board. The IRS Oversight Board is a body established under the 1998 Act which is granted oversight responsibilities for the administration of the IRS. IRC §7803 places certain pre- and post-employment restrictions on the person holding the position of the Taxpayer Advocate in order to ensure independence of action. Notices of deficiency are required to advise the taxpayer that he or she may contact the office of the local taxpayer advocate and to give the telephone number. In addition to responsibilities in connection with problem-resolution officers and taxpayer assistance orders, the National Taxpayer Advocate is required to propose changes in IRS administrative practices and identify appropriate legislative changes. The Taxpayer Advocate is required to issue annual reports on a wide range of tax issues including a summary of at least 20 of the most serious problems encountered by taxpayers.⁴² The reports are available on the IRS website.

Under the 1998 Act, Local Taxpayer Advocates are appointed by and report to the National Taxpayer Advocate. IRC §7803 emphasizes that the Local Taxpayer Advocates operate independently of the IRS.

The primary function of the Local Taxpayer Advocate is to cut through red tape in situations in which normal channels of communication have proved ineffective. Local Taxpayer Advocates can be contacted by mail, telephone, or walk-in at the district office.

There is additional information about the Taxpayer Advocate office at the IRS website under the "Tax Professionals" tab.

INTERVENTION NOT PERMITTED

Local Taxpayer Advocate intervention is inappropriate where there are established procedures or channels of communication which the taxpayer has not used. Thus, a Local Taxpayer Advocate will not intervene, for example, where the IRS offers an administrative appeal.

Local Taxpayer Advocates will also not consider any tax protester case, nor will they intervene in any matter which is the subject of a criminal tax investigation.

⁴² IRC §7802(d)(2).

TAXPAYER ASSISTANCE ORDERS (TAOS)

IRC §7811(a) authorizes the National Taxpayer Advocate to issue Taxpayer Assistance Orders (TAOs) in situations in which a taxpayer is suffering or about to suffer significant hardship as a result of the manner in which the tax laws are being administered.

A TAO may require the IRS to cease or refrain from taking any action in respect of enforcement of the tax laws, or to take any action that is permitted by law in order to relieve taxpayer hardship.

The failure of a taxpayer to apply for a TAO does not limit the action that a Local Taxpayer Advocate might otherwise take under the PRP.⁴³

Significant Hardship

In order for a TAO to issue, the taxpayer must have suffered or be about to suffer significant hardship. The current regulations describe significant hardship as “serious privation,” which probably leaves open the possibility that serious hardship can occur without the taxpayer being destitute. The IRM states that significant hardship may be present if the taxpayer is unable to pay for basic subsistence, suffers emotional distress, or loses her job as a result of the administration of the tax laws.⁴⁴ The Internal Revenue Service Restructuring and Reform Act of 1998 has added a definition of “significant hardship” to IRC §7811(a). Specifically, IRC §7811(a) provides that significant hardship includes

- An immediate threat of adverse action;
- A delay of more than 30 days in resolving taxpayer account problems;
- Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted; or
- The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted.

It is difficult to predict what practical difference this provision will make. The statute does not require the issuance of a TAO when there is significant hardship and the current regulations are emphatic that a TAO should not issue in every case in which there is a finding of significant hardship. The real issue, perhaps, is not the definition of significant hardship but whether a TAO should issue when the IRS has properly followed all collection procedures and the only remaining remedy is to levy on the taxpayer’s property in such manner as to cause him or her significant hardship. In this connection, IRC §7811(a) provides that the National Taxpayer Advocate should take into account when considering whether to issue a TAO whether the IRS has not followed applicable published administrative procedures including the Internal Revenue Manual.

⁴³ IRC §7811(e).

⁴⁴ IRM(10)40.

Limitations on TAOs include the following:

- TAOs are intended to prevent hardship arising from the manner of administration of the tax laws rather than from the laws themselves.
 - Thus, a TAO may not require an action which violates or is unauthorized by the Code.
- A TAO may issue only if the taxpayer has no administrative remedy, such as an appeals conference, that could prevent the significant hardship.
- A TAO may be rescinded or modified only by the Taxpayer Advocate or the Commissioner or Deputy Commissioner of the IRS.
 - The latter, however, is required to give a written explanation to the National Taxpayer Advocate of any such action.
- A TAO may not contest the merits of any tax liability.⁴⁵
- A TAO may not enjoin an act of the Office of Chief Counsel (except Appeals).⁴⁶
- A TAO may not be issued if the matter is the subject of a criminal investigation.⁴⁷
- A TAO may direct the IRS to pay a refund immediately to relieve hardship.⁴⁸

APPLICATION

The application for a TAO is Form 911 or a written statement meeting certain requirements. It should be filed presumably with the Local Taxpayer Advocate.

The assessment and collection limitation periods are suspended for the time the TAO application is under consideration by the Local Taxpayer Advocate. Also, the TAO itself may further suspend a statutory limitation period.⁴⁹

The IRS suspends enforcement action, such as levies, while the application for a TAO is being considered.

FAIR TAX COLLECTION PRACTICES

Under the Internal Revenue Service Restructuring and Reform Act of 1998, IRC §6304 prohibits the IRS from harassing taxpayers by engaging in such conduct as contacting the taxpayer at inconvenient times and using abusive language.

⁴⁵ Treas. Reg. §301.7811-1(c)(3).

⁴⁶ Treas. Reg. §301.7811-1(c)(3).

⁴⁷ Treas. Reg. §301.7811-1(c)(3).

⁴⁸ Ann. 96-5.

⁴⁹ IRC §7811(d).

Penalties and Interest

Penalties

A tax collection client will frequently be subject to tax penalties. The tax debt can often be made manageable if penalties are waived or abated.

Most of the penalty provisions of the Code are in Subchapters A and B of Chapter 68. The penalties of Subchapter B are the so-called assessable penalties, which are payable on notice and demand without the requirement of following deficiency procedures.⁵⁰ These include the tax preparer penalties of IRC §§6694 and 6695, the trust fund recovery penalty of IRC §6672, and a large number of less commonly encountered penalties.

Note that early in 2003, the IRS published proposed amendments to regulations under IRC §§6662 and 6664 that would significantly limit the ability of taxpayers to avoid penalties by relying upon professional tax opinions. This represents an attack on promoted tax shelter structures that typically come with opinions of counsel. Under the proposed amendments, taxpayers claiming that a regulation is invalid cannot rely on an opinion to satisfy the “reasonable cause and good faith” exception under IRC §6664(c)(1). Also, an undisclosed transaction that should have been disclosed under the regulations under IRC §6011 cannot satisfy the reasonable cause and good faith exception under Code Sec. 6664(c) by reason of an opinion. Also, if the position taken on a return is contrary to a revenue ruling or notice, an opinion cannot, without disclosure, cause the “realistic possibility” standard under IRC §6662 to be met.

COMMONLY ENCOUNTERED PENALTIES

The most commonly encountered penalties are in Subchapter A. Subchapter A includes

- Penalty provisions for failure to file returns and pay tax,⁵¹
- The failure to pay estimated taxes,⁵²
- Failure to make tax deposits,⁵³ and
- Accuracy-related and fraud penalties.⁵⁴

The general rule of assessment for Subchapter A penalties is that they may not be assessed until deficiency procedures have been followed. There are important exceptions, however. One exception is the failure-to-file-returns-and-pay-tax penalty of IRC §6651, which can be summarily assessed to the extent the penalty is imposed upon a tax liability that can itself be summarily assessed.⁵⁵ The other exceptions are the estimated tax penalties of IRC §§6654 and

⁵⁰ IRC §6671.

⁵¹ IRC §6651.

⁵² IRC §§6654, 6655.

⁵³ IRC §6656.

⁵⁴ IRC §§6662 and 6663, respectively.

⁵⁵ IRC §6665(b)(1).

6655, which can be summarily assessed if no return has been filed for the taxable year in question.⁵⁶

PROCEDURAL REQUIREMENTS FOR IMPOSITION OF PENALTIES

Under the Internal Revenue Service Restructuring and Reform Act of 1998, IRC §6751 provides for certain procedural requirements to be satisfied in connection with the imposition of penalties.

The IRS is required to include, with each notice of penalty under the Code, information with respect to the name of the penalty, the section of the Code under which the penalty is imposed, and a computation of the penalty. A penalty may not be assessed unless the initial determination of the assessment is personally approved in writing by the immediate supervisor of the individual making the determination or a higher-level official as the IRS may require. This provision does not apply, however, to failure to file, pay tax or estimated-tax penalties, or any other penalty automatically calculated through electronic means.

SUSPENSION OF INTEREST AND CERTAIN PENALTIES WHERE IRS FAILS TO CONTACT INDIVIDUAL TAXPAYER

IRC §6404(g) provides that, in the case of an individual filing an income tax return, the accrual of certain interest and penalties is suspended after 36 months if the IRS has not sent the taxpayer a notice stating the taxpayer's liability and the basis for the liability (18 months for notices provided before November 26, 2007). The 36-month period runs from the later of the due date of the return or the filing date of the return, provided it was timely. Suspended interest and penalties begin to accrue again 21 days after the date the requisite notice is given to the taxpayer.

The suspension of interest and penalties does not apply, however, in the case of

- Any failure-to-file-or-pay-tax penalty imposed by section 6651;
- Any interest or penalty in a case involving fraud;
- Any interest or penalty with respect to any tax liability shown on the return; or
- Any criminal penalty.

PREASSESSMENT APPEAL OF PENALTIES

The IRS grants taxpayers the opportunity to appeal penalties before assessment in a number of situations. These include the following:

- If the tax on which the penalty is based may be appealed.
 - Where a return is examined and the IRS asserts a tax deficiency and an IRC §6662 substantial understatement of tax penalty.
- If the IRS asserts the trust fund recovery penalty of §6672 or the tax preparer penalty of §6694.

⁵⁶ IRC §6655(b)(2).

- Since these are assessable penalties, they could be summarily assessed. It is IRS policy, however, to grant a preassessment appeal.

POST-ASSESSMENT APPEAL OR EXCEPTIONS

The IRS grants the opportunity for post-assessment appeal of penalties in all situations *except* the following.⁵⁷

- If a preassessment appeal right was granted as set forth above.
- If the IRC §6700 penalty for promoting abusive tax shelters has been assessed.
- If the penalty provision in question contains no reasonable-cause provision.

A taxpayer does not lose the opportunity to have an appeals conference by paying the penalty.

CLAIM FOR A REFUND

In the same manner as for taxes, a taxpayer may pay any asserted or assessed penalty and apply for a refund. This can be done either following an appeal or instead of an appeal. A claim for a refund should be made on Form 843. If the claim for a refund is denied or not acted upon within six months following the claim, the taxpayer can file a refund action in court in the same manner as for a tax.

ABATEMENT FOR REASONABLE CAUSE

Some penalties such as the failure-to-file-and-pay penalties of IRC §6651 may be abated for reasonable cause. If the client has a tax collection problem, the debt can frequently be reduced by getting penalties abated because of reasonable cause. Consider submitting affidavits in cases relating to mental incapacity, illness, and so on, in failure-to-file cases.

INSTALLMENT AGREEMENTS

Under the Internal Revenue Service Restructuring and Reform Act of 1998, certain penalties are mitigated for taxpayers entering into installment agreements with the IRS.

FAILURE TO DEPOSIT PENALTY

Under the Internal Revenue Service Restructuring and Reform Act of 1998, IRC §6656(a) permits taxpayers to designate the period to which tax deposits are to be allocated.

Interest on Underpayments

The Code requires taxpayers to pay interest on underpayments of tax⁵⁸ and the IRS to pay interest on overpayments.⁵⁹

⁵⁷ Treas. Reg. §601.106(a)(1)(iv).

⁵⁸ IRC §6601.

⁵⁹ IRC §6611.

Interest is imposed at the underpayment rate until the tax, addition to tax, or penalty in question is paid. The following principles govern the period over which interest accrues:

- If interest is imposed by reason of an underpayment of tax, interest accrues from the last date for payment of the tax. Extensions of time to pay tax are disregarded for this purpose.
- In the case of the failure-to-file penalty of IRC §6651(a), the failure-to-pay-stamp-tax penalty of IRC §6653, the accuracy-related penalty of IRC §6662, and the fraud penalty of IRC §6663, interest accrues on the unpaid penalty from the last date for filing the return, taking into account any filing extensions.
- In the case of penalties other than those listed above (generally the assessable penalties), interest accrues from the date notice and demand is sent to the taxpayer.
- In the case of the trust fund recovery penalty of IRC §6672, interest accrues from the date the penalty is assessed.
 - Since a preassessment appeal is granted, this means that interest on the penalty is not accruing while the appeal is being processed.
- Underpayment rate increases by two percentage points in the case of a C corporation underpayment in excess of \$100,000 for any taxable period.⁶⁰
 - Higher rate comes into effect 30 days after the date a 30-day letter or notice of deficiency is sent.
- Where notice and demand is sent to the taxpayer, the notice demands payment within a 10-day period.
 - Running of interest is suspended for that 10-day period if payment is made during that time.
- The taxpayer can suspend the accrual of interest by depositing an appropriate amount with the IRS pending the resolution of a tax dispute. The procedures for doing this are discussed in chapter 1 of this text.

The interest provisions of IRC §6601 do not apply in the following situations:

- If there has been a failure to pay or deposit estimated taxes or employment taxes.
 - Separate penalty provisions apply in these cases.
- If the IRS asserts a deficiency, the taxpayer can waive deficiency procedures by executing Form 870.⁶¹
 - This permits the IRS to immediately assess the deficiency.

⁶⁰ IRC §6621(c).

⁶¹ IRC §6213(d).

- If the taxpayer does waive restrictions on assessment under IRC §6213(d), and the IRS fails to give the taxpayer notice and demand within 30 days of the waiver, interest is suspended from the elapse of the 30-day period until notice and demand is sent.⁶²
- The interest provisions of IRC §6601 continue to apply in situations not described above.
- Thus, there is no relief from interest if the taxpayer enters into an installment agreement to pay tax pursuant to IRC §6159.

UNDERPAYMENT AND OVERPAYMENT RATES

The interest rate charged on underpayments is the federal short-term rate plus 3 percent.⁶³ Under the Internal Revenue Service Restructuring and Reform Act of 1998, the overpayment rate for individuals is the same as the underpayment rate. For taxpayers other than individuals, however, the underpayment rate is higher than the overpayment rate. There is a 2 percent higher rate for large corporate underpayments, as discussed in the previous section. The federal short-term rate is published on a monthly basis. With minor exception, for this purpose the federal short-term rate for any given calendar quarter is the published rate for the first month of the quarter.

Except for estimated taxes, interest is compounded daily. Rev. Proc. 83-7, 1983-1 C.B. 583, sets forth procedures for daily compounding and contains uniform tables to assist in the computation of interest.

CHALLENGING THE IMPOSITION OF INTEREST

Interest on underpayments is not subject to deficiency procedures.⁶⁴ Since interest is derivative, however, it cannot be assessed and collected until the tax liability on which it is based is finally established.

Interest Abatement

The circumstances under which the IRS is authorized or required to abate interest are much more limited than for penalties. There is no abatement of interest for reasonable cause.

The penalty may be abated only if the error or delay of the IRS occurred after the IRS had communicated in writing with the taxpayer with respect to the tax matter. Also, the interest may be abated only if no significant aspect of the delay or error is attributable to the taxpayer.

Rev. Proc. 87-42, 1987-2 C.B. 589, sets forth the procedures a taxpayer must follow in making a claim for abatement under IRC §6404(e). Generally, the claim should be made on Form 843 and filed with the service center at which the return was filed. "Request for Abatement of Interest under Rev. Proc. 87-42" should be written across the top of the form.

⁶² IRC §6601(c).

⁶³ IRC §6621(a)(2).

⁶⁴ IRC §6601(e)(1).

NETTING OF INTEREST ON OVERPAYMENTS AND UNDERPAYMENTS

Except for individuals, for whom the differential between the underpayment and overpayment rates of interest is eliminated under the Internal Revenue Service Restructuring and Reform Act of 1998, the underpayment rate of interest which is applied to underpayments of tax is higher than the overpayment rate of interest which is paid on refunds. Under the 1998 Act,⁶⁵ with respect to all taxes imposed by the Code, overlapping periods of interest on tax overpayments and underpayments are subject to a net interest rate of zero. The IRS practice has been to charge a zero interest rate to the extent that underpayments were matched by overpayments at any given time. If the taxpayer were to choose to pay the underpayment, however, before the refund of the overpayment, he or she would be billed the underpayment rate of interest. Consequently, the taxpayer would have a disincentive to pay the underpayment.

This amendment applies to interest for periods beginning before the date of enactment if the taxpayer reasonably identifies and establishes periods of tax overpayments and underpayments for which the zero rate applies and applies to the IRS to have the zero rate apply not later than December 31, 1999.

Practice Points 3-1

The following is a summary of practice points to bear in mind in connection with the representation of a delinquent taxpayer:

- Become fully acquainted with the taxpayer's situation.
 - Request from the client copies of IRS communications and tax returns.
 - Clients cannot usually be relied upon to accurately inform you of their tax situation.
- Obtain a transcript of the taxpayer's liabilities from the IRS.
- If the client is subject to tax levy, contact the IRS immediately.
- The IRS will nearly always hold off from levying until the taxpayer and her advisor meet with a collection division employee to discuss the status of the tax delinquency.

Summary

In any new IRS collection matter, it is important for the practitioner to thoroughly explore the facts of the case with the client. The client's version of the facts should be verified, wherever possible, by documentation such as tax returns, IRS documents and correspondence with the IRS. Once in possession of the facts, the tax advisor should attempt to develop a strategy for assisting the taxpayer. That strategy may involve an offer in compromise, an installment agreement, or bankruptcy, which are discussed in other chapters of this book. It may also involve a taxpayer assistance order, administrative appeal, or other action discussed in this chapter.

⁶⁵ IRC §6621.

Exhibit 3-1

OMB No. 1545-1504

Department of the Treasury - Internal Revenue Service Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)	Form 911 (Rev. 6-2007)
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Section I – Taxpayer Information (See Pages 3 and 4 for Form 911 Filing Requirements and Instructions for Completing this Form.)

1a. Your name as shown on tax return		2a. Your Social Security Number	
1b. Spouse's name as shown on tax return		2b. Spouse's Social Security Number	
3a. Your current street address (Number, Street, & Apt. Number)			
3b. City		3c. State (or Foreign Country)	3d. ZIP code
4. Fax number (if applicable)		5. E-mail address	
6. Employer Identification Number (EIN) (if applicable)		7. Tax form(s)	8. Tax period(s)
9. Person to contact		10. Daytime phone number <input type="checkbox"/> Check if Cell Phone	11. Best time to call
12. Indicate the special communication needs you require (if applicable) <input type="checkbox"/> TTY/TDD Line <input type="checkbox"/> Interpreter - Specify language other than English (including sign language) _____ <input type="checkbox"/> Other (please specify) _____			
13a. Please describe the tax problem you are experiencing (If more space is needed, attach additional sheets.)			
13b. Please describe the relief/assistance you are requesting (If more space is needed, attach additional sheets.)			

I understand that Taxpayer Advocate Service employees may contact third parties in order to respond to this request and I authorize such contacts to be made. Further, by authorizing the Taxpayer Advocate Service to contact third parties, I understand that I will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.

14a. Signature of Taxpayer or Corporate Officer, and title, if applicable		14b. Date signed	
15a. Signature of spouse		15b. Date signed	

Section II – Representative Information (Attach Form 2848 if not already on file with the IRS.)

1. Name of authorized representative		2. Centralized Authorization File (CAF) number	
3. Current mailing address		4. Daytime phone number <input type="checkbox"/> Check if Cell Phone	
		5. Fax number	
6. Signature of representative		7. Date signed	

The Adviser's Guide to Doing Business With the IRS

Section III is to be completed by the IRS only

Section III – Initiating Employee Information

Taxpayer name	Taxpayer Identification Number (<i>TIN</i>)
---------------	---

1. Name of employee	2. Phone number	3a. Function	3b. Operating division	4. Organization code no.
---------------------	-----------------	--------------	------------------------	--------------------------

<p>5. How identified and received (<i>Check the appropriate box</i>)</p> <p>IRS Function identified issue as meeting Taxpayer Advocate Service (TAS) criteria</p> <p><input type="checkbox"/> (r) Functional referral (Function identified taxpayer issue as meeting TAS criteria).</p> <p><input type="checkbox"/> (x) Congressional correspondence/inquiry not addressed to TAS but referred for TAS handling. Name of Congressional Representative _____</p> <p>Taxpayer or Representative requested TAS assistance</p> <p><input type="checkbox"/> (n) Taxpayer or representative called into a National Taxpayer Advocate (NTA) Toll-Free site.</p> <p><input type="checkbox"/> (s) Functional referral (taxpayer or representative specifically requested TAS assistance).</p>	<p>6. IRS received date</p>
---	-----------------------------

7. TAS criteria (*Check the appropriate box. NOTE: Checkbox 9 is for TAS Use Only*)

- (1) The taxpayer is experiencing economic harm or is about to suffer economic harm.
- (2) The taxpayer is facing an immediate threat of adverse action.
- (3) The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
- (4) The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
- (5) The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- (6) The taxpayer did not receive a response or resolution to their problem or inquiry by the date promised.
- (7) A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
- (8) The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair the taxpayer's rights.
- (9) The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers (**TAS Use Only**).

8. What action(s) did you take to help resolve the problem (*Must be completed by the initiating employee*)

9. State the reason(s) why the problem was not resolved (*Must be completed by the initiating employee*)

10. How did the taxpayer learn about the Taxpayer Advocate Service

Instructions for completing Form 911 (Rev. 6-2007)

Form 911 Filing Requirements

When to Use this Form: Use this form if any of the following apply to you:

1. You are experiencing economic harm or are about to suffer economic harm.
2. You are facing an immediate threat of adverse action.
3. You will incur significant costs if relief is not granted (including fees for professional representation).
4. You will suffer irreparable injury or long-term adverse impact if relief is not granted.
5. You have experienced a delay of more than 30 days to resolve a tax account problem.
6. You have not received a response or resolution to your problem or inquiry by the date promised.
7. A system or procedure has either failed to operate as intended, or failed to resolve your problem or dispute within the IRS.
8. The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair your rights.
9. The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers.

If an IRS office will not grant the assistance requested or will not grant the assistance in time, you may submit this form. The Taxpayer Advocate Service will generally request that certain activities be stopped while your request for assistance is pending (e.g., lien filings, levies, and seizures).

Where to FAX or Mail this Form: Submit this request to the Taxpayer Advocate office located in the city or state where you reside. For the address of the Taxpayer Advocate office near you or for additional information, call the National Taxpayer Advocate Toll-Free Number: 1-877-777-4778. You can also find the address, phone and fax number of your local Taxpayer Advocate office in the government listings in your local telephone directory. Information can also be found on the IRS website, www.irs.gov, under Taxpayer Advocate.

Third Party Contact: You should understand that in order to respond to this request you are authorizing the Taxpayer Advocate Service to contact third parties when necessary, and that you will not receive further notice regarding contacted parties. See IRC 7602(c).

Overseas Taxpayers: Taxpayers residing overseas can submit this application by mail to the Taxpayer Advocate Service, Internal Revenue Service, PO Box 193479, San Juan, Puerto Rico 00919-3479, or in person at San Patricio Office Center, #7 Tabonuco Street, Room 202, Guaynabo, PR 00966. The application can also be faxed to 1-787-622-8933.

Caution: Incomplete information or requests submitted to a Taxpayer Advocate office outside of your geographical location may result in delays. If you do not hear from us within one week of submitting Form 911, please contact the Taxpayer Advocate office where you originally submitted your request. The Taxpayer Advocate Service will not consider frivolous arguments raised on this form, such as those listed in Notice 2007-30. Frivolous arguments may include arguments that the income tax is illegal or that the IRS has no authority to assess and collect tax. You can find additional examples of frivolous arguments in *Publication 2105, Why do I have to Pay Taxes?*. If you use this form to raise frivolous arguments, you may be subject to a penalty of \$5,000.

Paperwork Reduction Act Notice: We ask for the information on this form to carry out the Internal Revenue laws of the United States. Your response is voluntary. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103. Although the time needed to complete this form may vary depending on individual circumstances, the estimated average time is 30 minutes.

Should you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, please write to: **Internal Revenue Service**, Tax Products Coordinating Committee, Room 6406, 1111 Constitution Ave. NW, Washington, DC 20224.

Instructions for Section I

- 1a. Enter your name as shown on the tax return that relates to this request for assistance.
- 1b. Enter your spouse's name (if applicable) if this request relates to a jointly filed return.
- 2a. Enter your Social Security Number.
- 2b. Enter your spouse's Social Security Number if this request relates to a jointly filed return.
- 3a-d. Enter your current mailing address, including the street number and name, and if applicable, your apartment number, your city, town, or post office, state or possession or foreign country, and ZIP code.
4. Enter your fax number, including the area code.
5. Enter your e-mail address. We may use this to contact you if we are unable to reach you by telephone. We will not, however, use your e-mail address to discuss the specifics of your case.
6. Enter your Employer Identification Number if this request involves a business or non-individual entity (e.g., a partnership, corporation, trust, or self-employed individual).
7. Enter the number of the Federal tax return or form that relates to this request.
For example, an individual taxpayer with an income tax issue would enter Form 1040.

Instructions for Section I
continue on the next page ►

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Instructions for Section I - (Continued from Page 3)

8. Enter the quarterly, annual, or other tax period that relates to this request. For example, if this request involves an income tax issue, enter the calendar or fiscal year; if an employment tax issue, enter the calendar quarter.
9. Enter the name of the individual we should contact. For partnerships, corporations, trusts, etc., enter the name of the individual authorized to act on the entity's behalf. If the contact person is not the taxpayer or other authorized individual, please see the Instructions for Section II.
10. Enter your daytime telephone number, including the area code. If this is a cell phone number, please check the box.
11. Indicate the best time to call you. Please specify a.m. or p.m. hours.
12. Indicate any special communication needs you require (such as sign language). Specify any language other than English.
- 13a. Describe the problem. Specify the actions that the IRS has taken (or not taken) to resolve the problem. If the problem involves an IRS delay of more than 30 days in resolving your issue, indicate the date you first contacted the IRS for assistance in resolving your problem.
- 13b. Please describe the relief/assistance you are requesting. Specify the action that you want taken and that you believe necessary to resolve the problem. Furnish any documentation that you believe would assist us in resolving the problem.
- 14-15. If this is a joint assistance request, both spouses must sign in the appropriate blocks and enter the date the request was signed. If only one spouse is requesting assistance, only the requesting spouse must sign the request. If this request is being submitted for another individual, only a person authorized and empowered to act on that individual's behalf should sign the request. Requests for corporations must be signed by an officer and include the officer's title.

Note: The signing of this request allows the IRS by law to suspend, for the period of time it takes the Taxpayer Advocate Service to review and decide upon your request, any applicable statutory periods of limitation relating to the assessment or collection of taxes. However, it does not suspend any applicable periods for you to perform acts related to assessment or collection, such as petitioning the Tax Court for redetermination of a deficiency or requesting a Collection Due Process hearing.

Instructions for Section II

Taxpayers: If you wish to have a representative act on your behalf, you must give him/her power of attorney or tax information authorization for the tax return(s) and period(s) involved. For additional information see Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, and the accompanying instructions. Information can also be found in Publication 1546, The Taxpayer Advocate Service of the IRS-How to Get Help With Unresolved Tax Problems.

Representatives: If you are an authorized representative submitting this request on behalf of the taxpayer identified in Section I, complete Blocks 1 through 7 of Section II. Attach a copy of Form 2848, Form 8821, or other power of attorney. Enter your Centralized Authorization File (CAF) number in Block 2 of Section II. The CAF number is the unique number that the IRS assigns to a representative after Form 2848 or Form 8821 is filed with an IRS office.

Note: Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. Form 8821 does authorize anyone you designate to inspect and/or receive your confidential tax information in any office of the IRS, for the type of tax and tax periods you list on Form 8821.

Instructions for Section III (For IRS Use Only)

Enter the taxpayers name and taxpayer identification number from the first page of this form.

1. Enter your name.
2. Enter your phone number.
- 3a. Enter your Function (e.g., ACS, Collection, Examination, Customer Service, etc.).
- 3b. Enter your Operating Division (W&I, SB/SE, LMSB, or TE/GE).
4. Enter the Organization code number for your office (e.g., 18 for AUSC, 95 for Los Angeles).
5. Check the appropriate box that best reflects how the need for TAS assistance was identified.
For example, did taxpayer or representative call or write to an IRS function or the Taxpayer Advocate Service (TAS).
6. Enter the date the taxpayer or representative called or visited an IRS office to request TAS assistance. Or enter the date when the IRS received the Congressional correspondence/inquiry or a written request for TAS assistance from the taxpayer or representative. If the IRS identified the taxpayer's issue as meeting TAS criteria, enter the date this determination was made.
7. Check the box that best describes the reason TAS assistance is requested. **Box 9 is for TAS Use Only.**
8. State the action(s) you took to help resolve the taxpayer's problem.
9. State the reason(s) that prevented you from resolving the taxpayer's problem. For example, levy proceeds cannot be returned because they were already applied to a valid liability; an overpayment cannot be refunded because the statutory period for issuing a refund expired; or current law precludes a specific interest abatement.
10. Ask the taxpayer how he or she learned about the Taxpayer Advocate Service and indicate the response here.

Exhibit 3-2

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer Identification Number:

Form:

Tax Period(s) Ended:

Person to Contact:

Contact Telephone Number:

Employee Identification Number:

Refer Reply to:

Last Date to Respond to this Letter:

Dear

We have enclosed two copies of our examination report showing the changes we made to your tax for the period(s) shown above. Please read the report and tell us whether you agree or disagree with the changes. (This report may not reflect the results of later examinations of partnerships, "S" Corporations, trusts, etc., in which you have an interest. Changes made to those tax returns could affect your tax.)

IF YOU AGREE with the changes in the report please sign, date, and return one copy to us by the response date shown above. If you filed a joint return, both taxpayers must sign the report. Enclose payment for tax, interest and any penalties due. Please make your check or money order payable to the **United States Treasury**. You can contact the person identified above to determine the total amount due as of the date you intend to make payment.

IF YOU CAN'T PAY the full amount you owe now, pay as much as you can. If you want us to consider an installment agreement, please complete and return the enclosed Form 9465, *Installment Agreement Request*. If we approve your request, we will charge a \$105.00 fee to help offset the cost of providing this service. We will continue to charge penalties and interest until you pay the full amount you owe. There are two exceptions to the \$105.00 fee; the fee is \$52.00 when you pay by direct debit from your bank account, and the fee is \$43.00 if you qualify as a low income taxpayer.

IF YOU DON'T AGREE with the changes shown in the examination report, you should do one of the following by the response date.

- Mail us any additional information that you would like us to consider
- Discuss the report with the examiner
- Discuss your position with the examiner's supervisor

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- Request a conference with an Appeals Officer, as explained in the enclosed Publication 3498, *The Examination Process*. Publication 3498 also explains *Your Rights as a Taxpayer* and *The Collection Process*.

IF YOU DON'T TAKE ANY ACTION by the response date indicated in the heading of this letter, we will process your case based on the information shown in the report. We will send you a statutory notice of deficiency that gives you 90 days to petition the United States Tax Court. If you allow the 90-day period to expire without petitioning the tax court, we will bill you for any additional tax, interest, and penalties.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter. When you write to us, please include your telephone number and the best time for us to call you if we need more information. We have enclosed an envelope for your convenience.

Thank you for your cooperation.

Sincerely yours,

Enclosures:
Examination Report (2)
Form 9465
Publication 3498
Envelope

Exhibit 3-3

Internal Revenue Service

Department of the Treasury

Form Number:

Taxpayer Identification Number:

Person to Contact/ID Number:

Telephone Number:

Refer Reply to:

Tax Year(s) Ended: Tax Deficiency: Penalties:

Date:

Last Day to File a Petition With
The United States Tax Court:

CERTIFIED MAIL

Dear Sir or Madam:

NOTICE OF DEFICIENCY

We have determined that you owe additional tax or other amounts, or both, for the tax year(s) identified above. This letter is your NOTICE OF DEFICIENCY, as required by law. The enclosed statement shows how we calculated the deficiency.

If you want to contest this deficiency in court before making any payment, you have 90 days from the date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Court for a re-determination of the deficiency. You can get a copy of the rules for filing a petition and a petition form you can use by writing to the address below:

United States Tax Court
400 Second Street, NW.
Washington, DC 20217

The Tax Court has a simplified procedure for small tax cases when the amount in dispute for each tax year is \$50,000 or less. If you intend to file a petition for multiple tax years and the amount in dispute for any one or more of the tax years exceeds \$50,000, this simplified procedure is not available to you. If you use this simplified procedure, you cannot appeal the Tax Court's decision. You can get information pertaining to the simplified procedure for small cases from the Tax Court by writing to the court at the above address or from the court's internet site at www.ustaxcourt.gov.

Letter 531-A (5-2004)
Catalog Number 37418Q

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Send the completed petition form, a copy of this letter, and copies of all statements and/or schedules you received with this letter to the Tax Court at the above address. The Court cannot consider your case if the petition is filed late. The petition is considered timely filed if the postmark date falls within the prescribed 90 or 150-day period and the envelope containing the petition is properly addressed with the correct postage.

The time you have to file a petition with the court is set by law, and cannot be extended or suspended. Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the (IRS) will not change the allowable period for filing a petition with the Tax Court.

As required by law, separate notices are sent to husbands and wives. If this letter is addressed to both husband and wife, and both want to petition the Tax Court, both must sign and file the petition. If more than one tax year is shown above, you may file one petition form showing all of the years you are contesting.

You may represent yourself before the Tax Court, or you may be represented by anyone admitted to practice before the Court.

If you decide not to file a petition with the Tax Court, please sign the enclosed waiver (Form 4089) and return it to us at the IRS address listed herein. We have enclosed a return envelope for your convenience. This will permit us to assess the deficiency quickly and can help limit the accumulation of interest.

If you decide not to sign and return the waiver, and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the deficiency after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).

NOTE: If you are a C-corporation, section 6621(c) of the Internal Revenue Code requires that we charge an interest rate two percent higher than the normal rate on corporate underpayments in excess of \$100,000.

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the front of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate can not reverse a legally correct tax determination, nor extend the time, as fixed by law, that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter not resolved through normal channels, gets prompt and proper handling. To request Taxpayer Advocate assistance, please contact Taxpayer Advocate for the IRS office that issued this notice of deficiency. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"* for Taxpayer Advocate telephone numbers and addresses.

Chapter 3: Advising Delinquent Taxpayers

The enclosed Publication 1 includes information on your rights as a taxpayer, and the enclosed Publication 594 includes information on the IRS collection process.

Thank you for your cooperation.

Sincerely,

IRS Commissioner
By

Director, EP Examinations

Enclosure(s):
Publication 1
Publication 594
Form 4089
Form 4549-E
Notice 1214
Revenue Agent Report (Form 886-A – Explanation of Items)
Return Envelope

Exhibit 3-4



This Product Contains Sensitive Taxpayer Data

Request Date: 01-26-2010
Response Date: 01-26-2010
Tracking Number: [REDACTED]

Tax Return Transcript

SSN Provided: [REDACTED]
Tax Period Ending: Dec. 31, 2006

The following items reflect the amount as shown on the return (PR), and the amount as adjusted (PC), if applicable. They do not show subsequent activity on the account.



021325

SSN: [REDACTED]
SPOUSE SSN: [REDACTED]

NAME(S) SHOWN ON RETURN: [REDACTED]

ADDRESS: [REDACTED]

FILING STATUS: Single
FORM NUMBER: 1040
CYCLE POSTED: 20072608
RECEIVED DATE: Apr. 15, 2007
REMITTANCE: 0.00
EXEMPTION NUMBER: 1
DEPENDENT 1 NAME CTRL:
DEPENDENT 1 SSN:
DEPENDENT 2 NAME CTRL:
DEPENDENT 2 SSN:
DEPENDENT 3 NAME CTRL:
DEPENDENT 3 SSN:
DEPENDENT 4 NAME CTRL:
DEPENDENT 4 SSN:
PREPARER SSN:
PREPARER EIN:

Income

WAGES, SALARIES, TIPS, ETC: 0.00
TAXABLE INTEREST INCOME: SCH B: 0.00
TAX-EXEMPT INTEREST: 0.00
ORDINARY DIVIDEND INCOME: SCH B: 0.00
QUALIFIED DIVIDENDS: 0.00
REFUNDS OF STATE/LOCAL TAXES: 0.00
ALIMONY RECEIVED: 0.00
BUSINESS INCOME OR LOSS (Schedule C): 15,952.00
BUSINESS INCOME OR LOSS: SCH C PER COMPUTER: 15,952.00
CAPITAL GAIN OR LOSS: (Schedule D): 0.00
CAPITAL GAINS OR LOSS: SCH D PER COMPUTER: 0.00
OTHER GAINS OR LOSSES (Form 4797): 0.00
TOTAL IRA DISTRIBUTIONS: 0.00
TAXABLE IRA DISTRIBUTIONS: 0.00
TOTAL PENSIONS AND ANNUITIES: 0.00
TAXABLE PENSION/ANNUITY AMOUNT: 0.00
RENT/ROYALTY/PARTNERSHIP/ESTATE (Schedule E): 0.00
RENT/ROYALTY/PARTNERSHIP/ESTATE (Schedule E) PER COMPUTER: 0.00
RENT/ROYALTY INCOME/LOSS PER COMPUTER: 0.00
ESTATE/TRUST INCOME/LOSS PER COMPUTER: 0.00
PARTNERSHIP/S-CORP INCOME/LOSS PER COMPUTER: 0.00
FARM INCOME OR LOSS (Schedule F): 0.00
FARM INCOME OR LOSS (Schedule F) PER COMPUTER: 8.00
UNEMPLOYMENT COMPENSATION: 0.00
TOTAL SOCIAL SECURITY BENEFITS: 0.00

Tracking Number: ██████████

TAXABLE SOCIAL SECURITY BENEFITS:	\$ 0.00
TAXABLE SOCIAL SECURITY BENEFITS PER COMPUTER:	\$ 0.00
OTHER INCOME:	\$ 0.00
SCHEDULE EIC SE INCOME PER COMPUTER:	\$ 0.00
SCHEDULE EIC EARNED INCOME PER COMPUTER:	\$ 0.00
SCH EIC DISQUALIFIED INC COMPUTER:	\$ 0.00
TOTAL INCOME:	\$ 15,952.00
TOTAL INCOME PER COMPUTER:	\$ 15,952.00

Adjustments to Income

EDUCATOR EXPENSES:	\$ 0.00
EDUCATOR EXPENSES PER COMPUTER:	\$ 0.00
RESERVIST AND OTHER BUSINESS EXPENSE:	\$ 0.00
JURY DUTY PAY DEDUCTION:	\$ 0.00
HEALTH SAVINGS ACCT DEDUCTION:	\$ 0.00
HEALTH SAVINGS ACCT DEDUCTION PER COMPTR:	\$ 0.00
MOVING EXPENSES: F3903:	\$ 0.00
SELF EMPLOYMENT TAX DEDUCTION:	\$ 1,127.00
SELF EMPLOYMENT TAX DEDUCTION PER COMPUTER:	\$ 1,127.00
KEOGH/SEP CONTRIBUTION DEDUCTION:	\$ 0.00
SELF-EMP HEALTH INS DEDUCTION:	\$ 0.00
EARLY WITHDRAWAL OF SAVINGS PENALTY:	\$ 0.00
ALIMONY PAID SSN:	215-48-9963
ALIMONY PAID:	\$ 3,000.00
IRA DEDUCTION:	\$ 0.00
IRA DEDUCTION PER COMPUTER:	\$ 0.00
STUDENT LOAN INTEREST DEDUCTION:	\$ 0.00
STUDENT LOAN INTEREST DEDUCTION PER COMPUTER:	\$ 0.00
TUITION AND FEES DEDUCTION:	\$ 0.00
TUITION AND FEES DEDUCTION PER COMPUTER:	\$ 0.00
DOMESTIC PRODUCTION ACTIVITIES DEDUCTION:	\$ 0.00
OTHER ADJUSTMENTS:	\$ 0.00
ARCHER MSA DEDUCTION:	\$ 0.00
ARCHER MSA DEDUCTION PER COMPUTER:	\$ 0.00
TOTAL ADJUSTMENTS:	\$ 4,127.00
TOTAL ADJUSTMENTS PER COMPUTER:	\$ 4,127.00
ADJUSTED GROSS INCOME:	\$ 11,825.00
ADJUSTED GROSS INCOME PER COMPUTER:	\$ 11,825.00

Tax and Credits

65-OR-OVER:	0
BLIND:	0
SPOUSE 65-OR-OVER:	0
SPOUSE BLIND:	0
STANDARD DEDUCTION PER COMPUTER:	\$ 5,150.00
ADDITIONAL STANDARD DEDUCTION PER COMPUTER:	\$ 0.00
TAX TABLE INCOME PER COMPUTER:	\$ 6,675.00
EXEMPTION AMOUNT PER COMPUTER:	\$ 3,300.00
TAXABLE INCOME:	\$ 3,375.00
TAXABLE INCOME PER COMPUTER:	\$ 3,375.00
TOTAL POSITIVE INCOME PER COMPUTER:	\$ 15,952.00
TENTATIVE TAX:	\$ 358.60
TENTATIVE TAX PER COMPUTER:	\$ 358.00
FORM 8814 ADDITIONAL TAX AMOUNT:	\$ 0.00
TAX ON INCOME LESS SOC SEC INCOME PER COMPUTER:	\$ 0.00
FORM 6251 ALTERNATIVE MINIMUM TAX:	\$ 0.00
FORM 6251 ALTERNATIVE MINIMUM TAX PER COMPUTER:	\$ 0.00
FOREIGN TAX CREDIT:	\$ 0.00
FOREIGN TAX CREDIT PER COMPUTER:	\$ 0.00
FOREIGN INCOME EXCLUSION PER COMPUTER:	\$ 0.00
CHILD & DEPENDENT CARE CREDIT:	\$ 0.00
CHILD & DEPENDENT CARE CREDIT PER COMPUTER:	\$ 0.00
CREDIT FOR ELDERLY AND DISABLED:	\$ 0.00
CREDIT FOR ELDERLY AND DISABLED PER COMPUTER:	\$ 0.00
EDUCATION CREDIT:	\$ 0.00
EDUCATION CREDIT PER COMPUTER:	\$ 0.00
GROSS EDUCATION CREDIT PER COMPUTER:	\$ 0.00
RETIREMENT SAVINGS CONTRB CREDIT:	\$ 0.00

Tracking Number: [REDACTED]

FEDERAL PHONE EXCISE TAX CREDIT PER COMPUTER:	\$ 30.00
FORM 8913 PHONE EXCISE TAX PER COMPUTER:	\$ 0.00
FEDERAL PHONE EXCISE TAX CREDIT AMOUNT:	\$ 30.00
FEDERAL PHONE EXCISE TAX CREDIT VERIFIED AMOUNT:	\$ 0.00
TOTAL PAYMENTS:	\$ 30.00
TOTAL PAYMENTS PER COMPUTER:	\$ 30.00

Refund or Amount Owed

AMOUNT YOU OWE:	\$ 2,562.00
APPLIED TO NEXT YEAR'S ESTIMATED TAX:	\$ 0.00
ESTIMATED TAX PENALTY:	\$ 0.00
TAX ON INCOME LESS STATE REFUND PER COMPUTER:	\$ 0.00
BAL DUE/OVER PYMT USING TP FIG PER COMPUTER:	\$ 2,562.00
BAL DUE/OVER PYMT USING COMPUTER FIGURES:	\$ 2,562.00
FORM 8988 TOTAL DEPOSIT PER COMPUTER:	\$ 0.00

Third Party Designee

THIRD PARTY DESIGNEE ID NUMBER:	
AUTHORIZATION INDICATOR:	0
THIRD PARTY DESIGNEE NAME:	

Schedule C--Profit or Loss From Business

EMPLOYER ID NUMBER:	
DESCRIPTION OF BUSINESS/PROFESSION:	
NAICS CODE:	541990
ACCT MTHD:	Cash
FIRST TIME SCHEDULE C FILED:	N
STATUTORY EMPLOYEE IND:	N

INCOME

GROSS RECEIPTS OR SALES:	\$ 47,900.00
RETURNS AND ALLOWANCES:	\$ 0.00
COST OF GOODS SOLD:	\$ 9,348.00
OTHER INCOME:	\$ 0.00

EXPENSES

CAR AND TRUCK EXPENSES:	\$ 4,135.00
DEPRECIATION:	\$ 0.00
INSURANCE (OTHER THAN HEALTH):	\$ 579.00
MORTGAGE INTEREST:	\$ 0.00
LEGAL AND PROFESSIONAL SERVICES:	\$ 0.00
REPAIRS AND MAINTENANCE:	\$ 356.00
TRAVEL:	\$ 0.00
MEALS-AND-ENTERTAINMENT:	\$ 194.00
WAGES:	\$ 0.00
OTHER EXPENSES:	\$ 0.00
TOTAL EXPENSES:	\$ 15,340.00
EXP FOR BUSINESS USE OF HOME:	\$ 7,260.00
SCH C NET PROFIT OR LOSS PER COMPUTER:	\$ 15,952.00
AT RISK CD:	All investment at risk
OFFICE EXPENSE AMOUNT:	\$ 2,244.00
UTILITIES EXPENSE AMOUNT:	\$ 4,733.00

COST OF GOODS SOLD

INVENTORY AT BEGINNING OF YEAR:	\$ 0.00
INVENTORY AT END OF YEAR:	\$ 0.00

Tracking Number: [REDACTED]

RETIREMENT SAVINGS CONTRB CREDIT PER COMPUTER:	\$ 0.00
PRIM RET SAV CNTRS: F8880 LN6A:	\$ 0.00
SEC RET SAV CNTRS: F8880 LN6B:	\$ 0.00
TOTAL RETIREMENT SAVINGS CONTRIBUTION: F8880 CMPTR:	\$ 0.00
RESIDENTIAL ENERGY CREDIT:	\$ 0.00
RESIDENTIAL ENERGY CREDIT PER COMPUTER:	\$ 0.00
CHILD TAX CREDIT:	\$ 0.00
CHILD TAX CREDIT PER COMPUTER:	\$ 0.00
ADOPTION CREDIT: F8839:	\$ 0.00
ADOPTION CREDIT PER COMPUTER:	\$ 0.00
DC 1ST TIME HOMEBUYERS CREDIT:	\$ 0.00
DC 1ST TIME HOMEBUYERS CREDIT PER COMPUTER:	\$ 0.00
FORM 8396 MORTGAGE CERTIFICATE CREDIT:	\$ 0.00
FORM 8396 MORTGAGE CERTIFICATE CREDIT PER COMPUTER:	\$ 0.00
F8396 AND F8859 CREDITS:	\$ 0.00
FORM 3800 GENERAL BUSINESS CREDITS:	\$ 0.00
FORM 3800 GENERAL BUSINESS CREDITS PER COMPUTER:	\$ 0.00
FORM 1040C CREDIT:	\$ 0.00
PRIOR YR MIN TAX CREDIT: F8801:	\$ 0.00
PRIOR YR MIN TAX CREDIT: F8801 PER COMPUTER:	\$ 0.00
TENTATIVE EMPOWERMENT ZONE CREDIT: F8844:	\$ 0.00
EMPOWERMENT ZONE CREDIT: F8844:	\$ 0.00
OTHER CREDITS:	\$ 0.00
TOTAL CREDITS:	\$ 0.00
TOTAL CREDITS PER COMPUTER:	\$ 0.00
INCOME TAX AFTER CREDITS PER COMPUTER:	\$ 338.00

Other Taxes

SE TAX:	\$ 2,254.00
SE TAX PER COMPUTER:	\$ 2,254.00
SOCIAL SECURITY AND MEDICARE TAX ON UNREPORTED TIPS:	\$ 0.00
SOCIAL SECURITY AND MEDICARE TAX ON UNREPORTED TIPS PER COMPUTER:	\$ 0.00
TAX ON QUALIFIED PLANS F5329 (PR):	\$ 0.00
TAX ON QUALIFIED PLANS F5329 PER COMPUTER:	\$ 0.00
IRAF TAX PER COMPUTER:	\$ 0.00
TP TAX FIGURES (REDUCED BY IRAF) PER COMPUTER:	\$ 2,592.00
INF TOTAL TAX (REDUCED BY IRAF) PER COMPUTER:	\$ 2,592.00
ADVANCED EARNED INCOME CREDIT:	\$ 0.00
UNPAID FICA ON REPORTED TIPS:	\$ 0.00
FORM 4970 ACCUMULATION DISTRIBUTION OF TRUSTS:	\$ 0.00
RECAPTURE TAX: F8611:	\$ 0.00
HOUSEHOLD EMPLOYMENT TAXES:	\$ 0.00
HOUSEHOLD EMPLOYMENT TAXES PER COMPUTER:	\$ 0.00
RECAPTURE TAXES:	\$ 0.00
TOTAL ASSESSMENT PER COMPUTER:	\$ 2,592.00
TOTAL TAX LIABILITY TP FIGURES:	\$ 2,592.00
TOTAL TAX LIABILITY TP FIGURES PER COMPUTER:	\$ 2,592.00

Payments

FEDERAL INCOME TAX WITHHELD:	\$ 0.00
ESTIMATED TAX PAYMENTS:	\$ 0.00
EARNED INCOME CREDIT:	\$ 0.00
EARNED INCOME CREDIT PER COMPUTER:	\$ 0.00
PRIOR YEAR EARNED INCOME:	\$ 0.00
FORM 8812 PRIOR YEAR EARNED INCOME CREDIT ELECT IND:	\$ 0.00
FORM 8812 PRIOR YEAR EARNED INCOME CREDIT:	\$ 0.00
NONTAXABLE COMBAT PAY ELECTION:	\$ 0.00
FORM 8812 NONTAXABLE COMBAT PAY:	\$ 0.00
EXCESS SOCIAL SECURITY & RRTA TAX WITHHELD:	\$ 0.00
TOT SS/MEDICARE WITHHELD: F8812:	\$ 0.00
FORM 8812 ADDITIONAL CHILD TAX CREDIT:	\$ 0.00
FORM 8812 ADDITIONAL CHILD TAX CREDIT PER COMPUTER:	\$ 0.00
FORM 8812 ADDITIONAL CHILD TAX CREDIT VERIFIED:	\$ 0.00
AMOUNT PAID WITH FORM 4868:	\$ 0.00
FORM 2439 REGULATED INVESTMENT COMPANY CREDIT:	\$ 0.00
FORM 4136 CREDIT FOR FEDERAL TAX ON FUELS:	\$ 0.00
FORM 4136 CREDIT FOR FEDERAL TAX ON FUELS PER COMPUTER:	\$ 0.00
HEALTH COVERAGE TX CR: F8885:	\$ 0.00



012128

Tracking Number: [REDACTED]
Schedule SE--Self-Employment Tax

SSN OF SELF-EMPLOYED TAXPAYER:.....217-58-0473
NET FARM PROFIT/LOSS, SCH F:.....\$ 0.00
NET NONFARM PROFIT/LOSS:.....\$ 15,952.00
TOTAL SE INCOME:.....\$ 15,952.00
SE QUARTERS COVERED:.....4
TOTAL SE TAX PER COMPUTER:.....\$ 2,253.83
SE INCOME PER COMPUTER:.....\$ 14,731.00
TOTAL NET EARNINGS PER COMPUTER:.....\$ 14,731.00

LONG FORM ONLY

TENTATIVE CHURCH EARNINGS:.....\$ 0.00
TOTAL SOC SEC & RR WAGES:.....\$ 0.00
SE SS TAX COMPUTER:.....\$ 1,826.64
SE MEDICARE INCOME PER COMPUTER:.....\$ 14,731.00
SE MEDICARE TAX PER COMPUTER:.....\$ 427.19
SE FARM OPTION METHOD USED:.....0
SE OPTIONAL METHOD INCOME:.....\$ 0.00

Form 8863 - Education Credits (Hope and Lifetime Learning Credits)

PART III - ALLOWABLE EDUCATION CREDITS

GROSS EDUCATION CR PER COMPUTER:.....\$ 0.00
TOTAL EDUCATION CREDIT AMOUNT:.....\$ 0.00
TOTAL EDUCATION CREDIT AMOUNT PER COMPUTER:.....\$ 0.00

This Product Contains Sensitive Taxpayer Data



012125

Exhibit 3-5



This Product Contains Sensitive Taxpayer Data

Request Date: 01-26-2010
 Response Date: 01-26-2010
 Tracking Number: [REDACTED]

Account Transcript

FORM NUMBER: 1040 TAX PERIOD: Dec. 31, 2006

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

<<<<POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TIA) ON FILE>>>>

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE: 0.00
 ACCRUED INTEREST: 0.00 AS OF: Feb. 08, 2010
 ACCRUED PENALTY: 0.00 AS OF: Feb. 08, 2010

ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount): 0.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS: 01 FILING STATUS: Single
 ADJUSTED GROSS INCOME: 11,825.00
 TAXABLE INCOME: 3,375.00
 TAX PER RETURN: 2,592.00
 SE TAXABLE INCOME TAXPAYER: 14,731.00
 SE TAXABLE INCOME SPOUSE: 0.00
 TOTAL SELF EMPLOYMENT TAX: 2,254.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER) Apr. 15, 2007
 PROCESSING DATE Jul. 09, 2007

		TRANSACTIONS		
CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed 08212-146-09159-7	20072608	07-09-2007	\$2,592.00
615	Payment with return		04-19-2007	-92,562.00
611	Bad check		04-19-2007	92,562.00
280	Penalty for bad check	20072008	05-28-2007	951.24
766	Credit to your account		04-15-2007	-925.61
776	Interest credited to your account		04-15-2007	-84.39
176	Penalty for not pre-paying tax	20072608	07-09-2007	9122.66
276	Penalty for late payment of tax	20072608	07-09-2007	938.43
196	Interest charged for late payment	20072608	07-09-2007	948.65
271	Reduced or removed penalty for late payment of tax		07-30-2007	-938.43



04480

The Adviser's Guide to Doing Business With the IRS

Tracking Number: ██████████

290	Additional tax assessed 17254-587-05141-7	20072908	07-30-2007	\$0.00
196	Interest charged for late payment	20072908	07-30-2007	\$12.84
960	Appointed representative		09-17-2007	\$0.00
960	Appointed representative		09-21-2007	\$0.00
971	Tax period blocked from automated levy program		10-22-2007	\$0.00
971	Collection due process Notice of Intent to Levy -- issued		02-11-2008	\$0.00
582	Lien placed on assets due to balance owed		08-08-2008	\$0.00
360	Fees and other expenses for collection		09-01-2008	\$6.00
960	Appointed representative		09-22-2008	\$0.00
706	Credit transferred in from 1040 200712		04-15-2008	-\$243.00
971	Notice issued		10-20-2008	\$0.00
706	Credit transferred in from 1040 200712		11-03-2008	-\$1,200.00
971	Notice issued		11-10-2008	\$0.00
971	Installment agreement established		11-12-2008	\$0.00
971	Pending installment agreement		11-12-2008	\$0.00
670	Payment		01-11-2009	-\$302.00
670	Payment		02-13-2009	-\$345.00
670	Payment		03-12-2009	-\$345.00
670	Payment		04-11-2009	-\$345.00
670	Payment		05-13-2009	-\$345.00
196	Interest charged for late payment	20092108	06-08-2009	\$268.97
270	Penalty for late payment of tax	20092208	06-15-2009	\$403.83
290	Additional tax assessed 07254-548-06940-9	20092208	06-15-2009	\$0.00
971	Notice issued		06-15-2009	\$0.00
670	Payment		06-17-2009	-\$351.19
971	No longer in installment agreement status		07-06-2009	\$0.00
583	Lien released		12-07-2009	\$0.00

This Product Contains Sensitive Taxpayer Data

Chapter 4

The Collection Process: Federal Tax Lien, Levy, Seizure, and Sale

Introduction

The direction the IRS collection effort will take depends upon the type of tax (for example, income, employment, or trust fund recovery penalty), whether it is a tax subject to deficiency procedures, and whether the tax has been assessed. Obviously, these considerations are not independent of each other.

A typical situation, however, might be where the taxpayer has filed an income tax return showing tax due, but has not enclosed payment. In this situation, the first contact is likely to be by telephone from the automated collection service (ACS) center requesting payment. Fairly soon after the initial inquiry, the matter may be referred to the collection division in the relevant district office if the amount due is significant.

Within usually about 6 weeks after filing the return, the taxpayer will be sent a written demand for payment from the service center or district office. Indeed, the literal language of IRC §6303(a) requires notice and demand for payment to be sent to the taxpayer as soon as possible, and in any event within 60 days after assessment. Usually, but not necessarily, three of these billing notices will be sent before the notice headed “FINAL NOTICE—NOTICE OF INTENTION TO LEVY.”

Most large accounts will be assigned to a collection division employee in the district office for processing. The revenue officer or other grade of employee will attempt to contact the taxpayer for the purpose of establishing whether she will or can pay the delinquency. The most important decision the collection division employee must make at this stage is whether to file a notice of federal tax lien. If the account is not assigned to a Revenue Officer, the Service Center will usually automatically file a tax lien.

The National Taxpayer Advocate, Nina E. Olson, in her annual reports to Congress, has been critical of IRS’s handling of certain collection accounts, particularly the automated system used to file tax liens against taxpayers. Hopefully, the Service will put some of the recommendations in the report into practice.

The levy, seizure, and sale of the taxpayer’s property to satisfy a tax liability is the last stop in the collection process.

IRC §6331(a) authorizes the IRS to levy upon all property subject to a federal tax lien and “all property and rights” of a taxpayer who is liable for a tax but fails to pay within 10 days of notice and demand having been given. The amount that the levy can satisfy is the amount of the liability including interest and penalties, plus the cost of the levy.

IRC §6331(b) defines levy and seizure synonymously. In this book, these terms are often used interchangeably, but the term levy tends to be used where property is appropriated from third parties, while seizure tends to be used where property is taken from the possession of the taxpayer.

The requirement of IRC §6331(a) that the taxpayer be given notice of the tax liability and demand for payment made at least 10 days before levy or seizure will nearly always have been met, since any one of the computer-generated demand letters and notices routinely sent to delinquent taxpayers satisfies this requirement.

IRC §6331(d) requires, in addition to the notice and demand requirement of IRC §6331(a), that notice of the levy or seizure be given to the taxpayer by personal service, certified mailing to the last known address, or leaving it at the taxpayer's dwelling at least 30 days in advance of levy or seizure of the taxpayer's property.

IRC §6331(d) also requires specific information regarding the lien, levy, and appeals process to accompany the 30-day notice. The Notice of Intention to Levy is the notice used by the IRS to satisfy the IRC §6331(d) 30-day notice requirement.

The Notice of Intention to Levy, once served, remains effective for as long as the liability remains legally collectible. It is IRS practice, however, to levy upon or seize property only within 180 days after the service of the notice. The IRS will usually send notices at 180-day intervals as long as the amount is outstanding.

Nature of a Lien

A lien is a legal interest which grants to a creditor the right to charge the amount of a debt against the value of specific property of the debtor. The creditor who has a lien on property of the debtor (known as a secured creditor) is, upon the default of the debtor, entitled to enforce the sale of property on which she has a lien and to appropriate the sale proceeds in satisfaction of the debt. If the taxpayer is insolvent, the unsecured creditors will be entitled to whatever is left of the assets of the debtor after payment of the secured creditors who have perfected their interests. Property may be subject to more than one lien. When this happens, there are laws establishing the order in which the claims of secured creditors are satisfied from the proceeds of the sale of the collateral.

A lien is perfected in most cases when the creditor files a document in a public office which evidences the security interest. This filing puts all persons lending money to, or purchasing property from the debtor on constructive notice of the existence of the security interest. Until the security interest is perfected, the lien is ineffective against the interests of most subsequent secured lenders and purchasers. A lien on real property is perfected by filing a mortgage. A lien on many kinds of personal property is perfected by filing a Uniform Commercial Code (UCC) financing statement.

General Tax Lien

IRC §6321 provides that a lien arises in favor of the United States when a taxpayer is assessed a tax and fails to pay it after notice is given and demand for payment made. Although IRC §6303(a) requires notice and demand to be made within 60 days of assessment, the IRS's position is that notice given after the expiration of the 60-day period is valid.⁶⁶

The lien arises without any action of the IRS beyond the assessment and demand requirements described above. This lien is a secret lien because it has not been perfected. The lien becomes retroactively effective as of the date of the assessment (IRC §6322). Thus, the lien can attach to property that was disposed of by the taxpayer between the effective date of the lien and the date of notice and demand and non-payment in response to it. The lien attaches to all property the taxpayer has and acquires. IRC §6325(a)(1) provides that the lien self-releases one month after the statute of limitations on collection runs.

It is not possible for a person engaging in business transactions to establish whether there is a general tax lien against another person. IRC §6323(a) lists interests to which the general federal tax lien is subordinate. These include

- Purchasers who purchase the taxpayer's property for adequate and full consideration, and
- Those lending money to the taxpayer and taking back a perfected security interest which would have priority over the claim of an unsecured judgment creditor under state law.

Therefore, a customer of a retail establishment or a bank that secures a loan with inventory of the taxpayer have priority over the government's interest.

The government's lien is derivative. The government's rights to the property cannot exceed the taxpayer's. For example, if the taxpayer has a pension plan but is under age 59½ and is not entitled to any distributions, the government cannot force a distribution.

The general tax lien has priority, however, over the interest in property of the donee of a gift or that of an unsecured lender.

Notice of Federal Tax Lien

Following our digression on the nature of liens and the effect of the federal general tax lien, we return to the Revenue Officer in a district office who has been assigned a delinquent account. One of the earliest and most important determinations he must make is whether to file a notice of federal tax lien (NFTL) against the delinquent taxpayer. In a case being handled by the Service Center, an NFTL is almost always filed.

Below is a description of the legal effects of the NFTL. For the moment, it suffices to understand that the NFTL is a filed lien that is deemed to put all persons on notice of the government's claim. The NFTL establishes the priority of the government's claim over subsequently perfected interests (and some earlier perfected interests).

⁶⁶ Treas. Reg. 301.6303-1(a).

The administrative process of filing NFTLs, levying upon the taxpayer's property and ultimately selling the property and applying the sale proceeds to the payment of the tax, has been substantially affected by the Internal Revenue Service Restructuring and Reform Act of 1998. Under Section 3421 of the 1998 Act, the IRS is required to implement approval processes for all liens, levies, and seizures. An IRS agent filing a notice of lien or levy or levying on or seizing property would, in some circumstances at least, be required to have the action reviewed by a supervisor before the action is taken, under pain of disciplinary action. The review process may include a certification that the employee has

- Reviewed the taxpayer's information;
- Verified that a balance is due; and
- Affirmed that the action proposed to be taken is appropriate given the taxpayer's circumstances, considering the amount due and the value of the property or right to property.

One of the primary objectives for the tax advisor in this situation must be to prevent having an NFTL filed against the client. This is because the filing of the NFTL is likely to have a significantly adverse effect on the client's ability to do business and earn enough to pay off her tax liabilities. The filed NFTL can preserve the government's rights to collect a tax debt that would otherwise be dischargeable in bankruptcy. Preventing the filing of the NFTL, however, will never be easy to accomplish and in many situations will be impossible.

If a tax lien is filed, it is always a good idea to get a copy of it. Mistakes can be made.

In appropriate situations, therefore, the taxpayer or the advisor should attempt to convince the Revenue Officer that

- Business is profitable,
- Profits from the business will be sufficient to pay the tax liability in a short period, and
- Filing of an NFTL will devastate the business by, for example, impairing its ability to secure working capital.

Even after a notice of tax lien is filed, certain purchasers may acquire the property of the taxpayer if they did not know that the lien existed. IRC 6323(b) lists the exceptions to the rule. These include purchasers of securities, motor vehicles, inventory, other goods purchased at retail and certain household goods and casual sales of less than \$1,400 (for 2011, adjusted for inflation), among others.

The Taxpayer Advocate's Report of January 6, 2010⁶⁷ points out the potentially needless harm to taxpayers that improperly applied tax liens may cause. The filing of a NFTL can significantly harm a taxpayer's credit and therefore make it more difficult for him to obtain a job or a loan. These things then make it more difficult for the taxpayer to pay his tax debt. Therefore, the Taxpayer Advocate recommends that the decision of whether or not to file a federal tax lien be made on a case by case basis. On average, a lien filing reduces a taxpayer's credit score by 100

⁶⁷ IR-2010-2.

points (according to Vantage Score). Released liens generally stay on the credit history for seven years after the date of release. Therefore, the filing of a federal tax lien has a seriously adverse effect on a taxpayer.

Not surprisingly, the IRS did not completely agree with the Taxpayer Advocate's findings that filing tax liens may not enhance collection. Their research indicates that the NFTL had little effect if the balance was under \$5,000, however it did enhance collection for amounts over \$5,000. Hopefully, the report will encourage the IRS to give more consideration to requests to withdraw a filed tax lien. In her report dated June 30, 2010, the Taxpayer Advocate complained that those issues are still a problem.

Withdrawal of Notices of Federal Tax Lien

Under IRC §6323(j), an NFTL may be withdrawn before payment in full if (1) the filing was premature or not in accordance with IRS administrative procedures, (2) an installment agreement has been entered into that does not require the NFTL to remain in place, (3) the withdrawal will facilitate the collection of the tax, or (4) the withdrawal would be in the best interest of the taxpayer and the government, as determined by the National Taxpayer Advocate.

Keep in mind that the withdrawal of a NFTL does not affect the underlying federal tax lien if the tax debt has not been satisfied.

Appealing Filed Liens: Collection Due Process Rights

Under IRC §6320, the IRS must notify the taxpayer of the filing of a lien no more than five business days after its filing. This notice must give the taxpayer relevant information regarding the liability and must advise the taxpayer of his or her right to request a hearing during the 30-day period beginning on the day after the five-day period described above. Where possible, the hearing is to be combined with any appeal of a levy under IRC §6330.

The request for a hearing must be made in writing. While not required for the valid exercise of collection due-process rights, Form 12153 is available for the purpose of requesting a hearing and, as a practical matter, should always be used.

If the IRS denies the taxpayer relief, he has 30 days to appeal to the Tax Court.

The filing of a collection due process appeal stays the statute of limitations for collection during the time the appeal is processed plus an additional 90 days after the final determination is made.⁶⁸

The Pension Protection Act of 2006 (PPA) substantially amended IRC §6702, which formerly had the title "Frivolous Income Tax Return." This section of the IRC now has the title "Frivolous Tax Submissions." Under IRC §§ 6702(b)(2)(B)(i)(I) and (II), categories of tax submission to which this section of the IRC applies include requests for a CDP hearing with respect to filed liens and levies.

The enhanced penalty of \$5,000, therefore, may be charged against taxpayers making a frivolous claim in a CDP hearing. This may be in addition to having the appeal denied. A frivolous

⁶⁸ IRC §6330(e).

submission is defined to be one that “reflects a desire to delay or impede the administration of federal tax laws” or one described by the Secretary on a list of frivolous positions which the Secretary is required to compile. The IRS has most recently published such a list in Notice 2008-14.

The CDP Hearing

As a first step, the Hearings Officer is required to establish that all legal and administrative requirements concerning the lien filing have been met. The taxpayer may raise at the hearing any relevant issue relating to the unpaid tax, the lien, or the proposed levy including

- Appropriate spousal defenses (note that the Internal Revenue Service Restructuring and Reform Act of 1998 amends statutory innocent spouse provisions, but further note that the IRS has taken the position that determinations under IRC §6015(f) (Equitable Relief) are non-appealable);
- Challenges to the appropriateness of collection actions; and
- 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.

The taxpayer may raise challenges to 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. The Regulations suggest that failure to receive a properly mailed notice would entitle the taxpayer to make a challenge. It appears that the taxpayer will rarely be entitled to challenge the underlying tax liability but the Regulations do give the Appeals Officer discretion to consider any such challenges where the taxpayer does not have the right to make such a challenge prior to assessment. Among the considerations the Appeals Officer may take into account is “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.”

Following the appeal, the service issues a CDP determination. The Pension Protection Act of 2006 amended IRC §6330(d)(1) to provide that for notices of determination issued on or after October 17, 2006, only the Tax Court has jurisdiction over the appeal.

A CDP hearing does not have to be conducted in a face-to-face meeting with the IRS. Written or oral communications (telephone) are sufficient. In *Schneider v. Comm.* 2010-1 USTC, the Fourth District Court of Appeals ruled that the fact that the IRS denied the taxpayer a face-to-face CDP hearing was not an abuse of discretion. IRC §6330 is informal in nature and does not require a face-to-face meeting.

Collection Appeals

Reg. §301.6320-1(i) provides that if the taxpayer fails to timely request a collection due-process hearing, the IRS will grant the taxpayer an equivalent hearing. An equivalent hearing is an administrative hearing that is almost identical to the CDP hearing. At the conclusion of this Appeals hearing, the IRS will issue a Decision Letter. The statute of limitations is not suspended for an Appeals hearing as it is for a CDP hearing and the IRS may continue collection action

while the matter is under Appeal, although the Regulations do provide for the IRS to consider halting such actions. Generally, the decision from an IRS Appeals hearing may not be appealed to Tax Court.

Reg. §301.6320 provides information regarding CDP hearings in a question and answer format. IRS Publication 1660 is helpful with respect to procedures concerning collection due-process rights.

The collection due process rights granted under the Internal Revenue Service Restructuring and Reform Act of 1998 have generated substantial litigation.

In *Moore*, 114 T.C. 11 (2000), the court determined that it had no jurisdiction to review a substantive challenge to liability for the trust fund recovery penalty under IRC §6672 (following a final determination of the Appeals Office adverse to the taxpayer) because the Tax Court has no jurisdiction over that penalty.

In *Meyer*, 115 T.C. 31 (2000), the IRS failed to give the taxpayer a due process hearing and issued a notice of determination. The court determined that it had jurisdiction to dismiss the notice of determination because it was issued without a hearing having been offered even though the court had no jurisdiction over the tax at issue.

In *Davis*, 115 T.C. 4 (2000), the court determined that the taxpayer had no right to subpoena witnesses in a collection due process hearing.

Pierson, 115 T.C. 39 (2000), is a case of which practitioners should take special note. The court warned of the possibility that it might impose the penalty for frivolous claims under IRC §6673 where the appeal lacked any kind of merit.

The IRS reports that litigation arising from CDP hearings is clogging the litigation docket and represents the largest category of litigation in which the IRS is involved. Although most reported CDP appeals appear to have been unsuccessful, there are some recent examples of taxpayers having some success with the argument that the appeals officer abused his or her discretion with respect to the final determination. See, for example, *Fowler v. Commissioner*, TC Memo. 2004-163, holding that it was an abuse of discretion for the appeals officer to accept an offer in compromise as an alternative to levying on the taxpayer's assets.

IRC §6326 provides for an administrative appeal in circumstances where an NFTL may have been erroneously filed. Specifically, it gives the Secretary of the Treasury the authority to prescribe Regulations for the appeal. IRC §6326 was not repealed by the Internal Revenue Service Restructuring and Reform Act of 1998, but IRC §6320 discussed above is likely to eclipse it. The appeal right under IRC §6326 does not include situations in which the dispute is the underlying liability for the tax, or where the NFTL was properly filed but should now be released by reason of payment or the unenforceability of the liability.

The appeal is made by submitting an application to the special procedures function of the district office. The application must set forth the information disclosed in Treas. Reg. §301.6326-1(d) and (e). The Regulations state that this is the exclusive administrative remedy with respect to the erroneous filing of an NFTL. Where the district director is satisfied that there has been an erroneous filing, a release will be filed within 14 days after the determination where practicable.

Priority of Filed Tax Liens

The priority of NFTLs over the claims of other creditors is a topic beyond the scope of this book. Nonetheless, tax advisors must be aware that the taxpayer's interest may be substantially affected by whether an NFTL has priority over the claims of other creditors. This is because the client's tax obligations may not be dischargeable in bankruptcy while the claims of other creditors may be. Frequently, the taxpayer would prefer to have her assets applied to her tax debts rather than to private debts.

The general rule of priority under IRC §6323 is that upon filing of the NFTL, the federal tax lien has priority over subsequently perfected liens, save for those exceptions in IRC §6323(b), (c), and (d).

The IRC §6323(b) exceptions include the interest of a purchaser of a vehicle who bought without actual notice or knowledge of the NFTL. It also includes an exception for personal property purchased at retail.

IRC §6323(c) exceptions are highly technical. This section establishes narrow exceptions under which advances under secured credit lines and construction mortgages made after the filing of an NFTL may, nonetheless, have priority.

The reason that the priority of liens is established by the order in which they are filed is that the filing of the lien gives public notice of the existence of the claim. For that reason, in many, and perhaps all states, a mortgage, for example, will not have priority over an unfilled lien if the mortgagee knew of the existence of the unfilled lien. Similar principles, however, do not apply to NFTLs. The categories of persons such as purchasers for value, holders of security interests, and so on, whose lien priorities are protected from unfilled federal tax liens remain protected even if they knew about the unfilled IRS lien at the time their own interests attached in the taxpayer's property.⁶⁹

Conditions for Release, Discharge, or Subordination of NFTLs

POSTING A BOND

The bond must satisfy the requirements of the IRC §7101 and 7102 regulations.⁷⁰

This is obviously a supremely irrelevant provision for most taxpayers struggling under the burden of a federal tax lien who lack the resources either to pay the tax or post a bond.

REQUESTING A WITHDRAWAL OF A TAX LIEN

If a taxpayer believes that a filed tax lien should be withdrawn, he may make a request for a withdrawal to the National Lien Office in Cincinnati, Ohio. The request should contain the name, current address and taxpayer identification number of the taxpayer, a copy of the applicable notice of lien, the grounds upon which the withdrawal is being requested, and a list of names and addresses of any credit reporting agency or financial institution that the taxpayer wishes the IRS

⁶⁹ Rev. Rul. 2003-108.

⁷⁰ Treas. Reg. §301.7101-1.

to notify of the withdrawal. The telephone number for the National IRS Centralized Lien Unit is 800-913-6050.

PROPERTY WORTH DOUBLE THE AMOUNT OF THE LIABILITY

If the taxpayer has property subject to a federal tax lien which has a market value double that of the sum of the amount of the lien and the value of all liens having priority over the federal tax lien, then the IRS is authorized to discharge any other property which is also subject to the lien.⁷¹

This provision requires the IRS to give up an existing lien without getting anything in return. Therefore, the tax advisor should expect the IRS to require substantiation with appraisals and other evidence of value before it will discharge any property on these grounds. For this provision and the others discussed in this section, the language of the statute and the Regulations is discretionary. This apparently precludes any legal recourse on the part of the taxpayer if the IRS unreasonably refuses to release or discharge a lien.

VALUELESS LIEN, PART PAYMENT

The IRS is given discretion to discharge a lien against property if it is paid the value of its lien or if the lien is valueless.⁷² This can be of assistance to a taxpayer who wishes to dispose of her assets as example 4-1 shows on the following page.

RIGHT OF SUBSTITUTION OF VALUE FOR NONTAXPAYER OWNER OF PROPERTY

Under IRC §6325(b)(4), an owner of property subject to an IRS lien who is not the taxpayer is granted a remedy under which he may post a bond or deposit cash with the IRS while the issue of whether or not the lien was erroneously filed is litigated.

SUBORDINATION OF LIEN

The IRS is authorized to subordinate a federal tax lien if it is paid an amount equal to the value of the lien to which it is being subordinated. The IRS is also permitted to subordinate a lien if it is satisfied the subordination will ultimately result in an increase in the amount realized and will facilitate the ultimate collection of the tax liability.⁷³ Please see example 4-2.

SUBSTITUTION OF PROCEEDS OF SALE

Regulation §301.6325-1(d) allows the IRS to discharge its lien on property if its lien is replaced by a lien of the same priority on the proceeds. The replacement lien must be established pursuant to an agreement, and would require an independent trustee to take custody of the funds immediately after the sale.

⁷¹ IRC §6325(b)(1).

⁷² IRC §6325(b)(2).

⁷³ IRC §6325(d).

Example 4-1

- Jessie Taxpayer owns property with a fair market value of \$200,000 which is subject to a mortgage of \$150,000 and a federal tax lien of \$200,000.
 - The mortgage has priority over the federal tax lien.
- If Jessie were to find a buyer for the property, the IRS is authorized to discharge the property from the lien for a payment of \$50,000.

Discussion

- If the situation was as described above, but the mortgagee was to incur \$5,000 in selling costs, the issue arises whether the value of the government's lien on the property is \$50,000 or \$45,000.
- If state law gives the same priority to the foreclosing lienholder's expenses as to the lien for the amount of the debt, the same rule will govern with respect to the priority of the federal tax lien.*
- Thus, if state law does give the same priority to expenses, the government's lien should be valued at \$45,000 for the purposes of this Code Section.
- If the fair market value of the property were \$125,000, the IRS should be prepared to release its valueless lien for no payment.
 - This could permit the taxpayer, for example, to deed the property to the mortgagee lender in complete or partial satisfaction of the debt and avoid a foreclosure proceeding.

*IRC §6323.

ERRONEOUSLY FILED LIEN

The IRS instructs its employees to release NFTLs which, although lawfully filed, are filed by mistake or in violation of an understanding reached with the taxpayer with regard to the payment of tax liability.

OFFER IN COMPROMISE

The IRS may release a federal tax lien upon the acceptance of an offer in compromise and upon the taxpayer having paid the compromise amount and otherwise honored her obligations. A collateral agreement under the agreement will not prevent the release of the lien.

Upon an offer in compromise being accepted, the taxpayer should ask the IRS agent with whom she is dealing to get the lien released.

See chapter 6 for a discussion of offers in compromise.

Example 4-2

- Julia Taxpayer has property with a fair market value of \$100,000.
- There exists a tax liability of \$200,000 for which an NFTL has been filed. Julia can borrow \$50,000 from a bank if she can give the bank a first mortgage on the property.

Discussion

- In this situation, the IRS is authorized to subordinate the tax lien to the first mortgage in exchange for a payment of \$50,000, if the other statutory conditions are met.
 - The IRS will retain a second lien on the property.
- It is likely to be quite difficult to persuade the IRS to subordinate a federal tax lien on the grounds that it will facilitate collection of the tax.
- The examples in the Regulations are
 - Farmer who needs to borrow money in order to harvest his crop,
 - Property owner who needs to borrow to refurbish the property for sale, and
 - Business whose lender refuses to make further advances because of the priority of the tax lien.*
- Each situation would require the IRS to make judgments about the future value of property or the profitability of business for which an investment banker would be better equipped.
- Nonetheless, this Code provision permits the IRS to take into account that the NFTL, itself, may be the chief obstacle to payment of the tax liability.
- Tax advisors should always be prepared to argue the case for this relief.

*Treas. Reg. §301.6325-1(d)(2)(ii).

Selling or Mortgaging Property Subject to Tax Lien

If the tax advisor is successful in persuading the IRS to discharge or subordinate a lien for one of the reasons set forth above, it will often be in the context of a sale or mortgage of property and the payment of the proceeds to the IRS.

In this situation, the IRS will issue a notice undertaking (with some reservations) to discharge or subordinate its lien upon the satisfaction of certain conditions. This notice can be given to the buyer or mortgagee as evidence that the lien will be discharged or subordinated as the case may be. The buyer, mortgagee, or title insurance company will normally directly pay the necessary amount to the IRS from the closing or loan proceeds. Collection Division employees will sometimes attend the closing and accept payment on the spot, although the discharge or subordination will not normally be given effect until later.

The IRS announced in 2008 that they would make subordination of tax liens for purposes of obtaining mortgages easier for taxpayers.

The Process of Levy and Seizure

Property in Possession of Third Parties

The procedure followed in levying upon or seizing property depends in part upon whether the property is in the possession of the taxpayer or a third party.

Collection Division employees are instructed to satisfy the liability wherever possible by levying on property in the hands of third parties. This avoids the hazards attendant on dealing with irate taxpayers, and liquid assets, which are preferred targets of levies, will normally be in the possession of financial institutions.

FORMS AND NOTICE

In the case of a levy on general property including bank accounts, the IRS serves Form 668-A, *Notice of Levy*, on the party having possession or dominion over the property. In the case of a levy on salary or wages, Form 668-W is served on the employer. Form 668-B, *Levy*, is given to the taxpayer.

Except where life insurance policies are levied upon, there is no statutory requirement that the taxpayer be given advance notice of a levy in addition to those requirements described in the introduction above. Nonetheless, the taxpayer is routinely sent a copy of all Forms 668 served on third parties.

SURRENDER OF PROPERTY UPON DEMAND

IRC §6332(a) requires a third party to surrender upon demand any property of the taxpayer of which it has possession or with respect to which it has some obligation. This latter provision would include, for example, the obligation of the served party to pay rent as a tenant.

The effect of IRC §6332(a) is to render nearly absolute the obligation of a third party to surrender property upon being served with a notice of levy. The only defenses appear to be that the third party has no property subject to the levy, or that any property it has is subject to attachment or levy under judicial process.⁷⁴ A third party is certainly not entitled to refuse to surrender property on the grounds of any defense that the taxpayer might have to the levy. The instructions on the levy make it quite clear that the third party would be held liable if they submit levied funds to the taxpayer instead of to the government. Therefore, most parties comply with the levy.

IMMUNITY FROM LIABILITY

A third party delivering up property in response to the service of a notice of levy is immunized from liability to the taxpayer or any third party with respect to that surrender. The Regulations make it clear that the immunity from liability of third parties extends only to situations in which the property surrendered is that of the taxpayer, or where a good faith determination was made to

⁷⁴ IRC §6332(a).

that effect. It would not, for example, apply where a bank surrendered the deposit of a person other than the taxpayer as a result of a misreading of the taxpayer's name on the notice of levy.⁷⁵

FAILURE TO SURRENDER PROPERTY UPON DEMAND

If a third party fails to surrender property upon demand, IRS practice is to serve Form 668-C, which is designated as a final notice and threatens legal action if the levied upon property is not surrendered within five days.

In the case of a failure or refusal to surrender property, IRC §6332(d) provides that the third party may be held personally liable for the tax, up to the value of the property levied upon, plus interest running from the date the property was required to be turned over. Any amounts recovered in this manner are credited against the tax liability.

IRC §6332(d) also provides for the imposition on the third party of a penalty of 50 percent of the amount for which he is held liable pursuant to the previous paragraph.

The liability and penalty under IRC §6332(d) are not self-executing. In order to impose them, the IRS must bring an action against the third party in question.

In the case of a continuing levy, such as a payroll levy, the employer must continue to submit the levied amounts to the Service until notified in writing that the levy has been withdrawn.

CONTINUOUS LEVIES

Generally, IRS levies only extend to the property that a third party is holding at the time of the levy. IRC §6331(e) allows for continuous levies on salaries or wages payable to a taxpayer until the levy is released subject to a minimum exemption amount. Payments that are susceptible to continuous levies also include unemployment benefits, worker's compensation payments and annuities or pension payments made under the Railroad Retirement Act. Levies on those payments attaches to up to 15 percent of the payment due to the taxpayer even though the payments are otherwise exempt from levy under IRC §6334. Any individual subject to such levies is afforded a notice of intent to levy and a CDP Notice except in cases where tax collection is in jeopardy, the IRS is seizing a state tax refund, or the levy is a disqualified employment tax levy.

If a payment is due to a vendor of goods or services sold or leased to the federal government, the levy may attach to up to 100 percent of the payments.⁷⁶

The Small Business Jobs Act of 2010 provides that there is no pre-levy notice required for a continuous levy to collect federal contractor tax liabilities. No pre-levy CDP Notice is required. However, the federal contractor must be given an opportunity for a post-levy hearing within a reasonable time after the levy. The levy is a continuous levy. This provision applies to levies issued after September 27, 2010.

⁷⁵ Treas. Reg. §301.6332-1(c).

⁷⁶ IRC §6331(h)(3).

Information Assisting Levy and Seizure

COLLECTION OF INFORMATION

The IRS will begin the levy and seizure process by collecting information that will be of assistance to it in identifying assets subject to levy or seizure. Some of this information can be obtained with standard investigatory techniques such as the use of tax returns, trade and telephone directories, and searches of vehicle title and real estate records.

IRM 5.1.18 provides guidance to Revenue Officers on how to collect information about a taxpayer's assets. They have access to many Web-based agencies to find assets including national asset locator services, credit reporting agencies, and state agencies. They have access to electronic title searches and various county reporting agencies, if available. If a taxpayer has submitted a financial statement on Form 433 or Form 433-A, the forms themselves provide valuable information on where the taxpayer's assets are. A Revenue Officer can summons a bank account and look at who the taxpayer's customers are. A creative Revenue Officer has been reported following a delivery truck to determine who a business's customers were in order to effectively distribute third party summonses.

Exhibit of Books and Records on Demand

A more direct approach is authorized by IRC §6333, under which any party is required to exhibit upon demand to the IRS any books or records that will assist the IRS in identifying property that can be seized or levied upon.

Summons and Enforcement Powers

The IRS may use its extensive summons powers and the associated enforcement provisions of IRC §7601 and related sections against uncooperative third parties or the taxpayer himself, but only as something of a last resort. Under IRC §7602(a), the IRS is authorized to summons either the taxpayer or third parties and books and records in order to assist in the collection of a tax.

If the summons is directed at the taxpayer, it will probably be for the purpose of completing the collection information statement referred to above, which will identify tangible property, bank deposits, accounts receivable, and so on, that may be seized or levied upon.

The IRS may not seize the taxpayer's property on the date on which the taxpayer or an officer or employee is required to appear in response to a summons.⁷⁷

In addition to discovering the assets which may be subject to levy or seizure, Collection Division agents are required to ensure in the case of each asset that there is equity which can be realized from a levy.⁷⁸

⁷⁷ IRC §6631(g).

⁷⁸ See also IRC §6331(f).

The Mechanics of Levy and Seizure

ATTEMPT TO SECURE TAXPAYER COOPERATION

The first step that the Revenue Officer will usually take in the seizure process is to advise the taxpayer that the seizure will take place failing payment. In seizing property of the taxpayer, the IRS will first attempt to secure the taxpayer's cooperation. The Revenue Officer, or other Collection Division employee, will seek the taxpayer's consent to enter the taxpayer's business or residential property for the purpose of inventorying the taxpayer's tangible personal property. There is nothing good for the taxpayer that can result from allowing a Revenue Officer to examine the premises!

LEVY AND SEIZURE

The levy and seizure of the taxpayer's property is a process by which the IRS actually or constructively reduces the taxpayer's property to its own possession. Exactly how this is done will depend upon the nature of the property and the circumstances of the seizure.

IRM 5.10.3 sets forth general procedures for seizures. The IRM emphasizes the desirability of obtaining the consent of the taxpayer and the absence of force in the seizure process.

- Except in cases where it is necessary to protect seized assets inside, the taxpayer will not be deprived of possession of seized real property until he would lose possession following a sale pursuant to a judgment levy under state law. In other words, when real estate is seized, the taxpayer is allowed to continue to live there until it is required to be turned over to the buyer.
 - In many states, this will not be until after the property is sold and after the expiration of any period during which the judgment creditor can redeem the property from the buyer.
- If this is the case in the state in question, the taxpayer will be permitted to remain in possession of the real property until the 180-day redemption period has expired.
- Form 688-B is given to the taxpayer when the first attempt to inventory the taxpayer's property is made.
- The IRS will not normally insure property it has seized.

Following the seizure, the taxpayer must be served with a notice specifying the sum demanded and describing the property seized.⁷⁹ The form used is Form 2433, *Notice of Seizure*.

A taxpayer may appeal a Notice of Federal Tax Lien, levy, seizure, or denial or termination of an installment agreement by submitting Form 9423, *Collection Appeal Request*. Before filing the form, he must first request a meeting with the Revenue Officer's manager. Upon an unsatisfactory conference meeting with the manager, the taxpayer may submit the form explaining why the meeting was unsatisfactory and what he proposes to resolve the issue. The

⁷⁹ IRC §6335(a).

Form must be filed within two days of the conference with the manager or collection activity will resume.

Collection activity is suspended while the appeal is considered. The decision by the appeals officer on the issue is binding.

Concurrent Interests

Joint Tenants and Tenants in Common

Where parties other than spouses own undivided interests in property, the federal tax lien attaches to the partial interests owned by the delinquent taxpayer. These interests may be levied upon and separately sold.

In many circumstances, of course, an undivided interest is not readily marketable and would not be worth levying upon. This is particularly true where the taxpayer and a third party own property with a right of survivorship, where the survivor of the joint tenants acquires title to the entire property. In this situation, the IRS may be best off waiting out the collection limitation period, in the hope that the taxpayer will acquire title by survivorship.

Under IRC §7403, the IRS is authorized to bring an action in federal district court to have the entire property in which the taxpayer has a part interest sold. If the sale is ordered by the court, the third-party joint owners are compensated the full value of their interests from the sale proceeds. The court has discretion to decline to order the sale if the specific factors enumerated by the Supreme Court in *U.S. v. Rogers*, 461 U.S. 677 (1983) cause the balance of equities to go against the sale.

Tenancies by the Entirety

In common law states, husbands and wives may own real property as tenants by the entirety. Historically, the interests of the married couple in tenancy by the entirety property have been indivisible under state law. This has meant in some states that a lien against only one of the spouses, such as that of a judgment creditor, cannot attach to any interest in the tenancy by the entirety property. It has long been thought that, although federal law determines the lien, levy, and other collection powers of the IRS, state law determines the nature of the property interests to which the lien and levy can be applied.

This principle of law was rejected, however, in 2002 by the United States Supreme Court in *U.S. v. Craft*, 2002-1 USTC ¶150,361. In *Craft*, the husband only owed tax delinquencies. Following the filing of an NFTL against the husband, the taxpayer husband and his wife conveyed the marital residence held as tenants by the entirety to the wife for nominal consideration. Upon the sale of the property by the wife, the IRS laid claim to half the sale proceeds on the grounds that the NFTL had attached to the husband's (divisible) interest in the residence. The Court held in favor of the IRS. The broader implications of the *Craft* opinion are uncertain. Specifically, *Craft* does not make clear whether a surviving spouse would take title to the tenancy by the entirety property ahead of the IRS lien if the taxpayer spouse were to die while still owning the property.

In Notice 2003-60, the IRS sets forth its interpretation of the *Craft* opinion. Among the provisions of the Notice are the following:

1. The IRS will, under certain circumstances, not take action to the detriment of parties other than the taxpayer who relied on the law as it appeared to be before *Craft*.
2. It states that it will generally treat a taxpayer's interest in an entireties property as one half.
3. The IRS will rarely exercise its power to seize and sell a one-half interest of a tenancy in common interest on which it has a lien.
4. Where the IRS has a lien against the property of only one of the tenants by the entirety, upon the death of that tenant by the entirety, the surviving tenant takes the property free of the lien in favor of the IRS.

In *United State of America, Plaintiff v. Joseph A. Hersperger, III and Karen S. Hersperger*⁸⁰ the IRS did foreclose on property held in a tenancy by the entireties to pay the husband's employment tax liabilities. The taxpayers argued that the proceeds should not have been split 50/50 between them, the IRS applying the husband's 50 percent against his tax liabilities. The taxpayers argued that Mrs. Hersperger would have a greater interest in the residence under the community property laws of the Commonwealth of Pennsylvania because in the event of a divorce, she would have been awarded a larger share.

The Court looked to *Popky v. United States of America*, 419 F.3d 242 which dealt with similar circumstances. The Popkys argued that the proceeds of the sale of the residence should have been allocated based on some variation of their life expectancies. However, Pennsylvania law has long held that the valuation of an interest in property held in their entireties.

In summary, the Court concluded that a 50/50 valuation was appropriate.

Sale of Taxpayer's Property

Notice and Sale Procedures

IRC §6335(b) requires a notice of sale to be placed in a newspaper published or circulated in the county of the levy or seizure as soon as practicable after the seizure. Form 2432, *Public Auction Sale*, and Form 2434-A, *Sealed Bid Sale*, are used. Notice is also required to be given to the taxpayer. In fact, the IRS sends a copy of the notice of sale to all parties including mortgagees that it knows to have an interest in the property. The sale is required to take place between ten and forty days after the publication of notice.⁸¹ The sale must be by public auction or public sale under sealed bids.

Request for Sale Following Seizure

Following seizure, the owner of the property can request the sale to take place within sixty days of the date of the request. The Regulations set forth the information required to be given on the

⁸⁰ 2010-2 USTC ¶50,615.

⁸¹ IRC §6335(d).

application, which is to be addressed to the group manager of the revenue officer signing the 688-B levy form or to the revenue officer for the attention of his group manager.⁸² The IRS is required to comply with the request unless it determines that it would not be in the interest of the United States and notifies the taxpayer within the 60-day period.⁸³

IRC §6336 sets forth special sale provisions applicable when the seized property is perishable goods.

Minimum Bid Price

IRC §6335(e)(1)(A) requires the IRS to establish a minimum price for the seized property before the sale and to determine whether the property should be deemed sold to the United States for the minimum bid price if that price is not reached at the sale. The Code and Regulations do not impose any criteria for establishing the minimum bid price beyond advising that it should take into account the expense of making the levy and conducting the sale. If the fair market value of the property is in excess of the tax liability, the IRS will establish the minimum bid price of the property to be equal to the tax liability plus expenses of sale.

In other circumstances, IRS employees are instructed to establish the minimum bid price at 80 percent or more of the forced sale value of the property, less the value of the encumbrances having priority over the federal tax lien. Listed securities are required to have a minimum bid price of no less than 95 percent of the closing market price on the day before sale.

It is IRS practice to deliver personally to the taxpayer Form 4585, *Seizure and Sale Worksheet*, which sets forth the minimum bid price and the basis on which the minimum bid price has been established. This is done before the public notice of sale is given. The taxpayer is then granted the opportunity to request an independent appraisal of the property if he is dissatisfied with the minimum bid price.

Requirements of Sale

The sale of the property is accomplished in accordance with detailed provisions set forth in the Code and Regulations, some of which have been described above. Other requirements are set forth in IRC §6335 and the Regulations thereunder.

CERTIFICATE OF SALE

Following the sale and upon full payment of the purchase price, the IRS gives the purchaser a certificate of sale.⁸⁴ With respect to personal property, the certificate of sale discharges the property from all liens inferior in priority to the federal tax lien.⁸⁵ Typically, these would be any liens that were placed on the property after the IRS lien was created.

⁸² Treas. Reg. §301.6335-1(d).

⁸³ IRC §6335(f).

⁸⁴ IRC §6338.

⁸⁵ IRC §6339.

In the case of real property, although a certificate of sale is given, it is the deed that effects the conveyance and discharges junior liens.⁸⁶ The deed is not delivered until the redemption period has expired.

RIGHT OF REDEMPTION

The taxpayer has the right to redeem any levied-upon property before the sale by paying the amount of tax due plus IRS expenses.⁸⁷

The taxpayer also has the right to redeem real property (but not personal property) for a period of 180 days following the sale. The redemption price is the price paid by the purchaser at the sale plus interest at the annual rate of 20 percent. Payment is to be made to or for the benefit of the purchaser. This right of redemption is not exclusive to the taxpayer. It extends also to any person having a lien on the property or other interest therein.⁸⁸

Post-Sale Procedures

Release of Levy

If the minimum sale price is not bid and if it is not deemed sold to the United States for the minimum price, the IRS must release the levy.⁸⁹ The forms used in this situation are Forms 668, 668E, and 2433. The released property will remain subject to the federal tax lien and the expenses of the sale will be added to the taxpayer's tax liability. There is no prohibition against levying or seizing upon the property at a later time.

If the property is sold, the government will issue a certificate of sale to the buyer and a deed in respect of real property after the elapse of the redemption period. These instruments will discharge the property liens junior in priority to the federal tax lien of the government.⁹⁰

Proceeds from Sale

The proceeds from the sale are applied against the expenses of sale first and then the tax liabilities with the balance, if any, going to the taxpayer.⁹¹ IRC §7426(a)(2) authorizes a party other than the taxpayer asserting a claim to surplus proceeds to bring an action against the United States in federal district court for an adjudication of the matter.

Limitations on Levy and Seizure Powers

The power of the IRS to levy upon and seize property of the taxpayer is not absolute. In addition, the IRS exercises its powers with restraint in some circumstances. This section discusses some of the more important statutory and voluntary limitations on the power of levy.

⁸⁶ IRC §6339.

⁸⁷ IRC §6337(a).

⁸⁸ IRC §6337(b).

⁸⁹ IRC §6335(e)(1)(D).

⁹⁰ IRC §6339(c).

⁹¹ IRC §6342(a).

Note. Statutory limitations on the levy do not apply if the IRS chooses to bring a judicial action to foreclose its lien pursuant to IRC §7403 as an alternative to a levy.⁹²

Investigation of Status of Property

IRC §6331(j) provides that no levy may be made on any property until the IRS has completed a thorough investigation of the status of the property. This investigation is to include

- A verification of the taxpayer's liability;
- An analysis as to whether the expenses of levy exceed the fair market value of the property subject to the levy;
- The determination that the equity in such property is sufficient to yield net proceeds from the sale of such property to apply to the liability; and
- A thorough consideration of alternative collection methods.

Exempt Property and Other Limitations on Levy Power

- IRC §6334 describes property exempt from levy.
- The following is an incomplete listing:
 - Weekly wages, salary, and other income up to the sum of the standard deduction, plus the value of personal exemptions divided by 52;
 - Unemployment benefits;
 - Wearing apparel and school books;
 - Furniture and personal property up to the value of \$8,370 for 2011;⁹³
 - Books and tools necessary for the taxpayer's business up to the value of \$4,180 for 2011;⁹⁴
 - Certain annuity and pension payments;
 - Certain public assistance payments; and
 - Certain service-connected disability payments.

Under the Taxpayer Relief Act of 1997, however, IRC §6331(h) provides that the continuing levy provisions which are described below operate notwithstanding the exemptions from levy under IRC §6334. Hence, for example, unemployment benefits, although exempt from levy under IRC §6334, are subject to the 15 percent levy of IRC §6331(h). Most otherwise continuous levies that are otherwise exempt are also subject to a levy of up to 15 percent.

⁹² *Scharf*, 91-1 USTC ¶150,205 (E.D. Mo. 1991).

⁹³ Rev. Proc. 2010-40.

⁹⁴ Rev. Proc. 2010-40.

PRINCIPAL RESIDENCE

Under prior law, no levy was permitted on a taxpayer's principal residence unless the district or assistant district director had approved the action in writing. Since late 1997, the IRS has adopted the practice of requiring the district director's approval. The Internal Revenue Service Restructuring and Reform Act of 1998 strengthens the protection from levy granted to the taxpayer's residence. The new provisions of IRC §6334(e) are as follows:

- If the amount of the levy does not exceed \$5,000, any real property used as a residence by the taxpayer; or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence is exempt from levy.
- In other cases, a taxpayer's principal residence is exempt from levy unless a judge or magistrate of a federal district court approves the levy in writing.

See Ltr. 200319006 in which the IRS determines that it would take the position that IRC §6334(e) applied to a sham trust to which the taxpayer had transferred his residence.

PROPERTY USED IN A TRADE OR BUSINESS

IRC §6334(e) provides that an individual taxpayer's tangible personal property or real property (other than real property which is rented) used in the taxpayer's trade or business is exempt from levy unless a district director or assistant district director of the IRS personally approves the levy in writing or there is a determination of jeopardy. The levy may be approved in writing only if the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

If the IRS does levy on an operating business, a possible response is to file for bankruptcy and move to have the assets turned over to the debtor in order to permit the business to remain in operation.

CONTINUING LEVIES

The levy on wages is a continuing levy until released.⁹⁵ The IRS may levy on wages as a last resort when the taxpayer has been unresponsive to IRS letters and notices. It is generally fairly easy to get a wage levy withdrawn once the taxpayer contacts the IRS and starts working on other payment arrangements. The IRS does not expect somebody to be able to live on the amount that is exempt from a wage levy.

Levies on certain *specified payments*, which include unemployment benefits, workers' compensation, and certain public assistance payments, are continuing and attach up to 15 percent of the specified payment even if the payment would otherwise be exempt from levy under §6334.⁹⁶ Under the Internal Revenue Service Restructuring and Reform Act of 1998, however, an authorized IRS official is required to approve all continuous levies on the specified payments.

⁹⁵ IRC §6331(e).

⁹⁶ IRC §6331(h).

Where the IRS levies upon an entitlement to future payments which are fixed and determinable on the date of levy, the future payments are subject to the levy.⁹⁷

Under this principle, for example, the levy on an annuity payable to the taxpayer would entitle the government to future payments made thereunder.

Levies other than the above, however, attach only to property in the possession of the party at the time of service of the notice of levy.

TAX NOT COLLECTIBLE

IRC §6343 provides that a levy on salary or wages be released as soon as practicable upon the IRS agreeing with the taxpayer that the tax is not collectible. Little appears to make sense with respect to this Code provision. The purpose of the currently-not-collectible (CNC) designation is to avoid a waste of IRS resources in pursuing uncollectible accounts. The procedure is not designed for the benefit of the taxpayer. Additionally, there is no statutory obligation for the IRS to have such a procedure.

NO UNECONOMICAL LEVY

No levy or seizure is permitted if the expenses of the levy and sale are greater than the value of the property, less encumbrances having priority over the federal tax lien.⁹⁸

This prevents the IRS from using the levy purely for purposes of harassment.

The IRS is particularly concerned to seize business assets to prevent the accumulation of tax liabilities (pyramiding), regardless of whether the levy yields any equity. This applies especially in regard to payroll tax deficiencies.

Release of Levies

IRC §6343(d) provides that a levy may be released before full payment if (1) a levy is determined to have been premature or not in accordance with IRS administrative procedures, (2) an installment agreement has been entered into that does not require the property to be seized, (3) the withdrawal will facilitate the collection of the tax, or (4) the withdrawal would be in the best interest of the taxpayer and government as determined by the Taxpayer Advocate.

Taxpayer Action Concerning Levies and Seizures—Collection Due Process Rights

We observed above that without full payment of the liability, an NFTL will be released by the IRS only in a very limited range of circumstances. This makes sense, since the filing of the NFTL fixes the priority of the government's right to a share of the taxpayer's assets. Releasing the lien before payment of the tax will rarely be prudent, because it has the effect of sending the government to the back of the line behind the taxpayer's other secured creditors.

⁹⁷ Treas. Reg. §301.6331-1(a).

⁹⁸ IRC §6331(f).

In contrast, the release of a levy by the IRS usually has much less serious consequences. This is because the released assets remain subject to the federal tax lien and, in any event, can be levied upon again. Also, the seizure and sale of the taxpayer's assets will frequently not be the method of liquidation of the taxpayer's assets which promises to maximize total receipts to the government.

The statutory framework and the practices of the IRS reflect these economic realities. Thus, the taxpayer and his adviser, when faced with levies and seizures, will often find it possible to get a flexible response from IRS agents in negotiations.

Under IRC §6330, the IRS is required to give taxpayers notice of levies, and notice of appeal rights, similar to that for liens discussed above. The notice is required to be given not less than 30 days before the levy or 90 days in respect of a levy on a life insurance contract. The taxpayer is granted the right to appeal the levy before it is made. The IRS may not levy on property while the appeal is pending unless the underlying tax liability is not at issue in the appeal and a court determines that the IRS has good cause not to suspend the levy.

The person may raise at the hearing any relevant issue relating to the unpaid tax or the proposed levy, including those issues set forth above in respect of the appeal of the filing of NFTLs. Indeed, the statute anticipates that the appeal by a given taxpayer of an NFTL and a levy will frequently be consolidated. The Regulations for appeals under IRC §6330 are similar to those for appeals of filed liens under IRC §6320.

The appeal rights to the Tax Court or federal district court and the limitation on enforcement power during the pendency of such appeals are the same as for the appeal of NFTLs described above.

If a hearing is requested, the collection limitation period is suspended until the final determination of the hearing although in no event can any limitation period expire before the 90th day after the final determination.

IRC 6343(a) sets forth the situations under which a levy or seizure can be released. These provisions are

- *Hardship*—IRC §6343(a)(1)(D) provides that a levy may be released if the levy is causing a hardship due to the financial condition of the taxpayer.

Under the Regulations, this provision applies only to natural persons and authorizes a levy to be released if it renders the taxpayer unable to pay his reasonable basic living expenses. This does not include an affluent or luxurious standard of living. The determination of whether the taxpayer's situation qualifies as a hardship can take into account situations such as medical catastrophes. In order to qualify for this relief, the taxpayer must act in good faith.⁹⁹

- *Facilitation of collection*—IRC §6343(a)(1)(B) authorizes the release of a levy if the release would facilitate collection of the tax liability. The release provisions of IRC §6343(a)(1) appear to give the best scope for imaginative argument.

⁹⁹ Treas. Reg. §301.6343-2(b)(4).

Unfortunately, the Regulations and proposed Regulations do not encourage the view that this Code provision is to be expansively interpreted.

Example 4-3

- Where the Regulations give an example of a general business situation which qualifies under IRC §6343(a)(1)(B), the facts are of very limited application.
- The example involves complementary production processes, whose machinery is owned by a delinquent taxpayer and is subject to seizure.
- In this example, the seized machine is released to permit the sale of both machines to a buyer, thus yielding a higher price for the seized property.*

Discussion

- One wonders why the buyer does not buy the first machine at its fair market value and wait to get the second machine at a bargain price at the IRS sale, secure in the knowledge that the machine is worth more to him than to anybody else.
- In any event, one could be in practice a long time before coming across a situation with facts like these.

*Treas. Reg. §301.6343-1(b)(2)(i).

Regardless of the lack of encouragement for broad interpretation given by the Regulations, this is the only open-ended justification given for a release of levy in the Code. Tax advisers should therefore advance its cause whenever the situation does not fall within one of the others described in IRC §6343(a)(1).

- *Expedited determination*—IRC §6343(a)(2) provides that if the release of a levy on tangible personal property essential for the carrying on of a business is requested for any of the reasons set forth in IRC §6343(a)(1), the district director must make an expedited determination. The Regulations state that the determination should be made within 10 days.¹⁰⁰
 - The tangible personal property limitation means that this provision cannot be employed with respect to the common practice of the IRS repeatedly levying on a business bank account.
- *Installment agreements*—IRC §6343(a)(1)(C) provides that a levy should be released upon an installment agreement being entered into, provided the release would not jeopardize the secured creditor status of the government. The Regulations indicate that this exception might be relevant where no NFTL had been filed.¹⁰¹
- *Fair market value of property liability*—A levy may be released on property if the fair market value of other property remaining subject to the levy exceeds the tax liability plus

¹⁰⁰ Treas. Reg. §301.6343-1(d)(ii).

¹⁰¹ Reg. §301.6343-1(b)(3).

the costs of the levy.¹⁰² Release is subject to the further condition that the release will not impede collecting the liability.

- *Liability satisfied or unenforceable*—Pursuant to IRC §6343(a)(1)(A), the levy will be released if the tax liability is paid or if the levy was made after the statute of limitations on collection had expired.

Applying for Release

Under the Regulations, an application for the release of a levy pursuant to IRC §6343(a)(1) should be made in writing or by telephone to the district director at least five days before the sale. The district director is required to respond promptly, generally within 30 days.¹⁰³

Taxpayer Action Concerning Sales

Minimum Bid Price

If the taxpayer cannot get the IRS to agree to an installment agreement, offer in compromise, or less formal arrangement, and if the sale of seized property is inevitable, the taxpayer's final concern will be the minimum bid price established by the IRS pursuant to IRC §6335.

The minimum bid price will be of crucial importance to the taxpayer. The lower it is, the lower may be the actual or deemed sale price the taxpayer will have credited against his tax liability. The higher it is, the better the price that may be actually bid, and the better the chance the government will release the property from the levy rather than become its buyer at the minimum price.

If the property is released, it will remain subject to the federal tax lien and can be levied upon again. In the recent depressed real estate market, however, a taxpayer may well find himself back in business on an indefinite basis while the IRS waits for better economic times in which to sell his real property.

Having emphasized the importance of the minimum bid price to the taxpayer, we should quickly admit that he has very limited ability to affect it. The best opportunity is to take advantage of the appraisal rights granted by the IRS, as set forth on the reverse side of Form 4585, *Minimum Bid Worksheet*.

If the bid price is set unconscionably low, a court may see fit to grant relief.¹⁰⁴ The general rule, however, is that the taxpayer has no recourse by reason of a divergence between minimum bid price and fair market value.¹⁰⁵ Under the Internal Revenue Service Restructuring and Reform Act of 1998, however, the IRS may not sell seized property for less than its minimum bid price. The taxpayer is granted a civil cause of action for IRS violations of this statute.

¹⁰² IRC §6343(a)(1)(B).

¹⁰³ Reg. §301.6343-3(h).

¹⁰⁴ *D.S. Ringer*, 645 F. Supp. 1517 (DC Colo. 1987), in which taxpayer's home sold at 5 percent of its fair market value.

¹⁰⁵ *Crump v. U.S.*, 66-1 USTC ¶9308 (N.D. Ga. 1966).

Setting Aside the Sale

The statutory requirements for notice and conduct of a sale pursuant to a tax levy or seizure are very detailed, and it is certainly possible for the IRS to make a procedural error. Courts have held that many of the statutory procedural requirements are conditions precedent to a valid sale. The Internal Revenue Service Restructuring and Reform Act of 1998 requires the IRS to properly account to the taxpayer following a sale of seized property. In addition, the IRS was required to implement a uniform asset disposal mechanism for sales.

Example 4-4

In the case of *Kulawy*, 917 F.2d 729,^{*} the court held that the failure of the IRS to give at least 10 days public notice of a sale as required under IRC §6335(b) rendered the sale voidable.

In *Reece v. Scoggins*, 506 F. 2d 967,^{**} the court held that the sale should be set aside since the IRS failed to give the taxpayer notice of the sale as required under IRC §6335(a).

^{*}2nd Cir. 1990.

^{**}5th Cir. 1975.

The action to set aside a sale is not recommended for every occasion that the IRS commits some irregularity in sale procedures since the returned property remains subject to the lien and can be sold again. Also, interest and perhaps penalties will continue to accrue on the tax liability. The following is a list of the circumstances in which an action to set aside a sale might benefit a taxpayer:

- When the procedural defect has prejudiced the taxpayer.
 - This might happen, for example, where there has been no public notice given of the sale, and, as a result, the property was deemed sold to the U.S. at the minimum bid price as a result.
- When the taxpayer has reason to believe a second sale might fetch a higher price for the property than was realized at the earlier voided sale.
- Where the taxpayer's fortunes have changed for the better, and he wants the sale set aside in order to exercise the right of redemption to repurchase it. Please refer to practice points 4-1 on the following page.

Summary

A lien is a legal interest which grants to a creditor the right to charge the amount of a debt against the value of specific property of the debtor. IRC §6325(a) authorizes the IRS to issue a certificate of release if the taxpayer posts a bond securing payment of the tax. If the taxpayer has property which has a market value double that of the sum of the amount of the lien and the value of all liens having priority over the federal tax lien, then the IRS is authorized to discharge any other property that is also subject to the lien. The IRS is authorized to subordinate a federal tax lien if it is paid an amount equal to the value of the lien to which it is being subordinated.

The IRS will begin the levy and seizure process by collecting information that will be of assistance to it in identifying assets subject to levy or seizure. The levy and seizure of the taxpayer's property is a process by which the IRS actually or constructively reduces the taxpayer's property to its own possession. The sale of the property is required to take place between 10 and 40 days after the publication of notice.¹⁰⁶ The proceeds from the sale are applied against the expenses of sale and the tax liabilities, with the balance, if any, going to the taxpayer.¹⁰⁷

Practice Points 4-1

The following is a summary of practice points to bear in mind in connection with federal tax liens and levy, seizure, and sales:

- General tax lien of IRC §6321 comes into existence after notice and demand and does not require a filing.
 - Although the general unfiled lien is subordinate to the interests of most buyers and secured lenders, there are classes of people whose interest may be subject to the lien.
- Filed lien (the NFTL) is likely to cause significant problems for a business.
 - Its filing may well cause the business's loans to be in default.
 - Holders of floating liens will have little choice except to close down credit lines in order to protect their priority as secured lenders.
 - For this reason it is important to attempt to persuade the revenue officer not to file the NFTL.
 - This effort will frequently be unsuccessful.
- The filing of the NFTL need not prevent the taxpayer from refinancing or selling property.
 - The IRS will subordinate or discharge its lien, as the case may be, provided it is paid the value of its lien on the property in question.
- The IRS will release the NFTL when an offer in compromise is consummated.
- Whether or not an NFTL has been filed can be very important in bankruptcy situations.
- The IRS is entitled to levy on the taxpayer's property or rights to property or property subject to the federal tax lien 10 days after notice and demand for payment and after 30 days notice is given to the taxpayer.
- Certain property of the taxpayer is exempt from levy.

¹⁰⁶ IRC §6335(d).

¹⁰⁷ IRC §6342(a).

- The exemptions are set forth in IRC §6334.
- If the IRS levies on exempt property or otherwise unlawfully levies on property, the taxpayer should apply for a release of the property in the manner set forth in the IRC §6343 regulations. The Internal Revenue Service Restructuring and Reform Act of 1998 grants additional appeal rights with respect to collection actions.
- If the IRS levies on the taxpayer's assets, the taxpayer should consider whether his circumstances are such that the IRS might agree to release the levy.
 - Grounds for a release are set forth in IRC §6343(a) and the regulations thereunder.
 - The grounds include hardship and when releasing the levy will facilitate collection of the tax.
- IRS may not levy on the taxpayer's principal residence without compliance with the protective provisions of the Internal Revenue Service Restructuring and Reform Act of 1998.
- In the case of an operating business, the taxpayer will often be concerned and want to prevent the IRS from putting it out of business by levying on the business assets.
 - The case must be forcefully made that the business is viable, is not *pyramiding* employment tax liabilities, and has goodwill which will be rendered worthless if closed down.
 - IRS may not levy on certain business property of the taxpayer without compliance with the protective provisions of the Internal Revenue Service Restructuring and Reform Act of 1998.
- If the levy proceeds to a tax sale, the taxpayer's chief concern will be to attempt to ensure that the minimum bid price is reasonable.
- Levies will normally be released if the taxpayer enters into an installment agreement.
 - No levies will be made while the installment agreement remains in effect, and the taxpayer is not in default.
 - Levies will be released upon the consummation of an offer in compromise.

Exhibit 4-1

1872 Department of the Treasury - Internal Revenue Service
Form 668 (Y)(c)
 (Rev. February 2004)
Notice of Federal Tax Lien

Area: **SMALL BUSINESS/SELF EMPLOYED AREA #3** (800) 829-3903
 Serial Number: **460611608**

For Optional Use by Recording Office

- This Notice of Federal Tax Lien has been filed as a matter of public record.
- IRS will continue to charge penalty and interest until you satisfy the amount you owe.
- Contact the Area Office Collection Function for information on the amount you must pay before we can release this lien.
- See the back of this page for an explanation of your Administrative Appeal rights.

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer: [REDACTED]

Residence: [REDACTED]

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC §325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)	
1040	12/31/2004	XXX-XX- [REDACTED]	05/19/2008	06/18/2018	8387.89	
1040	12/31/2006	XXX-XX- [REDACTED]	07/09/2007	08/08/2017	2797.39	
Place of Filing CLERK OF THE CIRCUIT COURT TALBOT COUNTY EASTON, MD 21601					Total	11185.28



002680

This notice was prepared and signed at BALTIMORE, MD, on this,

the 31st day of July, 2008.

Signature: R. A. Mitchell Title: ACS 23-00-0008
 for THERESA HARLEY (800) 829-3903

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

Part 3 - Taxpayer's Copy

CAT, NO 80025X
 Form 668 (Y)(c) (Rev. 02-04)

Lien

This Notice of Federal Tax Lien gives public notice that the government has a lien on all your property (such as your house or car), all your rights to property (such as money owed to you) and to property you acquire after this lien is filed.

Your Administrative Appeal Rights

If you believe the IRS filed this Notice of Federal Tax Lien in error, you may appeal if any of the following conditions apply:

- You had paid all tax, penalty and interest before the lien was filed;
- IRS assessed tax after the date you filed a petition for bankruptcy;
- IRS mailed your notice of deficiency to the wrong address;

You have already filed a timely petition with the Tax Court;

The statute of limitations for collection ended before IRS filed the notice of lien.

Your appeal request must be in writing and contain the following:

- Your name, current address and SSN/EIN;
- Copy of this notice of lien, if available;
- The specific reason(s) why you think the IRS is in error;
- Proof that you paid the amount due (such as cancelled check);
- Proof that you filed a bankruptcy petition before this lien was filed.

Send your written request to the IRS, Attention: Technical Services Group Manager, in the office where this notice of lien was filed.

When This Lien Can Be Released

The IRS will issue a Certificate of Release of Federal Tax Lien within 30 days after:

- You pay the tax due, including penalties, interest, and any other additions under law, or IRS adjusts the amount due, or;
- The end of the time period during which we can collect the tax (usually 10 years).

Publication 1450, Request for Release of Federal Tax Lien, available at IRS offices, describes this process.

When a Lien against Property can be Removed

The IRS may remove the lien from a specific piece of property if any of the following conditions apply:

- You have other property subject to this lien that is worth at least two times the total of the tax you owe, including penalties and interest, plus the amount of any other debts you owe on the property (such as a mortgage);
- You give up ownership in the property and IRS receives the value of the government's interest in the property;
- IRS decides the government's interest in the property has no value when you give up ownership;
- The property in question is being sold; there is a dispute about who is entitled to the sale proceeds; and the proceeds are placed in escrow while the dispute is being resolved.

Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property from a Federal Tax Lien, available at IRS offices, describes this process.

Gravamen

Este Aviso de Gravamen del Impuesto Federal da aviso público que el gobierno tiene un gravamen en todas sus propiedades (tal como su casa o carro), todos sus derechos a propiedad (tales como el dinero que le adeudan a usted) y la propiedad que adquiera después que se presentó este gravamen.

Sus Derechos de Apelación Administrativos

Si usted cree que el IRS presentó este Aviso de Gravamen del Impuesto Federal por error, usted puede apelar si cualquiera de las siguientes condiciones le aplican:

- Usted pagó todo el impuesto, multa, interés antes de que el gravamen fuera presentado;
- El IRS tasó el impuesto después de la fecha en que usted presentó una petición de quiebra;
- El IRS le envió por correo el aviso de deficiencia a una dirección incorrecta;
- Usted presentó a tiempo una petición ante la Corte de Impuestos;
- El IRS no presentó el aviso de gravamen dentro del término prescriptivo.

Su petición de apelación tiene que estar por escrito y debe incluir lo siguiente:

- Su nombre, dirección actual y SSN/EIN;
- Una copia de este aviso de gravamen, el está disponible;
- La razón (o razones) específica(s) por qué piensa que el IRS está erróneo;
- Prueba que pagó la cantidad adeudada (tal como un cheque cancelado);
- Prueba que presentó una petición de quiebra antes de que se presentara el gravamen.

Envíe su petición por escrito al IRS. Atención: "Technical Services Group Manager" (Grupo de Gerente-Servicios Técnicos) en la oficina donde este aviso de gravamen fue presentado.

Cuándo Este Gravamen Se Puede Cancelar

El IRS emitirá un Certificado de Cancelación de Gravamen del Impuesto Federal dentro de 30 días después que:

- Usted paga el impuesto adeudado, incluyendo multas, intereses, y otras sumas adicionales según la ley, o el IRS ajusta la cantidad adeudada, o;
- Aceptemos una fianza garantizando el pago de su deuda;
- La expiración del término en que podemos cobrar el impuesto (usualmente 10 años).

La Publicación 1450, en inglés, "Petición Para Cancelar el Gravamen del Impuesto Federal", describe este proceso y está disponible en las oficinas del IRS.

Cuándo un Gravamen en Contra de la Propiedad Puede Eliminarse

El IRS puede eliminar el gravamen de una propiedad específica si cualquiera de las siguientes condiciones aplica:

- Usted tiene otra propiedad sujeta a este gravamen cuyo valor es por lo menos dos veces el total del impuesto que usted adeuda, incluyendo intereses y multas, más la cantidad de cualquiera de las otras deudas que adeuda sobre la propiedad (tal como una hipoteca);
- Usted cede su interés en la propiedad y el IRS recibe el valor del interés del gobierno en la propiedad;
- El IRS decide que el interés del gobierno en la propiedad no tiene valor alguno cuando usted cedió su interés en la propiedad;
- La propiedad gravada será vendida; existe una controversia sobre quién tiene derecho al producto de la venta; y se depositan los fondos recibidos en la venta en una cuenta especial en la que se resuelve la controversia.

La Publicación 783 en inglés, "Instrucciones de Cómo Solicitar un Certificado de Relieve de la Propiedad de un Gravamen del Impuesto Federal", describe este proceso y está disponible en las oficinas del IRS.

Exhibit 4-2

Request for a Collection Due Process or Equivalent Hearing

Use this form to request a Collection Due Process (CDP) or equivalent hearing with the IRS Office of Appeals if you have been issued one of the following lien or levy notices:

- Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320,
• Notice of Intent to Levy and Notice of Your Right to a Hearing,
• Notice of Jeopardy Levy and Right of Appeal,
• Notice of Levy on Your State Tax Refund- Notice of Your Right to a Hearing.

Complete this form and send it to the address shown on your lien or levy notice. Include a copy of your lien or levy notice to ensure proper handling of your request.

Call the phone number on the notice or 1-800-829-1040 if you are not sure about the correct address or if you want to fax your request.

You can find a section explaining the deadline for requesting a Collection Due Process hearing in this form's instructions. If you've missed the deadline for requesting a CDP hearing, you must check line 6 (Equivalent Hearing) to request an equivalent hearing.

1. Print Name:

If a husband and wife owe the tax liability jointly, please print both names if both want a hearing.

Address:

City: _____ State: _____ Zip Code: _____

2. Social Security Number or Numbers

SSN 1 _____ SSN 2 _____

Employer Identification Number

3. Daytime Telephone Number and Best Time to Call

() _____ - _____ _____ am. pm.

4. Tax Information

Table with 3 columns: Type of Tax (Income, Employment, Excise, etc. or Civil Penalty), Tax Form Number (1040, 941, 720, etc), Tax Period or Periods

Request for a Collection Due Process or Equivalent Hearing

5. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice)

- Filed Notice of Federal Tax Lien Proposed Levy or Actual Levy

6. Equivalent Hearing (See the instructions for more information on Equivalent Hearings)

- I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing is too late.

7. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. **See page 4 of this form for examples.** You can add more pages if you don't have enough space.

- Collection Alternative Installment Agreement Offer in Compromise

- Lien Subordination Discharge Withdrawal

Please explain:

- My Spouse Is Responsible Innocent Spouse Relief (Please attach Form 8857, *Request for Innocent Spouse Relief*, to your request.)

- Other Reason:

(Use as much space as you need to explain the reason for your request. Attach extra pages if necessary.)

I understand the CDP hearing and any subsequent judicial review will suspend the statutory period of limitations for collection action. I also understand my representative or I must sign and date this request before the IRS Office of Appeals can accept it.

SIGN HERE

Your Signature	Date
Spouse's Signature (if a joint request, both must sign)	Date

IRS Use Only		
IRS Employee (Print)	Employee Telephone Number	IRS Received Date

Information You Need To Know When Requesting A Collection Due Process Hearing

What Is the Deadline for Requesting a Collection Due Process (CDP) Hearing?

- Your request for a CDP hearing about a Federal Tax Lien filing must be postmarked by the date indicated in the *Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320* (lien notice).
- Your request for a CDP hearing about a proposed levy must be postmarked within 30 days after the date of the *Notice of Intent to Levy and Notice of Your Right to a Hearing* (levy notice).

Your timely request for a CDP hearing will prohibit levy action in most cases. A timely request for CDP hearing will also suspend the 10-year period we have, by law, to collect your taxes. Both the prohibition on levy and the suspension of the 10-year period will last until the determination the IRS Office of Appeals makes about your disagreement is final. The amount of time the suspension is in effect will be added to the time remaining in the 10-year period. For example, if the 10-year period is suspended for six months, the time left in the period we have to collect taxes will increase by six months.

You can go to court to appeal the CDP determination the IRS Office of Appeals makes about your disagreement.

What Is an Equivalent Hearing?

If you still want a hearing with the IRS Office of Appeals after the deadline for requesting a CDP hearing has passed, you can use this form to request an equivalent hearing. You must check the Equivalent Hearing box on line 6 of the form to request an equivalent hearing. **An equivalent hearing request does not prohibit levy or suspend the 10-year period for collecting your taxes; also, you cannot go to court to appeal the IRS Office of Appeals' decision about your disagreement.** You must request an equivalent hearing within the following timeframe:

- Lien Notice-- one year plus five business days from the filing date of the Federal Tax Lien.
- Levy Notice-- one year from the date of the levy notice.

Where Should You File Your CDP or Equivalent Hearing Request?

File your request by mail at the address on your lien notice or levy notice. You may also fax your request. Call the telephone number on the lien or levy notice to ask for the fax number. **Do not send your CDP or equivalent hearing request directly to the IRS Office of Appeals.**

Where Can You Get Help?

You can call the telephone number on the lien or levy notice with your questions about requesting a hearing. The contact person listed on the notice or other representative can access your tax information and answer your questions.

In addition, you may qualify for representation by a low-income taxpayer clinic for a free or nominal charge. Our Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area.

If you are experiencing economic harm, the Taxpayer Advocate Service (TAS) may be able to help you resolve your problems with the IRS. TAS cannot extend the time you have to request a CDP or equivalent hearing. See page five of Publication 594, *The IRS Collection Process*, or visit www.irs.gov/advocate/index.html. You also can call 1-877-777-4778 for TAS assistance.

Note— The IRS Office of Appeals will not consider frivolous requests. You can find examples of frivolous reasons for requesting a hearing or disagreeing with a tax assessment in Publication 2105, *Why do I have to Pay Taxes?*, or at www.irs.gov/pub/irs-util/friv_tax.pdf

You can get copies of tax forms, schedules, instructions, publications, and notices at www.irs.gov, at your local IRS office, or by calling toll-free 1-800-TAX-FORM (829-3676).

Information You Need To Know When Requesting A Collection Due Process Hearing

What Are Examples of Reasons for Requesting a Hearing?

You will have to explain your reason for requesting a hearing when you make your request. Below are examples of reasons for requesting a hearing.

You want a collection alternative-- "I would like to propose a different way to pay the money I owe." Common collection alternatives include:

- Full payment-- you pay your taxes by personal check, cashier's check, money order, or credit card.
- Installment Agreement-- you pay your taxes fully or partially by making monthly payments.
- Offer in Compromise-- you offer to make a payment or payments to settle your tax liability for less than the full amount you owe.

You want action taken about the filing of the tax lien against your property-- You can get a Federal Tax Lien released if you pay your taxes in full. You also may request a lien subordination, discharge, or withdrawal.

When you request **lien subordination**, you are asking the IRS to make a Federal Tax Lien secondary to a non-IRS lien. For example, you may ask for a subordination of the Federal Tax Lien to get a refinancing mortgage on your house. You would ask to make the Federal Tax Lien secondary to the mortgage, even though the mortgage came after the tax lien filing. The IRS Office of Appeals would consider lien subordination, in this example, if you used the mortgage proceeds to pay your taxes.

When you request a **lien discharge**, you are asking the IRS to remove a Federal Tax Lien from a specific property. For example, you may ask for a discharge of the Federal Tax Lien on your house to sell that property and use the sale proceeds to pay your taxes.

When you request a **lien withdrawal**, you are asking the IRS to remove the lien information from public records because you believe the Federal Tax Lien should not have been filed. For example, you may ask for a withdrawal of the filing of the Federal Tax Lien if you believe the IRS filed the lien prematurely or did not follow procedures or if a withdrawal will allow you to pay your taxes more quickly.

Your spouse is responsible-- "My spouse (or former spouse) is responsible for all or part of the tax liability." You may believe that your spouse or former spouse is the only one responsible for all or a part of the tax liability. If this is the case, you are requesting a hearing so you can receive relief as an innocent spouse. You should complete and attach Form 8857, *Request for Innocent Spouse Relief*, to your hearing request.

Other Reasons-- "I cannot pay my taxes." Some possible reasons why you cannot pay your taxes are: (1) you have a terminal illness or excessive medical bills; (2) your only source of income is Social Security payments, welfare payments, or unemployment benefit payments; (3) you are unemployed with little or no income; (4) you have reasonable expenses exceeding your income; or (5) you have some other hardship condition. The IRS Office of Appeals may consider freezing collection action until your circumstances improve.

"I am not liable for (I don't owe) all or part of the taxes." You can raise a disagreement about the amount you owe only if you did not receive a deficiency notice for the liability (a notice explaining why you owe taxes-it gives you the right to challenge in court, within a specific timeframe, the additional tax the IRS says you owe), or if you didn't have any other prior opportunity to disagree with the amount you owe.

"I do not believe I should be responsible for penalties." The IRS Office of Appeals may remove all or part of the penalties if you have a reasonable cause for not paying or not filing on time. Notice 433, *Interest and Penalty Information*, describes what are considered reasonable causes for removing penalties.

"I have already paid all or part of my taxes." You disagree with the amount the IRS says you haven't paid if you think you have not received credit for payments you have already made.

See Publication 594, *The IRS Collection Process*, for more information on the following topics: Installment Agreements and Offers in Compromise-page 6; Lien Subordination, Discharge, and Withdrawal-page 8; Innocent Spouse Relief-page 4; Temporarily Delay Collection-page 6; and belief that tax bill is wrong-page 4.

Exhibit 4-3

Collection Appeal Request

1. Taxpayer's Name		2. Representative: (Form 2848, Power of Attorney Attached)	
3. SSN/EIN	4. Taxpayer's Business Phone	5. Taxpayer's Home Phone	6. Representative's Phone
7. Taxpayer's Street Address			
8. City		9. State	10. Zip Code
11. Type of Tax (Tax Form)		12. Tax Periods Being Appealed	13. Tax Due

Collection Action(s) Appealed

14. Please Check the Collection Action(s) You're Appealing:

<input type="checkbox"/> Federal Tax Lien	<input type="checkbox"/> Denial of Installment Agreement
<input type="checkbox"/> Levy or Notice of Levy	<input type="checkbox"/> Termination of Installment Agreement
<input type="checkbox"/> Seizure	

Explanation

15. Please explain why you disagree with the collection action(s) you checked above and explain how you would resolve your tax problem. Attach additional pages if needed. Attach copies of any documents that you think will support your position.

Under penalties of perjury, I declare that I have examined this request and the attached documents, and to the best of my knowledge and belief, they are true, correct and complete. A submission by a representative, other than the taxpayer, is based on all information of which preparer has any knowledge.

16. Taxpayer's or Authorized Representative's Signature	17. Date
18. Collection Manager's Signature	19. Date Received

(Over)

Collection Appeal Rights

FOR LIENS, LEVIES, SEIZURES, AND DENIAL OR TERMINATION OF INSTALLMENT AGREEMENT

You may appeal a Notice of Federal Tax Lien, levy, seizure, or denial or termination of an installment agreement under these procedures. However, if you request an appeal after IRS makes a seizure, you must appeal to the Collection manager within 10 business days after the Notice of Seizure is provided to you or left at your home or business.

How to Appeal If You Disagree With One of These Actions

1. If you disagree with the decision of the Revenue Officer, and wish to appeal, you must first request a conference with a Collection manager.
2. If you do not resolve your disagreement with the Collection manager, you may request Appeals consideration by completing Form 9423, Collection Appeal Request.
3. On the Form 9423, check the Collection action(s) you disagree with and explain why you disagree. You must also explain your solution to resolve your tax problem. **THE COLLECTION OFFICE MUST RECEIVE YOUR REQUEST FOR AN APPEAL WITHIN 2 DAYS OF YOUR CONFERENCE WITH THE COLLECTION MANAGER OR WE WILL RESUME COLLECTION ACTION.**

What will happen when you appeal your case

Normally, we will stop the collection action(s) you disagree with until your appeal is settled, unless we have reason to believe that collection of the amount owed is at risk.

You may have a representative

You may represent yourself at your Appeals conference or you may be represented by an attorney, certified public accountant, or a person enrolled to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed Form 2848, Power of Attorney and Declaration of Representative. You can obtain Form 2848 from your local IRS office or by calling 1-800-829-3676.

Decision on the appeal

Once the Appeals Officer makes a decision on your case, that decision is binding on both you and the IRS. This means that both you and the IRS are required to accept the decision and live up to its terms.

Note: Providing false information, failing to provide all pertinent information, or fraud will void Appeal's decision.

Exhibit 4-4

1. Tables for Figuring Amount Exempt from Levy on Wages, Salary, and Other Income (Forms 668-W(ACS), 668-W(c)(DO) and 668-W(ICS))
 The tables below show the amount of an individual's income that is exempt from a notice of levy used to collect delinquent tax in 2010.
 (Amounts are for each pay period.)

2010

Pay Period	Filing Status: Single						Filing Status: Married Filing Joint Return (and Qualifying Widow(er)s)							
	Number of Exemptions Claimed on Statement						Number of Exemptions Claimed on Statement							
	1	2	3	4	5	6	1	2	3	4	5	6		
Daily	35.96	50.00	64.04	78.08	92.12	106.15	21.92 plus 14.04 for each exemption	57.88	71.92	85.96	100.00	114.04	128.08	43.85 plus 14.04 for each exemption
Weekly	179.81	250.00	320.19	390.38	460.58	530.77	109.62 plus 70.19 for each exemption	289.42	359.62	429.81	500.00	570.19	640.38	219.23 plus 70.19 for each exemption
Biweekly	359.62	500.00	640.38	780.77	921.15	1061.54	219.23 plus 140.38 for each exemption	578.85	719.23	859.62	1000.00	1140.38	1280.77	438.46 plus 140.38 for each exemption
Semimonthly	389.58	541.67	693.75	845.83	997.92	1150.00	237.50 plus 152.08 for each exemption	627.08	779.17	931.25	1083.33	1235.42	1387.50	475.00 plus 152.08 for each exemption
Monthly	779.17	1083.33	1387.50	1691.67	1995.83	2300.00	475.00 plus 304.17 for each exemption	1254.17	1558.33	1862.50	2166.67	2470.83	2775.00	950.00 plus 304.17 for each exemption

Pay Period	Filing Status: Head of Household						Filing Status: Married Filing Separate Return							
	Number of Exemptions Claimed on Statement						Number of Exemptions Claimed on Statement							
	1	2	3	4	5	6	1	2	3	4	5	6		
Daily	46.35	60.38	74.42	88.46	102.50	116.54	32.31 plus 14.04 for each exemption	35.96	50.00	64.04	78.08	92.12	106.15	21.92 plus 14.04 for each exemption
Weekly	231.73	301.92	372.12	442.31	512.50	582.69	161.54 plus 70.19 for each exemption	179.81	250.00	320.19	390.38	460.58	530.77	109.62 plus 70.19 for each exemption
Biweekly	463.46	603.85	744.23	884.62	1025.00	1165.38	323.08 plus 140.38 for each exemption	359.62	500.00	640.38	780.77	921.15	1061.54	219.23 plus 140.38 for each exemption
Semimonthly	502.08	654.17	806.25	958.33	1110.42	1262.50	350.00 plus 152.08 for each exemption	389.58	541.67	693.75	845.83	997.92	1150.00	237.50 plus 152.08 for each exemption
Monthly	1004.17	1308.33	1612.50	1916.67	2220.83	2525.00	700.00 plus 304.17 for each exemption	779.17	1083.33	1387.50	1691.67	1995.83	2300.00	475.00 plus 304.17 for each exemption

2. Table for Figuring Additional Exempt Amount for Taxpayers at Least 65 Years Old and/or Blind

Filing Status	*	Additional Exempt Amount			
		Daily	Weekly	Biweekly	Monthly
Single or Head of Household	1	5.38	26.92	53.85	116.67
	2	10.77	53.85	107.69	233.33
Any other Filing Status	1	4.23	21.15	42.31	91.67
	2	8.46	42.31	84.62	183.33
	3	12.69	63.46	126.92	275.00
	4	16.92	84.62	169.23	366.67

* ADDITIONAL STANDARD DEDUCTION claimed on Parts 3, 4, and 5 of levy.

Examples

These tables show the amount exempt each pay period from a levy on wages, salary, and other income. For example:

1. A single taxpayer who is paid weekly and claims three exemptions (including one for the taxpayer) has \$320.19 exempt from levy.
2. If the taxpayer in number 1 is over 65 and writes 1 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, and 5 of the levy, \$347.11 is exempt from this levy (\$320.19 plus \$26.92).
3. A taxpayer who is married, files jointly, is paid biweekly, and claims two exemptions (including one for the taxpayer) has \$719.23 exempt from levy.
4. If the taxpayer in number 3 is over 65 and has a spouse who is blind, this taxpayer should write 2 in the ADDITIONAL STANDARD DEDUCTION space on Parts 3, 4, and 5 of the levy. Then, \$803.85 is exempt from this levy (\$719.23 plus \$84.62).

Exhibit 4-5

Collection Letters

Letter 11—Final Notice of Intent to Levy and Notice of Your Right to a Hearing

This letter is to notify you of your unpaid taxes and that the Service intends to levy to collect the amount owed. The letter and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your levy notice within 30 days from the date of the letter in order to appeal the proposed action with the Office of Appeals.

Letter 1058—Final Notice Reply Within 30 Days

This letter is to notify you of your unpaid taxes and that the Service intends to levy to collect the amount owed. The letter and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your levy notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

Letter 1085—30-Day Letter Proposed 6020(b) Assessment

This letter is to notify you of your unpaid taxes and that the Service intends to levy to collect the amount owed. The letter and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your levy notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

Letter 3172—Notice of Federal Tax Lien Filing and Your Rights to a Hearing under IRC 6320

This letter is to notify you the IRS filed a notice of tax lien for the unpaid taxes. If you do not agree you can request appeals consideration within 30 days from the date of the letter. The letter and publications explain how to request a hearing from Appeals. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your lien notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

Notices

CP 90—Final Notice of Intent to Levy

CP 90 notifies you of your unpaid taxes and that the IRS intends to levy to collect the amount owed. This notice and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your levy notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

CP 92—Notice of Levy upon Your State Tax Refund

CP 92 notifies you that the IRS levied your state tax refund to pay your unpaid federal taxes. This notice and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the

address shown on your levy notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

CP 242—Notice of Levy upon Your State Tax Refund

CP 242 notifies you that the IRS levied your state tax refund to pay your unpaid federal tax. This notice and referenced publications explain how to request an appeal if you do not agree. You need to file a Form 12153, Request for A Collection Due Process Hearing and send it to the address shown on your levy notice within 30 days from the date of the letter in order to appeal the action with the Office of Appeals.

CP 523—IMF Installment Agreement Default Notice

CP 523 notifies you that the IRS intends to terminate your installment agreement in 30 days. You have the right to request an appeal if you do not agree by following the instructions in the notice.

CP 2000

You receive this letter when the IRS receives income, deduction or credit information that does not match your return. You are provided a computation of the proposed adjustments to your tax return based upon this information. If you agree, you sign and return the agreement forms. If you do not agree, you can submit a request for appeal/protest to the office/individual that sent you the letter. The letter explains how to file a protest. You need to file your protest within 30 days from the date of this letter in order to appeal the proposed adjustments with the Office of Appeals.

Chapter 5

Installment Agreements

Introduction

If your client has been assessed tax that he cannot pay immediately, there are several alternatives available to him to avoid IRS levy or seizure of property. The three primary alternatives are installment agreements, offers in compromise, and bankruptcy. We will examine each of these alternatives separately starting with the installment agreement.

IRC §6159 authorizes the IRS to enter into installment agreements with taxpayers if the agreement will facilitate the payment of the tax.

Installment agreements are offered by the IRS in a wide range of circumstances. Some are quite informal short-term agreements that may initially be agreed to by telephone between the taxpayer and the Automated Collection System or a Service Center Collection Branch and confirmed by the IRS by letter. For accounts up to \$25,000 which the taxpayer can pay off in five years or less, the taxpayer may be entitled to a “streamlined” installment agreement, one granted without the completion of a collection information statement and possibly without the filing of a notice of federal tax lien (NFTL). For accounts between \$25,000 and \$100,000, a collection information statement is required, and an NFTL will normally be filed, but the collection information statement will not normally be extensively researched.

Taxpayers may apply for an installment agreement by attaching Form 9465 to a filed tax return with a balance due. The IRS will generally respond within thirty days.

Installment agreements may be approved by examination or other noncollection-division IRS personnel. Installment agreements may be entered into after audit and before assessment where the taxpayer agrees to the examiner’s proposed adjustments to tax but lacks the ability to pay. The IRS now supplies an interactive installment agreement application process on its website.

The situation in which tax advisors usually become involved, however, is where the liability is substantial and the taxpayer lacks the ability to pay the liability within a relatively short time period. An installment agreement under these circumstances is handled by the Collection Division and there may be a Revenue Officer assigned to the case. In this situation, before offering or agreeing to an installment agreement, the IRS will usually require an individual taxpayer to submit Form 433-A and, if the taxpayer is a business entity, Form 433-B. The taxpayer will be considered eligible for an installment agreement if the forms show an absence of assets that can be liquidated to pay the liability but a sufficiently large income from which to make payment.

The major advantage to an installment agreement is the fact that it allows the taxpayer to pay his liability over time. The disadvantages to an installment agreement are that interest and penalties

continue to accrue during the installment period and the taxpayer must live on a rather tight budget.

Setting Up the Agreement

Before an installment agreement can be put into effect, the taxpayer must be current with all tax filings and other payment obligations. The IRS will not consider an installment agreement when there are unfiled delinquent returns.

In order to meet the requirements of IRC §6159, the installment agreement must be in writing.

The statute of limitation on collection, which is normally 10 years, is tolled while the proposed installment agreement is pending plus 30 days. However, the taxpayer may file a written notice waiving the restriction of the IRS to levy while the agreement is pending and therefore avoid the tolling of the statute.

If the installment agreement provides for only partial payment of the tax owed, the IRS is permitted to require an extension of the statute of limitations as a condition for obtaining the agreement. However, generally, the IRS may not otherwise require an extension as a prerequisite to agreeing to the agreement.

Once an agreement is accepted, the failure-to-pay penalty is reduced from 0.5 percent per month to 0.25 percent per month.

Installment agreements are not permanent and the IRS will periodically review the taxpayer's account and may request updated financial information. If the taxpayer's financial situation improves, the Service may require a change in the payment amount. Entering into an installment agreement does, however, prevent the IRS from filing a suit to obtain a judgment when the statute of limitations is about to lapse.

The IRS is required to give a taxpayer a 30-day notice before modifying an installment agreement explaining its actions. There is no judicial review available for modifications to an installment agreement, the taxpayer may only ask for an administrative review.

Restrictions on Levy

IRC §6331(k) provides that, absent jeopardy, the IRS may not levy on the taxpayer's property while an installment agreement is pending or in effect and for a period of 30 days thereafter. Treas. Reg. §301.6331-4 sets forth certain actions the IRS is permitted to take during the period of an installment agreement to protect its position. These include filing or refiling an NFTL. Also, because an installment agreement does not preclude a taxpayer from filing for a refund after payment of the liability, the IRS (or more accurately the Justice Department) is permitted to bring an action during the period of the installment agreement establishing the liability for the tax.

Collection Limitation Period: Non-Liquidating Installment Agreements

IRC §6502(a) (2)(A) provides that installment agreements are exempt from the general prohibition on consensual extensions of the collection limitation period. IRC §6331(k)(3) makes clear that in the case of an installment agreement that is in effect, the collection limitation period

is tolled, not for the period that the IRS is prevented from levying on the taxpayer's property under IRC §6331(k), but pursuant to the extension of the limitation period entered into pursuant to IRC §6502(a)(2)(A). (See *Stinson v. U.S.*, 2002-2 USTC ¶50,604. Taxpayer's refusal to consent to extension of collection limitation period during installment agreement represented a refusal to pay and entitled the IRS to reduce the tax liability to a judgment.) IRS policy is, however, that if it does require an extension to the collection statute, it will require the collection limitation period to be extended by no more than five years and not more than once for a given tax period.

In 1998, IRS Counsel determined that the reference in IRC §6159 to the satisfaction of the tax liability meant that installment agreements could be entered into only where the terms of the agreement required the complete payment of the taxpayer's liabilities. The American Jobs Creation Act of 2004, however, effective October 22, 2004, amends IRC §6159(a) to make it clear that an installment agreement need not provide for the complete liquidation of the liability.

Installment agreements that do not provide for full payment of the tax liability are required to be reviewed by the IRS every two years.

Judicial Relief

Increasingly, it appears, taxpayers have been resorting to the courts in order to secure an installment agreement or offer in compromise. The taxpayers are rarely, if ever, successful. In order to prevail, the taxpayer is required to demonstrate that the IRS abused its discretion by declining to entertain an installment agreement or offer in compromise. That is a very difficult standard of proof for the taxpayer to meet, for example, *McCorkle v. Com'r*, T.C. Memo 2003-34.

Accrual of Interest and Penalties

Interest will continue to accrue while the installment agreement remains in effect. Under the Internal Revenue Service Restructuring and Reform Act of 1998, however, as mentioned earlier, IRC §6651(a) is amended to provide that the failure-to-pay-tax penalty is reduced from 0.5 percent of the unpaid tax per month to 0.25 percent for months in which there is an installment agreement in effect, provided the return was timely filed.

Pursuant to IRC §6343(a)(1)(C), any levies should be released upon the consummation of an installment agreement unless the release would jeopardize the secured creditor status of the government. IRC §6323(j)(1)(B), effective 1996, provides that the IRS *may* withdraw an NFTL if the taxpayer enters into an installment agreement, unless the agreement provides otherwise. In practice, it is generally very difficult to get the IRS to withdraw the NFTL until the agreement has been paid.

Extension of Time to Pay Tax on Return

IRC §6161(a) gives the Secretary of the Treasury the discretion to extend the time to pay the tax on an income tax return for a period of up to 6 months if the T/P is suffering undue hardships. A request for a Section 6161 extension is made on IRS Form 1127. The form must be filed before the tax is due. The application must be accompanied by a financial statement. The application

will be granted or denied within 30 days. Early in 2009, the IRS made an announcement that they were willing to work with more flexibility with individuals in economic distress.

Required Acceptance of Certain Agreements

Regulation §301.6159-1(c) requires the IRS to accept a proposed installment agreement if, at the date the individual proposes the installment agreement:

- The aggregate amount of the tax liability, not including interest and penalties, does not exceed \$10,000
- The taxpayer has not, in the preceding five taxable years
 - Failed to file any income tax return,
 - Failed to pay any required income tax, or
 - Entered into an installment agreement for the payment of any tax
- The Service determines that the taxpayer is unable to pay the liability in full when due and
- The liability will be full paid within three years

The IRS has also created a streamlined procedure for installment agreements where the amount owed is no larger than \$25,000 and can be fully paid within five years. Financial statements are not required and the agreement may be made over the telephone. Interest and penalties will continue to accrue.

Additionally, the taxpayers that qualify for such an agreement may make the arrangement at the IRS website through the online payment agreement (OPA) procedures. The taxpayer or the representative may create the arrangement and receive instant notification of the approval. There are three payment options that are allowed through OPA:

- Payment in full within 10 days
- A 120-day extension to pay
- An installment agreement. This will require a user fee.

Review of Rejected Proposed Installment Agreements

The procedures for an independent administrative review of rejected offers in compromise, and appeal rights of taxpayers which are described above, apply also in the case of installment agreements.

FORMS 433-A AND THE VALUATION AND EVALUATION OF ASSETS

The preparation of Forms 433-A and 433-B, if appropriate, are extremely important in determining the financial status of the taxpayer for purposes of negotiating an installment agreement or an offer in compromise. Form 433-B is basically a business income statement and

balance sheet. Valuation of the assets for a business should follow the same rules discussed below. For our purposes, we will concentrate on the Form 433-A.

Form 433-A is required to be submitted by individual wage earners and by self-employed individuals. The information set forth on Form 433-A will be the primary factor determining the amount of monthly payments the IRS will accept for an installment plan or an offer.

One problem associated with completing Form 433-A is that if the taxpayer and the IRS cannot arrive at an agreement, or the payment agreement is rejected, the asset information on the form will make the levy upon the taxpayer's assets an effortless exercise.

Valuation and Evaluation Principles

The following are some of the more important valuation and evaluation principles the IRS employs when investigating and considering financial and asset data. They are set forth in IRM 5.8.5 which pertains to the preparation of Form 433-A in the context of an offer in compromise. The IRM provides for specific valuation techniques for purposes of an installment agreement. Installment agreements may be amended by the IRS; however, an accepted offer in compromise (OIC) may not, therefore the rules are more strict for an offer and there is more room for negotiation with an installment agreement.

The first three sections of Form 433-A are self-explanatory.

Section 4 requires a valuation of the taxpayer's assets.

- *Cash*—The IRM provides that cash balances should be averaged over a three-month period to avoid the distortion that might arise from valuing cash balances on a given date for purposes of submitting an OIC.

Form 433-A instructs that the current values of accounts be stated. Do not include amounts that are in an account that are the proceeds of a loan. The taxpayer should also state the value of any stored value cards such as benefits provided via a debit card.

- *Investments*—Listed stocks should be valued at fair market value less costs of sale. Stock of closely held corporations should be valued on the basis of financial data.
- *Pension and Profit-Sharing Plans*—Retirement plans will be deemed to have no realizable equity if the funds may not be withdrawn or borrowed against until separation or retirement. The IRS cannot access these funds any earlier than the taxpayer can. The ability of a taxpayer to borrow from a plan will, however, be taken into account and the accrued balance will normally be deemed an asset for the purpose of evaluating an offer in compromise. Interest and early withdrawal penalties are subtracted for valuation purposes.

Under the Internal Revenue Service Restructuring and Reform Act of 1998, IRC §72(t)(2)(A)(vii) provides that there is no early withdrawal penalty when the IRS levies on an IRA or qualified plan. Note, however, that if a taxpayer withdraws from an IRA or qualified plan in order to pay a tax liability or to make a payment pursuant to an offer in compromise, the withdrawal will be potentially subject to early withdrawal penalties.

In completing a Form 433-A for purposes of an installment agreement, the instructions do not address the issue of pension plans where the taxpayer does not have access to the funds. Therefore, disclose the plan, show its fair market value at 0, and attach an explanation.

- *Available Credit*—Enter available credit on credit cards issued by banks, credit unions, or savings and loans. The IRS will often request that the taxpayer borrow against his credit cards to pay the tax. Keep in mind that any borrowing against a credit card to pay taxes is not dischargeable in bankruptcy.
- *Life Insurance*—Only enter life insurance policies that have a cash value.
- *Real Property and Personal Vehicles*
 - *Quick-Sale Value*—Assets other than securities, and so on, should be valued at their quick-sale value for offer in compromise purposes. The quick-sale value is the estimated price that will be obtained if the taxpayer sells the asset under financial pressure to pay the tax liability. The IRM suggests that the quick-sale value will normally be 80 percent of fair market value. According to the IRM, the price that would be realized at a forced or distraint sale would be about 75 percent of fair market value. The discounted quick-sale value reflects that the taxpayer is under a compulsion to sell the asset and that the taxpayer will not have the time to wait for the best offer.
 - Under the current Form 433-A worksheet the taxpayer is simply instructed, without explanation, to list their assets.
- *Jointly Owned Real Property and Assets of Nonliable Spouse*—If the taxpayer owns an undivided interest in real property, the value of his equity in the property will normally be his pro rata share of the value of the entire property.

If the taxpayer and his spouse are jointly liable for the tax in question, the quick-sale value of the tenancy by the entirety property is taken into account. When spouses are not jointly liable, the equity in a tenancy by the entirety property is allocated equally between the spouses unless one spouse or the other can demonstrate that he or she supplied the consideration.

Under the existing Regulations, the IRS will generally take into account the assets of a nonliable spouse for offer in compromise purposes if, under local law, the assets of a nonliable spouse are subject to levy to satisfy debts of the liable spouse.

The case of *Craft v. U.S.*, 535 U.S. 274,¹⁰⁸ 2002-1 USTC ¶150,361, a U.S. Supreme Court decision, is discussed in Chapter 8. *Craft* holds that the IRS has greater power to levy on tenancy by the entirety properties than had previously appeared to be the case. It also holds that local law is less significant than had previously been thought by many practitioners with respect to the right of the IRS to levy against the assets of the nonliable spouse. In Notice 2003-60, the IRS has set forth guidance as to its interpretation of *Craft*. With respect to offers in compromise, it appears that *Craft* will have a limited effect.

¹⁰⁸ 2002.

Under Notice 2003-60, the IRS states that, where it has a lien on entireties property, it will take the position that the maximum value of its lien is half the value of the entire property. Notice 2003-60 also states that *Craft* will not change any limitation on its ability to rescind an accepted offer in compromise or terminate an accepted installment agreement.

The monthly income or expense statement on page 4 of Form 433-A is probably the most difficult to complete and is critical in determining the payment amount.

Financial Analysis

Frequently, the most important issue for the taxpayer in negotiating an installment agreement is how much income he or she will be allowed to keep for personal and family expenditures. Until 1995, there was no published guidance for practitioners about what constituted the minimum permissible living allowance.

In August 1995, the IRS published criteria in the IRM to be applied to establish allowable expenses for the purpose of installment agreements and offers in compromise. At the same time, the Collection Information Statement for Individuals, Form 433-A, was amended to require the taxpayer to report necessary expenses.

The Internal Revenue Service Restructuring and Reform Act of 1998 requires the IRS to publish schedules of national and local allowances designed to provide that taxpayers entering into offers in compromise have adequate means to provide for basic living expenses.

Total Income

Enter the taxpayer's gross monthly wages or salary. Do not reduce it by withholding or any other voluntary reductions. These amounts will be included in the living expenses section. The form provides a formula to convert weekly, biweekly, or semimonthly salaries into a monthly amount. Note that if the taxpayer has her own business and has a loss, you are to enter a "0" and not a negative figure.

Net rental income to be reported is rental income less expenses except depreciation. Again, the taxpayer is instructed to not enter a negative amount.

The taxpayer is instructed to enter distributions reported on Schedule K-1 using a monthly average.

Necessary Expenses

Necessary expenses are deemed to be the amounts reasonably necessary to provide for the taxpayer's family's health, production of income, housing, transportation, food, housekeeping supplies, clothing, and personal care products and services. Other expenses may be accepted as necessary by the IRS on a case-by-case basis. The national and local standards discussed below can be obtained from the IRS website. Schedules are set forth at the end of the chapter.

Generally, the IRS will not allow tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions, payments on unsecured debt, cable

television, extra telephone lines, and so on. These are negotiable, however, if the installment agreement will result in full payment of the tax within a reasonable amount of time.

NATIONAL STANDARDS

The necessary costs of housekeeping supplies, apparel and services, personal care products and services, food, and miscellaneous items are determined according to a national standard. The National Standards are issued annually by the IRS on March 1. Taxpayers are allowed the total National Standards amount for their family size without questioning the amount actually spent. If the amount claimed is more than the total allowed by the National Standards, the taxpayer must provide documentation to substantiate that those expenses are necessary living expenses. Generally, the total number of persons allowed for National Standards should be the same as those allowed as exemptions on the taxpayer's most recent year income tax return.

National Standards have also been established for minimum allowances for out-of-pocket health care expenses. Taxpayers and their dependents are allowed the standard amount on a per-person basis, without questioning the amount actually spent. The table for health care allowances is based on Medical Expenditure Panel Survey data and uses an average amount per person for taxpayers and their dependents under 65 and those individuals that are 65 and older. The out-of-pocket health care standard amount is allowed in addition to the amount taxpayers pay for health insurance.

LOCAL STANDARDS

The necessary costs of housing, utilities, and transportation are determined according to a local standard.

The housing and utilities standards are derived from Census and BLS data, and are provided by state down to the county level. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence. These standards are generally regarded as a maximum allowable. The taxpayer should report their actual expenses. If they are substantially higher than the standards, the IRS may require that the taxpayer reduce their expenses. If the taxpayer's monthly expenses are less than the standard amount, the IRS will use the actual expenses in computing the taxpayer's allowable expenses.

Housing and Utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, telephone, and cell phone. The tables include five categories for one, two, three, four, and five or more persons in a household. The local standards can be obtained at the IRS website.

TRANSPORTATION STANDARDS

The transportation standards for taxpayers with a vehicle consist of two parts: nationwide figures for monthly loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by Census Region and Metropolitan Statistical Area (MSA).

The ownership costs provide maximum allowances for the lease or purchase of up to two automobiles if allowed as a necessary expense. A single taxpayer is normally allowed one automobile.

The operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls.

If a taxpayer has a car payment, the allowable ownership cost added to the allowable operating cost equals the allowable transportation expense. If a taxpayer has a car, but no car payment, only the operating costs portion of the transportation standard is used to figure the allowable transportation expense. In both of these cases, the taxpayer is allowed the amount actually spent, or the standard, whichever is less.

There is a single nationwide allowance for public transportation based on BLS expenditure data for mass transit fares for a train, bus, taxi, ferry, and so on. Taxpayers with no vehicle are allowed the standard, per household, without questioning the amount actually spent.

If a taxpayer owns a vehicle and uses public transportation, expenses may be allowed for both, provided they are needed for the health and welfare of the taxpayer or family, or for the production of income. However, the expenses allowed would be actual expenses incurred for ownership costs, operating costs, and public transportation, or the standard amounts, whichever is less.

If the IRS determines that the facts and circumstances of a taxpayer's situation indicate that using the standards is inadequate to provide for basic living expenses, it may allow for actual expenses. However, taxpayers must provide documentation that supports a determination that using national and local expense standards leaves them an inadequate means of providing for basic living expenses.

OTHER NECESSARY EXPENSES

Other necessary expenses such as health insurance, taxes, child and other dependent care, professional fees for representation before the IRS, expenses necessary for the production of income, and minimum payments on secured debt may be allowable if substantiated. Payments on unsecured debt will usually be allowed as necessary expenses only if the payments are necessary for the production of income.

Conditional Expenses

Conditional expenses are those which the IRS has determined do not qualify as necessary expenses. The general rule is that conditional expenses are allowed only to the extent that they will not prevent full payment of the tax liability within five years. This rule is different for offers in compromise, since the tax will not be full paid. Also, an installment agreement that does not result in full payment of the tax may result in conditional expenses being disallowed.

One-Year Relief Rule

Under certain circumstances, a taxpayer may be given one year of reduced periodic payments under an installment agreement during which time he is to reduce nonallowable expenses. He or

she may do this by, say, selling an automobile and paying off a purchase money loan, the payments for which were in excess of that allowable as a necessary expense.

Form 433-F

The IRS may request that the taxpayer complete a Form 433-F (Collection Information Statement) instead of a Form 433-A, particularly when submitting a Form 9465. While the format is somewhat different from a Form 433A, the information requested is basically the same.

INSTALLMENT AGREEMENT PAYMENT

The installment agreement payment will be the amount by which gross income exceeds necessary living expenses. If the tax will be full paid within five years, conditional expenses are allowed. If not, or if it appears that the full tax will never be collected by the Service, conditional expenses will probably not be allowed. This is frequently the subject of negotiation in creating an installment agreement payment amount.

ANNUAL STATEMENT

Under the Internal Revenue Service Restructuring and Reform Act of 1998, the IRS is required to provide each taxpayer who has an installment agreement in effect an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

Termination or Modification by IRS

The IRS may terminate an installment agreement if it determines the taxpayer gave the IRS incomplete or inaccurate information or if the collection of the tax is in jeopardy.¹⁰⁹

The IRS is entitled to terminate or modify an installment agreement in any of the following situations:¹¹⁰

- The taxpayer supplied inaccurate or incomplete information.
(Although the Code permits the IRS to terminate or modify an installment agreement if the financial situation of the taxpayer has changed, the Regulations limit this action to situations in which financial circumstances have *improved* or where the taxpayer requests an amendment.¹¹¹)
- Taxpayer fails to timely pay an installment of tax.
- Taxpayer fails to pay any other tax when due.

¹⁰⁹ IRC §6159(b)(2).

¹¹⁰ IRC §6159(b)(3) & (4).

¹¹¹ Treas. Reg. §301.6159-1(c)(2)&(3).

- Taxpayer fails to provide a financial condition update when requested to do so by the IRS.

The IRS has ruled that an installment agreement should not be terminated by reason of the Taxpayer's bankruptcy because that action might violate the automatic stay on collection provisions of the Bankruptcy Code. Ltr 199920005.

If the IRS proposes to terminate, alter, or modify an installment agreement, it must give the taxpayer 30 days' notice and include an explanation of the proposed action.

As required under IRC §6159(d), the IRS grants an administrative appeal in the case of a termination of an installment agreement and has published proposed regulations in this regard. The taxpayer may request a Collection Due Process hearing.

Therefore, it is very important that the taxpayer must remain current with his tax obligations upon the execution of an installment agreement. Failure to do so will result in the termination of the installment agreement and the IRS will commence collection procedures.

Frivolous Tax Submissions

The Pension Protection Act of 2006 (PPA) substantially amended IRC §6702, which formerly had the title "Frivolous Income Tax Return." This section of the IRC now has the title "Frivolous Tax Submissions." Under IRC § 6702(b)(2)(B)(ii)(I), one of the categories of tax submission to which this section of the IRC applies is an application for an installment agreement.

The enhanced penalty of \$5,000, therefore, may be charged against taxpayers making a frivolous submission in an offer in an installment agreement application. A frivolous submission is defined to be one that "reflects a desire to delay or impede the administration of federal tax laws" or one described by the Secretary on a list of frivolous positions which the Secretary is required to compile.

IRC §7122(f)(g) provides that if the IRS determines that any part of any application for an installment is frivolous under IRC §6702(b)(2)(A), the application may be disregarded and treated as if never submitted. IRC §7122(f)(g) was to become effective as of the date that the IRS first prescribed a list of frivolous positions as it is required to do under IRC §6702(c). The IRS satisfied this requirement as of April 2, 2007 by publishing Notice 2007-30. Most recently, it published Notice 2008-14. In this Notice the IRS sets forth a nonexclusive list of frivolous positions to which IRC §6702 is applicable. Few professionals would have any issues with the positions described in this Notice.

Direct Payment Arrangements

The IRS will frequently ask the taxpayer to enter into a payroll reduction agreement or a direct debit installment agreement as a component of an installment agreement.

PAYROLL REDUCTION AGREEMENT

A payroll reduction agreement is set forth on Form 2159. Unlike a levy on wages, there is no legal requirement that the employer deduct installments of tax and send them to the IRS. Hence, a payroll reduction agreement cannot be accomplished without the agreement of the employer.

DIRECT DEBIT INSTALLMENT AGREEMENT

A direct debit installment agreement is set forth on Form 433G. Under the agreement, the installment is automatically paid, when due, from the taxpayer's bank account.

USER FEES

The user fee for an installment agreement is currently \$52 if it is a direct debit installment. Otherwise, the user fee is \$105. For those taxpayers with income below or at certain poverty guidelines the IRS will automatically reduce the fee to \$43. The IRS has attempted to phase out the necessity of filing Form 13844 used to request the lower fee. If a taxpayer believes that they are eligible for the reduced amount and the IRS did not automatically reduce the fee, he may submit Form 13844 for additional consideration. The fee for reinstating or restructuring an existing installment agreement is \$45.

DEFAULTING ON INSTALLMENT AGREEMENTS

On January 6, 2009, the IRS announced that it would take additional steps to help people who owe back taxes.¹¹² Taxpayers who cannot make a payment on an installment agreement should immediately contact the IRS by phone. The IRS has stated that it has given its employees greater authority to suspend collection actions in hardship cases and provide for more flexibility in dealing with taxpayers that cannot make a monthly payment without automatically suspending the Installment Agreement, such as allowing taxpayers to omit a payment or reduce the monthly payments. Specifically, it is giving its employees more leeway to

- Postpone collection actions in certain hardship cases where taxpayers are unable to pay. This includes instances when the taxpayer has recently lost a job, is relying solely on Social Security or welfare income or is facing devastating illness or significant medical bills. If an individual has recently encountered this type of financial problem, IRS assistors may be able to suspend collection without documentation to minimize burden on the taxpayer.
- Add flexibility for missed payments. The IRS may allow a skipped payment or a reduced monthly payment amount without automatically suspending the Installment Agreement. Taxpayers in a difficult financial situation should contact the IRS.
- Provide additional review for Offers in Compromise on Home Values. With the uncertainty in the housing market, the IRS recognizes that the real-estate valuations used to assess ability to pay may not be accurate. So in instances where the accuracy of local real estate valuations is in question or other unusual hardships exist, the IRS is creating a new second review of the information to determine if accepting an offer is appropriate.
- Assist taxpayers who are unable to meet the periodic payment terms of an accepted OIC. Taxpayers will be able to contact the IRS office handling the offer for available options to help them avoid default.

¹¹² IR-2009-2.

- Speed the delivery of levy releases by easing requirements on taxpayers who request expedited levy releases for hardship reasons.

It is important that the taxpayer or his representative contact the IRS before he becomes delinquent on a payment. The IRS tends to be helpful in resolving temporary problems when contacted before the taxpayer defaults. Once the taxpayer defaults, he is in violation of the installment agreement and the IRS may terminate the agreement and levy.

Practice Points 5-1

The following is a summary of practice points to bear in mind in connection with installment agreements:

- Installment agreements are not difficult to get.
 - In order to qualify, the IRS needs only to be assured that
 - Taxpayer cannot presently pay his tax liabilities,
 - Taxpayer has the capacity to make the payments within the collection limitation period plus five years, and
 - IRS position as a creditor will not be jeopardized by forbearing on levying on the taxpayer's assets.
- Issue of contention between the taxpayer and the IRS is most likely to be the amount of the periodic installment payment.
 - IRS, in the case of an individual, will establish the payment on the basis of the minimum amount of income it considers the taxpayer will need for basic sustenance.
- Interest will continue to run on the tax liability but the failure-to-pay penalty is reduced.
- If the taxpayer has limited assets and income, the dollars that can be raised by levying may be so small that the IRS will not make a determined effort to collect.
 - In these cases, there is nothing to be gained by the taxpayer entering into an installment agreement.
- Recognize when an installment agreement is the best the taxpayer can do under the circumstances.
- Identify circumstances under which an installment agreement may be terminated by the IRS.
- Note the effect of an installment agreement upon the running of the collection statute of limitations.

Summary

Taxpayers may apply for an installment agreement by attaching Form 9465, Installment Agreement Request, to a filed return with a balance due. There is also an online installment agreement procedure. If the taxpayer's liability is substantial and the taxpayer lacks the ability to pay within a few months, the installment agreement is handled by the Collection Division. In this situation, the IRS will usually require the individual to submit Form 433-A, and Form 433-B if the taxpayer is a business entity.

An installment agreement will generally leave the taxpayer with little discretionary funds and may result in an extension of the collection statute of limitations.

Exhibit 5-1**National Standards: Food, Clothing and Other Items (Issued March 1, 2010)**

Latest figures are available at www.irs.gov

The standards are derived from the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (CES).

Taxpayers are allowed the total National Standards amount monthly for their family size, without questioning the amounts they actually spend. If the amount claimed is more than the total allowed by the National Standards, the taxpayer must provide documentation to substantiate those expenses are necessary living expenses. Generally, the total number of persons allowed for National Standards should be the same as those allowed as exemptions on the taxpayer's most recent year income tax return.

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$300	\$537	\$639	\$757
Housekeeping supplies	\$29	\$66	\$65	\$74
Apparel & services	\$86	\$162	\$209	\$244
Personal care products & services	\$32	\$55	\$61	\$67
Miscellaneous	\$87	\$165	\$197	\$235
Total	\$534	\$985	\$1,171	\$1,377
More than four persons			Additional Persons Amount	
For each additional person, add to four-person total allowance:			\$262	

Exhibit 5-2**National Standards: Out of Pocket Health Care**

The out-of-pocket health care standard amount is allowed in addition to the amount taxpayers pay for health insurance.

	Out-of-Pocket Costs
Under 65	\$60
65 and Older	\$144

Exhibit 5-3

Transportation Expenses

Effective March 1, 2010

<u>Public Transportation</u>		
National	\$182	
<u>Ownership Costs</u>		
	<u>One Car</u>	<u>Two Cars</u>
National	\$496	\$992
<u>Operating Costs</u>		
	<u>One Car</u>	<u>Two Cars</u>
Northeast Region	\$278	\$556
Boston	\$277	\$554
New York	\$342	\$684
Philadelphia	\$299	\$598
Midwest Region	\$212	\$424
Chicago	\$262	\$524
Cleveland	\$226	\$452
Detroit	\$295	\$590
Minneapolis-St. Paul	\$216	\$432
South Region	\$244	\$488
Atlanta	\$256	\$512
Baltimore	\$250	\$500
Dallas-Ft. Worth	\$277	\$554
Houston	\$312	\$624
Miami	\$346	\$692
Washington, D.C.	\$270	\$540
West Region	\$236	\$472
Los Angeles	\$295	\$590
Phoenix	\$291	\$582
San Diego	\$301	\$602
San Francisco	\$306	\$612
Seattle	\$192	\$384

The data for the Operating Costs section of the Transportation Standards are provided by Census Region and Metropolitan Statistical Area (MSA). The following table lists the states that comprise each Census Region. Once the taxpayer's Census Region has been ascertained, to determine if an MSA standard is applicable, use the definitions below to see if the taxpayer lives within an MSA (MSAs are defined by county and city, where applicable). If the taxpayer does not reside in an MSA, use the regional standard.

Northeast Census Region		
Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey		
MSA	Counties	
Boston	In MA:	Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth, Suffolk, Worcester
	In NH:	Hillsborough, Merrimack, Rockingham, Strafford
	In CT:	Windham
	In ME:	York
New York	In NY:	Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester
	In NJ:	Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, Warren
	In CT:	Fairfield, Litchfield, Middlesex, New Haven
	In PA:	Pike
	In DE:	New Castle
Philadelphia	In PA:	Bucks, Chester, Delaware, Montgomery, Philadelphia
	In NJ:	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem
	In MD:	Cecil

Midwest Census Region		
North Dakota, South Dakota, Nebraska, Kansas, Missouri, Illinois, Indiana, Ohio, Michigan, Wisconsin, Minnesota, Iowa		
MSA	Counties (unless otherwise specified)	
Chicago	in IL:	Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, Will
	in IN:	Lake, Porter
	in WI:	Kenosh
Cleveland	in OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit
Detroit	in MI:	Genesee, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne
Minneapolis-St. Paul	in MN:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
	in WI:	Pierce, St. Croix

South Census Region		
Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Virginia, Maryland, District of Columbia, Delaware, North Carolina, South Carolina, Georgia, Florida, Alabama		
MSA	Counties (unless otherwise specified)	
Atlanta	in GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton
Baltimore	in MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore City
Dallas-Ft. Worth	in TX:	Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant
Houston	in TX:	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller
Miami	in FL:	Broward, Miami-Dade
Washington, D.C.	in DC:	District of Columbia
	in MD:	Calvert, Charles, Frederick, Montgomery, Prince George's, Washington
	in VA:	Arlington, Clarke, Culpepper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
	in WV:	Berkeley, Jefferson

West Census Region		
New Mexico, Arizona, Colorado, Wyoming, Montana, Nevada, Utah, Washington, Oregon, Idaho, California, Alaska, Hawaii		
MSA	Counties (unless otherwise specified)	
Los Angeles	in CA:	Los Angeles, Orange, Riverside, San Bernadino, Ventura
Phoenix	in AZ:	Maricopa, Pinal
San Diego	in CA:	San Diego
San Francisco	in CA:	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma
Seattle	in WA:	Island, King, Kitsap, Pierce, Snohomish, Thurston

Exhibit 5-4

Form **9465**
(Rev. December 2009)
Department of the Treasury
Internal Revenue Service

Installment Agreement Request

OMB No. 1545-0074

▶ If you are filing this form with your tax return, attach it to the front of the return. Otherwise, see instructions.

Caution: Do not file this form if you are currently making payments on an installment agreement or can pay your balance due in full within 120 days. Instead, call 1-800-829-1040. If you are in bankruptcy or we have accepted your offer-in-compromise, see **Bankruptcy or offer-in-compromise** on page 2.

This request is for Form(s) (for example, Form 1040) ▶ and for tax year(s) (for example, 2008 and 2009) ▶

1 Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Current address (number and street). If you have a P.O. box and no home delivery, enter your box number.		Apt. number
City, town or post office, state, and ZIP code. If a foreign address, enter city, province or state, and country. Follow the country's practice for entering the postal code.		

2 If this address is new since you filed your last tax return, check here ▶

3 Your home phone number	Best time for us to call	4 Your work phone number	Ext.	Best time for us to call
5 Name of your bank or other financial institution:		6 Your employer's name:		
Address		Address		
City, state, and ZIP code		City, state, and ZIP code		

7 Enter the total amount you owe as shown on your tax return(s) (or notice(s))	7	
8 Enter the amount of any payment you are making with your tax return(s) (or notice(s)). See instructions	8	
9 Enter the amount you can pay each month. Make your payments as large as possible to limit interest and penalty charges. The charges will continue until you pay in full	9	

10 Enter the day you want to make your payment each month. **Do not** enter a day later than the 28th ▶

11 If you want to make your payments by electronic funds withdrawal from your checking account, see the instructions and fill in lines 11a and 11b. This is the most convenient way to make your payments and it will ensure that they are made on time.

▶ **a** Routing number

▶ **b** Account number

I authorize the U.S. Treasury and its designated Financial Agent to initiate a monthly ACH electronic funds withdrawal entry to the financial institution account indicated for payments of my federal taxes owed, and the financial institution to debit the entry to this account. This authorization is to remain in full force and effect until I notify the U.S. Treasury Financial Agent to terminate the authorization. To revoke payment, I must contact the U.S. Treasury Financial Agent at **1-800-829-1040** no later than 10 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payments of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payments.

Your signature	Date	Spouse's signature. If a joint return, both must sign.	Date
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General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form 9465 to request a monthly installment plan if you cannot pay the full amount you owe shown on your tax return (or on a notice we sent you). Generally, you can have up to 60 months to pay. In certain circumstances, you can have longer to pay or your agreement can be approved for an amount that is less than the amount of tax you owe. However, before requesting an installment agreement, you should consider other less costly alternatives, such as getting a bank loan or using available credit on a credit card. If you have any questions about this request, call 1-800-829-1040.

Do not use Form 9465 if:

- You can pay the full amount you owe within 120 days (see page 2), or

- You want to request an online payment agreement. See *Applying online for a payment agreement* on page 2.
- **Guaranteed installment agreement.** Your request for an installment agreement cannot be turned down if the tax you owe is not more than \$10,000 and all three of the following apply.
 - During the past 5 tax years, you (and your spouse if filing a joint return) have timely filed all income tax returns and paid any income tax due, and have not entered into an installment agreement for payment of income tax.
 - The IRS determines that you cannot pay the tax owed in full when it is due and you give the IRS any information needed to make that determination.
 - You agree to pay the full amount you owe within 3 years and to comply with the tax laws while the agreement is in effect.



A Notice of Federal Tax Lien may be filed to protect the government's interests until you pay in full.

Can you pay in full within 120 days? If you can pay the full amount you owe within 120 days, call 1-800-829-1040 to establish your request to pay in full. If you can do this, you can avoid paying the fee to set up an installment agreement. Instead of calling, you can apply online.

Applying online for a payment agreement. Instead of filing Form 9465, you can apply online for a payment agreement. To do that, go to www.irs.gov, use the pull-down menu under "I need to . . ." and select "Set Up a Payment Plan."

Bankruptcy or offer-in-compromise. If you are in bankruptcy or we have accepted your offer-in-compromise, do not file this form. Instead, call 1-800-829-1040 to get the number of your local IRS Insolvency function for bankruptcy or Technical Support function for offer-in-compromise.

How the Installment Agreement Works

We will usually let you know within 30 days after we receive your request whether it is approved or denied. However, if this request is for tax due on a return you filed after March 31, it may take us longer than 30 days to reply. If we approve your request, we will send you a notice detailing the terms of your agreement and requesting a fee of \$105 (\$52 if you make your payments by electronic funds withdrawal). However, you may qualify to pay a reduced fee of \$43 if your income is below a certain level. The IRS will let you know whether you qualify for the reduced fee. If the IRS does not say you qualify for the reduced fee, you can request the reduced fee using Form 13844, Application For Reduced User Fee For Installment Agreements.

You will also be charged interest and may be charged a late payment penalty on any tax not paid by its due date, even if your request to pay in installments is granted. Interest and any applicable penalties will be charged until the balance is paid in full. To limit interest and penalty charges, file your return on time and pay as much of the tax as possible with your return (or notice). All payments received will be applied to your account in the best interests of the United States.

By approving your request, we agree to let you pay the tax you owe in monthly installments instead of immediately paying the amount in full. In return, you agree to make your monthly payments on time. You also agree to meet all your future tax liabilities. This means that you must have enough withholding or estimated tax payments so that your tax liability for future years is paid in full when you timely file your return. Your request for an installment agreement will be denied if all required tax returns have not been filed. Any refund due you in a future year will be applied against the amount you owe. If your refund is applied to your balance, you are still required to make your regular monthly installment payment.

Payment methods. You can make your payments by check, money order, credit card, or one of the other payment methods shown next. The fee for each payment method is also shown.

Payment method	Applicable fee
Check, money order, or credit card	\$105
Electronic funds withdrawal	\$ 52
Payroll deduction installment agreement	\$105

For details on how to pay, see your tax return instructions, visit www.irs.gov, or call 1-800-829-1040.

After we receive each payment, we will send you a notice showing the remaining amount you owe, and the due date and amount of your next payment. But if you choose to have your payments automatically withdrawn from your checking account, you will not receive a notice. Your bank statement is

your record of payment. We will also send you an annual statement showing the amount you owed at the beginning of the year, all payments made during the year, and the amount you owe at the end of the year.

If you do not make your payments on time or do not pay any balance due on a return you file later, you will be in default on your agreement and we may take enforcement actions, such as the filing of a Notice of Federal Tax Lien or an IRS levy action, to collect the entire amount you owe. To ensure that your payments are made timely, you should consider making them by electronic funds withdrawal (see the instructions for lines 11a and 11b on page 3).

Requests to modify or terminate an installment agreement. After an installment agreement is approved, you may submit a request to modify or terminate an installment agreement. This request will not suspend the statute of limitations on collection. While the IRS considers your request to modify or terminate the installment agreement, you must comply with the existing agreement.



An installment agreement may be terminated if you provide materially incomplete or inaccurate information in response to an IRS request for a financial update.

For additional information on the IRS collection process, see Pub. 594, The IRS Collection Process.

Where To File

Attach Form 9465 to the front of your return and send it to the address shown in your tax return booklet. If you have already filed your return or you are filing this form in response to a notice, file Form 9465 by itself with the Internal Revenue Service Center at the address below that applies to you. No street address is needed.

IF you live in . . . THEN use this address . . .

Florida, Georgia, North Carolina, South Carolina
 Department of the Treasury
 Internal Revenue Service Center
 Atlanta, GA 39901

Alabama, Kentucky, Louisiana, Mississippi, Tennessee, Texas
 Department of the Treasury
 Internal Revenue Service Center
 Austin, TX 73301

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming
 Department of the Treasury
 Internal Revenue Service Center
 Fresno, CA 93888

Arkansas, Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia
 Department of the Treasury
 Internal Revenue Service Center
 Kansas City, MO 64999

A foreign country, American Samoa, or Puerto Rico (or are excluding income under Internal Revenue Code section 933), or use an APO or FPO address, or file Form 2555, 2555-EZ, or 4563, or are a dual-status alien or nonpermanent resident of Guam or the Virgin Islands*
 Department of the Treasury
 Internal Revenue Service Center
 Austin, TX 73301

* Permanent residents of Guam or the Virgin Islands cannot use Form 9465.

Specific Instructions

Line 1

If you are making this request for a joint tax return, show the names and social security numbers (SSNs) in the same order as on your tax return.

Line 7

Enter the total amount you owe as shown on your tax return (or notice).



If the total amount you owe is more than \$25,000 (including any amounts you owe from prior years), complete and attach Form 433-F, Collection Information Statement. You can get Form 433-F by visiting the IRS website at www.irs.gov.

Line 8

Even if you cannot pay the full amount you owe now, you should pay as much as possible to limit penalty and interest charges. If you are filing this form with your tax return, make the payment with your return. For details on how to pay, see your tax return instructions.

If you are filing this form by itself, such as in response to a notice, attach a check or money order payable to the "United States Treasury." Do not send cash. Be sure to include:

- Your name, address, SSN, and daytime phone number.
- The tax year and tax return (for example, "2009 Form 1040") for which you are making this request.

Line 9

You should try to make your payments large enough so that your balance due will be paid off as quickly as possible without causing you a financial burden.

Line 10

You can choose the day of each month your payment is due. This can be on or after the 1st of the month, but no later than the 28th of the month. For example, if your rent or mortgage payment is due on the 1st of the month, you may want to make your installment payments on the 15th. When we approve your request, we will tell you the month and day that your first payment is due.

If we have not replied by the date you chose for your first payment, you can send the first payment to the Internal Revenue Service Center at the address shown on page 2 that applies to you. See the instructions for line 8 above for details on what to write on your payment.

Lines 11a and 11b



Making your payments by electronic funds withdrawal will help ensure that your payments are made timely and that you are not in default of this agreement.

To pay by electronic funds withdrawal from your checking account at a bank or other financial institution (such as mutual fund, brokerage firm, or credit union), fill in lines 11a and 11b. Check with your financial institution to make sure that an electronic funds withdrawal is allowed and to get the correct routing and account numbers.

Note. We will send you a bill for the first payment and the fee. You must send us your first payment. All other payments will be electronically withdrawn.

Line 11a. The routing number must be nine digits. The first two digits of the routing number must be 01 through 12 or 21 through 32. Use a check to verify the routing number. On the sample check on this page, the routing number is 250250025. But if your check is payable through a financial institution

different from the one at which you have your checking account, do not use the routing number on that check. Instead, contact your financial institution for the correct routing number.

Line 11b. The account number can be up to 17 characters (both numbers and letters). Include hyphens but omit spaces and special symbols. Enter the number from left to right and leave any unused boxes blank. On the sample check below, the account number is 20202086. Do not include the check number.



The electronic funds withdrawal from your checking account will not be approved unless you (and your spouse if filing a joint return) sign Form 9465.

Sample Check—Lines 11a and 11b

The sample check shows the following details:

- Payor:** DWAIN MAPLE, ROBYN MAPLE, 123 Pear Lane, Anyplace, VA 20000
- Payee:** ANYPLACE BANK, Anyplace, VA 20000
- Amount:** \$1234.00 (DOLLARS)
- Routing Number (line 11a):** 250250025
- Account Number (line 11b):** 20202086
- Check Number:** 1234
- Note:** Do not include the check number.



The routing and account numbers may be in different places on your check.

Privacy Act and Paperwork Reduction Act Notice. Our legal right to ask for the information on this form is sections 6001, 6011, 6012(a), 6109, and 6159 and their regulations. We will use the information to process your request for an installment agreement. The reason we need your name and social security number is to secure proper identification. We require this information to gain access to the tax information in our files and properly respond to your request. You are not required to request an installment agreement. If you do request an installment agreement, you are required to provide the information requested on this form. Failure to provide this information may prevent processing your request; providing false information may subject you to fines or penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. However, we may give this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

Exhibit 5-5

Form **433-A**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

Collection Information Statement for Wage Earners and Self-Employed Individuals

Wage Earners Complete Sections 1, 2, 3, and 4, including signature line on page 4. *Answer all questions or write N/A.*
Self-Employed Individuals Complete Sections 1, 2, 3, 4, 5 and 6 and signature line on page 4. *Answer all questions or write N/A.*
For Additional Information, refer to Publication 1854, "How To Prepare a Collection Information Statement"
Include attachments if additional space is needed to respond completely to any question.

Name on Internal Revenue Service (IRS) Account	Social Security Number SSN on IRS Account	Employer Identification Number EIN
---	--	---

Section 1: Personal Information

1a Full Name of Taxpayer and Spouse (if applicable)		1c Home Phone () ()	1d Cell Phone () ()
1b Address (Street, City, State, ZIP code) (County of Residence)		1e Business Phone () ()	1f Business Cell Phone () ()
		2b Name, Age, and Relationship of dependent(s)	
2a Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Unmarried (Single, Divorced, Widowed)			
		Social Security No. (SSN)	Date of Birth (mmddyyyy)
3a Taxpayer		Driver's License Number and State	
3b Spouse			

Section 2: Employment Information

If the taxpayer or spouse is self-employed or has self-employment income, also complete Business Information in Sections 5 and 6.

Taxpayer		Spouse	
4a Taxpayer's Employer Name		5a Spouse's Employer Name	
4b Address (Street, City, State, ZIP code)		5b Address (Street, City, State, ZIP code)	
4c Work Telephone Number () ()	4d Does employer allow contact at work <input type="checkbox"/> Yes <input type="checkbox"/> No	5c Work Telephone Number () ()	5d Does employer allow contact at work <input type="checkbox"/> Yes <input type="checkbox"/> No
4e How long with this employer (years) (months)	4f Occupation	5e How long with this employer (years) (months)	5f Occupation
4g Number of exemptions claimed on Form W-4	4h Pay Period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other	5g Number of exemptions claimed on Form W-4	5h Pay Period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other

Section 3: Other Financial Information (Attach copies of applicable documentation.)

6 Is the individual or sole proprietorship party to a lawsuit (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Location of Filing	Represented by	Docket/Case No.
Amount of Suit \$	Possible Completion Date (mmddyyyy)	Subject of Suit	
7 Has the individual or sole proprietorship ever filed bankruptcy (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Date Filed (mmddyyyy)	Date Dismissed or Discharged (mmddyyyy)	Petition No.	Location
8 Any increase/decrease in income anticipated (business or personal) (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Explain. (Use attachment if needed)	How much will it increase/decrease \$	When will it increase/decrease	
9 Is the individual or sole proprietorship a beneficiary of a trust, estate, or life insurance policy (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Place where recorded:		EIN: :	
Name of the trust, estate, or policy	Anticipated amount to be received \$	When will the amount be received	
10 In the past 10 years, has the individual resided outside of the United States for periods of 6 months or longer (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Dates lived abroad: from (mmddyyyy)		To (mmddyyyy)	

Section 4: Personal Asset Information for All Individuals

11 Cash on Hand. Include cash that is not in a bank. **Total Cash on Hand** \$

Personal Bank Accounts. Include all checking, online bank accounts, money market accounts, savings accounts, stored value cards (e.g., payroll cards, government benefit cards, etc.) List safe deposit boxes including location and contents.

Type of Account	Full Name & Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union, or Financial Institution.	Account Number	Account Balance As of _____ mmddyyyy
12a			\$
12b			\$

12c Total Cash (Add lines 12a, 12b, and amounts from any attachments) \$

Investments. Include stocks, bonds, mutual funds, stock options, certificates of deposit, and retirement assets such as IRAs, Keogh, and 401(k) plans. **Include all corporations, partnerships, limited liability companies or other business entities in which the individual is an officer, director, owner, member, or otherwise has a financial interest.**

Type of Investment or Financial Interest	Full Name & Address (Street, City, State, ZIP code) of Company	Current Value	Loan Balance (if applicable) As of _____ mmddyyyy	Equity Value Minus Loan
13a				
	Phone	\$	\$	\$
13b				
	Phone	\$	\$	\$
13c				
	Phone	\$	\$	\$

13d Total Equity (Add lines 13a through 13c and amounts from any attachments) \$

Available Credit. List bank issued credit cards with available credit. Full Name & Address (Street, City, State, ZIP code) of Credit Institution

Full Name & Address (Street, City, State, ZIP code) of Credit Institution	Credit Limit	Amount Owed As of _____ mmddyyyy	Available Credit As of _____ mmddyyyy
14a			
Acct No.:	\$	\$	\$
14b			
Acct No.:	\$	\$	\$

14c Total Available Credit (Add lines 14a, 14b and amounts from any attachments) \$

15a Life Insurance. Does the individual have life insurance with a cash value (Term Life insurance does not have a cash value.)
 Yes **No** If **Yes** complete blocks 15b through 15f for each policy:

15b Name and Address of Insurance Company(ies):			
15c Policy Number(s)			
15d Owner of Policy			
15e Current Cash Value	\$	\$	\$
15f Outstanding Loan Balance	\$	\$	\$

15g Total Available Cash. (Subtract amounts on line 15f from line 15e and include amounts from any attachments) \$

The Adviser's Guide to Doing Business With the IRS

16 In the past 10 years, have any assets been transferred by the individual for less than full value Yes No
(If yes, answer the following. If no, skip to 17a)

List Asset	Value at Time of Transfer	Date Transferred (mmddyyyy)	To Whom or Where was it Transferred
	\$		

Real Property Owned, Rented, and Leased. Include all real property and land contracts.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
--	--------------------------------	---------------------------------	----------------------	---------------------------	----------------------------------	-----------------------

17a Property Description		\$	\$	\$		\$
---------------------------------	--	----	----	----	--	----

Location (Street, City, State, ZIP code) and County	Lender/Lessor/Landlord Name, Address, (Street, City, State, ZIP code) and Phone
---	---

17b Property Description		\$	\$	\$		\$
---------------------------------	--	----	----	----	--	----

Location (Street, City, State, ZIP code) and County	Lender/Lessor/Landlord Name, Address, (Street, City, State, ZIP code) and Phone
---	---

17c Total Equity (Add lines 17a, 17b and amounts from any attachments) \$

Personal Vehicles Leased and Purchased. Include boats, RVs, motorcycles, trailers, etc.

Description (Year, Mileage, Make, Model)		Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
--	--	--------------------------------	---------------------------------	----------------------	---------------------------	----------------------------------	-----------------------

18a Year	Mileage		\$	\$	\$		\$
-----------------	---------	--	----	----	----	--	----

Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone
------	-------	--

18b Year	Mileage		\$	\$	\$		\$
-----------------	---------	--	----	----	----	--	----

Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone
------	-------	--

18c Total Equity (Add lines 18a, 18b and amounts from any attachments) \$

Personal Assets. Include all furniture, personal effects, artwork, jewelry, collections (coins, guns, etc.), antiques or other assets.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
--	--------------------------------	---------------------------------	----------------------	---------------------------	----------------------------------	-----------------------

19a Property Description		\$	\$	\$		\$
---------------------------------	--	----	----	----	--	----

Location (Street, City, State, ZIP code) and County	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone
---	--

19b Property Description		\$	\$	\$		\$
---------------------------------	--	----	----	----	--	----

Location (Street, City, State, ZIP code) and County	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone
---	--

19c Total Equity (Add lines 19a, 19b and amounts from any attachments) \$

If the taxpayer is self-employed, sections 5 and 6 must be completed before continuing.

Monthly Income/Expense Statement (For additional information, refer to Publication 1854.)

Total Income		Total Living Expenses		IRS USE ONLY
Source	Gross Monthly	Expense Items ⁵	Actual Monthly	Allowable Expenses
20 Wages (Taxpayer) ¹	\$	33 Food, Clothing, and Misc. ⁶	\$	
21 Wages (Spouse) ¹	\$	34 Housing and Utilities ⁷	\$	
22 Interest - Dividends	\$	35 Vehicle Ownership Costs ⁸	\$	
23 Net Business Income ²	\$	36 Vehicle Operating Costs ⁹	\$	
24 Net Rental Income ³	\$	37 Public Transportation ¹⁰	\$	
25 Distributions ⁴	\$	38 Health Insurance	\$	
26 Pension/Social Security (Taxpayer)	\$	39 Out of Pocket Health Care Costs ¹¹	\$	
27 Pension/Social Security (Spouse)	\$	40 Court Ordered Payments	\$	
28 Child Support	\$	41 Child/Dependent Care	\$	
29 Alimony	\$	42 Life insurance	\$	
30 Other (Rent subsidy, Oil credit, etc.)	\$	43 Taxes (Income and FICA)	\$	
31 Other	\$	44 Other Secured Debts (Attach list)	\$	
32 Total Income (add lines 20-31)	\$	45 Total Living Expenses (add lines 33-44)	\$	

- 1 Wages, salaries, pensions, and social security:** Enter gross monthly wages and/or salaries. Do not deduct withholding or allotments taken out of pay, such as insurance payments, credit union deductions, car payments, etc. To calculate the gross monthly wages and/or salaries:
If paid weekly - multiply weekly gross wages by 4.3. Example: \$425.89 x 4.3 = \$1,831.33
If paid biweekly (every 2 weeks) - multiply biweekly gross wages by 2.17. Example: \$972.45 x 2.17 = \$2,110.22
If paid semimonthly (twice each month) - multiply semimonthly gross wages by 2. Example: \$856.23 x 2 = \$1,712.46
- 2 Net Income from Business:** Enter monthly net business income. This is the amount earned after ordinary and necessary monthly business expenses are paid. **This figure is the amount from page 6, line 82.** If the net business income is a loss, enter "0". Do not enter a negative number. If this amount is more or less than previous years, attach an explanation.
- 3 Net Rental Income:** Enter monthly net rental income. This is the amount earned after ordinary and necessary monthly rental expenses are paid. Do not include deductions for depreciation or depletion. If the net rental income is a loss, enter "0". Do not enter a negative number.
- 4 Distributions:** Enter the total distributions from partnerships and subchapter S corporations reported on Schedule K-1, and from limited liability companies reported on Form 1040, Schedule C, D or E.
- 5 Expenses not generally allowed:** We generally do not allow tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions, payments on unsecured debts such as credit card bills, cable television and other similar expenses. However, we may allow these expenses if it is proven that they are necessary for the health and welfare of the individual or family or for the production of income.
- 6 Food, Clothing, and Misc.:** Total of clothing, food, housekeeping supplies, and personal care products for one month.
- 7 Housing and Utilities:** For principal residence: Total of rent or mortgage payment. Add the average monthly expenses for the following: property taxes, home owner's or renter's insurance, maintenance, dues, fees, and utilities. Utilities include gas, electricity, water, fuel, oil, other fuels, trash collection, telephone, and cell phone.
- 8 Vehicle Ownership Costs:** Total of monthly lease or purchase/loan payments.
- 9 Vehicle Operating Costs:** Total of maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls for one month.
- 10 Public Transportation:** Total of monthly fares for mass transit (e.g., bus, train, ferry, taxi, etc.)
- 11 Out of Pocket Health Care Costs:** Monthly total of medical services, prescription drugs and medical supplies (e.g., eyeglasses, hearing aids, etc.)

Certification: Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

Taxpayer's Signature	Spouse's Signature	Date
-----------------------------	---------------------------	-------------

Attachments Required for Wage Earners and Self-Employed Individuals:

Copies of the following items for the last 3 months from the date this form is submitted (check all attached items):

- Income - Earnings statements, pay stubs, etc. from each employer, pension/social security/other income, self employment income (commissions, invoices, sales records, etc.).
- Banks, Investments, and Life Insurance - Statements for all money market, brokerage, checking and savings accounts, certificates of deposit, IRA, stocks/bonds, and life insurance policies with a cash value.
- Assets - Statements from lenders on loans, monthly payments, payoffs, and balances for all personal and business assets. Include copies of UCC financing statements and accountant's depreciation schedules.
- Expenses - Bills or statements for monthly recurring expenses of utilities, rent, insurance, property taxes, phone and cell phone, insurance premiums, court orders requiring payments (child support, alimony, etc.), other out of pocket expenses.
- Other - credit card statements, profit and loss statements, all loan payoffs, etc.
- A copy of last year's Form 1040 with all attachments. Include all Schedules K-1 from Form 1120S or Form 1065, as applicable.

The Adviser's Guide to Doing Business With the IRS

Sections 5 and 6 must be completed only if the taxpayer is SELF-EMPLOYED.

Section 5: Business Information

46 Is the business a sole proprietorship (filing Schedule C) Yes, Continue with Sections 5 and 6. No, Complete Form 433-B. All other business entities, including limited liability companies, partnerships or corporations, must complete Form 433-B.

47 Business Name	48 Employer Identification Number	49 Type of Business Federal Contractor <input type="checkbox"/> Yes <input type="checkbox"/> No
50 Business Website	51 Total Number of Employees	52a Average Gross Monthly Payroll 52b Frequency of Tax Deposits

53 Does the business engage in e-Commerce (Internet sales) Yes No

Payment Processor (e.g., PayPal, Authorize.net, Google Checkout, etc.) Name & Address (Street, City, State, ZIP code)	Payment Processor Account Number
54a	
54b	

Credit Cards Accepted by the Business.

Credit Card	Merchant Account Number	Merchant Account Provider, Name & Address (Street, City, State, ZIP code)
55a		
55b		
55c		

56 Business Cash on Hand. Include cash that is not in a bank. **Total Cash on Hand** \$

Business Bank Accounts. Include checking accounts, online bank accounts, money market accounts, savings accounts, and stored value cards (e.g. payroll cards, government benefit cards, etc.) Report Personal Accounts in Section 4.

Type of Account	Full name & Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union or Financial Institution.	Account Number	Account Balance As of <u> </u> mmddyyyy
57a			\$
57b			\$

57c Total Cash in Banks (Add lines 57a, 57b and amounts from any attachments) \$

Accounts/Notes Receivable. Include e-payment accounts receivable and factoring companies, and any bartering or online auction accounts. (List all contracts separately, including contracts awarded, but not started.) **Include Federal Government Contracts.**

Accounts/Notes Receivable & Address (Street, City, State, ZIP code)	Status (e.g., age, factored, other)	Date Due (mmddyyyy)	Invoice Number or Federal Government Contract Number	Amount Due
58a				\$
58b				\$
58c				\$
58d				\$

58e Total Outstanding Balance (Add lines 58a through 58d and amounts from any attachments) \$

Business Assets. Include all tools, books, machinery, equipment, inventory or other assets used in trade or business. Include Uniform Commercial Code (UCC) filings. Include Vehicles and Real Property owned/leased/rented by the business, if not shown in Section 4.

	Purchase/Lease/Rental Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
59a Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code) and Phone			
59b Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code) and Phone			
59c Total Equity (Add lines 59a, 59b and amounts from any attachments)						\$

Section 6 should be completed only if the taxpayer is SELF-EMPLOYED

Section 6: Sole Proprietorship Information (lines 60 through 81 should reconcile with business Profit and Loss Statement)

Accounting Method Used: Cash Accrual

Income and Expenses during the period (mmddyyyy)

to (mmddyyyy)

Total Monthly Business Income		Total Monthly Business Expenses (Use attachments as needed.)	
Source	Gross Monthly	Expense Items	Actual Monthly
60 Gross Receipts	\$	70 Materials Purchased ¹	\$
61 Gross Rental Income	\$	71 Inventory Purchased ²	\$
62 Interest	\$	72 Gross Wages & Salaries	\$
63 Dividends	\$	73 Rent	\$
64 Cash	\$	74 Supplies ³	\$
Other Income (Specify below)		75 Utilities/Telephone ⁴	\$
65	\$	76 Vehicle Gasoline/Oil	\$
66	\$	77 Repairs & Maintenance	\$
67	\$	78 Insurance	\$
68	\$	79 Current Taxes ⁵	\$
		80 Other Expenses, including installment payments (Specify)	\$
69 Total Income (Add lines 60 through 68)	\$	81 Total Expenses (Add lines 70 through 80)	\$
		82 Net Business Income (Line 69 minus 81) ⁶	\$

Enter the amount from line 82 on line 23, section 4. If line 82 is a loss, enter "0" on line 23, section 4.

Self-employed taxpayers must return to page 4 to sign the certification and include all applicable attachments.

¹ **Materials Purchased:** Materials are items directly related to the production of a product or service.

² **Inventory Purchased:** Goods bought for resale.

³ **Supplies:** Supplies are items used in the business that are consumed or used up within one year. This could be the cost of books, office supplies, professional equipment, etc.

⁴ **Utilities/Telephone:** Utilities include gas, electricity, water, oil, other fuels, trash collection, telephone and cell phone.

⁵ **Current Taxes:** Real estate, excise, franchise, occupational, personal property, sales and employer's portion of employment taxes.

⁶ **Net Business Income:** Net profit from Form 1040, Schedule C may be used if duplicated deductions are eliminated (e.g., expenses for business use of home already included in housing and utility expenses on page 4). Deductions for depreciation and depletion on Schedule C are not cash expenses and must be added back to the net income figure. In addition, interest cannot be deducted if it is already included in any other installment payments allowed.

FINANCIAL ANALYSIS OF COLLECTION POTENTIAL FOR INDIVIDUAL WAGE EARNERS AND SELF-EMPLOYED INDIVIDUALS		(IRS USE ONLY)
Cash Available (Lines 11, 12c, 13d, 14c, 15g, 56, 57c and 58e)	Total Cash	\$
Distrainable Asset Summary (Lines 17c, 18c, 19c, and 59c)	Total Equity	\$
Monthly Total Positive Income minus Expenses (Line 32 minus Line 45)	Monthly Available Cash	\$

Privacy Act: The information requested on this Form is covered under Privacy Acts and Paperwork Reduction Notices which have already been provided to the taxpayer.

How to prepare a Collection Information Statement (Form 433-A)

Who should use Form 433-A?

Form 433-A is used to obtain current financial information necessary for determining how a wage earner or self-employed individual can satisfy an outstanding tax liability.

You may need to complete Form 433-A:

- if you are an individual who owes income tax on Form 1040,
- if you are an individual who may be a responsible person for a Trust Fund Recovery Penalty,
- if you are an individual who may be personally responsible for a partnership liability,
- if you are an individual owner of a limited liability company that is a disregarded entity,
- or if you are an individual who is self-employed or has self-employment income. You are self-employed if you are in business for yourself, or carry on a trade or business as a sole proprietor or an independent contractor.

If you are a wage earner:

Complete Sections 1, 2, 3 and 4, including the signature line on page 4.

Include the attachments required on page 4.

Answer all questions in these sections or write N/A.

Include attachments if additional space is needed to respond completely to any question.

If you are a self-employed individual:

Complete sections 1, 2, 3, 4, 5 and 6, and the signature line on page 4.

Include the attachments required on page 4.

Answer all questions in these sections or write N/A.

Include attachments if additional space is needed to respond completely to any question.

Certification for Signature Line on page 4

This requires the taxpayer's signature. For joint income tax liabilities, both husband and wife must sign the statement.

If you do not complete the form, we will not be able to help determine the best method for you to pay the amount due.

This may result in significant delay in account resolution.

The areas explained in this publication are the ones we have found to be the most confusing to people completing the form.



Department of the Treasury
Internal Revenue Service

www.irs.gov

Publication 1854 (Rev. 3-2009)
Catalog Number 21563Q

Section 4 (Wage earners and Self-employed Individuals)

Items 12 – Personal Bank Accounts

Enter all accounts, even if there is currently no balance. Include stored value cards such as a payroll card from an employer, an electronic benefit card from a government agency, or a child support payment card. *Do not* enter bank loans.

Item 13 – Investments

Include any investment or interest you have in a business.

Item 14 – Available Credit

Enter only credit cards issued by a bank, credit union, or savings and loan (*MasterCard, Visa, overdraft protection, etc.*)

Items 17, 18 and 19 – Real Estate, Vehicles and Personal Assets

Current Fair Market Value – Indicate the amount you could sell the asset for today.

Date of Final Payment – Enter the date the loan or lease will be fully paid.

Item 17 – Real Estate

List locations of all property that you lease, own or are purchasing. If you are leasing or renting, list lessor or landlord. If you are purchasing, list lender.

Item 18 – Personal Vehicle

List all vehicles owned and leased (cars, boats, RVs, etc.) If you are leasing, list lessor. If you are purchasing, list lender.

Item 19 – Personal Assets

List other personal assets you own such as artwork, jewelry, antiques, furniture, collections (coins, guns etc.) not included in previous sections.

Section 5 (Self-employed only) Business Information/Assets

Item 54 – Payment Processor

List all third-party processors you use for business to accept credit card payments.

Item 57 – Business Bank Accounts

Enter all business bank accounts, even if there is currently no balance. Include stored value cards such as a telephone card or prepaid debit card for expenses. Do not enter bank loans.

Item 59 – Business Assets

List all other assets used in trade or business that were not included in previous sections.

Section 6 (Self-employed only) Business Income and Expenses

Complete Business Income and Expenses in Section 6 before completing Monthly Income/Expense Statement in Section 4. The business information in Section 6 should reconcile with your business profit and loss statement. See footnote 6 on page 6 if using Form 1040, Schedule C.

Section 4 Monthly Income/Expense Statement

If only one spouse has a tax liability, but both have income, list the total household income and expenses.

TOTAL INCOME

Items 20 and 21 – Wages

Enter your *gross* monthly wages and/or salaries. Do not deduct withholding or allotments you elect to take out of you pay such as insurance, credit union deductions, car payments, etc. List these deductions in Total Living Expenses.

Item 23 – Net Business Income

Enter your monthly *net* business income from line 82 on page 6.

Item 25 – Distributions

Enter the monthly average of your distributions from Partnerships, Subchapter S Corporations or Limited Liability Companies.

TOTAL LIVING EXPENSES (necessary)

To be necessary, expenses must provide for the health and welfare of you and your family and/or provide for the production of income, and must be reasonable in amount. We may ask you to provide substantiation of certain expenses.

Item 33 – Standard for Food, Clothing and Misc.

Enter the total amount for this item from the chart in the next column. If you claim a higher amount for a specific expense, you must verify and substantiate that amount.

Item 34 – Housing and Utilities

Enter the monthly rent or mortgage payment for your principal residence. Add the average monthly payment for the following expenses, if they are *not* included in your rent or mortgage payments: property taxes, homeowner's or renter's insurance, necessary maintenance and repair, homeowner dues, condominium fees, and utilities.

Item 35 – Vehicle Ownership Costs

Enter your monthly lease, purchase or loan payments.

Item 36 – Vehicle Operating Costs

Enter the average monthly costs for insurance, licenses, registration fees, inspections, normal repairs and maintenance, fuel, parking and tolls.

Item 37 – Public Transportation

Enter the average monthly public transportation expenses you pay for bus, train and taxi fares and any other mass transit fares.

Item 38 – Health Insurance

Enter your monthly expense for health insurance.

Item 39 – Out-of-Pocket Health Care Costs

Enter the amount for this item from the chart in the next column. If you claim a higher amount, you must verify and substantiate the expenses.

Item 40 – Court Ordered Payments

Includes child support, alimony, etc.

Item 44 – Other Secured Debts

Enter your average monthly payments for any other secured debts. Do not duplicate mortgage or car payments entered in Items 34 or 35 above.

Total Monthly National Standards for Food, Clothing and Misc. (Section 4, Item 33)

Effective 03/01/2009

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$285	\$537	\$626	\$752
Housekeeping supplies	\$28	\$66	\$61	\$74
Apparel & services	\$86	\$162	\$209	\$244
Personal care products & services	\$31	\$55	\$59	\$65
Miscellaneous	\$87	\$165	\$197	\$235
Total	\$517	\$985	\$1,152	\$1,370

More than four persons	Over Four Persons Amount
For each additional person, add to four-person total allowance:	\$262

To calculate the allowance, please read across to the column that matches the number of persons in your family.

When you have more than four persons in your family, you need to multiply the amount of additional persons over four by the dollar amount in the "Over Four" column; then add the answer to the dollar amount in the "Four" column. For example, when you have six persons in your family, you would multiply \$262 by the two members of your family over four to get \$524. You then would add this \$524 to the \$1,370 allowed for a family of four. As a result, your allowed expenses would equal \$1,894 (\$524 + \$1,370).

Total Monthly National Standards for Out-of-Pocket Health Care Costs

(Section 4, item 39)

Effective 03/1/2009

	Out-of-Pocket Health Care Costs
Under 65	\$60
65 and Older	\$144

To calculate the allowance, determine the number and age of persons in your household and multiply by the amount reflected in the chart.

For example, a family of three persons, all under 65, would be allowed \$180 (\$60 x 3)

Exhibit 5-6

Form **433-B**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

Collection Information Statement for Businesses

Note: Complete all entry spaces with the current data available or "N/A" (not applicable). Failure to complete all entry spaces may result in rejection of your request or significant delay in account resolution. Include attachments if additional space is needed to respond completely to any question.

Section 1: Business Information

<p>1a Business Name _____</p> <p>1b Business Street Address _____ Mailing Address _____ City _____ State _____ ZIP _____</p> <p>1c County _____</p> <p>1d Business Telephone (____) _____</p> <p>1e Type of Business _____</p> <p>1f Business Website _____</p>	<p>2a Employer Identification No. (EIN) _____</p> <p>2b Type of Entity (Check appropriate box below) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other _____ <input type="checkbox"/> Limited Liability Company (LLC) classified as a corporation <input type="checkbox"/> Other LLC – Include number of members _____</p> <p>2c Date Incorporated/Established _____ mmdyyyyy</p> <p>3a Number of Employees _____</p> <p>3b Monthly Gross Payroll _____</p> <p>3c Frequency of Tax Deposits _____</p> <p>3d Is the business enrolled in Electronic Federal Tax Payment System (EFTPS) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
--	--

4 Does the business engage in e-Commerce (Internet sales) Yes No

<p>Payment Processor (e.g., PayPal, Authorize.net, Google Checkout, etc.), Name and Address (Street, Cty, State, ZIP code)</p>	<p>Payment Processor Account Number</p>
5a	
5b	

Credit cards accepted by the business

Type of Credit Card (e.g., Visa, MasterCard, etc.)	Merchant Account Number	Merchant Account Provider Name and Address (Street, Cty, State, ZIP code)
6a		Phone _____
6b		Phone _____
6c		Phone _____

Section 2: Business Personnel and Contacts

Partners, Officers, LLC Members, Major Shareholders, Etc.

<p>7a Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Social Security Number _____ Home Telephone (____) _____ Work/Cell Phone (____) _____ Ownership Percentage & Shares or Interest _____</p>
<p>7b Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Social Security Number _____ Home Telephone (____) _____ Work/Cell Phone (____) _____ Ownership Percentage & Shares or Interest _____</p>
<p>7c Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Social Security Number _____ Home Telephone (____) _____ Work/Cell Phone (____) _____ Ownership Percentage & Shares or Interest _____</p>
<p>7d Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Social Security Number _____ Home Telephone (____) _____ Work/Cell Phone (____) _____ Ownership Percentage & Shares or Interest _____</p>

Section 3: Other Financial Information (Attach copies of all applicable documentation.)

8 Does the business use a Payroll Service Provider or Reporting Agent (If yes, answer the following) Yes No

Name and Address (Street, City, State, ZIP code)	Effective dates (mmddyyyy)
--	----------------------------

9 Is the business a party to a lawsuit (If yes, answer the following) Yes No

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant Amount of Suit \$	Location of Filing	Represented by	Docket/Case No.
	Possible Completion Date (mmddyyyy)	Subject of Suit	

10 Has the business ever filed bankruptcy (If yes, answer the following) Yes No

Date Filed (mmddyyyy)	Date Dismissed or Discharged (mmddyyyy)	Petition No.	Location
-----------------------	---	--------------	----------

11 Do any related parties (e.g., officers, partners, employees) **have outstanding amounts owed to the business** (If yes, answer the following) Yes No

Name and Address (Street, City, State, ZIP code)	Date of Loan	Current Balance As of _____ mmddyyyy	Payment Date	Payment Amount
		\$		\$

12 Have any assets been transferred, in the last 10 years, from this business for less than full value (If yes, answer the following) Yes No

List Asset	Value at Time of Transfer	Date Transferred (mmddyyyy)	To Whom or Where Transferred
	\$		

13 Does this business have other business affiliations (e.g., subsidiary or parent companies) (If yes, answer the following) Yes No

Related Business Name and Address (Street, City, State, ZIP code)	Related Business EIN:
---	-----------------------

14 Any increase/decrease in income anticipated (If yes, answer the following) Yes No

Explain (use attachment if needed)	How much will it increase/decrease	When will it increase/decrease
	\$	

Section 4: Business Asset and Liability Information

15 Cash on Hand. Include cash that is not in the bank **Total Cash on Hand** \$

Business Bank Accounts. Include online bank accounts, money market accounts, savings accounts, checking accounts, and stored value cards (e.g., payroll cards, government benefit cards, etc.)
List safe deposit boxes including location and contents.

Type of Account	Full Name and Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union or Financial Institution.	Account Number	Account Balance As of _____ mmddyyyy
16a			\$
16b			\$
16c			\$

16d Total Cash in Banks (Add lines 16a through 16c and amounts from any attachments) \$

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Accounts/Notes Receivable. Include e-payment accounts receivable and factoring companies, and any bartering or online auction accounts. (List all contracts separately, including contracts awarded, but not started.)

17 Is the business a Federal Government Contractor Yes No (Include Federal Government contracts below)

Accounts/Notes Receivable & Address (Street, City, State, ZIP code)	Status (e.g., age, factored, other)	Date Due (mmddyyyy)	Invoice Number or Federal Government Contract Number	Amount Due
18a Contact Name: Phone:				\$
18b Contact Name: Phone:				\$
18c Contact Name: Phone:				\$
18d Contact Name: Phone:				\$
18e Contact Name: Phone:				\$
18f Outstanding Balance (Add lines 18a through 18e and amounts from any attachments)				\$

Investments. List all investment assets below. Include stocks, bonds, mutual funds, stock options, and certificates of deposit.

Name of Company & Address (Street, City, State, ZIP code)	Used as collateral on loan	Current Value	Loan Balance	Equity Value Minus Loan
19a Phone:	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$	\$
19b Phone:	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	\$	\$
19c Total Investments (Add lines 19a, 19b, and amounts from any attachments)				\$

Available Credit. Include all lines of credit and credit cards. Full Name & Address (Street, City, State, ZIP code) of Credit Institution	Credit Limit	Amount Owed As of _____ mmddyyyy	Available Credit As of _____ mmddyyyy
20a Account No.	\$	\$	\$
20b Account No.	\$	\$	\$
20c Total Credit Available (Add lines 20a, 20b, and amounts from any attachments)			\$

Real Property. Include all real property and land contracts the business owns/leases/rents.

	Purchase/Lease Date (mmdyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmdyyyy)	Equity FMV Minus Loan
21a Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21b Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21c Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21d Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21e Total Equity (Add lines 21a through 21d and amounts from any attachments)						\$

Vehicles, Leased and Purchased. Include boats, RVs, motorcycles, trailers, mobile homes, etc.

	Purchase/Lease Date (mmdyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmdyyyy)	Equity FMV Minus Loan
22a Year	Mileage	\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone				
22b Year	Mileage	\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone				
22c Year	Mileage	\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone				
22d Year	Mileage	\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone				
22e Total Equity (Add lines 22a through 22d and amounts from any attachments)						\$

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Business Equipment. Include all machinery, equipment, merchandise inventory, and/or other assets. Include Uniform Commercial Code (UCC) filings.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
23a Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23b Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23c Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23d Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23e Total Equity (Add lines 23a through 23d and amounts from any attachments)						\$

Business Liabilities. Include notes and judgments below.

Business Liabilities	Secured/ Unsecured	Date Pledged (mmddyyyy)	Balance Owed	Date of Final Payment (mmddyyyy)	Payment Amount
24a Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24b Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24c Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24d Total Payments (Add lines 24a through 24c and amounts from any attachments)					
\$					

Section 5: Monthly Income/Expense Statement for Business

Accounting Method Used: Cash Accrual

Income and Expenses during the period (mmdyyyy)

to (mmdyyyy)

Total Monthly Business Income		Total Monthly Business Expenses	
Source	Gross Monthly	Expense Items	Actual Monthly
25 Gross Receipts from Sales/Services	\$	36 Materials Purchased ¹	\$
26 Gross Rental Income	\$	37 Inventory Purchased ²	\$
27 Interest Income	\$	38 Gross Wages & Salaries	\$
28 Dividends	\$	39 Rent	\$
29 Cash	\$	40 Supplies ³	\$
Other Income (Specify below)		41 Utilities/Telephone ⁴	\$
30	\$	42 Vehicle Gasoline/Oil	\$
31	\$	43 Repairs & Maintenance	\$
32	\$	44 Insurance	\$
33	\$	45 Current Taxes ⁵	\$
34	\$	46 Other Expenses (Specify)	\$
35 Total Income (Add lines 25 through 34)	\$	47 IRS Use Only Allowable Installment Payments	\$
		48 Total Expenses (Add lines 36 through 47)	\$

- 1 Materials Purchased:** Materials are items directly related to the production of a product or service.
- 2 Inventory Purchased:** Goods bought for resale.
- 3 Supplies:** Supplies are items used to conduct business and are consumed or used up within one year. This could be the cost of books, office supplies, professional equipment, etc.

- 4 Utilities/Telephone:** Utilities include gas, electricity, water, oil, other fuels, trash collection, telephone and cell phone.
- 5 Current Taxes:** Real estate, state, and local income tax, excise, franchise, occupational, personal property, sales and the employer's portion of employment taxes.

Certification: Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

Signature	Title	Date
-----------	-------	------

Print Name of Officer, Partner or LLC Member

Attachments Required: Copies of the following items for the last 3 months from the date this form is submitted (check all attached items):

- Banks and Investments - Statements for all money market, brokerage, checking/savings accounts, certificates of deposit, stocks/bonds.
- Assets - Statements from lenders on loans, monthly payments, payoffs, and balances, for all assets. Include copies of UCC financing statements and accountant's depreciation schedules.
- Expenses - Bills or statements for monthly recurring expenses of utilities, rent, insurance, property taxes, telephone and cell phone, insurance premiums, court orders requiring payments, other expenses.
- Other - credit card statements, profit and loss statements, all loan payoffs, etc.
- Copy of the last income tax return filed; Form 1120, 1120S, 1065, 1040, 990, etc.

Additional information or proof may be subsequently requested.

FINANCIAL ANALYSIS OF COLLECTION POTENTIAL FOR BUSINESSES		(IRS USE ONLY)
Cash Available (Lines 15, 16d, 18f, 19c, and 20c)	Total Cash	\$
Distraintable Asset Summary (Lines 21e, 22e, and 23e)	Total Equity	\$
Monthly Income Minus Expenses (Line 35 Minus Line 48)	Monthly Available Cash	\$

Privacy Act: The information requested on this Form is covered under Privacy Acts and Paperwork Reduction Notices which have already been provided to the taxpayer.

Exhibit 5-7

Form 433-F (EN/SP) (Rev. 7-2008)		Department of the Treasury — Internal Revenue Service Collection Information Statement				
Name(s) and Address <input type="checkbox"/> If address provided above is different then last return filed please check here. County of Residence _____		Your Social Security Number or Individual Taxpayer Identification Number _____				
		Your Spouse's Social Security Number or Individual Taxpayer Identification Number _____				
		Your Telephone Numbers Home: () Work: () Cell: ()		Spouse's Telephone Numbers Home: () Work: () Cell: ()		
A. ACCOUNTS / LINES OF CREDIT (include Banks, Savings and Loans, Credit Unions, Certificates of Deposit, Individual Retirement Accounts (IRAs), Keogh Plans, Simplified Employee Pensions, 401(k) Plans, Profit Sharing Plans, Mutual Funds and Stock Brokerage Accounts)						
Name and Address of Institution		Type of Account		Current Balance / Value		
Total number of dependents claims on Last Return Filed _____ Over 65 _____ Under 65 _____						
B. REAL ESTATE (home, vacation property, timeshares and other real estate)						
County / Description	Monthly Payment(s)	Financing		Current Value	Balance Owed	Equity
<input type="checkbox"/> Primary Residence <input type="checkbox"/> Other		Year Purchased	Purchase Price			
		Year Refinanced	Refinance Amount			
<input type="checkbox"/> Primary Residence <input type="checkbox"/> Other		Year Purchased	Purchase Price			
		Year Refinanced	Refinance Amount			
<input type="checkbox"/> Primary Residence <input type="checkbox"/> Other		Year Purchased	Purchase Price			
		Year Refinanced	Refinance Amount			
C. OTHER ASSETS (cars, boats, recreational vehicles, whole life policies, etc.)						
Description	Monthly Payment	Year Purchased	Final Payment (mo / yr)	Current Value	Balance Owed	Equity
			/			
			/			
			/			
			/			
			/			
			/			
			/			

TURN PAGE TO CONTINUE

Chapter 5: Installment Agreements

D. CREDIT CARDS (Visa, MasterCard, American Express, Department Stores, etc.)			
Type	Credit Limit	Balance Owed	Minimum Monthly Payment
E. WAGE INFORMATION (If you have more than one employer, include the information on another sheet of paper.)			
Your current Employer (name and address)		Spouse's current Employer (name and address)	
<input type="checkbox"/> Paid monthly (once each month) <input type="checkbox"/> Paid bi-weekly (every two weeks) <input type="checkbox"/> Paid semi-monthly (two times each month) <input type="checkbox"/> Paid weekly How long at current employer _____ Current Year to Date's Total Income _____ Total Income from Last Year's 1040 Tax Return _____	<input type="checkbox"/> Paid monthly (once each month) <input type="checkbox"/> Paid bi-weekly (every two weeks) <input type="checkbox"/> Paid semi-monthly (two times each month) <input type="checkbox"/> Paid weekly How long at current employer _____ Current Year to Date's Total Income _____ Total Income from Last Year's 1040 Tax Return _____		
F. NON-WAGE HOUSEHOLD INCOME (List monthly amounts. For Self-Employment and Rental Income, list the monthly amount received after expenses.)			
Alimony Income: _____	Net Rental Income: _____	Interest Income: _____	
Child Support Income: _____	Unemployment Income: _____	Social Security Income: _____	
Net Self Employment Income: _____	Pension Income: _____	Other: _____	
G. MONTHLY NECESSARY LIVING EXPENSES (List monthly amounts. For expenses paid other than monthly, see instructions.)			
1. Food / Personal Care Food: _____ Housekeeping Supplies: _____ Clothing and Clothing Services: _____ Personal Care Products & Services: _____ Misc. (Cable, Internet, etc.): _____ Total: 0.00	3. Housing & Utilities Rent: _____ Electric, Oil/Gas, Water/Trash: _____ Telephone and/or Cell Phone: _____ Real Estate Taxes and Insurance: _____ (if not included in B above) Total: 0.00	5. Other Child / Dependent Care: _____ Estimated Tax Payments: _____ Term Life Insurance: _____ Retirement (Employer Required): _____ Retirement (Voluntary): _____ Court Ordered Payments: _____ _____ _____	
2. Transportation Gas/Insurance/Licenses/Parking/Maintenance etc.: _____ Public Transportation: _____	4. Medical Health Insurance: _____ Out of Pocket Health Care Expenses: _____		
See the instructions for detailed information on how to complete the Monthly Necessary Living Expenses. IRS standard amounts are found on the internet at http://www.irs.gov/individuals/article/0,,id=96543,00.html . If you are required to send supporting documentation please send copies and not the original documents.			
H. ADDITIONAL INFORMATION			
1. We cannot consider an installment agreement unless all returns have been filed. Attach a signed copy of ALL unfiled return(s).			
2. Proposed Monthly Installment Agreement Payment Amount: _____			
3. Please explain any expected changes to future income or expenses: _____			
Under penalty of perjury, I declare to the best of my knowledge and belief this statement of assets, liabilities and other information is true, correct and complete.			
Your Signature	Spouse's Signature	Date	

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Instructions

Complete all the blocks. Write N/A (Not Applicable) for those which don't apply to you. We need you to complete the form so we can establish the best method for you to pay the amount due.

If any section is too small for the information you need to supply, please use a separate sheet.

Failure to complete the form or provide copies (not originals) of required attachments (as stated below) may result in a delay in resolving your account. We may also require you to submit financial substantiation after our financial analysis is complete.

Section A – Accounts / Lines of Credit

List all accounts, even if they currently have no balance. However, do not enter bank loans in this section.

Section B – Real Estate

List all real estate you own or are purchasing. This listing should include your home and any other real estate you own. Include the county and description, the year(s) and amount(s) of purchase and/or refinancing, the current market value and the amount you owe. To determine equity, subtract the amount owed from its current market value.

Section C – Other Assets

List all cars, boats, recreational vehicles, whole life policies, or other assets that you own. If a vehicle is leased, write "lease" in the "year purchased" column. To determine equity, subtract the amount owed from its current market value.

Section D – Credit Cards

List all credit cards and lines of credit, even if there is no balance owed.

Section E – Wage Information

Provide the name and address of employers for you and your spouse. Include both spouses' income, even if the tax liability is not the result of a jointly filed return. Check the appropriate box indicating how you are paid. Year to Date Income includes all income, without deductions, for you and your spouse. Include all wage income from all employers since January of the current year. Last years gross income should be recorded from last years filed return.

Section F – Non-Wage Household Income

Enter monthly amounts for all sources of household income. For any income not received monthly, calculate the monthly amount as follows:

- If received quarterly - divide by three.
- If received weekly - multiply by 4.3.
- If received biweekly - multiply by 2.17.

Net Self-Employment Income is the amount you earn after you pay ordinary and necessary monthly business expenses. This figure should relate to the yearly net profit from Schedule C on your Form 1040 or your current year profit and loss statement, but should not include depreciation expenses. If your net income is less than the previous year, attach an explanation. If net income is a loss, enter "0".

Net Rental Income is the amount you earn after you pay ordinary and necessary monthly rental expenses. This figure should relate to the amount reported on Schedule E of your Form 1040. If net rental income is loss, enter "0".

Section G – Monthly Necessary Living Expenses

Expenses that do not provide for the health and welfare of you or your family or for the production of income are generally not considered necessary. These may include tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions and payments to unsecured debts.

Enter monthly amounts for expenses. For any expenses not paid monthly, calculate the monthly amount as follows:

- If paid quarterly - divide by three.
- If paid weekly - multiply by 4.3.
- If paid biweekly - multiply by 2.17.

For expenses claimed in boxes 1 and 4 you may either use the total amounts shown on the IRS website at <http://www.irs.gov/individuals/article/0,,id=96543,00.html>, and substantiation may be required once the financial analysis is completed. If you are currently paying higher expenses you may enter that amount, but you are also required to submit supporting documentation with this form, which show payments being made.

For boxes 2 and 3 you must enter only the amount you actually spend on these expenses. If your total amount is higher than the amount shown on the IRS website shown above, you are **REQUIRED** to submit supporting documentation when submitting this form, such as copies of cancelled checks etc. which show payments being made.

All expenses claimed in box 5 **REQUIRE** supporting documentation when submitting this form. This includes copies of cancelled checks, pay stubs etc. that indicate payments are being made. For any court ordered payments you **MUST** submit a copy of the court order portion that shows the amount you are ordered to pay and the signatures.

If you do not have access to the IRS website, itemize your actual expenses and we will ask you for additional proof, if required.

Rent - Do not enter mortgage payment here.

Medical - Enter only ongoing medical expenses. Do not include a one time only medical expense.

Out-of-Pocket health care expenses include:

- Medical services
- Prescription drugs
- Medical supplies, including eyeglasses and contact lenses.

Child / Dependent Care - Enter the monthly amount you pay for the care of dependents that can be claimed on your Form 1040.

Estimated Tax Payments - Calculate the monthly amount you pay for estimated taxes by dividing the quarterly amount due on your Form 1040ES by 3.

Life Insurance - Enter the amount you pay for term life insurance only. Whole life insurance has cash value and should be listed in Section C.

Chapter 6

Offers in Compromise

Introduction

IRC §7122 authorizes the IRS to compromise any civil or criminal tax liability. Under this provision, the IRS may settle with a taxpayer for a tax liability lower than that assessed, either because there is doubt as to liability or because of the inability of the taxpayer to pay. Most offers in compromise are made on the basis of inability to pay. An offer in compromise may also be made where the amount of the liability is in question. Form 656-L has been designated for that purpose. Since most offers are made because of the inability of the taxpayer to pay, we address here only offers made for this reason.

Offers in compromise can be made by individuals, corporations, and other taxpayer entities.

Our discussion in this chapter, however, assumes that the taxpayer is an individual except where otherwise stated.

Offers in Compromise

An Historical Perspective

Until 1992, there were neither uniform standards nor procedures governing the acceptance of offers in compromise (OIC) by the IRS. As a result, the acceptance rate was low and IRC §7122 served neither to give taxpayers significant relief nor to raise money for the Treasury.

On February 26, 1992, the IRS published Policy Statement P-5-100 and substantially revised the offer in compromise sections of the Internal Revenue Manual. These amendments to IRS internal operating procedures were made for the purpose of increasing receipts and reducing the IRS inventory of receivables.

Features

The more important features of Policy Statement P-5-100 were as follows:

- Compromise offers were to be considered adequate if they reasonably reflected collection potential and the taxpayer's maximum ability to pay.
- Time value of money concepts were emphasized and offers providing for immediate payment were to be favored over future income collateral agreements or deferred payment plans. An offer was required to reflect, however, the present discounted value of the excess of five years of the taxpayer's income over necessary expenses.
- Procedures were implemented for reviewing offers in compromise at the national and regional levels.

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- Form 656, *Offer in Compromise*, and Forms 433-A and 433-B, *Collection Information Statements*, were simplified.

The 1992 changes were somewhat successful, but the administration of offers still appeared to be marked by excessive delays and unrealistic standards for acceptance.

The primary advantages of an offer in compromise are that it

- May include the discharge of tax liabilities that would otherwise not be dischargeable in bankruptcy.
- The liability is discharged without payment in full.
- Upon satisfaction of the terms of the offer, any tax liens will be removed. This may not be the case in a Chapter 7 bankruptcy.

The disadvantages to an offer in compromise are

- They are very difficult to get approved.
- The taxpayer must come up with cash beyond his means to pay the offer. This means that he needs to know the “right people.”
- The statute of limitations on collection is tolled while the offer is being considered plus 30 days. Meanwhile, interest continues to accrue.
- The waiting period while the offer is pending is long—sometimes as much as a year.

Information pertaining to IRS procedures regarding offers is found in Section 5.8 of the Internal Revenue Manual. It also includes details of how the Service should value taxpayer assets.

In her 2010 Annual Report to Congress, the National Taxpayer Advocate pointed out some of the advantages of the OIC program. Ms. Olson pointed out that OICs are good for the government because they enable the government to collect as much tax as it reasonably can and, importantly, provide a strong incentive for the taxpayer to remain in compliance. The current economic climate has resulted in a nine percent increase in offers. However, the IRS, during fiscal year 2010, accepted only 13,886 offers, which represents an accepted offer for one of every 290 delinquent taxpayers. The IRS has proposed to make the offer amount flexible by allowing certain payments for unsecured debt, reducing or exempting automobile and home values, and using fewer months of future income to calculate reasonable collection potential. None of these proposals appear to be in place yet, however hopefully some of these proposals will be implemented soon.

Liabilities to be Compromised

A compromise is effective for any assessed tax liability, penalties, and interest for the years or periods covered by the offer. The tax liability for the period should be conclusively settled. Neither the taxpayer nor the government can reopen a compromised case unless there was fraud or a mutual mistake of a material fact.

If a substitute for return has been prepared by the Service, the IRS will generally ask that the taxpayer file a corrected return.

The offer is only good for the specific periods itemized on Form 656. Therefore, it is imperative that all outstanding tax liabilities be carefully identified before submitting the form.

The Internal Revenue Service Restructuring and Reform Act of 1998

The Internal Revenue Service Restructuring and Reform Act of 1998, in part, represented an attempt by Congress to address the problems of administering the offer in compromise program. The most significant provisions were the following:

GUIDELINES

IRC §7122(c) was amended to provide that the IRS must prescribe guidelines for its employees to determine whether an offer in compromise is adequate and should be accepted. Arguably, this merely codified the practice of the IRS.

SCHEDULES OF NATIONAL AND LOCAL ALLOWANCES

Under the 1998 Act, the IRS is required to publish schedules of national and local allowances designed to provide that taxpayers entering into offers in compromise have adequate means to provide for basic living expenses. This, again, was already IRS practice. Under the 1998 Act, local and national standards are not required to be used if their use would result in the taxpayer having inadequate means to provide for living expenses.

Section V of Form 433-A consists of a Monthly Income and Expense Analysis. The excess of the taxpayer's income over permitted expenses is treated as an asset under the offer in compromise rules. The offer in compromise is required to reflect the excess of income over permitted expenses for some period of time in the future.

SPOUSES

A married couple may submit a joint offer in compromise for a joint tax liability. However, the IRM states that a joint compromise should not be considered when the taxpayers are not maintaining a marital relationship, one taxpayer claims he is not liable for any portion of the tax liability, or the taxpayers are attempting to allocate responsibility for portions of the tax.

If a compromise made jointly by spouses is terminated due to the actions of one of the spouses, the IRS, upon application, is required to reinstate the compromise with the spouse (or former spouse) who remains in compliance with the terms of the compromise.

REVIEW OF REJECTIONS

There must be an independent administrative review of any rejection of a proposed offer in compromise before the taxpayer is advised of the rejection. A taxpayer may appeal any rejection of an offer to the Internal Revenue Service Office of Appeals. Again, the statute merely codified existing practice, at least with respect to the appeal rights of the taxpayer. During 2009, the IRS issued a statement urging its personnel to not simply reject an offer, but to contact the taxpayer and attempt to resolve the issue either through an amended offer or an installment agreement.

The IRS has instituted a test program during which its Appeals Office will offer arbitration and mediation for offers in compromise in Atlanta, Chicago, Cincinnati, Houston, Indianapolis, Louisville, Phoenix and San Francisco. The test program has been extended under December 31, 2012.¹¹³ It is possible that the IRS will expand the program to other cities.

LEVY WHILE APPLICATION PENDING

Unless the collection of tax is in jeopardy, the IRS is prohibited from levying on a taxpayer's property after an offer in compromise by the taxpayer has been accepted for processing and for thirty days after a rejection of the offer. The prohibition remains in effect during the period of any appeal of the rejection of the offer, provided that the appeal is filed within thirty days of the rejection of the offer. The Regulations provide that collection action will again be suspended if a taxpayer makes a good-faith revised offer within thirty days of the rejection of the original offer.

NOMINAL OFFERS

The IRS is prohibited from rejecting an offer in compromise from a low-income taxpayer "solely" on the basis of the amount of the offer. While the language of the statute may be problematic, the legislative intention appears to be to permit offers of nominal amounts by low-income taxpayers to be accepted in compromise of the taxpayer's tax liabilities. The significance of this provision is difficult to predict. Consider an offer of, say, \$100 from a zero-income taxpayer in compromise of a \$20,000,000 tax liability. Must such an offer be accepted? It appears likely that in such cases the IRS will take the position that the offer is unacceptable on public policy grounds because of the failure of the taxpayer to make provision for such large tax liabilities. Hence, the grounds for rejection would not "solely" be the amount of the offer. But if this argument prevails, does the statute have any operational meaning? The Regulations define "low income" in terms of criteria adopted by the U.S. Department of Health and Human Services.

The IRS publishes on its website a statement that cautions taxpayers with respect to "unscrupulous promoters" who represent that they can negotiate offers in compromise for "pennies on the dollar." The advice is still worth heeding.

STATEMENT OF RIGHTS

Under the 1998 Act, the IRS was required to prepare a statement which sets forth in simple, nontechnical terms the rights of a taxpayer and the obligations of the Internal Revenue Service relating to offers in compromise. The statement was required specifically to advise taxpayers of certain provisions of the 1998 Act as they affected offers in compromise. This statement is now contained in Publication 594.

It is clear from the above that the statutory provisions themselves were hardly radical. Congress's intent, however imperfectly expressed in the statute, is probably best understood from the Committee reports. The Senate Committee Report states that "It is anticipated that the IRS will adopt a liberal acceptance policy for offers in compromise to provide an incentive for taxpayers to continue to file tax returns and continue to pay their taxes." The Conference Report states that "the conferees expect that the present regulations will be expanded so as to permit the

¹¹³ Ann. 2011-6.

IRS, in certain circumstances, to consider additional factors (that is, factors other than doubt as to liability or collectibility) in determining whether to compromise the income tax liabilities of individual taxpayers. For example, the conferees anticipate that the IRS will take into account factors such as equity, hardship, and public policy where a compromise of an individual taxpayer's income tax liability would promote effective tax administration." The application of "effective tax administration" criteria is discussed in the following text.

Making the Offer

Form 656

Form 656 was updated on March 2009. Form 656-B contains the checklist, information on making the offer, and the worksheet to determine the amount of the offer. Form 656-B is not submitted with the offer. The IRS also offers an interactive offer in compromise application procedure on its website.

User Fee

Effective November 1, 2003, Treas. Reg. §300.3 imposes a user fee of \$150 for each offer in compromise filed. Offers filed without payment of the fee will not be considered unless the taxpayer files the form certifying that he or she is exempt from the fee either because the offer is submitted solely upon doubt as to liability or because collection of the fee would effect an economic hardship. Form 656-A includes a worksheet which enables the taxpayer to calculate whether he or she is exempt from the fee by reason of his or her income being below levels based on poverty guidelines established by the U.S. Department of Health and Human Services. The fee waiver on the grounds of poverty applies only to individuals.

Under IRC §7122(c)(2)(B), the user fee is applied against the assessed tax, interest, or penalty that is owed by the taxpayer.¹¹⁴ This provision is relevant to the taxpayer only if the offer is not accepted by the IRS.

Establishing Amount and Terms of Payment

AMOUNT OF OFFER AND EFFICIENT TAX ADMINISTRATION

Under the 1998 and earlier versions of Form 656, the IRS was criticized for apparently imposing an inflexible standard for an offer in compromise. This standard was that the offer was required to represent at a minimum the net realizable value of the taxpayer, plus the value of the excess of five years' income over permitted expenses. The current regulations under IRC §7122 attempt to define the circumstances under which the compromising of the tax liability would promote "efficient tax administration." This refers to situations in which the IRS may accept an offer even though the amount of the offer is less than the realizable value of the taxpayer's assets.

The Regulations take the position that a compromise may be entered into to promote effective tax administration when, although collection in full could be achieved, collection of the full liability will create economic hardship or exceptional circumstances exist, such that collection of the full liability will be detrimental to voluntary compliance by taxpayers, and compromise of

¹¹⁴ IRC §7122(c)(2)(B).

the liability will not undermine compliance by taxpayers with the tax laws. (Presumably, and notwithstanding the wording of the Regulations, effective tax administration principles may also be applicable when the liability could be collected in part, but effective tax administration principles call for the taxpayer to pay only a smaller part.)

The Regulations¹¹⁵ state that the following factors support a determination of economic hardship:

1. Taxpayer is incapable of earning a living because of a long-term illness, medical condition, or disability and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;
2. Although taxpayer has certain assets, liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses; and
3. Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

The Regulations state that the following factors support a determination that compromise would not undermine compliance by taxpayers with the tax laws:

1. Taxpayer does not have a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;
2. Taxpayer has not taken deliberate actions to avoid the payment of taxes; and
3. Taxpayer has not encouraged others to refuse to comply with the tax laws.

It appears questionable whether the Regulations really advance the debate very much as to the reasonable circumstances under which a liability may be compromised for an amount less than the realizable value of assets. Take, for example, the following from Treas. Reg. §301.7122-1(c)(3)(iii)(Ex.3):

The taxpayer is disabled and lives on a fixed income that will not, after allowance of basic living expenses, permit full payment of his liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate his disability. The taxpayer's equity in the house is sufficient to permit payment of the liability he owes. However, because of his disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer. The taxpayer's overall compliance history does not weigh against compromise.

Say the house had not been specially equipped. Would that make any difference to the result? What are the critical facts in this example?

There is provision in the IRM¹¹⁶ for acceptance of an offer on the grounds that the acceptance promotes effective tax administration for reasons other than hardship. The grounds might include

¹¹⁵ Treas. Reg. §301.7122-1(c)(3).

¹¹⁶ 5.8.11.2.2.

some fault on the part of the IRS, such as erroneous advice in handling the taxpayer's tax issues, the incapacity of the taxpayer, or that the tax liability is directly attributable to the criminal conduct of a third party. The allegedly unjust effect of the tax laws will not justify an acceptance on the grounds that it promotes effective tax administration.

Value of Taxpayer's Assets

The taxpayer's assets are valued on Form 433-A. The necessary amount of the offer is the sum of the amount reflecting the value of the taxpayer's assets and an amount reflecting the excess of income over permitted expenses. This includes

- The value of cash, securities, and loan value of life insurance policies, less the current month's necessary living expenses; plus
- The value of retirement plans, IRAs, and so on, to the extent they can be cashed out or borrowed upon, less any taxes or early withdrawal penalties to be paid; plus
- The value of other assets disclosed on Form 433-A with the following adjustments:
 - Where appropriate, the values disclosed on Form 433-A are reduced by 20 percent to reflect quick-sale value.
 - Liens to which assets are subject are subtracted from the value, provided that those liens are perfected and that the lien has priority over the claim of the IRS to the assets. (The lien will have priority over the claim of the IRS in most states, for example, where the mortgage was filed before the IRS lien was filed.)
 - The value of personal effects exempt from levy under IRC §6334(a)(2) levy exemptions and the value of trade or business tools exempt from levy under IRC §6334(a)(3).

TERMS OF PAYMENT OF OFFERS UNDER FORM 656

Form 656 describes the three categories of terms of payment for an offer. They are as follows:

- *Lump Sum Cash Offer*—There are two different lump sum cash offer possibilities. If the offer will be fully paid within 5 or fewer installments upon notice of acceptance of the offer and the full offer will be paid up in five months or less, the taxpayer should submit an offer of the realizable value of his assets plus the excess of income over allowable expenses for 48 months.

If the taxpayer will make these installments over more than five months but less than 24 months, the amount of the offer should be the realizable value of his assets plus the excess of income over allowable expenses for 60 months.

- *Short Term Periodic Payment Offer*—The offer amount must be fully paid within 24 months from the date the *IRS receives* the offer. The taxpayer must submit the first monthly payment with the offer and must continue to make monthly payments while the offer is being considered. The offer must consist of the realizable value of the taxpayer's assets plus the income over allowable expenses for 60 months or the statute of limitation

on collection, whichever is less. Note that, if the IRS takes 12 months to accept or deny the offer, the taxpayer will have still made significant payments of the tax to the IRS.

- *Deferred Periodic Payment Offer*—This option requires the taxpayer to pay the offer amount in monthly payments over the remaining collection statutory period. The amount of the offer must include the realizable value of the taxpayer's assets plus the amount of income over allowable expenses for the remainder of the statutory collection period. The taxpayer must make his first payment with the offer and continue to make payments while the IRS is considering the offer.

The excess of income over permitted expenses is total income less total expenses as established in page 4 of Form 433-A. Note that the amount of the excess income over permitted expenses required to be taken into account on Form 656 depends upon whether the taxpayer will be able to make full payment of the offer within 5 months of acceptance. If the taxpayer can pay the offer in full within 5 months, he will save the equivalent of 12 months of excess payments. He also does not have to continue to make payments during the period of time that the IRS is considering the offer.

In completing Form 656 keep in mind that if monthly income does not exceed expenses, there is little likelihood that the offer will be accepted. If the taxpayer cannot meet his living expenses there is little reason to believe that he will be able to stay current with subsequent year tax obligations.

Under IRC §7122(c), the taxpayer is required to make advance payments toward the offer being made.

- *Lump-Sum Offer* (defined as an offer to pay the offered amount in five or fewer payments)—Where a lump-sum offer is made, 20 percent of the lump sum must be paid in cash with the submission of the offer in compromise.
- *Periodic Payment Offer*—Where the offer is other than a lump-sum offer, the first proposed installment must accompany the offer. The taxpayer is then required to continue to make the installment payments while the offer is under consideration. (But this should not be for more than two years.) If the taxpayer does not make the payments, the IRS is entitled to treat the offer as having been withdrawn.

Under IRC §7122(d)(3)(C), offers submitted without the advance payment may be returned to the taxpayer as unprocessable.

The obvious purpose served by the advance payment provisions is to discourage taxpayers from making unrealistic offers for the purpose of delaying forced collection of the debt.

The advance payments made toward the offer are credited against the tax owed. The taxpayer is entitled to specify how the payment is applied. This is critical especially where an offer is being submitted for payroll taxes. The advance payments are not refundable even if the offer is rejected.

It appears likely that these provisions will discourage offers being made. With many offers, it is family members who supply funds either as a gift or as a loan in order to enable the taxpayer to make a clean start. Under the current statute, the generous family member may face the prospect

of having his or her loan or gift not benefit the taxpayer at all. This might occur if the offer is refused and the installments paid by the taxpayer with the cash from the gift or loan are merely applied to reduce the taxpayer's overwhelming tax liabilities which will never be paid.

Collateral Agreements

FUTURE INCOME COLLATERAL AGREEMENTS

A future income collateral agreement is an agreement under which the taxpayer must pay the IRS an agreed fraction of annual income, less ordinary living expenses, usually for a period of five years. The 1999 IRM amendments provide that collateral agreements should be the exception rather than the rule, should not be a substitute for amounts that should otherwise have been collected with the offer, and should be secured only when a significant recovery can be expected. An example might be where a taxpayer has few assets but substantial income potential.

OTHER COLLATERAL AGREEMENTS

Other kinds of collateral agreements, though uncommon, are also available:

- *Adjusted Basis of Assets*—This is a form of collateral agreement under which the taxpayer agrees to a reduced basis for specific assets.
 - Result is to increase the gain or reduce the loss on any sales or exchanges of the assets and to reduce depreciation deductions in subsequent years.

This kind of collateral agreement will be employed when the tax basis of the asset is greater than the value established for the purpose of determining the taxpayer's net worth for offer in compromise purposes. In effect, it denies the taxpayer the benefit of the capital loss she would have obtained on selling the asset to pay the tax liability.

Upon the expiration of the term of the collateral agreement, the basis of the asset is restored to the basis it would have had if the agreement had not been entered into and if normal depreciation deductions had been taken.

- *Waiver of Net Operating Losses, and so on.*—This is a form of collateral agreement under which the taxpayer agrees to waive the tax benefit of NOLs and capital losses.

Employment and Trust Fund Tax Liabilities

Under a Memorandum dated January 28, 2008, the IRS will process an offer in compromise made by a corporation or other entity (corporation) in respect of employment taxes simply on the basis of the corporate assets. It will no longer take into account the reasonable collection potential of those persons who may be liable for the trust fund portion of employment taxes as responsible persons. However, the offer will not be accepted unless the responsible persons either pay the trust fund recovery penalty or agree to its assessment. The IRS position is that once the trust fund penalty is assessed, its collectability is not affected by the offer in compromise of the corporation being accepted.

Consequences of Submitting an Offer

STATUTES OF LIMITATION

Where an offer in compromise application has been submitted the statutory limitation for the collection period is tolled for the period that the IRS is prevented from levying on the taxpayer's property under IRC §6331(k)(3).¹¹⁷ This is the period for which the offer in compromise is under consideration plus 30 days and includes the period of any appeals. Therefore, one should strongly consider whether it is in the best interest of a taxpayer to submit an offer where the statute of limitations is approaching, especially during the last three years of the statute.

If the taxpayer should withdraw the offer, the statute of limitations will resume as of the date the IRS issues written notification of the withdrawal.

The tolling of the collection statute of limitations while offers in compromise are under consideration has been an issue in several cases. In *Donovan v. U.S.*, 348 F.3d 509,¹¹⁸ the court held that the language of Form 656, itself, was an important factor for determining what has to happen for the offer no longer to be pending. In *Elton v. Com'r*, 2006-1 USTC 50,335,¹¹⁹ the court found that the withdrawal of an offer by the taxpayer was not necessarily the time at which the IRS rejects the offer or otherwise causes it to no longer be pending for the purpose of the statute of limitations.

STAY ON COLLECTION

IRC §6331(k) provides that the IRS may not levy on a taxpayer's property during the period beginning on the date the IRS accepts such offer for processing and ending 30 days after the rejection of the offer or during the period any taxpayer appeal is pending. If an offer is rejected, the IRS will not levy on the taxpayer's property for the period the revised offer is under consideration if the revised offer is submitted within 30 days of the rejection.

The submission of a compromise offer by an employer in respect of delinquent employment taxes will not, however, suspend the assertion of the trust fund recovery penalty against responsible persons pursuant to IRC §6672.

But see *AJP Management*, 2001-1 USTC ¶ 50,184, and *TTK Management*, 2001-1 USTC ¶ 50,185. These cases were appeals of IRS Notices of Determination to Levy and of collection due process. The Court held that in neither case did the Revenue Officer abuse his discretion by rejecting offers in compromise and installment agreements and by issuing Notices of Intent to Levy where the taxpayers' compliance records were very poor.

Consider the unfortunate case of *United States of America v. Gilbert Kitila*, 2010-1 USTC ¶ 50,273. Mr. Kitila owed federal income taxes and statutory additions to tax for 1988, 1989 and 1990 totalling \$795,710 as of February 25, 2009. The assessments were originally made on February 23, 1998. The government sought to reduce this amount to a judgment by filing its complaint on February 24, 2009. The taxpayer argued that the statute of limitations had expired.

¹¹⁷ IRC § 6503(a).

¹¹⁸ 2003.

¹¹⁹ 2006.

Indeed, the statute of limitations for collection would have expired on February 23, 2008. However, Mr. Kitila submitted an offer in compromise to the Government on June 16, 2006. The offer was rejected on June 19, 2007. The submission of the offer resulted in the tolling of the statute of limitations on collection until March 26, 2009.

The taxpayer's statute of limitations was extended by 368 days while the offer was pending plus an additional 30 days. One can only wonder whether the filing of the OIC alerted the IRS to the impending statute expiration.

OFFER IN COMPROMISE AND BANKRUPT TAXPAYERS

IRM 5.8.3.2.1(b) provides that a bankrupt taxpayer is ineligible for an offer in compromise. *In the Matter of W.K. Holmes*, 2003-2 USTC ¶50,685, the taxpayer had owned WorldCom stock worth \$200,000,000, which had plunged in value, leaving him unable to pay his federal income tax obligations of approximately \$10,000,000. The taxpayer filed for Chapter 11 bankruptcy hoping to be able to liquidate his substantial interests in real estate and pay his creditors. The taxpayer offered about \$600,000 to the IRS in compromise of his tax liabilities but the IRS declined to consider it by reason of the bankruptcy. The Bankruptcy Court determined that consideration of the offer by the IRS might be necessary for the viability of a plan of reorganization. It held, therefore, that it had the power to compel the IRS to consider the offer. (There is divided opinion as to whether the refusal of the IRS to consider offers by bankrupt taxpayers is unlawful discrimination against bankrupts under the Bankruptcy Code.) Note, however, that this result may not be very important since courts have been extremely reluctant to intervene where taxpayers have claimed an abuse of discretion in the IRS's rejection of their offers. See, also, *In the Matter of R.H. Macher*, 2004-1 USTC ¶ 50,114 (government required to process and consider a debtor's reorganization plan which proposes a compromise of tax liabilities).

Chief Counsel Notice CC-2005-025 advises that, under most circumstances the IRS will not consider an offer in compromise when the taxpayer has filed for bankruptcy. Chief Counsel's view is that in such circumstances, the payment of the taxpayer's taxes is best determined in the bankruptcy proceeding. Furthermore, the IRS is not prepared generally to accept less from a bankrupt taxpayer than the IRS would obtain under the bankruptcy process. In any event, such negotiations or settlements will not be made pursuant to the offer in compromise process.

DISCHARGE OF TAX LIABILITIES IN BANKRUPTCY

11 U.S.C. 507(a)(8)(A)(ii) sets forth the general rule that taxes are not dischargeable in bankruptcy if assessed within 240 days of the filing of the bankruptcy petition. That period is extended for the period of time any offer in compromise is under consideration by the IRS plus 30 days if the offer is submitted in the 240-day period. Therefore, if a taxpayer is contemplating filing for bankruptcy she might be well advised not to file an offer in compromise.

Processing the Offer

Although a complete offer in compromise requires only the submission of Forms 656 and 433-A, Revenue Officers are instructed to advise the taxpayer to submit such evidence and additional information regarding the taxpayer's financial affairs as the Revenue Officer thinks appropriate.

Following investigation and verification of the information submitted by the taxpayer, the taxpayer will be advised if the offer appears to be unacceptable. At this time, the examining officer is authorized to negotiate with the taxpayer and the taxpayer may amend the offer.

If agreement cannot be reached, the taxpayer will be invited to withdraw the offer. If she does not do so, a rejection letter will follow. The Service has put in place review procedures for rejected offers as is required under the Internal Revenue Service Restructuring and Reform Act of 1998.

The rejection letter gives the taxpayer 30 days in which to request an administrative appeal. No taxpayer or taxpayer advisor should hesitate to appeal the rejection of an offer when there are grounds for doing so. Many lawsuits based upon the IRS officer having abused his or her discretion in rejecting an offer in compromise appear frivolous and such actions appear rarely to be successful. The case of *Oman v. Com'r*, T.C. Memo 2006-231, however, is one such case in which the court appeared sympathetic to the taxpayer. Although the taxpayer did not absolutely prevail, the matter was remanded to the IRS for further consideration. In this case, it was the taxpayer's history of noncompliance with the tax laws that caused the IRS to reject the offer on the grounds that acceptance would not be in the best interest of the government. Although the Internal Revenue Manual authorizes the IRS to take into account the best interest of the government, the court in this case questioned whether the offer in compromise could be refused on these grounds.

Offer Deemed Accepted if Not Rejected within Two Years

Under IRC §7122(f), an offer is deemed to have been accepted by the IRS if it has not been rejected within 24 months of the offer having been made. The 24-month period is tolled for any period in which the liability for the tax is in dispute in a legal proceeding.

Consequences and Implications of Acceptance of Offer

BINDING AND CONCLUSIVE FOR ALL ISSUES

Once there is offer and acceptance, the offer in compromise is legally enforceable against the parties in the same manner as a contract. It can be rescinded only in circumstances under which a contract can be set aside, such as mutual mistake, fraudulent misrepresentation, and so on.

The taxpayer must stay current for five years following the acceptance of the offer. He must file and timely pay his taxes for the next five years. Failure to do so may result in a revocation of the offer, making the entire original amount due plus accrued interest and penalties.

The accepted compromise is conclusive of all tax issues for the periods to which the compromise applies.¹²⁰ The taxpayer waives all right to apply for a refund or to otherwise challenge the liability, and the IRS is prevented from asserting new claims. The offer is not conclusive, however, for years for which there is no compromised liability. An accepted offer does not preclude the IRS from examining a return and asserting a deficiency from an open year other than one to which the offer relates.

¹²⁰ Treas. Reg. §301.7122-1(c).

The compromise of a civil tax liability, however, does not operate to remit a criminal tax liability, and the compromise of a criminal tax liability does not operate to remit a civil liability.¹²¹

The agreed compromise amount is inclusive of penalties and interest. However, interest does begin to accrue from the date the offer in compromise is accepted until the agreed amount is paid.

REFUNDS AND CERTAIN TAX BENEFITS

If the offer in compromise is accepted, the taxpayer waives any right to refunds to which she may be entitled arising out of periods up to the end of the year in which the offer in compromise is accepted. Therefore, the taxpayer will lose the entitlement to refunds arising from years not covered by the offer. See *Keating*, 794 FSupp 888, 70 AFTR 2nd 92-5041, 92-1 USTC ¶ 60,178.¹²² If a taxpayer submits an offer for tax years 2006-2008 and it is accepted by the IRS in 2010, she will lose any refund due from the filing of her 2010 tax return.

JOINT LIABILITY

Where there is joint liability for a tax, the compromise of that liability by one of the obligors will not operate to release a non-settling joint obligor from liability. Sometimes, the IRS will require a joint obligor who is making an offer to sign a co-obligor agreement in order to confirm this. The IRS will take special measures to protect itself in states in which the release of one joint obligor releases or limits the liability of the others.

As indicated above, in the case of a compromise made jointly by spouses, if the compromise is terminated due to the actions of one of the spouses, the IRS, upon application, is required to reinstate the compromise with the spouse (or former spouse) who remains in compliance with the terms of the compromise. Nonetheless, payment of the compromise amount (if not fully paid) remains a joint liability and must be paid.

FEDERAL TAX LIEN

The IRS may file a federal tax lien if one has not already been filed when the taxpayer enters into an offer in compromise regardless of whether the taxpayer elects to pay under a Short-Term Deferred Payment or a Deferred Payment. An existing filed federal tax lien will be released only upon the taxpayer fulfilling all her obligations under the accepted offer in compromise. Therefore, if the taxpayer agrees to a deferred payment plan, the NFTL will not normally be released until the last payment is made.

DEFAULT

If the taxpayer fails to comply with any provision of the accepted offer in compromise or the collateral agreement, the tax liability will be reinstated in full with the penalties and interest that would have been imposed or accrued had the compromise agreement never been put into effect.

¹²¹ Treas. Reg. §301.7122-1(c).

¹²² D. Neb. 1992.

The IRS may then either levy on the taxpayer's assets or file suit for the recovery of the amount owed.

Even if the accepted offer is for an immediate payment with no collateral agreement, the taxpayer can still default by failing to remain current with tax filing or payment obligations at any time during the five-year period following acceptance.¹²³ In *Robinette v. Commissioner*, 123 T.C. 85,¹²⁴ the Tax Court had some mercy for the taxpayer. In this case, the Tax Court held that the taxpayer's failure to comply with all the terms of the offer were not material. In *Robinette v. Commissioner*, 439 F.3d 455,¹²⁵ however, the Court of Appeals reversed the Tax Court.

If the taxpayer cannot make a payment under a deferred payment compromise arrangement, the IRS may permit reduced payments for a limited time or extend the payment schedule. These arrangements will not operate to amend the offer in compromise, however, and the total amount due from the taxpayer will not be changed. The taxpayer should contact the IRS *prior* to any default or nonpayment. Generally, the IRS has been willing to work with taxpayers to keep the agreement in effect.

ELIGIBILITY

The only condition imposed on a compromise agreement by the Internal Revenue Code is that the Attorney General, rather than the IRS, must compromise matters referred to the Department of Justice.

The IRS imposes other requirements, however. No compromise on the basis of either liability or collectibility can be entertained by the Service Center or District Office where criminal proceedings have been recommended or where the issue is being litigated. If these matters are compromised, it will be by the Department of Justice or other agency having jurisdiction over the case.

As a prerequisite for an offer being accepted, the taxpayer must be current with all outstanding tax filing obligations.

Frivolous Tax Submissions

The Pension Protection Act of 2006 (PPA) substantially amended IRC §6702, which formerly had the title "Frivolous Income Tax Return." This section of the IRC now has the title "Frivolous Tax Submissions." Under IRC § 6702(b)(2)(B)(ii)(II), one of the categories of tax submission to which this section of the IRC applies is an application for an offer in compromise.

The enhanced penalty of \$5,000, therefore, may be charged against taxpayers making a frivolous submission in an offer in compromise application. A frivolous submission is defined to be one that "reflects a desire to delay or impede the administration of Federal tax laws" or one described by the Secretary on a list of frivolous positions which the Secretary is required to compile.

IRC §7122(f)(g) provides that if the IRS determines that any part of any application for an offer in compromise is frivolous under IRC §6702(b)(2)(A), the application may be disregarded and

¹²³ Form 656.

¹²⁴ 2004.

¹²⁵ 8th Cir. 2006.

treated as if never submitted. IRC §7122(f)(g) was to become effective as of the date that the IRS first prescribed a list of frivolous positions as it is required to do under IRC 6702(c). The IRS satisfied this requirement as of April 2, 2007 by publishing Notice 2007-30. Most recently, it published Notice 2008-14. In this Notice, the IRS sets forth a nonexclusive list of frivolous positions to which IRC §6702 is applicable. Few professionals would have any issues with the positions described in this Notice.

Opinion of IRS Chief Counsel

If the compromised tax assessment is for \$50,000 or more, an accepted offer must be submitted to IRS Chief Counsel for a legal opinion.¹²⁶ District, Service Center, and Regional Appeals Directors, however, have authority to accept an offer on the basis of inability to pay notwithstanding an unfavorable opinion of counsel.¹²⁷

Current State of the Offer in Compromise Program

The Taxpayer Advocate was critical of the acceptance rate for offers in her 2010 report. The report includes the following information:

- The number of offers the IRS has accepted has declined by 72 percent from FY 2001 to FY 2009.
- Three out of every four offers disposed of in FY 2009 were returned, rejected, withdrawn, or terminated.
- The IRS's "second level" review of rejected offers has reviewed only seven offers and accepted just one.
- The IRS has committed nearly 55 percent fewer Collection staff hours to the offer program. Please see the practice points on the following page.

Summary

The majority of offers in compromise are tendered on the basis of inability to pay. To make an offer in compromise, an individual must complete and submit Form 656, *Offer in Compromise*, and Form 433-A, *Collection Information for Individuals*.

It is important that the practitioner thoroughly evaluate his client to determine if he is a suitable candidate for the offer. Otherwise the application merely serves to extend the statute of limitations and commit whatever funds have been submitted with the offer to the IRS.

¹²⁶ IRC §7122(b).

¹²⁷ Delegation Order No. 11 (Rev 24), 59 FR 37130.

Practice Points 6-1

Important issues that should be addressed:

- Whether client is jointly liable for taxes with spouse or individually liable
 - How the joint ownership of property might affect the issue if there is no joint liability for taxes
- Whether a federal tax lien has been filed against the taxpayer
- Whether there are assets the IRS can seize or levy against if an offer is not made
- Whether efficient tax administration criteria are met that justify the offer being less than the net realizable value of assets
 - Extreme hardship
 - Taxpayer's assets are necessary to enable taxpayer to meet necessities of life
 - Acceptance of offer would not undermine compliance with tax laws
 - No history of noncompliance with tax laws
 - No deliberate action to avoid payment of taxes
- Whether bankruptcy is a viable alternative to an offer in compromise
 - Whether the client has liabilities other than tax liabilities
 - Whether the tax liabilities are eligible for discharge
 - Whether a federal tax lien has been filed

Exhibit 6-1

Form 656 (March 2009)	Department of the Treasury — Internal Revenue Service Offer in Compromise
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Attach Application Fee and Payment (check or money order) here.		IRS RECEIVED DATE
Section I Taxpayer Contact Information		
Taxpayer's First Name and Middle Initial	Last Name	
If a joint offer, spouse's First Name and Middle Initial	Last Name	
Business Name		
Taxpayer's Address (Home and Business) (number, street, and room or suite no., city, state, ZIP code)		
Mailing Address (if different from above) (number, street, and room or suite no., city, state, ZIP code)		DATE RETURNED

Social Security Number (SSN) <i>(Primary)</i>	<i>(Secondary)</i>	Employer Identification Number (EIN) <i>(EIN included in offer)</i>	<i>(EIN not included in offer)</i>
-	-	-	-

Section II To: Commissioner of Internal Revenue Service

I/We (includes all types of taxpayers) submit this offer to compromise the tax liabilities plus any interest, penalties, additions to tax, and additional amounts required by law (tax liability) for the tax type and period marked below: (Please mark an "X" in the box for the correct description and fill-in the correct tax period(s), adding additional periods if needed).

1040/1120 Income Tax - Year(s) _____

941 Employer's Quarterly Federal Tax Return - Quarterly period(s) _____

940 Employer's Annual Federal Unemployment (FUTA) Tax Return — Year(s) _____

Trust Fund Recovery Penalty as a responsible person of (enter corporation name) _____, for failure to pay withholding and Federal Insurance Contributions Act taxes (Social Security taxes), for period(s) ending _____

Other Federal Tax(es) [specify type(s) and period(s)] _____

Note: If you need more space, use a separate sheet of paper and title it "Attachment to Form 656 Dated _____." Sign and date the attachment following the listing of the tax periods.

Section III Reason for Offer in Compromise

I/We submit this offer for the reason(s) checked below:

Doubt as to Collectibility — "I have insufficient assets and income to pay the full amount." You must include a complete Collection Information Statement, Form 433-A and/or Form 433-B.

Effective Tax Administration — "I owe this amount and have sufficient assets to pay the full amount, but due to my exceptional circumstances, requiring full payment would cause an economic hardship or would be unfair and inequitable." You must include a complete Collection Information Statement, Form 433-A and/or Form 433-B and complete Section VI.

Section IV Offer in Compromise Terms

I/We offer to pay \$ _____ (must be more than zero). Complete Section VII to explain where you will obtain the funds to make this offer.

Check **only** one of the following:

Lump sum cash offer — 20% of the amount of the offer \$ _____ must be sent with Form 656. Upon written acceptance of the offer, the balance must be paid in 5 or fewer installments.

\$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance

Short Term Periodic Payment Offer - Offer amount is paid within 24 months from the date IRS received your offer. The first payment **must** be submitted with your Form 656. You **must** make regular payments during your offer investigation. Complete the following:

\$ _____ will be submitted with the Form 656. Beginning in the month after the offer is submitted (insert month _____), on the _____ day of each month, \$ _____ will be sent in for a total of _____ months. (Cannot extend more than 24 months from the date the offer was submitted.)

Section IV Cont.

Deferred Periodic Payment Offer – Offer amount will be paid over the remaining life of the collection statute. The first payment **must** be submitted with your Form 656. You must make regular payments during your offer investigation. Complete the following:

\$ _____ will be submitted with the Form 656. Beginning in the month after the offer is submitted (*insert month _____*), on the _____ day of each month, \$ _____ will be sent in for a total of _____ months.

Optional - Designation of Required Payment under IRC 7122(c)

You have the option to designate the required payment you made under Section IV above. If you choose not to designate your required payment, then the IRS will apply your payment in the best interest of the government. If the required payment is not paid, the offer will be returned even if you make a payment you designated as a deposit. Please complete the following if you choose to designate your payment:

\$ _____ paid under IRC 7122 (c) is to be applied to my _____ Tax Year/Quarter(s) (*whichever is applicable*) for my/our tax form _____.

If you pay more than the required payment when you submit your offer and want any part of that additional payment treated as a deposit, check the box below and insert the amount. It is not required that you designate any portion of your payment as a deposit.

I am making a deposit of \$ _____ with this offer.

Section V By submitting this offer, I/we have read, understand and agree to the following conditions:

(a) I/We voluntarily submit all tax payments made on this offer, including the mandatory payments of tax required under section 7122(c). These tax payments are not refundable even if I/we withdraw the offer prior to acceptance or the IRS returns or rejects the offer. If the offer is accepted, the IRS will apply payments made after acceptance in the best interest of the government.

(b) Any payments made in connection with this offer will be applied to the tax liability unless I have specified that they be treated as a deposit. Only amounts that exceed the mandatory payments can be treated as a deposit. Such a deposit will be refundable if the offer is rejected or returned by the IRS or is withdrawn. I/we understand that the IRS will not pay interest on any deposit.

(c) The application fee for this offer will be kept by the IRS unless the offer was not accepted for processing.

(d) I/We will comply with all provisions of the Internal Revenue Code relating to filing my/our returns and paying my/our required taxes for 5 years or until the offered amount is paid in full, whichever is longer. In the case of a jointly submitted Offer in Compromise of joint liabilities, I/we understand that default with respect to the compliance provisions described in this paragraph by one party to this agreement will not result in the default of the entire agreement. The default provisions described in Section V(i) of this agreement will be applied only to the party failing to comply with the requirements of this paragraph.

(e) I/We waive and agree to the suspension of any statutory periods of limitation (time limits provided by law) for the IRS assessment of the liability for the periods identified in Section II. I/We understand that I/we have the right not to waive these statutory periods or to limit the waiver to a certain length or to certain periods. I/we understand, however, that the IRS may not consider this offer if I/we refuse to waive the statutory periods for assessment or if we provide only a limited waiver. The amount of any Federal tax due for the periods described in Section II may be assessed at any time prior to the acceptance of this offer or within one year of the rejection of this offer. I/We understand that the statute of limitations for collection will be suspended during the period an offer is considered pending by the IRS (paragraph (k) of this section defines pending).

(f) The IRS will keep all payments and credits made, received or applied to the total original liability before submission of this offer and all payments required under section 7122(c). The IRS will also keep all payments in excess of those required by section 7122(c) that are received in connection with the offer and that are not designated as deposits in Section IV. The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted. As additional consideration beyond the amount of my/our offer, the IRS will keep any refund, including interest, due to me/us because of overpayment of any tax or other liability, for tax periods extending through the calendar year in which the IRS accepts the offer. The date of acceptance is the date on the written notice of acceptance issued by the IRS to me/us or to my/our representative. I/We may not designate an overpayment ordinarily subject to refund, to which the IRS is entitled, to be applied to estimated tax payments for the following year.

(g) I/We will return to the IRS any refund identified in paragraph (f) received after submission of this offer.

(h) The IRS cannot collect more than the full amount of the liability under this offer.

(i) I/We understand that I/we remain responsible for the full amount of the liabilities, unless and until the IRS accepts the offer in writing and I/we have met all the terms and conditions of the offer. The IRS will not remove the original amount of the liabilities from its records until I/we have met all the terms and conditions of the offer. I/we understand that the liabilities I/we offer to compromise are and will remain liabilities until I/we meet all the terms and conditions of this offer. If I/we file for bankruptcy before the terms and conditions of this offer are completed, any claim the IRS files in the bankruptcy proceedings will be a tax claim.

(j) Once the IRS accepts the offer in writing, I/we have no right to contest, in court or otherwise, the amount of the liability.

(k) The offer is pending starting with the date an authorized IRS official signs the form. The offer remains pending until an authorized IRS official accepts, rejects, returns or acknowledges withdrawal of the offer in writing. If I/we appeal an IRS rejection decision on the offer, the IRS will continue to treat the offer as pending until the Appeals Office accepts or rejects the offer in writing.

If I/we don't file a protest within 30 days of the date the IRS notifies me/us of the right to protest the decision, I/we waive the right to a hearing before the Appeals Office about the Offer in Compromise.

(l) If I/we fail to meet any of the terms and conditions of the offer and the offer defaults, the IRS may:

- immediately file suit to collect the entire unpaid balance of the offer;
- immediately file suit to collect an amount equal to the original amount of the liability, minus any payment already received under the terms of this offer;
- disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the liability; and/or
- file suit or levy to collect the original amount of the liability, without further notice of any kind.

The IRS will continue to add interest, as section 6601 of the Internal Revenue Code requires, on the amount the IRS determines is due after default. The IRS will add interest from the date the offer is defaulted until I/we completely satisfy the amount owed.

(m) The IRS generally files a Notice of Federal Tax Lien to protect the Government's interest on offers with deferred payments. Also, the IRS may file a Notice of Federal Tax Lien during the offer investigation. This tax lien will be released when the payment terms of the offer agreement have been satisfied.

(n) I/We understand that IRS employees may contact third parties in order to respond to this request and I/we authorize the IRS to make such contacts. Further, by authorizing the IRS to contact third parties, I/we understand that I/we will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.

(o) I/We are offering to compromise all the liabilities assessed against me/us as of the date of this offer and under the taxpayer identification numbers listed in Section II above. I/We authorize the IRS to amend Section II, above, to include any assessed liabilities we failed to list on Form 656.

Section VI Explanation of Circumstances

I am requesting an Offer in Compromise for the reason(s) listed below:

Note: *If you believe you have special circumstances affecting your ability to fully pay the amount due, explain your situation. You may attach additional sheets if necessary. Please include your name and SSN or EIN on all additional sheets or supporting documentation.*

Section VII Source of Funds

I / We shall obtain the funds to make this offer from the following source(s):

Section VIII Mandatory Signatures

Taxpayer Attestation	If I / we submit this offer on a substitute form, I / we affirm that this form is a verbatim duplicate of the official Form 656, and I/we agree to be bound by all the terms and conditions set forth in the official Form 656. Under penalties of perjury, I declare that I have examined this offer, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.		
	Signature of Taxpayer	Daytime Telephone Number ()	Date (mmddyyyy)
	Signature of Taxpayer		Date (mmddyyyy)

Official Use Only

I accept the waiver of the statutory period of limitations on assessment for the Internal Revenue Service, as described in Section V(e).

Signature of Authorized Internal Revenue Service Official	Title	Date (mmddyyyy)
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Section IX Application Prepared by Someone Other than the Taxpayer

If this application was prepared by someone other than the taxpayer, please fill in that person's name and address below.

Name _____

Address (if known) (Street, City, State, ZIP code) _____

Section X Paid Preparer Use Only

Name of Preparer _____

Signature of Preparer	Date (mmddyyyy)	Check if self-employed <input type="checkbox"/>	Preparer's CAF no. or PTIN
-----------------------	-----------------	---	----------------------------

Firm's name (or yours if self-employed), address, and ZIP code _____

Section XI Third Party Designee

Do you want to allow another person to discuss this offer with the IRS? Yes. Complete the information below. No

Designee's Name	Telephone Number ()
-----------------	------------------------------

Privacy Act Statement

We ask for the information on this form to carry out the internal revenue laws of the United States. Our authority to request this information is Section 7801 of the Internal Revenue Code.

Our purpose for requesting the information is to determine if it is in the best interests of the IRS to accept an Offer in Compromise. You are not required to make an Offer in Compromise; however, if you choose to do so, you must provide all of the taxpayer information requested. Failure to provide all of the information may prevent us from processing your request.

If you are a paid preparer and you prepared the Form 656 for the taxpayer submitting an offer, we request that you complete and sign Section X on Form 656, and provide identifying information. Providing this information is voluntary. This information will be used to administer and enforce the internal revenue laws of the United States and may be used to regulate practice before the Internal Revenue Service for those persons subject to Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service. Information on this form may be disclosed to the Department of Justice for civil and criminal litigation.

We may also disclose this information to cities, states and the District of Columbia for use in administering their tax laws and to combat terrorism. Providing false or fraudulent information on this form may subject you to criminal prosecution and penalties.

Attention:

Instructions and pertaining forms for completing an accurate Offer in Compromise are available in the Form 656-B, Offer in Compromise Booklet. The Form 656-B is available through the IRS website www.irs.gov.

Exhibit 6-2



Form 656-B

Offer in Compromise Booklet

IMPORTANT! THIS BOOKLET CONTAINS INFORMATION AND FORMS THAT YOU NEED IN ORDER TO PREPARE A COMPLETE AND ACCURATE OFFER IN COMPROMISE. PLEASE READ THESE INSTRUCTIONS CAREFULLY BEFORE ATTEMPTING TO COMPLETE THE ENCLOSED FORMS.

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Note: If you have any questions, please call our toll-free number at 1-800-829-1040. You can get forms and publications by calling toll free at 1-800-829-3676 (1-800-TAX-FORM), or by visiting your local Internal Revenue Service (IRS) office or our web site at www.irs.gov.

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What is an Offer in Compromise?

An Offer in Compromise (OIC) is an agreement between the taxpayer and the government that settles a tax liability for payment of less than the full amount owed.

The IRS will generally accept an Offer in Compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An OIC is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government.

The success of the Offer in Compromise program will be assured only if taxpayers make adequate compromise proposals consistent with their ability to pay and the Service makes prompt and reasonable decisions. Taxpayers are expected to provide reasonable documentation to verify their ability to pay. The ultimate goal is a compromise which is in the best interest of both the taxpayer and the Service. Acceptance of an adequate offer will also result in creating a fresh start for the taxpayer and an expectation of compliance with all future filing and payment requirements.

- **Doubt as to Collectibility.** This means that doubt exists that the taxpayer could ever pay the full amount of tax liability owed within the remainder of the statutory period for collection. The IRS will consider a doubt as to collectibility offer when the taxpayer is unable to pay the taxes in full either by liquidating assets or through current installment agreement guidelines. The taxpayer **must** submit the appropriate collection information statement along with all required supporting documents.
- **Doubt as to Liability.** This means that a legitimate doubt exists that the taxpayer owes part or all of the

assessed tax liability. To submit a Doubt as to Liability OIC, the taxpayer must submit Form 656-L, which can be obtained by calling the toll free number 1-800-829-1040, by visiting the local IRS office or our web site at www.irs.gov.

- **Effective Tax Administration (ETA).** This means that the taxpayer **does not have any doubt** that the tax is correct and there is potential to collect the full amount of the tax owed, but an exceptional circumstance exists that would allow the Service to consider an offer. To be eligible for compromise on this basis, a taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable. For an ETA offer, a taxpayer must submit:
 1. A collection information statement with all appropriate attachments, and
 2. A written narrative explaining the taxpayer's special circumstances and why paying the tax liability in full would create an economic hardship or would be unfair and inequitable.

The taxpayer **must** also attach appropriate documentation that will support their request for an ETA offer such as proof of unusual expenses that would cause an economic hardship if the taxes were collected in full.

Note: An important factor in determining the type of offer to submit is the potential ability to pay the liability in full. If the taxpayer cannot pay their liability in full, then they should submit a Doubt as to Collectibility offer. If special circumstances exist, see Page 6 for additional information. However, if potential exists to pay their liability in full, but the collection of the tax would create an economic hardship or would be unfair or inequitable, then they should submit an Effective Tax Administration (ETA) offer.



PLEASE DO NOT GO ANY FURTHER WITHOUT FIRST DETERMINING WHETHER OR NOT YOU ARE ELIGIBLE TO HAVE YOUR OFFER IN COMPROMISE PROCESSED AT THIS TIME.

Step One:

Please answer the three questions below to determine if you are eligible to have your Offer in Compromise processed.

YES NO

1. Do you currently have an open bankruptcy proceeding? You should contact your Bankruptcy Attorney if you are not certain. If you are involved in an open bankruptcy proceeding, contact your local IRS Insolvency office. If you do not know the location of your local IRS Insolvency office, then you may call 1-800-829-1040. They will be able to provide you with the local number. Any resolution of your outstanding tax liabilities generally must take place within the context of your bankruptcy proceeding. If you answered **YES** to this question, then stop here. You **are not eligible** to have your offer considered or processed at this time. YES NO

2. **Offer in Compromise Application Fee** — Your offer must include the \$150 application fee or a completed Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*, if you are requesting an exception of the fee because of your income. Offers received without the \$150 fee or a completed Form 656-A will not be accepted for processing. Please see Step Four on Page 12 of this package for more information on the application fee and to determine if you qualify for the exception. Have you attached the \$150 application fee or the Form 656-A, whichever is applicable, to the Form 656? If you answered **NO** to this question, Stop Here. You **are not eligible** to have your offer considered or processed at this time. YES NO

3. **Cash Payment and Periodic Payment Offers** — Your offer must include your 20% payment for Lump Sum Cash payment offers, or your first installment payment of your Periodic Payment offer (Short Term or Deferred). If you are requesting an exception to the 20% down payment or your initial periodic payment because of your income level, then you must complete Form 656-A, *Certification of Offer in Compromise Application Fee and Payment*. Offers received without one of these will not be accepted for processing. Please see Step Four on Page 12 of this package for more information on the Cash Payment and Periodic Payment Offer. Have you attached either the 20% payment for Lump Sum Cash payment offers or your first installment payment for a Periodic Payment Offer, or, the Form 656-A? If you answered **NO** to this question, Stop Here. You **are not eligible** to have your offer considered or processed at this time. YES NO

NOTE: If you currently have an approved installment agreement with IRS and are currently making installment payments to IRS, then you may stop making those installment agreement payments when you submit a Periodic Payment offer. This will allow you to make your payments required under the Periodic Payment guidelines. You do not have to make both installment agreement payments and periodic payments at the same time.

However this procedure does not apply to Lump Sum Cash Offers. If you submit a Lump Sum Cash offer and you are currently making installment agreement payments, then you must continue to make your installment agreement payments until your offer is accepted.

Step Two: What We Need to Fully Evaluate Your Offer

- 1. You must file all tax returns that you were legally required to file prior to submitting an Offer in Compromise.** If you have not filed all required tax returns, you will be asked to do so before we begin to evaluate your offer.

This includes but is not limited to:

- All Income Tax, Employment Tax, and Excise Tax returns, along with all returns required to be filed by Partnerships, Limited Liability Companies, or closely held Sub-Chapter S Corporations.

If you did not file a return for a specific year prior to submitting your OIC because you were not legally required to file the return, then you **must** include a detailed explanation of your circumstances with your OIC.

If you used an employee leasing company for all or part of the time during the past three years, then please provide a detailed explanation of your circumstances with your offer by providing the exact dates you used the employee leasing company, the name and address of the leasing company, and EIN of the leasing company, and whether or not you are still using them.

- 2. If you are a business with employees, then you must have made all required federal tax deposits for the current quarter.** If you have not made all the required deposits, you will be asked to do so before we begin to evaluate your offer. In addition, you must remain current on all filing and deposit requirements while your offer is being investigated.
- 3. Estimated tax payments must be up to date for the current year —** We will not process your offer to completion if we determine that your estimated tax payments for the current year's income tax liability are not paid up to date. If we determine

this to be the case, you will have one opportunity to make the required payments before we return your offer.

NOTE: If you fail to comply with items 1, 2, or 3, then your offer will be returned to you and we will keep your \$150 application fee as well as any payments you made with your offer, such as the 20% payment or your first installment. Any money not returned will be applied to your tax liability.

- 4. Complete an accurate Form 656 —** Complete all applicable items on Form 656, **which is the official compromise agreement.** You **must** sign Form 656. If someone else prepared the offer package, then please see the instructions in Step Eight, Section IX and X, found on Page 21 of this package. If your Form 656 was prepared by an authorized representative, you **must** include a completed Form 2848, *Power of Attorney and Declaration of Representative*, with your offer, unless a copy is already on file with the IRS

Detailed instructions for the completion of Form 656 are found on Pages 20 – 22 of this package.

Common errors to avoid in completing Form 656:

- The taxpayer's name is missing.
- The street address is missing or incomplete.
- The social security number (SSN) or employer identification number (EIN) is missing, incomplete, or incorrect.
- The preprinted terms and conditions listed on the Form 656 have been altered or deleted.
- An offer amount is missing.
- Payment terms are missing or terms do not equal the offer amount.
- A required signature is missing.

5. Complete an accurate collection information statement (Form 433-A and/or Form 433-B) — You **must** provide financial information when you submit offers based on doubt as to collectibility and effective tax administration. You **must** send us current information that reflects your financial situation for the **three months** immediately prior to the date you submitted your Offer in Compromise. Collection information statements **must** show all assets and income. The offer investigator needs this information to evaluate your offer and may ask you to update it or verify certain financial information. These forms **must** be filled in completely. We may return offer packages that are incomplete. Annotate items that do not apply to you with “N/A.”

Provide all the information required to support your financial condition. Required items of documentation are clearly indicated on the collection information statements under the signature blocks. Photo copies of these support documents are acceptable. If you mail your original documents to the IRS, they will not be returned to you unless you specifically request it.

When only one spouse has a tax liability but both have incomes, only the spouse responsible for the tax debt is required to sign the necessary collection information statements. The responsible spouse should include **only** his/her assets and liabilities on his/her collection information statements. However, the income and expenses of the entire household is required on the responsible spouse's collection information statements. The entire household includes spouse, domestic partner, significant other, children, and others that contribute to the household. This is necessary for the IRS to evaluate the income

and expenses allocable to the liable taxpayer.

When both spouses have tax liabilities included in the offer, whether jointly or separately, and they maintain a household together, both spouses are required to sign the collection information statement and include income and expenses of the entire household.

In states with community property laws, we require collection information statements from both spouses. We may also require financial information on the non-liable spouse, or cohabitant(s), for offer verification purposes, even when community property laws do not apply.

6. Respond promptly to requests for additional information — While we are evaluating your offer, we may contact you for any information that is missing or requires clarification. You must respond within the time frame given to you by IRS or, we will not give your offer any further consideration. **Your offer will be returned to you and we will keep your \$150 application fee as well as any payments you made with your offer such as the 20% payment or your first installment. Any money not returned will be applied to your tax liability.**

7. We will not consider offers where liabilities have not been assessed — You cannot submit an offer that is solely for a tax year or tax period that has not been assessed. Your offer will be returned if you submit an offer that is solely for an unassessed tax year or tax period and you will forfeit your application fee. Any money not returned will be applied to your tax liability.

8. Trust fund taxes - Offers, from businesses seeking to compromise unpaid trust fund taxes that are

subject to assertion of the trust fund recovery penalty, will not be evaluated until the trust fund portion of the liability is either fully paid or the trust fund recovery penalty has been assessed against the responsible persons.

- 9. Make copies of removable forms and documents** — This is a reminder that you should make copies of all the removable forms and documents that you send to the IRS. You should keep these copies with your records.

Step Three: Determining the Amount of Your Offer

Doubt as to Collectibility

Your offer amount must equal or exceed your reasonable collection potential amount. The information provided on the collection information statements (*Form 433-A and Form 433-B*) assists us in determining the reasonable collection potential (*RCP*). The RCP equals the net equity of your assets plus the amount we could collect from your future income. **If our financial analysis indicates that you have the ability to fully pay the tax liability, either immediately or through an installment agreement, your offer will be rejected. Exception: special circumstances. Please see below for more information on special circumstances. You must offer an amount greater than or equal to the RCP amount. All offer amounts must exceed zero.**

If special circumstances cause you to offer an amount less than the RCP, you **must** complete Section VI, "Explanation of Circumstances," on Form 656, explaining your situation. You **must** also attach to Form 656 any supporting documents to help support your special circumstances. Special circumstances

may include factors such as advanced age, serious illness from which recovery is unlikely, or any other factors that have an impact upon your ability to pay the total RCP and continue to provide for the necessary living expenses for you and your family.

If you are a wage earner or self-employed individual, completion of the worksheet on Pages 9 - 11 will give you a good estimate of what an acceptable offer amount may be. You will use the information on your Form 433-A to complete the worksheet.

Effective Tax Administration (ETA)

Complete Form 433-A or Form 433-B, as appropriate, and attach to Form 656. You **must** complete Section VI, "Explanation of Circumstances," on Form 656, explaining your exceptional circumstances and why requiring payment of the tax liability in full would either create an economic hardship or would be unfair and inequitable. You **must** also attach to Form 656 any documents to help support your exceptional circumstances.

Determine Your Payment Terms

There are three payment plans you and the IRS may agree to:

- **Lump Sum Cash Offer** – This option requires the offer amount to be paid **in five** or fewer installments, upon written notice of acceptance. Twenty percent of the total amount of the offer must be paid when you submit the Form 656.

If these installments will be paid in five months or less, you should offer the realizable value of your assets plus the total amount we could collect over 48 months of payments (or the remainder of the statutory period for collection, whichever is less).

If these installments will be paid in more than five months, but less than 24 months you should offer the realizable value of your assets plus the total amount we could collect over 60 months of payments.

If these installments will be paid in more than 24 months, you should offer the realizable value of our assets plus the number of months remaining on the statutory period for collection.

- **Short Term Periodic Payment Offer** – This option requires the offer amount to be paid within 24 months from the date IRS received the offer. The first payment **must** be submitted with your Form 656. You **must** continue to make regular payments during your offer investigation. Failure to make regular payments during your offer investigation will cause your offer to be withdrawn.

The offer must include the realizable value of your assets plus any amount we could collect over 60 months of payments (or the remainder of the statutory period of collection, whichever is less.)

NOTE: Generally the collection statute is 10 years from the date that your liability was assessed. If

you need assistance in calculating the remaining time on your collections statute, call 1-800-829-1040.

- **Deferred Periodic Payment Offer** – This option requires you to pay the offer amount over the remaining statutory period for collecting the tax. This offer option must include the realizable value of your assets plus the amount we could collect through monthly payments during the remaining life of the collection statute. As with the Short Term Periodic Payment above, the first payment must be submitted with your Form 656. You must make regular payments during your offer investigation. Failure to make regular payments during your offer investigation will cause your offer to be withdrawn.

Use the worksheet on pages 9 - 11, and use the amount in Box P as the basis for your offer amount in Section IV of Form 656.

- **Notice of Federal Tax Lien** – We may file a Notice of Federal Tax Lien with any of the above payment options.
- **How to Calculate an Offer Amount** – The worksheet on pages 9 - 11 instructs wage earners and self-employed individuals how to figure the appropriate amount of Lump Sum Cash, Short Term Periodic Payment and Deferred Periodic Payment Offers.
- **Exception to Application Fee and Payments** – If you believe that you qualify for the exception to the \$150 application fee and payments due to your low income, then please complete the Offer in Compromise Application Fee and Payment Worksheet. If you meet the qualifications, then you are not required to make any payments while we investigate your offer. Complete Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*, and submit it with Form 656.

Funding Your Offer

If you do not have the cash to pay your offer amount immediately, you should begin the process of exploring options to finance your offer amount. Options you may want to consider include liquidating assets, obtaining a loan from a lending institution, borrowing on your home equity through a second mortgage or reverse mortgage, or borrowing funds from family members or friends.

NOTE: If your offer is returned or not accepted, any required payment made with the filing of your offer will not be refunded. Your payment will be applied to your outstanding tax liabilities.

Worksheet to Calculate an Offer Amount

For use by Wage Earners and Self-Employed Individuals

Keep this worksheet for your records.
Do not send to the IRS.

Use this Worksheet to calculate an offer amount using information from the 433-A

1. Enter total Cash balances from lines 11 and 56	A
2. Enter total Personal and Business account balances from lines 12c and 57c	B
If less than 0, enter 0	
3. Enter total investments from line 13d	C
4. Enter total life insurance cash value from line 15g	D
5. Enter total accounts/notes receivable from line 58e	E
Subtotal: Add boxes A through E =	
	F

6. Real Property Owned

	Enter Fair Market Value (FMV) for each asset	Enter loan balance for each asset	Individual asset value (if less than 0, enter 0)
From line 17a	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
From line 17b	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Amount from any attachments	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Subtotal =			G

7. Purchased Personal Vehicles and Other Licensed Assets

	Enter FMV for each asset	Enter loan balance for each asset	Individual asset value (if less than 0, enter 0)
From line 18a	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
From line 18b	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Amount from any attachments	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Subtotal =			H

8. Personal Assets Except Furniture and Personal Effects

	Enter FMV for each asset	Enter loan balance for each asset	Individual asset value (if less than 0, enter 0)
From line 19a	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
From line 19b	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Amount from any attachments	\$ _____ x .8 = \$ _____	- \$ _____ =	_____
Subtotal =			I

The Adviser's Guide to Doing Business With the IRS

9. Furniture and Personal Effects

\$ _____ x .8 = \$ _____ - \$ _____ = _____

Allowable Exemption (subtract) – \$7900.00

Subtotal =
Cannot be less than 0

J

10. Business Assets Except Books and Tools

Enter current value
for each asset

Enter loan balance
for each asset

Individual asset
value (if less
than 0, enter 0)

From line 59a \$ _____ x .8 = \$ _____ - \$ _____ = _____

From line 59b \$ _____ x .8 = \$ _____ - \$ _____ = _____

Amounts from any attachments

\$ _____ x .8 = \$ _____ - \$ _____ = _____

Subtotal =

K

11. Books and Tools

\$ _____ x .8 = \$ _____ - \$ _____ = _____

Allowable Exemption (subtract) – \$3950.00

Subtotal =
Cannot be less than 0

L

12. Add amounts in Boxes F through L to obtain your total equity and assets =

M

13. Enter amount from line 32

\$ _____

If Box N is 0 or less,
STOP. Use the amount
from Box M to base
your offer amount in
Section IV of Form 656.

Enter amount from line 45 and subtract –

\$ _____

Net Difference =

This amount would be available
to pay monthly on your tax liability.

N

**Your offer amount
must equal or exceed
the amount shown in
Box M.**

Chapter 6: Offers in Compromise

14. Select the payment term below that you have chosen for your offer. For more information on payment terms, please see page 7 of this booklet.

A. Lump Sum Cash paid 5 installments within 5 months or less (or the remainder of the statutory period for collection, whichever is less)	Amount from Box N X 48 =	\$ _____
B. Lump Sum Cash paid 5 installments in more than 5 months but less than 24 months (or the remainder of the statutory period for collection, whichever is less)	Amount from Box N X 60 =	\$ _____
C. Lump Sum Cash paid 5 installments in more than 24 months	Amount from Box N X The number of months remaining on the statutory period for collection _____ =	\$ _____
D. Short Term Periodic Payment paid within 6 – 24 months	Amount from Box N X 60 =	\$ _____
E. Deferred Periodic Payment paid within the remainder of the statutory period for collection.	Amount from Box N X The number of months remaining on the statutory period for collection _____ =	\$ _____
Insert in Box O the amount from the payment terms you chose above.		O \$ _____
Add Boxes M \$ _____ + O \$ _____ =		P \$ _____

Enter the amount in **Box P** as your minimum offer amount in Section IV on the Form 656

Note: If you are submitting an offer under effective tax administration or doubt as to collectibility with special circumstances considerations then refer to page 6 of this booklet.

By law, the IRS has the authority to collect outstanding federal taxes for ten years from the date your liability is assessed. There may be circumstances that extend the ten year collection statute such as when a taxpayer files bankruptcy or an Offer in Compromise.

The IRS may adjust the Reasonable Collection Potential (RCP) during the investigation to a higher or lower amount, depending upon the facts and circumstances of your individual case. Occasionally, the IRS updates the amounts allowed for exempt property (i.e., Line 9, Furniture and Personal Effects, and Item 11, Books and Tools). Please use the amounts listed on page 10 (\$7900 and \$3950, respectively) until this booklet is revised again, or you can call our toll-free number (1-800-829-1040) to confirm the current amounts.

You can call the toll free number 1-800-829-1040 for assistance in calculating the remaining time on your collection statute.

Step Four: Offer in Compromise Application Fee and Payments

	One person is liable	Two people are liable for one joint liability	Two people have joint liabilities but want to file separate offers	Two people have joint liabilities and one has joint and separate liabilities	Corporation has a liability	Partnership has a liability	Individual and Corporate or Partnership liabilities
Number of Forms 656 required	1	1	2 Each will show the joint liabilities	2 One with the joint and the 2nd with the joint and separate liabilities	1	1	2
Number of fees to be sent with the Form 656*	1 - \$150 fee	1 - \$150	2 - \$150	2 - \$150	1 - \$150	1 - \$150	2 - \$150
Lump Sum Cash Offer amount to be sent with the Form 656	20% of the amount offered	20% of the amount offered	20% for each offered amount	20% for each offered amount	20% of the amount offered	20% of the amount offered	20% for each offered amount
Amount to be sent with the Short Term or Deferred Periodic Payment Offer	First payment amount shown in Section IV of the Form 656	First payment amount shown in Section IV of the Form 656	First payment for each offer that is shown in Section IV of the Form 656	First payment for each offer that is shown in Section IV of the Form 656	First payment amount shown in Section IV of the Form 656	First payment amount shown in Section IV of the Form 656	First payment for each offer that is shown in Section IV of the Form 656

A. The application fee and payment are due on all offers at the time you submit your offer. Please staple **both** the application fee **and** payment to the front of your Form 656. Any offer submitted without the application and payment will be returned to you without further consideration.

* **EXCEPTION:** If you certify that your total monthly household income is at or below levels based on the IRS OIC Low Income Guidelines, then you may be exempt from the application fee and the payments (20% of the amount offered, the initial payment, and required payments while your offer is being investigated) as described above. The exception for taxpayers with incomes below these levels only applies to individuals. It does not apply to other entities such as corporations, partnerships, and LLC's.

To determine if you qualify for the exemption, please complete the attached Offer in Compromise Application Fee and Payment Worksheet. If you do qualify, then you must complete and sign Form 656-A.

B. **Do not send cash.** Please make all checks or money orders payable to the "United States Treasury".

C. The application fee can only be returned to you if the IRS determines that your offer is not processable. If your offer is determined to be not processable (see Page 2 for the 3 processable requirements), the IRS will return your application fee.

However if your offer is determined to be not processable and you have made either the 20% initial payment for Lump Sum Cash offer, or the first initial installment for the Short Term Periodic Payment Offer or Deferred Periodic Payment Offer, these payments will not be refunded to you. They will be applied to your outstanding tax liability and your offer will be returned to you as not processable.

- D. If your offer is determined to be processable and later in the investigation, the offer is returned, rejected, or withdrawn, the application fee and payments will be applied to your outstanding tax liability.
- E. If you have any additional questions about your Offer in Compromise, application fee or payments, please call toll free at 1-800-829-1040, visit our web site at www.irs.gov or visit your nearest IRS office. You will find the exact address in your local phone book under U.S. Government.

Step Five: Where You Need to Send Your Offer

Where to File

IF YOU RESIDE IN

Alaska, Alabama, Arizona, California, Colorado, Hawaii, Idaho, Kentucky, Louisiana, Mississippi, Montana, Nevada, New Mexico, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin or Wyoming,

AND

You are a wage earner, retiree, or a self-employed individual without employees,

THEN MAIL

Form 656 and attachments to:

Memphis Internal Revenue Service
Center COIC Unit
PO Box 30803, AMC
Memphis, TN 38130-0803

AND

You are **OTHER** than a wage earner, retiree, or a self-employed individual without employees,

THEN MAIL

Form 656 and attachments to:

Memphis Internal Revenue Service
Center COIC Unit
PO Box 30804, AMC
Memphis, TN 38130-0804

IF YOU RESIDE IN

Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, West Virginia or have a foreign address,

AND

You are a wage earner, retiree, or a self-employed individual without employees,

THEN MAIL

Form 656 and attachments to:

Brookhaven Internal Revenue Service
Center COIC Unit
PO Box 9007
Holtsville, NY 11742-9007

AND

You are **OTHER** than a wage earner, retiree, or a self-employed individual without employees,

THEN MAIL

Form 656 and attachments to:

Brookhaven Internal Revenue Service
Center COIC Unit
PO Box 9008
Holtsville, NY 11742-9008

Step Six: What to Expect After the IRS Receives Your Offer

How We Consider Your Offer	An offer examiner will evaluate your offer and may request additional documentation from you to verify financial or other information you provide. The examiner will then make a recommendation to accept or reject the offer. The examiner may also	return your offer if you do not provide the requested information. The examiner may decide that a larger offer amount is necessary to justify acceptance. You will have the opportunity to amend your offer.
Additional Agreements	When you submit certain offers, we may also request that you sign an additional agreement requiring you to:	<ul style="list-style-type: none"> ■ Pay a percentage of your future earnings. ■ Waive certain present or future tax benefits.
Withholding Collection Activities	There are certain circumstances where we will withhold collection activities while we consider your offer. We will not act to collect the tax liability: <ul style="list-style-type: none"> ■ While we investigate and evaluate your offer. ■ For 30 days after we reject an offer. 	<ul style="list-style-type: none"> ■ While you appeal an offer rejection. <p>The above do not apply if we find any indication that you submitted your offer to delay collection or cause a delay which will jeopardize our ability to collect the tax.</p> <ul style="list-style-type: none"> ■ A Notice of Federal Tax Lien may be filed at any time while your offer is being considered
Periodic Payments Requirements	If you choose one of the Periodic Payment options, then you are required to continue to make payments while your offer is being investigated. The removable Form 656-PPV is to be used to make these periodic payments. The instructions to complete Form 656-PPV are contained on the form as well as the proper address to mail your payments to. It is important to note that	the address where you send your periodic payments is different from the address where you submit your offer form. Be sure you send your periodic payment and Form 656-PPV to the address listed on the Form 656-PPV, as it applies to where you originally filed your offer.

NOTE: Step Six continues on Page 16.

If We Accept Your Offer

If we accept your offer, we will notify you by mail. When you receive your acceptance letter, you must:

- Promptly pay any unpaid amounts that become due under the terms of the offer agreement. You must comply with the payment terms specified in the agreement in a timely manner or your offer and agreement will be in default.
- Comply with all the terms and conditions of the offer, along with those of any additional agreement.
- Promptly notify us of any change of address until you meet the conditions of your offer. Your acceptance letter will indicate the IRS office to contact if your address changes. Your notification allows us to contact you immediately regarding the status of your offer.

We will release all Notices of Federal Tax Lien when you satisfy the payment terms of the offered amount. For an immediate release of a lien, you can submit certified funds with a request letter to the address on the acceptance letter.

Once your offer is accepted, not filing returns or paying taxes when due could result in the default of an accepted offer (see Section V (d) of Form 656 for the

future compliance provision). If you default your agreement, we will reinstate the unpaid amount of the original tax liability, file a Notice of Federal Tax Lien on any tax liability without a filed notice, and resume collection activities. The future compliance provision applies to all offers based on **Doubt as to Collectibility and Effective Tax Administration offers**.

We will not default your offer agreement when you have filed a joint offer with your spouse or ex-spouse as long as you have kept or are keeping all the terms of the agreement, even if your spouse or ex-spouse violates the future compliance provision.

The offer agreement requires you to forego certain refunds, and to return those refunds to us if they are issued to you by mistake. These conditions are also listed on Form 656, Sections V (f) and (g). For example, if your offer was accepted by the IRS in the tax year 2008, the IRS would keep the refund due to you with respect to the tax year 2008, which you would normally receive in calendar year 2009 (*because the due date for filing the tax year 2008 is April 15, 2009*).

If We Reject Your Offer

We will notify you by mail if we reject your offer. In our letter, we will explain our reason for the rejection. We will also keep your \$150 application fee and payments. If your offer is rejected, you have the right to:

- Appeal our decision to the Office of Appeals within thirty days from the date of our letter. The letter will include detailed instructions on how to appeal the rejection.

- Information about appeals, including an online self-help tool to assist you in deciding whether to appeal the rejection of your offer, is available at www.irs.gov, using key word "appeals".

Step Seven: Offer in Compromise Summary Checklist

Below is a checklist of items that you should review and complete prior to submitting your Form 656, *Offer in Compromise*. This checklist is solely for your benefit, so do not submit with your offer.

- Did you answer YES to question one on Page 2? If you did, then please do not submit Form 656 because you are not eligible to have your offer considered at this time.
- Did you answer NO to questions two or three on Page 2? If you did, then please do not submit Form 656 because you are not eligible to have your offer considered at this time.
- Have you properly completed Form 656, *Offer in Compromise*, by following the instructions on Pages 20 - 22?
- Are the preprinted terms and conditions listed on Form 656 unaltered?
- Are you using the most current versions of Form 656, Form 433-A, and Form 433-B as instructed on Page 4?
- Did you include your name (or names, if joint)?
- Have you included your social security number (SSN) (*both SSNs are required if filing a joint offer*) and/or employer identification number (EIN) and is it accurate?
- Have you included an offer amount (*the amount must be greater than zero*) and payment terms as instructed on Page 11, Box P?
- Have you signed the Form 656? If this is a joint Form 656, have both spouses signed Form 656?
- Have you included complete financial information (*Form 433-A or Form 433-B, or both*) and all attachments as instructed on Page 4?
- Have you either attached the application fee in the designated area on the Form 656 or attached the Form 656-A certification, whichever is applicable?**
- Have you attached to Form 656 either the 20% payment for the Lump Sum Cash offer, or the first installment payment for either the Short Term Periodic Payment or Deferred Periodic Payment, OR attached Form 656-A certification, whichever is applicable?
- Have you signed in all required places on Form 433-A and/or Form 433-B?
- Is your offer amount greater than or equal to the reasonable collection potential (RCP) as described on Page 6 and calculated on Page 11, unless your offer is based on Effective Tax Administration and/or special circumstances exist?
- If applicable, are Sections IX and XI, on Form 656 completed?
- If applicable, is Section X on Form 656 completed and **signed**?
- Have you properly identified where to mail your Form 656 from the instructions on Page 14?
- If applicable, did you attach Form 2848 as required in Section XI, Page 22?

If you have any questions, please call our toll-free number at 1-800-829-1040. You can get forms and publications by calling toll free at 1-800-829-3676 (1-800-TAX-FORM), or by visiting your local Internal Revenue Service (IRS) office or our website at www.irs.gov.

Important Information Regarding the Offer in Compromise

Statute of Limitations for Assessment and Collection is Suspended

— The statute of limitations for assessment and collection of a tax debt is suspended while an OIC is “pending,” or being reviewed. The Offer in Compromise is pending starting with the date an authorized IRS employee determines the Form 656 can be processed and signs the Form 656. The OIC remains pending until an authorized IRS employee accepts, rejects, returns, or acknowledges withdrawal of the offer in writing. If a taxpayer appeals an OIC that was rejected, the IRS will continue to treat the OIC as pending until the Appeals Office accepts or rejects the OIC in writing.

Taxpayers Must File and Pay Taxes

— In order to avoid defaulting an OIC once it is accepted by the IRS, taxpayers must remain in compliance in the filing and payment of all required taxes for a period of five years, or until the offered amount is paid in full, whichever is longer. Failure to comply with these conditions will result in the default of the OIC and the reinstatement of the full tax liability.

Federal Tax Liens Are Not Released

— If there is a Notice of Federal Tax Lien on record prior to the OIC being submitted, the lien is not released until the terms of the offer in compromise are satisfied, or until the liability is paid, whichever comes first.

The IRS generally files a Notice of Federal Tax Lien to protect the Government's interest on all payment offers. This tax lien will be released when the payment terms of the offer agreement have been satisfied.

Effect of the Offer on the Taxpayer's Refund

— The IRS will keep any refund, including interest due to the taxpayer because of overpayment of any tax or other liability, for tax periods extending through the calendar year that the IRS accepts the offer. The taxpayer may not designate an overpayment ordinarily subject to refund, to which the IRS is entitled, to be applied to estimated tax payments for the following year.

Effect of the Offer on Levies — The IRS will keep all payments and credits made, received or applied to the total original

tax liability before submission of this offer. The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted. If a levy has been served prior to submission of the offer, or if a levy was served after the offer was filed, then immediately contact the IRS person or function whose name and phone number appear on the levy as the contact person.

Public Inspection Files for Accepted Offer in Compromise Files

— The law requires IRS to make certain information from accepted Offers in Compromise available for public inspection and review. These public inspection files are located in designated IRS Area Offices. It is important to know that certain information regarding your accepted Offer in Compromise will be publicly known.

Taxpayer Advocate Service

— The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, you can reach TAS by calling toll free 1-877-777-4778, or TTY/TTD 1-800-829-4059.

Low Income Taxpayer Clinic (LITC)

— Low Income Taxpayer Clinics are independent organizations that provide low income taxpayers with representation in Federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers with limited English proficiency or who speak English as a second language. IRS Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area and is available through the IRS website at www.irs.gov, by phone at 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

Penalties and Interest — Penalties and interest will continue to accrue on your unpaid balance of assessment(s) while your offer is being considered.

Terms and Definitions

An understanding of the following terms and conditions will help you to prepare offers based upon **doubt as to collectibility or effective tax administration**.

Current Value — The amount you could reasonably expect from the sale of an asset today. Provide an accurate valuation of each asset. Determine value from realtors, used car dealers, publications, furniture dealers, or other experts on specific types of assets. Please include a copy of any written estimate with your Collection Information Statement.

Expenses Not Generally Allowed — We typically do not allow you to claim tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions, payments on unsecured debts such as credit card bills, cable television charges and other similar expenses as necessary living expenses. However, we may allow these expenses when you can prove that they are necessary for the health and welfare of you or your family or for the production of income.

Future Income — We generally determine the amount we could collect from your future income by subtracting necessary living expenses from your monthly income over a set number of months. For a lump sum cash offer paid in five months or less, you must offer what you could pay in monthly payments over forty-eight months (*or the remainder of the ten-year statutory period for collection, whichever is less*). For a Lump Sum Cash Offer paid in more than five months or a Short Term Periodic Payment Offer, you must offer what you could pay in monthly payments over 60 months (*or the remainder of the statutory period for collection, whichever is less*). For a deferred periodic payment offer, you must offer what you could pay in monthly payments during the remaining time we could legally receive payments.

Necessary Expenses — Necessary expenses are the allowable payments you make to support you and your family's health and welfare and/or the production of income. These expenses do not apply to businesses. See our website at www.irs.gov for an explanation of National Standard Expenses and the amounts that are allowed. We derive these amounts from the Bureau of Labor Statistics Consumer Expenditure Survey. We also use information from the Bureau of the Census to determine local expenses for housing, utilities, and transportation.

NOTE:

If the IRS determines that the facts and circumstances of your situation indicate that using the scheduled allowance of necessary expenses is inadequate, we will allow you an adequate means for providing basic living expenses. However you must provide documentation that using national and local expense standards leaves you an inadequate means of providing for basic living expenses.

Quick Sale Value (QSV) — The amount you could reasonably expect from the sale of an asset if you sold it quickly, typically in ninety days or less. This amount generally is less than current value, but may be equal to current value, based on local circumstances.

Realizable Value — The quick sale value amount minus what you owe to a secured creditor. The creditor must have priority over a filed Notice of Federal Tax Lien before we allow a subtraction from the asset's value.

Reasonable Collection Potential (RCP) — The total realizable value of your assets plus your future income. The total is generally your minimum offer amount.

Step Eight: Completing Form 656, Offer in Compromise

Note: If you have any questions about completing this form, you may call toll free at 1-800-829-1040 or visit your local IRS office or our website at www.irs.gov. We may return your offer if you fail to follow these instructions.

Section I:

Enter your name and home and business street address. Show **both names** on a joint offer for joint liabilities. You also should include a mailing address if it is different from your street address.

If you owe a liability —

Jointly with another person and **both of you agree** to submit an offer, send only **one** Form 656, *Offer in Compromise*, and **one** \$150 application fee (or Form 656-A, if applicable) and one payment (20% of the amount offered or first initial payment).

By yourself (such as employment taxes), and other liabilities with another person (such as income taxes), but **only you** are submitting an offer, then list **all** tax liabilities on **one** Form 656 and submit **one** \$150 application fee (or Form 656-A, if applicable) and one payment (20% of amount offered or first initial payment).

By yourself and another one jointly, and **both of you** submit an offer, then you must show **all** tax liabilities on

your Form 656 and submit **one** \$150 application fee (or Form 656-A, if applicable) and payment (20% of offer amount or first initial payment). **The other person** should show **only** the joint tax liability on their Form 656 and submit **one** \$150 application fee (or Form 656-A, if applicable) and payment (20% of amount offered or first initial payment)

Please see the matrix in Step 4, Page 12, for further instructions and examples.

Enter the social security number(s) for the person(s) submitting the offer. For example, enter the social security number of both spouses when submitting a joint offer for a joint tax liability. However, when only one spouse submits an offer, enter only that spouse's social security number

Enter the employer identification number for offers from businesses.

Show the employer identification numbers for all other businesses that you own or in which you have an ownership interest, even if they are not included in the offer.

Section II:

Identify the type of tax liability you owe and enter the tax year or period. Letters and notices from us and Notices of

Federal Tax Lien show the tax periods for trust fund recovery penalties.

Section III:	Check the appropriate box(es) describing the basis for your offer.	Effective Tax Administration offers require you to complete a Form 433-A, <i>Collection Information Statement for Wage Earners and Self-Employed Individuals</i> , if you are an individual taxpayer, or a Form 433-B, <i>Collection Information Statement for Businesses</i> , if you are a corporation or other business taxpayer. Complete Section VI, "Explanation of Circumstances."
	Doubt as to Collectibility offers require you to complete a Form 433-A, <i>Collection Information Statement for Wage Earners and Self-Employed Individuals</i> , if you are an individual taxpayer, or a Form 433-B, <i>Collection Information Statement for Businesses</i> , if you are a corporation or other business taxpayer.	
	Note: Attach to the upper left corner of Form 656 the six (6) pages of the collection information statement(s) and all related documents before you send it to us.	
Section IV:	Enter the total amount of your offer (see Page 6, Step Three, "Determining the Amount of Your Offer"). Your offer amount cannot include a refund we owe you or amounts you have already paid.	Check the appropriate payment box (<i>Lump Sum Cash Offer, Short Term Periodic Payment Offer, or Deferred Periodic Payment Offer</i> — see Page 7, "Determine Your Payment Terms") and describe your payment plan in the spaces provided.
Section V:	It is important that you understand the requirements listed in this section. Pay particular attention to Items (d), (f)	and (g), as they address the future compliance provision and refunds.
Section VI:	Explain your reason(s) for submitting your offer in the "Explanation of Circumstances." You may attach	additional sheets if necessary. Include your name and SSN or EIN on all attachments. If you believe you have special circumstances affecting your ability to fully pay the amount due, thoroughly explain your situation.
Section VII:	Explain where you will get the funds to pay the amount you are offering.	
Section VIII:	All persons submitting the offer must sign and date Form 656. Include titles of authorized corporate officers,	executors, trustees, Powers of Attorney, etc., where applicable.
Section IX:	If someone other than the taxpayer prepared this Offer in Compromise, the	taxpayer should insert the name and address of the preparer (<i>if known</i>) in Section IX.
Section X:	Paid Preparer Use Only.	Please see the "Privacy Act Notice" in Form 656.

Section XI:

If you want to allow the IRS to discuss your Offer in Compromise with a friend, family member, or any other person, including an individual you paid to prepare this form, check the "Yes" box in Section XI, "Third Party Designee," on your Form 656. Also enter the designee's name and phone number. Checking the "Yes" box allows the IRS to contact another person and discuss with that person any additional information the IRS needs to process your offer.

This additional information may include information about tax liabilities you failed to list in Section II on your Form 656 or returns you have failed to file. If your contact person is an attorney, CPA, or enrolled agent and you wish to have them represent you regarding this offer, a Form 2848, *Power of Attorney and Declaration of Representative*, should be completed and submitted with your offer.

Note: Staple Form 2848, Power of Attorney and Declaration of Representative, to the upper left corner of Form 656 before you send it to us.

Form 656 (March 2009)	Department of the Treasury — Internal Revenue Service Offer in Compromise
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Attach Application Fee and Payment (check or money order) here.		IRS RECEIVED DATE
Section I Taxpayer Contact Information		
Taxpayer's First Name and Middle Initial	Last Name	
If a joint offer, spouse's First Name and Middle Initial	Last Name	
Business Name		
Taxpayer's Address (Home and Business) (number, street, and room or suite no., city, state, ZIP code)		
Mailing Address (if different from above) (number, street, and room or suite no., city, state, ZIP code)		DATE RETURNED

Social Security Number (SSN) <i>(Primary)</i>	Social Security Number (SSN) <i>(Secondary)</i>	Employer Identification Number (EIN) <i>(EIN included in offer)</i>	Employer Identification Number (EIN) <i>(EIN not included in offer)</i>
- -	- -	-	-

Section II To: Commissioner of Internal Revenue Service

I/We (includes all types of taxpayers) submit this offer to compromise the tax liabilities plus any interest, penalties, additions to tax, and additional amounts required by law (tax liability) for the tax type and period marked below: (Please mark an "X" in the box for the correct description and fill-in the correct tax period(s), adding additional periods if needed).

1040/1120 Income Tax - Year(s) _____

941 Employer's Quarterly Federal Tax Return - Quarterly period(s) _____

940 Employer's Annual Federal Unemployment (FUTA) Tax Return — Year(s) _____

Trust Fund Recovery Penalty as a responsible person of (enter corporation name) _____, for failure to pay withholding and Federal Insurance Contributions Act taxes (Social Security taxes), for period(s) ending _____

Other Federal Tax(es) [specify type(s) and period(s)] _____

Note: If you need more space, use a separate sheet of paper and title it "Attachment to Form 656 Dated _____." Sign and date the attachment following the listing of the tax periods.

Section III Reason for Offer in Compromise

I/We submit this offer for the reason(s) checked below:

Doubt as to Collectibility — "I have insufficient assets and income to pay the full amount." You must include a complete Collection Information Statement, Form 433-A and/or Form 433-B.

Effective Tax Administration — "I owe this amount and have sufficient assets to pay the full amount, but due to my exceptional circumstances, requiring full payment would cause an economic hardship or would be unfair and inequitable." You must include a complete Collection Information Statement, Form 433-A and/or Form 433-B and complete Section VI.

Section IV Offer in Compromise Terms

I/We offer to pay \$ _____ (must be more than zero). Complete Section VII to explain where you will obtain the funds to make this offer.

Check **only** one of the following:

Lump sum cash offer — 20% of the amount of the offer \$ _____ must be sent with Form 656. Upon written acceptance of the offer, the balance must be paid in 5 or fewer installments.

\$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance
 \$ _____ payable within _____ months after acceptance

Short Term Periodic Payment Offer - Offer amount is paid within 24 months from the date IRS received your offer. The first payment **must** be submitted with your Form 656. You **must** make regular payments during your offer investigation. Complete the following:

\$ _____ will be submitted with the Form 656. Beginning in the month after the offer is submitted (insert month _____), on the _____ day of each month, \$ _____ will be sent in for a total of _____ months. (Cannot extend more than 24 months from the date the offer was submitted.)

Section IV Cont.

Deferred Periodic Payment Offer – Offer amount will be paid over the remaining life of the collection statute. The first payment **must** be submitted with your Form 656. You must make regular payments during your offer investigation. Complete the following:
 \$ _____ will be submitted with the Form 656. Beginning in the month after the offer is submitted (*insert month _____*), on the _____ day of each month, \$ _____ will be sent in for a total of _____ months.

Optional - Designation of Required Payment under IRC 7122(c)

You have the option to designate the required payment you made under Section IV above. If you choose not to designate your required payment, then the IRS will apply your payment in the best interest of the government. If the required payment is not paid, the offer will be returned even if you make a payment you designated as a deposit. Please complete the following if you choose to designate your payment:

\$ _____ paid under IRC 7122 (c) is to be applied to my _____ Tax Year/Quarter(s) (*whichever is applicable*) for my/our tax form _____.

If you pay more than the required payment when you submit your offer and want any part of that additional payment treated as a deposit, check the box below and insert the amount. It is not required that you designate any portion of your payment as a deposit.

I am making a deposit of \$ _____ with this offer.

Section V By submitting this offer, I/we have read, understand and agree to the following conditions:

(a) I/We voluntarily submit all tax payments made on this offer, including the mandatory payments of tax required under section 7122(c). These tax payments are not refundable even if I/we withdraw the offer prior to acceptance or the IRS returns or rejects the offer. If the offer is accepted, the IRS will apply payments made after acceptance in the best interest of the government.

(b) Any payments made in connection with this offer will be applied to the tax liability unless I have specified that they be treated as a deposit. Only amounts that exceed the mandatory payments can be treated as a deposit. Such a deposit will be refundable if the offer is rejected or returned by the IRS or is withdrawn. I/we understand that the IRS will not pay interest on any deposit.

(c) The application fee for this offer will be kept by the IRS unless the offer was not accepted for processing.

(d) I/We will comply with all provisions of the Internal Revenue Code relating to filing my/our returns and paying my/our required taxes for 5 years or until the offered amount is paid in full, whichever is longer. In the case of a jointly submitted Offer in Compromise of joint liabilities, I/we understand that default with respect to the compliance provisions described in this paragraph by one party to this agreement will not result in the default of the entire agreement. The default provisions described in Section V(i) of this agreement will be applied only to the party failing to comply with the requirements of this paragraph.

(e) I/We waive and agree to the suspension of any statutory periods of limitation (time limits provided by law) for the IRS assessment of the liability for the periods identified in Section II. I/We understand that I/we have the right not to waive these statutory periods or to limit the waiver to a certain length or to certain periods. I/we understand, however, that the IRS may not consider this offer if I/we refuse to waive the statutory periods for assessment or if we provide only a limited waiver. The amount of any Federal tax due for the periods described in Section II may be assessed at any time prior to the acceptance of this offer or within one year of the rejection of this offer. I/We understand that the statute of limitations for collection will be suspended during the period an offer is considered pending by the IRS (paragraph (k) of this section defines pending).

(f) The IRS will keep all payments and credits made, received or applied to the total original liability before submission of this offer and all payments required under section 7122(c). The IRS will also keep all payments in excess of those required by section 7122(c) that are received in connection with the offer and that are not designated as deposits in Section IV. The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted. As additional consideration beyond the amount of my/our offer, the IRS will keep any refund, including interest, due to me/us because of overpayment of any tax or other liability, for tax periods extending through the calendar year in which the IRS accepts the offer. The date of acceptance is the date on the written notice of acceptance issued by the IRS to me/us or to my/our representative. I/We may not designate an overpayment ordinarily subject to refund, to which the IRS is entitled, to be applied to estimated tax payments for the following year.

(g) I/We will return to the IRS any refund identified in paragraph (f) received after submission of this offer.

(h) The IRS cannot collect more than the full amount of the liability under this offer.

(i) I/We understand that I/we remain responsible for the full amount of the liabilities, unless and until the IRS accepts the offer in writing and I/we have met all the terms and conditions of the offer. The IRS will not remove the original amount of the liabilities from its records until I/we have met all the terms and conditions of the offer. I/we understand that the liabilities I/we offer to compromise are and will remain liabilities until I/we meet all the terms and conditions of this offer. If I/we file for bankruptcy before the terms and conditions of this offer are completed, any claim the IRS files in the bankruptcy proceedings will be a tax claim.

(j) Once the IRS accepts the offer in writing, I/we have no right to contest, in court or otherwise, the amount of the liability.

(k) The offer is pending starting with the date an authorized IRS official signs the form. The offer remains pending until an authorized IRS official accepts, rejects, returns or acknowledges withdrawal of the offer in writing. If I/we appeal an IRS rejection decision on the offer, the IRS will continue to treat the offer as pending until the Appeals Office accepts or rejects the offer in writing.

If I/we don't file a protest within 30 days of the date the IRS notifies me/us of the right to protest the decision, I/we waive the right to a hearing before the Appeals Office about the Offer in Compromise.

(l) If I/we fail to meet any of the terms and conditions of the offer and the offer defaults, the IRS may:

- immediately file suit to collect the entire unpaid balance of the offer;
- immediately file suit to collect an amount equal to the original amount of the liability, minus any payment already received under the terms of this offer;
- disregard the amount of the offer and apply all amounts already paid under the offer against the original amount of the liability; and/or
- file suit or levy to collect the original amount of the liability, without further notice of any kind.

The IRS will continue to add interest, as section 6601 of the Internal Revenue Code requires, on the amount the IRS determines is due after default. The IRS will add interest from the date the offer is defaulted until I/we completely satisfy the amount owed.

(m) The IRS generally files a Notice of Federal Tax Lien to protect the Government's interest on offers with deferred payments. Also, the IRS may file a Notice of Federal Tax Lien during the offer investigation. This tax lien will be released when the payment terms of the offer agreement have been satisfied.

(n) I/We understand that IRS employees may contact third parties in order to respond to this request and I/we authorize the IRS to make such contacts. Further, by authorizing the IRS to contact third parties, I/we understand that I/we will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.

(o) I/We are offering to compromise all the liabilities assessed against me/us as of the date of this offer and under the taxpayer identification numbers listed in Section II above. I/We authorize the IRS to amend Section II, above, to include any assessed liabilities we failed to list on Form 656.

Section VI Explanation of Circumstances

I am requesting an Offer in Compromise for the reason(s) listed below:

Note: If you believe you have special circumstances affecting your ability to fully pay the amount due, explain your situation. You may attach additional sheets if necessary. Please include your name and SSN or EIN on all additional sheets or supporting documentation.

Section VII Source of Funds

I / We shall obtain the funds to make this offer from the following source(s):

Section VIII Mandatory Signatures

Taxpayer Attestation	<p>If I / we submit this offer on a substitute form, I/ we affirm that this form is a verbatim duplicate of the official Form 656, and I/we agree to be bound by all the terms and conditions set forth in the official Form 656.</p> <p>Under penalties of perjury, I declare that I have examined this offer, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.</p>		
	Signature of Taxpayer	Daytime Telephone Number ()	Date (mmdyyyy)
	Signature of Taxpayer		Date (mmdyyyy)

Official Use Only

I accept the waiver of the statutory period of limitations on assessment for the Internal Revenue Service, as described in Section V(e).

Signature of Authorized Internal Revenue Service Official	Title	Date (mmdyyyy)
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Section IX Application Prepared by Someone Other than the Taxpayer

If this application was prepared by someone other than the taxpayer, please fill in that person's name and address below.

Name _____

Address (if known) (Street, City, State, ZIP code) _____

Section X Paid Preparer Use Only

Name of Preparer _____

Signature of Preparer	Date (mmdyyyy)	Check if self-employed <input type="checkbox"/>	Preparer's CAF no. or PTIN
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Firm's name (or yours if self-employed), address, and ZIP code _____

Section XI Third Party Designee

Do you want to allow another person to discuss this offer with the IRS? Yes. Complete the information below. No

Designee's Name	Telephone Number ()
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Privacy Act Statement

We ask for the information on this form to carry out the internal revenue laws of the United States. Our authority to request this information is Section 7801 of the Internal Revenue Code.

Our purpose for requesting the information is to determine if it is in the best interests of the IRS to accept an Offer in Compromise. You are not required to make an Offer in Compromise; however, if you choose to do so, you must provide all of the taxpayer information requested. Failure to provide all of the information may prevent us from processing your request.

If you are a paid preparer and you prepared the Form 656 for the taxpayer submitting an offer, we request that you complete and sign Section X on Form 656, and provide identifying information. Providing this information is voluntary. This information will be used to administer and enforce the internal revenue laws of the United States and may be used to regulate practice before the Internal Revenue Service for those persons subject to Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service. Information on this form may be disclosed to the Department of Justice for civil and criminal litigation.

We may also disclose this information to cities, states and the District of Columbia for use in administering their tax laws and to combat terrorism. Providing false or fraudulent information on this form may subject you to criminal prosecution and penalties.

Attention:

Instructions and pertaining forms for completing an accurate Offer in Compromise are available in the Form 656-B, Offer in Compromise Booklet. The Form 656-B is available through the IRS website www.irs.gov.

Offer in Compromise Application Fee and Payment Worksheet

This worksheet should only be completed if you are requesting an exception to the \$150 application fee and payment(s) because of your income.

It is important that you use the current version Form 656 (Rev. 03-2009), *Offer in Compromise*, and the (Rev. 1-2008) versions of Forms 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, that are included in this package.

Individuals whose income falls at or below levels based on IRS Offer in Compromise Low Income Guidelines are not required to pay the application fee or the required initial payments. This exception only applies to individuals; it does not apply to other entities such as corporations or partnerships. You should use the worksheet below to determine if you meet the eligibility requirements.

If you are an individual, follow the steps below to determine if you must pay the application fee and any 20% payment or first initial installment with your Form 656, Offer in Compromise.

1. **Family Unit Size** _____. Enter the total number of dependants (including yourself and your spouse) listed in Section 1 of Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed individuals*. Transfer this number to Form 656-A, Item 5.
2. **Total Household Monthly Income** _____. Enter the amount of your total household monthly income from Section 4, Line 32, "Total Income", of the Form 433A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*. Please see Page 4 under Step Two, item 5, for a definition of total household income. Transfer this number to Form 656-A, Item 6.

If you are self-employed you must comply to footnote number 6 instructions regarding business deductions and treatment of depreciation before you compute the Net Business Income amount for line 82, and carry it over to Form 433A, section 4, line 23 to Form 656-A, Item 6.

3. Compare the information you entered in items 1 and 2, above, to the IRS OIC Low Income Guidelines table below. Find the "Family Unit Size" equal to the number you entered in item 1. Next, find the column which represents where you reside (48 Contiguous states, DC ..., Hawaii or Alaska). Compare the "Total Household Income" you entered in item 2 to the number in the row and column that corresponds to your family unit size and residence. *For example, if you reside in one of the 48 contiguous states, and your family unit size from item 1 above is 4, and your total household monthly income from item 2 above is \$3000, then you are exempt from the application fee and payment because your income is less than the \$4,594 guideline amount.*

IRS OIC Low Income Guidelines

Size of Family Unit	48 Contiguous States and D.C.	Hawaii	Alaska
1	\$2,256	\$2,596	\$2,819
2	\$3,035	\$3,492	\$3,794
3	\$3,815	\$4,388	\$4,769
4	\$4,594	\$5,283	\$5,744
5	\$5,373	\$6,179	\$6,719
6	\$6,152	\$7,075	\$7,694
7	\$6,931	\$7,971	\$8,669
8	\$7,710	\$8,867	\$9,644
For each additional person, add	\$779	\$896	\$975

4. If the total household monthly income you entered in item 2 is **more** than the amount shown for your family unit size and residence in the monthly IRS OIC Low Income Guidelines table above, **you must send the \$150 application fee and any 20% payment or first initial installment with each OIC you submit.**

Your check or money order should be made payable to the "United States Treasury" and attached to the front of your Form 656, *Offer In Compromise*. **Do Not Send Cash.** Send a separate application fee with each OIC; do not combine it with any other tax payments as this may delay processing of your OIC. Your OIC will be returned to you without further consideration if the application fee and the required payments are not properly remitted, or if your check is returned for insufficient funds.

5. If the total income you entered in item 2 is **equal to or less than** the amount shown for your family unit size and residence in the table above, do not send the application fee or the required payments. Sign and date Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*. **Attach the certification to the front of your Form 656.**

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Form 656-A (March 2009)	Department of the Treasury — Internal Revenue Service Income Certification for Offer in Compromise Application Fee and Payment (For Individual Taxpayers Only)
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If you are not required to submit the fee or payments based on your income level, you must complete this form and attach it to the front of your Form 656. You do not need to attach the Offer in Compromise Application Fee and Payment Worksheet to the Form 656.

1. Your Name <i>(Last, First, Middle initial) (Please Print)</i>	2. Social Security Number (SSN) or Taxpayer Identification Number (TIN)
3. Spouse's Name <i>(Last, First, Middle initial) (Please Print)</i>	4. Social Security Number (SSN) or Taxpayer Identification Number (TIN)
5. Family Unit Size <i>(This number is transferred over from your Offer in Compromise Application Fee and Payment Worksheet)</i>	
6. Total Household Monthly Income <i>(This amount is transferred over from your Offer in Compromise Application Fee and Payment Worksheet)</i>	
\$	

Certification: Under the penalty of perjury, I certify that I am not required to submit an Offer in Compromise application fee or payment, based on family unit size and income.

Your Signature	Date
Spouse's Signature <i>(if submitting a joint Offer in Compromise)</i>	Date

The Adviser's Guide to Doing Business With the IRS

Form 656-PPV (March 2009)	Department of the Treasury — Internal Revenue Service Offer in Compromise - Periodic Payment Voucher					
<p>If you filed an offer in compromise and the offered amount is to be paid in 24 months or fewer (<i>Short Term Periodic Payment Offer</i>) or monthly installments paid within the statutory period (<i>Deferred Periodic Payment Offer</i>) in accordance with the Tax Increase Prevention and Reconciliation Act of 2005, you must continue to make the payments during the investigation of the offer until you receive a decision letter (<i>accepted, rejected, returned, or withdrawn</i>). Mail this voucher with your check or money order payable to the "United States Treasury." Write your social security number or employer identification number on the check or money order. Do not send cash. You may designate a specific tax liability to apply the payments. If you choose to do this, please write it in the "Apply to" section of the Form 656-PPV.</p> <p>Enclose your payment with this voucher and mail to:</p> <p>For those offers originally sent to Holtsville, NY, please send payments to: P.O. Box 9011, Holtsville, NY 11742 For those offers originally sent to Memphis, TN, please send payments to: AMC-Stop 880, PO Box 30834, Memphis, TN 38130-0834</p> <p><i>(Please Print or Type)</i></p>						
Taxpayer's First Name and Initial	Taxpayer's Last Name	Your Social Security Number (SSN) or Employer Identification Number (EIN)				
Taxpayer's Address (<i>number, street, and room or suite no., city, state, ZIP code</i>)		Amount of Your Payment <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center; width: 70%;"><i>(Dollars)</i></td> <td style="text-align: center; width: 30%;"><i>(Cents)</i></td> </tr> <tr> <td style="text-align: center;">\$</td> <td></td> </tr> </table>	<i>(Dollars)</i>	<i>(Cents)</i>	\$	
<i>(Dollars)</i>	<i>(Cents)</i>					
\$						
Offer Number (<i>If you are submitting a payment (as described above) and this Form 656-PPV with your offer, then please leave this section blank. An offer number will be assigned and sent to you once your offer is processed.</i>)		Apply Payment to: (<i>optional</i>) Form _____ Period _____				

Catalog Number 31131Y

www.irs.gov

Form **656-PPV** (Rev. 3-2009)

Exhibit 6-3

Form **433-A**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

Collection Information Statement for Wage Earners and Self-Employed Individuals

Wage Earners Complete Sections 1, 2, 3, and 4, including signature line on page 4. *Answer all questions or write N/A.*
Self-Employed Individuals Complete Sections 1, 2, 3, 4, 5 and 6 and signature line on page 4. *Answer all questions or write N/A.*
For Additional Information, refer to Publication 1854, "How To Prepare a Collection Information Statement"
Include attachments if additional space is needed to respond completely to any question.

Name on Internal Revenue Service (IRS) Account	Social Security Number SSN on IRS Account	Employer Identification Number EIN
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Section 1: Personal Information

1a Full Name of Taxpayer and Spouse (if applicable)	1c Home Phone ()	1d Cell Phone ()
1b Address (Street, City, State, ZIP code) (County of Residence)	1e Business Phone ()	1f Business Cell Phone ()
	2b Name, Age, and Relationship of dependent(s)	
2a Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Unmarried (Single, Divorced, Widowed)		
	Social Security No. (SSN)	Date of Birth (mmddyyyy)
3a Taxpayer		Driver's License Number and State
3b Spouse		

Section 2: Employment Information

If the taxpayer or spouse is self-employed or has self-employment income, also complete Business Information in Sections 5 and 6.

Taxpayer		Spouse	
4a Taxpayer's Employer Name		5a Spouse's Employer Name	
4b Address (Street, City, State, ZIP code)		5b Address (Street, City, State, ZIP code)	
4c Work Telephone Number ()	4d Does employer allow contact at work <input type="checkbox"/> Yes <input type="checkbox"/> No	5c Work Telephone Number ()	5d Does employer allow contact at work <input type="checkbox"/> Yes <input type="checkbox"/> No
4e How long with this employer (years) (months)	4f Occupation	5e How long with this employer (years) (months)	5f Occupation
4g Number of exemptions claimed on Form W-4	4h Pay Period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other	5g Number of exemptions claimed on Form W-4	5h Pay Period: <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other

Section 3: Other Financial Information (Attach copies of applicable documentation.)

6 Is the individual or sole proprietorship party to a lawsuit (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Location of Filing	Represented by	Docket/Case No.
Amount of Suit \$	Possible Completion Date (mmddyyyy)	Subject of Suit	
7 Has the individual or sole proprietorship ever filed bankruptcy (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Date Filed (mmddyyyy)	Date Dismissed or Discharged (mmddyyyy)	Petition No.	Location
8 Any increase/decrease in income anticipated (business or personal) (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Explain. (Use attachment if needed)	How much will it increase/decrease \$	When will it increase/decrease	
9 Is the individual or sole proprietorship a beneficiary of a trust, estate, or life insurance policy (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Place where recorded:		EIN: :	
Name of the trust, estate, or policy	Anticipated amount to be received \$	When will the amount be received	
10 In the past 10 years, has the individual resided outside of the United States for periods of 6 months or longer (If yes, answer the following) Yes <input type="checkbox"/> No <input type="checkbox"/>			
Dates lived abroad: from (mmddyyyy)		To (mmddyyyy)	

The Adviser's Guide to Doing Business With the IRS

Section 4: Personal Asset Information for All Individuals

11 Cash on Hand. Include cash that is not in a bank. **Total Cash on Hand** \$

Personal Bank Accounts. Include all checking, online bank accounts, money market accounts, savings accounts, stored value cards (e.g., payroll cards, government benefit cards, etc.) List safe deposit boxes including location and contents.

Type of Account	Full Name & Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union, or Financial Institution.	Account Number	Account Balance As of _____ mmddyyyy
12a			\$
12b			\$

12c Total Cash (Add lines 12a, 12b, and amounts from any attachments) \$

Investments. Include stocks, bonds, mutual funds, stock options, certificates of deposit, and retirement assets such as IRAs, Keogh, and 401(k) plans. **Include all corporations, partnerships, limited liability companies or other business entities in which the individual is an officer, director, owner, member, or otherwise has a financial interest.**

Type of Investment or Financial Interest	Full Name & Address (Street, City, State, ZIP code) of Company	Current Value	Loan Balance (if applicable) As of _____ mmddyyyy	Equity Value Minus Loan
13a	Phone	\$	\$	\$
13b	Phone	\$	\$	\$
13c	Phone	\$	\$	\$

13d Total Equity (Add lines 13a through 13c and amounts from any attachments) \$

Available Credit. List bank issued credit cards with available credit. **Available Credit** As of _____
mmddyyyy

Full Name & Address (Street, City, State, ZIP code) of Credit Institution	Credit Limit	Amount Owed As of _____ mmddyyyy	Available Credit As of _____ mmddyyyy
14a Acct No.:	\$	\$	\$
14b Acct No.:	\$	\$	\$

14c Total Available Credit (Add lines 14a, 14b and amounts from any attachments) \$

15a Life Insurance. Does the individual have life insurance with a cash value (Term Life insurance does not have a cash value.)

Yes **No** If **Yes** complete blocks 15b through 15f for each policy:

15b Name and Address of Insurance Company(ies):			
15c Policy Number(s)			
15d Owner of Policy			
15e Current Cash Value	\$	\$	\$
15f Outstanding Loan Balance	\$	\$	\$

15g Total Available Cash. (Subtract amounts on line 15f from line 15e and include amounts from any attachments) \$

16 In the past 10 years, have any assets been transferred by the individual for less than full value Yes No
(If yes, answer the following. If no, skip to 17a)

List Asset	Value at Time of Transfer \$	Date Transferred (mmddyyyy)	To Whom or Where was it Transferred
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Real Property Owned, Rented, and Leased. Include all real property and land contracts.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
17a Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address, (Street, City, State, ZIP code) and Phone			
17b Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address, (Street, City, State, ZIP code) and Phone			

17c Total Equity (Add lines 17a, 17b and amounts from any attachments) \$

Personal Vehicles Leased and Purchased. Include boats, RVs, motorcycles, trailers, etc.

Description (Year, Mileage, Make, Model)		Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
18a Year	Mileage		\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					
18b Year	Mileage		\$	\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					

18c Total Equity (Add lines 18a, 18b and amounts from any attachments) \$

Personal Assets. Include all furniture, personal effects, artwork, jewelry, collections (coins, guns, etc.), antiques or other assets.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
19a Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
19b Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			

19c Total Equity (Add lines 19a, 19b and amounts from any attachments) \$

If the taxpayer is self-employed, sections 5 and 6 must be completed before continuing.

Monthly Income/Expense Statement (For additional information, refer to Publication 1854.)

Total Income		Total Living Expenses		IRS USE ONLY
Source	Gross Monthly	Expense Items ⁵	Actual Monthly	Allowable Expenses
20 Wages (<i>Taxpayer</i>) ¹	\$	33 Food, Clothing, and Misc. ⁶	\$	
21 Wages (<i>Spouse</i>) ¹	\$	34 Housing and Utilities ⁷	\$	
22 Interest - Dividends	\$	35 Vehicle Ownership Costs ⁸	\$	
23 Net Business Income ²	\$	36 Vehicle Operating Costs ⁹	\$	
24 Net Rental Income ³	\$	37 Public Transportation ¹⁰	\$	
25 Distributions ⁴	\$	38 Health Insurance	\$	
26 Pension/Social Security (<i>Taxpayer</i>)	\$	39 Out of Pocket Health Care Costs ¹¹	\$	
27 Pension/Social Security (<i>Spouse</i>)	\$	40 Court Ordered Payments	\$	
28 Child Support	\$	41 Child/Dependent Care	\$	
29 Alimony	\$	42 Life insurance	\$	
30 Other (Rent subsidy, Oil credit, etc.)	\$	43 Taxes (<i>Income and FICA</i>)	\$	
31 Other	\$	44 Other Secured Debts (Attach list)	\$	
32 Total Income (add lines 20-31)	\$	45 Total Living Expenses (add lines 33-44)	\$	

- Wages, salaries, pensions, and social security:** Enter gross monthly wages and/or salaries. Do not deduct withholding or allotments taken out of pay, such as insurance payments, credit union deductions, car payments, etc. To calculate the gross monthly wages and/or salaries:
 - If paid weekly - multiply weekly gross wages by 4.3. Example: \$425.89 x 4.3 = \$1,831.33
 - If paid biweekly (every 2 weeks) - multiply biweekly gross wages by 2.17. Example: \$972.45 x 2.17 = \$2,110.22
 - If paid semimonthly (twice each month) - multiply semimonthly gross wages by 2. Example: \$856.23 x 2 = \$1,712.46
- Net Income from Business:** Enter monthly net business income. This is the amount earned after ordinary and necessary monthly business expenses are paid. **This figure is the amount from page 6, line 82.** If the net business income is a loss, enter "0". Do not enter a negative number. If this amount is more or less than previous years, attach an explanation.
- Net Rental Income:** Enter monthly net rental income. This is the amount earned after ordinary and necessary monthly rental expenses are paid. Do not include deductions for depreciation or depletion. If the net rental income is a loss, enter "0". Do not enter a negative number.
- Distributions:** Enter the total distributions from partnerships and subchapter S corporations reported on Schedule K-1, and from limited liability companies reported on Form 1040, Schedule C, D or E.
- Expenses not generally allowed:** We generally do not allow tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions, payments on unsecured debts such as credit card bills, cable television and other similar expenses. However, we may allow these expenses if it is proven that they are necessary for the health and welfare of the individual or family or for the production of income.
- Food, Clothing, and Misc.:** Total of clothing, food, housekeeping supplies, and personal care products for one month.
- Housing and Utilities:** For principal residence: Total of rent or mortgage payment. Add the average monthly expenses for the following: property taxes, home owner's or renter's insurance, maintenance, dues, fees, and utilities. Utilities include gas, electricity, water, fuel, oil, other fuels, trash collection, telephone, and cell phone.
- Vehicle Ownership Costs:** Total of monthly lease or purchase/loan payments.
- Vehicle Operating Costs:** Total of maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls for one month.
- Public Transportation:** Total of monthly fares for mass transit (e.g., bus, train, ferry, taxi, etc.)
- Out of Pocket Health Care Costs:** Monthly total of medical services, prescription drugs and medical supplies (e.g., eyeglasses, hearing aids, etc.)

Certification: Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

Taxpayer's Signature	Spouse's Signature	Date
----------------------	--------------------	------

Attachments Required for Wage Earners and Self-Employed Individuals:

Copies of the following items for the last 3 months from the date this form is submitted (check all attached items):

- Income - Earnings statements, pay stubs, etc. from each employer, pension/social security/other income, self employment income (commissions, invoices, sales records, etc.).
- Banks, Investments, and Life Insurance - Statements for all money market, brokerage, checking and savings accounts, certificates of deposit, IRA, stocks/bonds, and life insurance policies with a cash value.
- Assets - Statements from lenders on loans, monthly payments, payoffs, and balances for all personal and business assets. Include copies of UCC financing statements and accountant's depreciation schedules.
- Expenses - Bills or statements for monthly recurring expenses of utilities, rent, insurance, property taxes, phone and cell phone, insurance premiums, court orders requiring payments (child support, alimony, etc.), other out of pocket expenses.
- Other - credit card statements, profit and loss statements, all loan payoffs, etc.
- A copy of last year's Form 1040 with all attachments. Include all Schedules K-1 from Form 1120S or Form 1065, as applicable.

Sections 5 and 6 must be completed only if the taxpayer is SELF-EMPLOYED.

Section 5: Business Information

46 Is the business a sole proprietorship (filing Schedule C) Yes, Continue with Sections 5 and 6. No, Complete Form 433-B. All other business entities, including limited liability companies, partnerships or corporations, must complete Form 433-B.

47 Business Name	48 Employer Identification Number	49 Type of Business Federal Contractor <input type="checkbox"/> Yes <input type="checkbox"/> No
50 Business Website	51 Total Number of Employees	52a Average Gross Monthly Payroll 52b Frequency of Tax Deposits

53 Does the business engage in e-Commerce (Internet sales) Yes No

Payment Processor (e.g., PayPal, Authorize.net, Google Checkout, etc.) Name & Address (Street, City, State, ZIP code)	Payment Processor Account Number
54a	
54b	

Credit Cards Accepted by the Business.

Credit Card	Merchant Account Number	Merchant Account Provider, Name & Address (Street, City, State, ZIP code)
55a		
55b		
55c		

56 Business Cash on Hand. Include cash that is not in a bank. **Total Cash on Hand** \$

Business Bank Accounts. Include checking accounts, online bank accounts, money market accounts, savings accounts, and stored value cards (e.g. payroll cards, government benefit cards, etc.) Report Personal Accounts in Section 4.

Type of Account	Full name & Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union or Financial Institution.	Account Number	Account Balance As of _____ mmddyyyy
57a			\$
57b			\$
57c Total Cash in Banks (Add lines 57a, 57b and amounts from any attachments)			\$

Accounts/Notes Receivable. Include e-payment accounts receivable and factoring companies, and any bartering or online auction accounts. (List all contracts separately, including contracts awarded, but not started.) **Include Federal Government Contracts.**

Accounts/Notes Receivable & Address (Street, City, State, ZIP code)	Status (e.g., age, factored, other)	Date Due (mmddyyyy)	Invoice Number or Federal Government Contract Number	Amount Due
58a				\$
58b				\$
58c				\$
58d				\$
58e Total Outstanding Balance (Add lines 58a through 58d and amounts from any attachments)				\$

Business Assets. Include all tools, books, machinery, equipment, inventory or other assets used in trade or business. Include Uniform Commercial Code (UCC) filings. Include Vehicles and Real Property owned/leased/rented by the business, if not shown in Section 4.

	Purchase/Lease/Rental Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
59a Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code) and Phone			
59b Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County			Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code) and Phone			
59c Total Equity (Add lines 59a, 59b and amounts from any attachments)						\$

Section 6 should be completed only if the taxpayer is SELF-EMPLOYED

Section 6: Sole Proprietorship Information (lines 60 through 81 should reconcile with business Profit and Loss Statement)

Accounting Method Used: Cash Accrual

Income and Expenses during the period (mmddyyyy)

to (mmddyyyy)

Total Monthly Business Income		Total Monthly Business Expenses (Use attachments as needed.)	
Source	Gross Monthly	Expense Items	Actual Monthly
60 Gross Receipts	\$	70 Materials Purchased ¹	\$
61 Gross Rental Income	\$	71 Inventory Purchased ²	\$
62 Interest	\$	72 Gross Wages & Salaries	\$
63 Dividends	\$	73 Rent	\$
64 Cash	\$	74 Supplies ³	\$
Other Income (Specify below)		75 Utilities/Telephone ⁴	\$
65	\$	76 Vehicle Gasoline/Oil	\$
66	\$	77 Repairs & Maintenance	\$
67	\$	78 Insurance	\$
68	\$	79 Current Taxes ⁵	\$
		80 Other Expenses, including installment payments (Specify)	\$
69 Total Income (Add lines 60 through 68)	\$	81 Total Expenses (Add lines 70 through 80)	\$
		82 Net Business Income (Line 69 minus 81) ⁶	\$

Enter the amount from line 82 on line 23, section 4. If line 82 is a loss, enter "0" on line 23, section 4.

Self-employed taxpayers must return to page 4 to sign the certification and include all applicable attachments.

1 Materials Purchased: Materials are items directly related to the production of a product or service.

2 Inventory Purchased: Goods bought for resale.

3 Supplies: Supplies are items used in the business that are consumed or used up within one year. This could be the cost of books, office supplies, professional equipment, etc.

4 Utilities/Telephone: Utilities include gas, electricity, water, oil, other fuels, trash collection, telephone and cell phone.

5 Current Taxes: Real estate, excise, franchise, occupational, personal property, sales and employer's portion of employment taxes.

6 Net Business Income: Net profit from Form 1040, Schedule C may be used if duplicated deductions are eliminated (e.g., expenses for business use of home already included in housing and utility expenses on page 4). Deductions for depreciation and depletion on Schedule C are not cash expenses and must be added back to the net income figure. In addition, interest cannot be deducted if it is already included in any other installment payments allowed.

FINANCIAL ANALYSIS OF COLLECTION POTENTIAL FOR INDIVIDUAL WAGE EARNERS AND SELF-EMPLOYED INDIVIDUALS		(IRS USE ONLY)
Cash Available (Lines 11, 12c, 13d, 14c, 15g, 56, 57c and 58e)	Total Cash	\$
Distraintable Asset Summary (Lines 17c, 18c, 19c, and 59c)	Total Equity	\$
Monthly Total Positive Income minus Expenses (Line 32 minus Line 45)	Monthly Available Cash	\$

Privacy Act: The information requested on this Form is covered under Privacy Acts and Paperwork Reduction Notices which have already been provided to the taxpayer.

Exhibit 6-4

Form **433-B**
 (Rev. January 2008)
 Department of the Treasury
 Internal Revenue Service

Collection Information Statement for Businesses

Note: Complete all entry spaces with the current data available or "N/A" (not applicable). Failure to complete all entry spaces may result in rejection of your request or significant delay in account resolution. Include attachments if additional space is needed to respond completely to any question.

Section 1: Business Information

1a Business Name _____	2a Employer Identification No. (EIN) _____
1b Business Street Address _____ Mailing Address _____ City _____ State _____ ZIP _____	2b Type of Entity (Check appropriate box below) <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other _____ <input type="checkbox"/> Limited Liability Company (LLC) classified as a corporation <input type="checkbox"/> Other LLC - Include number of members _____
1c County _____	2c Date Incorporated/Established _____ mmddyyyy
1d Business Telephone () _____	3a Number of Employees _____
1e Type of Business _____	3b Monthly Gross Payroll _____
1f Business Website _____	3c Frequency of Tax Deposits _____
	3d Is the business enrolled in Electronic Federal Tax Payment System (EFTPS) <input type="checkbox"/> Yes <input type="checkbox"/> No

4 Does the business engage in e-Commerce (Internet sales) Yes No

Payment Processor (e.g., PayPal, Authorize.net, Google Checkout, etc.), Name and Address (Street, City, State, ZIP code)	Payment Processor Account Number
5a	
5b	

Credit cards accepted by the business

Type of Credit Card (e.g., Visa, MasterCard, etc.)	Merchant Account Number	Merchant Account Provider Name and Address (Street, City, State, ZIP code)
6a		Phone _____
6b		Phone _____
6c		Phone _____

Section 2: Business Personnel and Contacts

Partners, Officers, LLC Members, Major Shareholders, Etc.

7a Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security Number _____ _____ _____ Home Telephone () _____ Work/Cell Phone () _____ Ownership Percentage & Shares or Interest _____
7b Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security Number _____ _____ _____ Home Telephone () _____ Work/Cell Phone () _____ Ownership Percentage & Shares or Interest _____
7c Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security Number _____ _____ _____ Home Telephone () _____ Work/Cell Phone () _____ Ownership Percentage & Shares or Interest _____
7d Full Name _____ Title _____ Home Address _____ City _____ State _____ ZIP _____ Responsible for Depositing Payroll Taxes <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security Number _____ _____ _____ Home Telephone () _____ Work/Cell Phone () _____ Ownership Percentage & Shares or Interest _____

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Section 3: Other Financial Information (Attach copies of all applicable documentation.)

8 Does the business use a Payroll Service Provider or Reporting Agent (If yes, answer the following) Yes No

Name and Address (Street, City, State, ZIP code)	Effective dates (mmddyyyy)
--	----------------------------

9 Is the business a party to a lawsuit (If yes, answer the following) Yes No

<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	Location of Filing	Represented by	Docket/Case No.
Amount of Suit \$	Possible Completion Date (mmddyyyy)	Subject of Suit	

10 Has the business ever filed bankruptcy (If yes, answer the following) Yes No

Date Filed (mmddyyyy)	Date Dismissed or Discharged (mmddyyyy)	Petition No.	Location
-----------------------	---	--------------	----------

11 Do any related parties (e.g., officers, partners, employees) have outstanding amounts owed to the business (If yes, answer the following) Yes No

Name and Address (Street, City, State, ZIP code)	Date of Loan	Current Balance As of _____ mmddyyyy	Payment Date	Payment Amount
		\$		\$

12 Have any assets been transferred, in the last 10 years, from this business for less than full value (If yes, answer the following) Yes No

List Asset	Value at Time of Transfer	Date Transferred (mmddyyyy)	To Whom or Where Transferred
	\$		

13 Does this business have other business affiliations (e.g., subsidiary or parent companies) (If yes, answer the following) Yes No

Related Business Name and Address (Street, City, State, ZIP code)	Related Business EIN:
---	-----------------------

14 Any increase/decrease in income anticipated (If yes, answer the following) Yes No

Explain (use attachment if needed)	How much will it increase/decrease	When will it increase/decrease
	\$	

Section 4: Business Asset and Liability Information

15 Cash on Hand. Include cash that is not in the bank **Total Cash on Hand** \$

Business Bank Accounts. Include online bank accounts, money market accounts, savings accounts, checking accounts, and stored value cards (e.g., payroll cards, government benefit cards, etc.)
List safe deposit boxes including location and contents.

Type of Account	Full Name and Address (Street, City, State, ZIP code) of Bank, Savings & Loan, Credit Union or Financial Institution.	Account Number	Account Balance As of _____ mmddyyyy
16a			\$
16b			\$
16c			\$

16d Total Cash in Banks (Add lines 16a through 16c and amounts from any attachments) \$

Accounts/Notes Receivable. Include e-payment accounts receivable and factoring companies, and any bartering or online auction accounts.
(List all contracts separately, including contracts awarded, but not started.)

17 Is the business a Federal Government Contractor Yes No (Include Federal Government contracts below)

Accounts/Notes Receivable & Address (Street, City, State, ZIP code)	Status (e.g., age, factored, other)	Date Due (mmddyyyy)	Invoice Number or Federal Government Contract Number	Amount Due
18a				
Contact Name: Phone:				\$
18b				
Contact Name: Phone:				\$
18c				
Contact Name: Phone:				\$
18d				
Contact Name: Phone:				\$
18e				
Contact Name: Phone:				\$
18f Outstanding Balance (Add lines 18a through 18e and amounts from any attachments)				\$

Investments. List all investment assets below. Include stocks, bonds, mutual funds, stock options, and certificates of deposit.

Name of Company & Address (Street, City, State, ZIP code)	Used as collateral on loan	Current Value	Loan Balance	Equity Value Minus Loan
19a	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Phone:		\$	\$	\$
19b	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Phone:		\$	\$	\$
19c Total Investments (Add lines 19a, 19b, and amounts from any attachments)				\$

Full Name & Address (Street, City, State, ZIP code) of Credit Institution	Credit Limit	Amount Owed As of _____ mmddyyyy	Available Credit As of _____ mmddyyyy
20a			
Account No.	\$	\$	\$
20b			
Account No.	\$	\$	\$
20c Total Credit Available (Add lines 20a, 20b, and amounts from any attachments)			\$

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Real Property. Include all real property and land contracts the business owns/leases/rents.

		Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
21a	Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County				Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21b	Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County				Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21c	Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County				Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21d	Property Description		\$	\$	\$		\$
Location (Street, City, State, ZIP code) and County				Lender/Lessor/Landlord Name, Address (Street, City, State, ZIP code), and Phone			
21e Total Equity (Add lines 21a through 21d and amounts from any attachments)							\$

Vehicles, Leased and Purchased. Include boats, RVs, motorcycles, trailers, mobile homes, etc.

		Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
22a	Year	Mileage		\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					
22b	Year	Mileage		\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					
22c	Year	Mileage		\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					
22d	Year	Mileage		\$	\$		\$
Make	Model	Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone					
22e Total Equity (Add lines 22a through 22d and amounts from any attachments)							\$

Business Equipment. Include all machinery, equipment, merchandise inventory, and/or other assets. Include Uniform Commercial Code (UCC) filings.

	Purchase/Lease Date (mmddyyyy)	Current Fair Market Value (FMV)	Current Loan Balance	Amount of Monthly Payment	Date of Final Payment (mmddyyyy)	Equity FMV Minus Loan
23a Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23b Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23c Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23d Asset Description		\$	\$	\$		\$
Location of asset (Street, City, State, ZIP code) and County			Lender/Lessor Name, Address, (Street, City, State, ZIP code) and Phone			
23e Total Equity (Add lines 23a through 23d and amounts from any attachments)						\$

Business Liabilities. Include notes and judgments below.

Business Liabilities	Secured/ Unsecured	Date Pledged (mmddyyyy)	Balance Owed	Date of Final Payment (mmddyyyy)	Payment Amount
24a Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24b Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24c Description:	<input type="checkbox"/> Secured <input type="checkbox"/> Unsecured		\$		\$
Name _____					
Street Address _____					
City/State/ZIP code _____				Phone: _____	
24d Total Payments (Add lines 24a through 24c and amounts from any attachments)					\$

The Adviser's Guide to Doing Business With the IRS

Section 5: Monthly Income/Expense Statement for Business

Accounting Method Used: Cash Accrual

Income and Expenses during the period (mmddyyyy) to (mmddyyyy)

Total Monthly Business Income		Total Monthly Business Expenses	
Source	Gross Monthly	Expense Items	Actual Monthly
25 Gross Receipts from Sales/Services	\$	36 Materials Purchased ¹	\$
26 Gross Rental Income	\$	37 Inventory Purchased ²	\$
27 Interest Income	\$	38 Gross Wages & Salaries	\$
28 Dividends	\$	39 Rent	\$
29 Cash	\$	40 Supplies ³	\$
Other Income (Specify below)		41 Utilities/Telephone ⁴	\$
30	\$	42 Vehicle Gasoline/Oil	\$
31	\$	43 Repairs & Maintenance	\$
32	\$	44 Insurance	\$
33	\$	45 Current Taxes ⁵	\$
34	\$	46 Other Expenses (Specify)	\$
35 Total Income (Add lines 25 through 34)	\$	47 IRS Use Only Allowable Installment Payments	\$
		48 Total Expenses (Add lines 36 through 47)	\$

1 Materials Purchased: Materials are items directly related to the production of a product or service.

2 Inventory Purchased: Goods bought for resale.

3 Supplies: Supplies are items used to conduct business and are consumed or used up within one year. This could be the cost of books, office supplies, professional equipment, etc.

4 Utilities/Telephone: Utilities include gas, electricity, water, oil, other fuels, trash collection, telephone and cell phone.

5 Current Taxes: Real estate, state, and local income tax, excise, franchise, occupational, personal property, sales and the employer's portion of employment taxes.

Certification: Under penalties of perjury, I declare that to the best of my knowledge and belief this statement of assets, liabilities, and other information is true, correct, and complete.

Signature	Title	Date

Print Name of Officer, Partner or LLC Member

Attachments Required: Copies of the following items for the last 3 months from the date this form is submitted (check all attached items):

- Banks and Investments - Statements for all money market, brokerage, checking/savings accounts, certificates of deposit, stocks/bonds.
- Assets - Statements from lenders on loans, monthly payments, payoffs, and balances, for all assets. Include copies of UCC financing statements and accountant's depreciation schedules.
- Expenses - Bills or statements for monthly recurring expenses of utilities, rent, insurance, property taxes, telephone and cell phone, insurance premiums, court orders requiring payments, other expenses.
- Other - credit card statements, profit and loss statements, all loan payoffs, etc.
- Copy of the last income tax return filed; Form 1120, 1120S, 1065, 1040, 990, etc.

Additional information or proof may be subsequently requested.

FINANCIAL ANALYSIS OF COLLECTION POTENTIAL FOR BUSINESSES		(IRS USE ONLY)
Cash Available (Lines 15, 16d, 18f, 19c, and 20c)	Total Cash	\$
Distrainable Asset Summary (Lines 21e, 22e, and 23e)	Total Equity	\$
Monthly Income Minus Expenses (Line 35 Minus Line 48)	Monthly Available Cash	\$

Privacy Act: The information requested on this Form is covered under Privacy Acts and Paperwork Reduction Notices which have already been provided to the taxpayer.

Exhibit 6-5



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

March 10, 2010

SMALL BUSINESS / SELF-EMPLOYED DIVISION

SB/SE Control No: SBSE 05-0310-012
Expires: 3/10/2011
Impacted IRM 5.8.5

MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS
DIRECTORS, CAMPUS COMPLIANCE OPERATIONS AND
CHIEF, APPEALS

FROM: Frederick W. Schindler /s/ **Frederick W. Schindler**
Director, Collection Policy

SUBJECT: Interim Guidance for Calculation of Future Income in Offer in
Compromise Cases

The purpose of this memorandum is to provide revised guidance in the computation of the taxpayer's future income value during the evaluation of an offer in compromise.

Internal Revenue Manual (IRM) 5.8.5 defines future income as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future. The number of months used depends on the payment terms of the offer. In general, a taxpayer's current income will be used in the analysis of future ability to pay.

Attached to this memorandum is a revision to sections of IRM 5.8.5, Financial Analysis which discuss the calculation of future income and the use of collateral agreements.

The revisions include specific examples of when the use of income averaging and/or a collateral agreement is appropriate.

These procedures are effective upon the date of issuance and should be applied to any offer currently under consideration. Additionally, these procedures may be applied to offers previously rejected which are currently in their appeal period or where the taxpayer has requested appeals consideration. These procedures will be incorporated into the next revision of IRM 5.8 Offers in Compromise.

If you have any questions, you may contact me, or a member of your staff may contact Thomas B. Moore, OIC Senior Program Analyst. Territory or Campus personnel should direct any questions, through their management staff, to the appropriate Area or Campus contact.

Attachment

cc: Commissioner, Small Business/Self-Employed Division
National Chief, Appeals
Chief Counsel
National Taxpayer Advocate

5.8.5.6 Future Income

(1) Future income is defined as an estimate of the taxpayer's ability to pay based on an analysis of gross income, less necessary living expenses, for a specific number of months into the future.

(2) As a general rule, the taxpayer's current income will be used in the analysis of future ability to pay.

This includes situations where the taxpayer's income is recently reduced based on a change in occupation or employment status.

(3) Consideration should be given to the taxpayer's overall general situation including such facts as age, health, marital status, number and age of dependents, level of education or occupational training, and work experience.

(4) Situations that may warrant placing a different value on future income than current or past income indicates are discussed in the table below. Additionally, securing a future income collateral agreement based on the taxpayer's earnings potential may be appropriate and are discussed in more detail in IRM 5.8.5.19 and IRM 5.8.6, Collateral Agreements.

If...	Then...
Income will increase or decrease or current necessary expenses will increase or decrease	Adjust the amount or number of payments to what is expected during the appropriate number of months.
A taxpayer is temporarily or recently unemployed or underemployed	<p>Use the level of income expected if the taxpayer were fully employed and if the potential for employment is apparent. Each case should be judged on its own merit, including consideration of special circumstances or ETA issues.</p> <p>Example: Unemployed – The taxpayer is a construction worker and between jobs. A review of the taxpayer's previous annual income and/or income averaging may be the appropriate method to determine taxpayer's income for calculation purposes.</p> <p>Example: Underemployed – If a taxpayer is a teacher but recently moved and is currently at a lesser paying job until a teaching position</p>

	<p>becomes available, or has been hired and does not begin work until the school season begins, the taxpayer is considered to be currently underemployed. Use the anticipated income once the taxpayer is fully employed.</p>
<p>A taxpayer is unemployed and is not expected to return to their previous occupation or previous level of earnings</p>	<p>Contact the taxpayer to discuss the expected future level of income. When considering future income, also allow anticipated increases in necessary living expenses and/or applicable taxes.</p> <p>Each case should be judged on its own merit, including consideration of special circumstances or ETA issues.</p>
<p>A taxpayer is long-term unemployed</p>	<p>Use of income averaging is not required; the taxpayer's current income may be used in the future income calculation.</p> <p>Example: Taxpayer has been unemployed for over one year. There are currently no employment opportunities for the taxpayer and the household is living on one income. Use of the taxpayer's current income with a future income collateral agreement is appropriate.</p>
<p>A taxpayer is long-term underemployed</p>	<p>Do not income average; use the taxpayer's current income.</p> <p>Example: The taxpayer was previously employed in a manufacturing plant making \$75,000 per year. There are currently no opportunities for the taxpayer to secure employment making the same rate of pay as their prior job. Their income is now \$25,000 per year with no anticipated increase. Use the current income only.</p>
<p>A taxpayer has an irregular employment history or fluctuating income</p>	<p>Average earnings over the three prior years. The use of a time period other than three years should be the exception and only when specific</p>

	<p>circumstances are present.</p> <p>Example: The taxpayer is a stock broker whose income in 2007 was \$150,000 and income in 2008 was \$25,000. In this case, you should consider income averaging the prior three years or secure a future income collateral agreement if the offer is accepted.</p> <p>Note: This practice does not apply to wage earners. Wage earners should be based on current income unless the taxpayer has unique circumstances.</p>
<p>A taxpayer is in poor health and their ability to continue working is questionable</p>	<p>Reduce the number of payments to the appropriate number of months it is anticipated the taxpayer will continue working. Consider special circumstance situations when making any adjustments.</p> <p>Example: Taxpayer has a serious health issue and it is anticipated they will be unable to work after six months. Use the taxpayer's current income for six months then reduce their income to the anticipated amount they will be receiving after they are unable to work.</p>
<p>A taxpayer is close to retirement and has indicated they will be retiring</p>	<p>If the taxpayer can substantiate retirement is imminent, adjust the taxpayer's future earnings and expenses accordingly. If it cannot be substantiated, base the calculation on current earnings. At this point, it may be appropriate to discuss other options available to the taxpayer, for example an installment agreement.</p> <p>Example: The taxpayer is 65 years of age and has indicated they will retire at the age of 66. They provide copies of documents that have been submitted to their employer discussing their retirement date. Use the taxpayer's current income until the taxpayer's</p>

	<p>anticipated retirement date, then adjust the taxpayer’s income to reflect the amount expected in retirement.</p> <p>Example: The taxpayer is 62 years of age, the taxpayer is in good health, and their income has remained stable for the past three years. The taxpayer states they would like to retire at age 65. Use the taxpayer’s current income and if the RCP exceeds the offer amount, discuss the option of securing an installment agreement until the taxpayer actually retires, at which time an offer may be appropriate.</p>
<p>A taxpayer will file a petition for liquidating bankruptcy</p>	<p>Consider reducing the value of future income. The total value of future income should not be reduced to an amount less than what could be paid toward non-dischargeable periods, or what would be recoverable through a bankruptcy proceeding. When considering a reduction in future income also consider the intangible value to the taxpayer of avoiding bankruptcy. Refer to IRM 5.8.10.2.</p>

(5) Judgment should be used in determining the appropriate time to apply income averaging on a case by case basis. All circumstances of the taxpayer should be considered when determining the appropriate application of income averaging, including special circumstances and ETA considerations. Below are some examples of when income averaging may or may not be appropriate.

Example: Taxpayer’s spouse has not worked for over two and one-half years and has no expectations of returning to work. Do not average income for the spouse's past employment.

Example: Taxpayer has been unemployed for over one year and provided proof that Social Security Disability is the sole source of income. Do not apply income averaging in this case but use current income to determine the taxpayer’s future ability to pay.

Example: The taxpayer was incarcerated and unable to work for the past four years and provided proof that a relative is paying for all expenses, including child support payments. The taxpayer has no skills or promise of work in the near future but is planning on attending trade school to

improve his chances of getting a job. Do not include income prior to the incarceration. In this case, since the taxpayer has no skills or promise of employment, their future income value may be determined to be zero. Consideration should be given whether it would be in the best interest of the government to accept the offer or reject the offer in favor of other case resolutions.

Example: The taxpayer recently began working after several months of unemployment. Use the most recent three months pay statements to determine future income. Since the taxpayer is a wage earner, the use of income averaging over the prior three years of income is not appropriate.

(6) In situations where the taxpayer's income does not appear to meet their stated living expenses the difference should not be included as additional income to the taxpayer, unless there are clear indications additional income not included on the collection information statement is being received and will continue to be received by the taxpayer. Discussion with the taxpayer/representative and a review of documents submitted by the taxpayer must take place to determine the appropriateness of including an additional amount in the calculation of future income. Verification of the source of unexplained bank deposits or statements from the source of gifts may be required to correctly determine the taxpayer's current income. Telephone contact is recommended to expedite case processing.

Example: The taxpayer has been receiving gifts from their parents to meet current living expenses for the past six months. The taxpayer has no guaranteed right to the funds in the future and the amount does not appear to be based on the transfer of assets to the parents. The gift amount should not be included as income.

Example: The taxpayer has been receiving an amount each month that only began recently, which they state is a gift from a friend. Further research has determined the taxpayer is in business with the friend and the amount is from their business. This amount should be included as income to the taxpayer. Additionally, consideration should be given to referring the taxpayer and the business income tax return to Examination.

Example: The taxpayer had gambling winnings over a period of time, but is not consistent. Do not include those winnings as additional income on the IET. This does not apply to professional gamblers.

Example: The collection information statement (CIS) submitted by the taxpayer included \$ 3,000.00 of monthly income, which is verified by paystubs. The CIS submitted by the taxpayer includes \$ 4,000.00 of expenses. An additional \$ 1,000.00 should not be added to the taxpayer's income based solely on the fact it appears the taxpayer has been meeting

the living expenses included on the CIS. Discussion with the taxpayer or representative is necessary to clarify the discrepancy prior to including the amount as additional income.

(7) Employees need to exercise good judgment when determining future income. The history must be clearly documented and support the known facts and circumstances of the case and include analysis of the supporting documents. Each case needs to be evaluated on its own particular set of facts and circumstances. The history must clearly explain the reasoning behind our actions.

Currently 5.8.5.6(7) Future Income Collateral Agreements

(1) In some instances, it may be difficult to calculate the taxpayer's anticipated income. While the use of income averaging is one method available and should be used when averaging the taxpayer's income provides a reasonable calculation of the taxpayer's future earnings potential, it may also be appropriate to use the taxpayer's current income and secure a future income collateral agreement. The use of a future income collateral agreement will protect the government's interest in any substantial increase in the taxpayer's earnings.

(2) A future income collateral agreement is most appropriate in situations where the taxpayer's future income is uncertain, but it is reasonably expected that the taxpayer will be receiving a substantial increase in income.

(3) A future income collateral agreement should not be used to accept an offer for a lesser amount than the calculated RCP. See IRM 5.8.6.3.1, Future Income, for instructions on completing collateral agreements.

Example: A taxpayer is currently in medical school; upon graduation income should increase dramatically. Consider securing a future income collateral agreement.

Example: A taxpayer recently secured a job as an attorney with a starting salary of \$80,000 per year, with potential for significant increases in salary. Consider securing a future income collateral agreement.

Example: A taxpayer is a real estate agent who has had two years of high income and the current income is significantly diminished. Based on the current real estate market, it may be appropriate to use the taxpayer's current income and secure a future income collateral agreement in lieu of income averaging.

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Example: A taxpayer's RCP is \$12,000 but has offered \$10,000 plus a future income collateral agreement. A future income collateral agreement is not appropriate in lieu of the taxpayer increasing their offer to the RCP amount. If the taxpayer is not willing to increase their offer to the RCP amount, the offer should be rejected.

Chapter 7

Tax Liabilities and Bankruptcy

Introduction

This chapter discusses the treatment of federal tax liabilities in the context of a bankruptcy proceeding.

The objective of this chapter is limited to giving the practitioner a basic understanding of bankruptcy law and illustrating the possible benefits and pitfalls of bankruptcy for a tax-delinquent taxpayer. It does not purport to give a complete treatment of the substantive or procedural law of bankruptcy.

This chapter, for the most part, does not take into account debts other than tax debts. In fact, in the majority of cases the delinquent taxpayer has become so by reason of other financial pressures. Frequently, the client has failed to file returns, pay tax, pay estimated taxes, or “borrowed” from trust fund taxes as a result of pressure from other creditors. In such cases, the legal strategy must take into account all aspects of the client’s financial situation and all creditors’ claims. A client considering bankruptcy should always be referred to an attorney experienced in bankruptcy practice. This chapter seeks only to assist the CPA in determining when such a referral might be worthwhile and to assist in determining where the taxpayer should file for bankruptcy instead of applying for an installment agreement or an offer in compromise to settle his tax debts.

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was signed into law by President George W. Bush on April 20, 2005. Most of the 2005 Act’s provisions took effect on October 17, 2005, and were applicable to bankruptcy proceedings filed on or after that date. The 2005 Act represents a radical reworking of United States insolvency law. We limit our discussion here, to some of the provisions of the 2005 Act that affect debtors with federal tax liabilities.

Types of Bankruptcies

There are several types of voluntary bankruptcy proceedings. These are invoked by the filing of a petition for relief under the Bankruptcy Code in a bankruptcy court in the area where an individual resides or where a business maintains its offices or conducts its business. (We will not discuss a Chapter 12 Family Farmer Bankruptcy proceeding.)

Whether a reorganization or a liquidation, the primary public policy purpose of a bankruptcy proceeding is to protect the interests of creditors and to provide that the bankrupt’s nonexempt property gets allocated among the creditors according to priorities established by Congress.

Chapter 7

A Chapter 7 bankruptcy consists of a liquidation of assets and liabilities. It may be filed by an individual, partnership, or corporation. Upon the filing of a Chapter 7 bankruptcy petition, the Office of the U.S. Trustee appoints a Chapter 7 trustee to administer the liquidation of the debtor's estate for the benefit of its creditors. In the context of any bankruptcy proceeding, the debtor is required to file schedules and a statement of financial affairs which sets forth in detail all assets and liabilities of the debtor and any property claimed to be exempt under federal or state laws. The end result of a Chapter 7 proceeding for the bankrupt is the unconditional discharge of many, but not all, categories of debt.

Chapter 7 works best to discharge unsecured tax liabilities where the statute of limitations on assessment has run and the liability was not assessed within 240 days of the filing. The liability may not be the subject of an offer in compromise or a collection due process appeal. It provides no assistance for tax liabilities incurred for the immediate prior three years and it provides no relief from secured tax debt.

Compared to an offer in compromise, Chapter 7 has some advantages. The taxpayer does not have to pay any amount over and above the liquidation of his current assets, Bankruptcy Code exemptions are larger than the exemptions allowed by the IRS when computing the offer and the taxpayer may get to keep his current tax refund. Only refunds that accrue prior to the bankruptcy petition go to the bankruptcy estate.

Chapters 11 and 13

Chapters 11 and 13 are reorganization bankruptcies. The public policy objective underlying a reorganization bankruptcy is that the interests of creditors, and particularly unsecured creditors, may, in some circumstances, be best served if the debtor's assets are not liquidated. Generally speaking, in a reorganization bankruptcy either the general unsecured creditors consent to the terms of the Plan of Reorganization or the Bankruptcy Court determines that the unsecured creditors receive at least as much as they would in a liquidation.

Chapter 11 reorganizations apply to individuals, corporations, and businesses. It is a favorable alternative when, for example, the liquidation of a business would include goodwill that exceeds the value of the other assets. The value of goodwill cannot usually be realized for the benefit of creditors unless the business is maintained in operation. Under a Chapter 11 reorganization proceeding, the business might be maintained in operation until it is sold as an operating business or until the creditors have been paid the amounts required under the Plan of Reorganization. Once the debtor files a Chapter 11 Petition, the debtor is regarded as a debtor in possession and is able to administer its affairs as a trustee or fiduciary for its creditors under the auspices of the Bankruptcy Code.¹²⁸ The debtor prepares and files within 120 days of the petition date, unless extended by order of the court, a plan of reorganization and a disclosure statement setting forth a business plan on how the debtor will emerge from Chapter 11 by paying all, or a portion, of its obligations. Typically, creditors have a voice in the reorganization process by forming a creditors' committee at the first meeting of creditors and may vote to either accept or reject the plan of reorganization.

¹²⁸ See 11 USC §§1107 and 1108.

If the Plan of Reorganization is accepted by at least the voting majorities set forth in 11 USC §1126(c) of each class of creditors, the Plan of Reorganization will be confirmed.

A Chapter 13 bankruptcy may be commenced by an individual with regular income. Generally, under a Chapter 13 bankruptcy, a debtor has the opportunity to retain control of his assets and reorganize under a plan approved by the court. He discharges his obligations under the plan for a given term. One advantage of a Chapter 13 bankruptcy for a delinquent taxpayer compared with a Chapter 7 has been that certain tax liabilities may be discharged under a Chapter 13 bankruptcy that are not dischargeable in a Chapter 7 proceeding. The discharge in a Chapter 13 bankruptcy, however, is conditional upon the debtor discharging all of his obligations under the plan.

A Bankruptcy Court may not confirm a Plan of Reorganization if the principal purpose of the plan is the avoidance of taxes.¹²⁹

Impact of the 2005 Act on Availability of Relief under the Bankruptcy Code

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) requires Chapter 13 debtors to be in filing compliance with the IRS for four years before a bankruptcy petition.

Additionally, the Act includes rules that make it much more difficult for a debtor to obtain a discharge. These are referred to as the anti-abuse rules. The rules generally make it more difficult for a high-income debtor to obtain Chapter 7 relief and force him into Chapter 13.

Section 11 USC §707(b) was amended by the 2005 Act to provide that, where the debtor's debts are primarily consumer debts, entitlement to relief under Chapter 7 is contingent on a test of the debtor's ability to make payment to his creditors. Section 102 of the 2005 Act has a very complex structure. As a beginning point, it establishes a presumption of abuse by the debtor in Chapter 7 proceedings where the debtor's debts are primarily consumer debts. Where the presumption of abuse is not rebutted, the Chapter 7 proceeding may be dismissed or, if the debtor consents, converted into a Chapter 11 or Chapter 13 proceeding.

Other than where there is evidence of abuse arising from the debtor's bad faith or the totality of the circumstances, the rebuttal or presumption of abuse will depend upon the relationship between the debtor's income, his or her expenses which are recognized for this purpose, and the debtor's debts.

11 USC §707(b) is amended under the 2005 Act to provide a formula to determine if abuse exists.

Abuse Testing

The abuse testing provision is mostly mechanical. Calculate monthly income less allowable monthly expenses. Multiply that amount by 60. If the resulting amount is equal to or greater than the greater of 25 percent of nonpriority unsecured claims or \$6,000 (that is, \$100 per week), abuse is presumed to exist. If, however, income less deductions over a five-year period is greater than \$10,000 (that is, \$400 per week), abuse is determined to exist regardless of the value of the first criterion set forth above.

¹²⁹ 11 USC §1129(d).

The result of these computations is that monthly payments of \$100 or less will not invoke the formula and monthly payments of more than \$167 ($\$10,000/60$) will.

Example 7-1

Assume, for example, that a debtor had income less deductions over a five-year period of \$9,000 (\$150 per week) and he has nonpriority unsecured debt of \$32,000. 25 percent of nonpriority unsecured claims is therefore \$8,000. Abuse would exist pursuant to this rule because 25 percent of claims is greater than \$6,000 and net available income is greater than \$8,000. The \$10,000 rule is irrelevant.

Example 7-2

Assume another debtor has \$60,000 of nonpriority unsecured debt and has monthly income over expenses of \$120 per month. Multiplying $\$120 \times 60$ results in \$7,200. This amount is less than 25 percent of \$60,000, therefore we use the \$10,000 ceiling in the formula. The assumption of abuse does not apply.

If the applicable debt of this debtor were \$20,000 and the ability to pay remained at \$120 per month or a total of \$7,200, the \$6,000 floor would be used because 25 percent of \$20,000 is \$5,000. Abuse would be presumed because \$7,200 is greater than \$6,000. If you reduce his ability to pay to \$84 per month for a total of \$4,980 (60×84), the abuse would not be presumed.

To avoid the anti-abuse presumption, a high-income debtor must have a large amount of debt before he would be allowed a Chapter 7 filing.

If the presumption of abuse is not rebutted pursuant to the above-stated rules, it may be rebutted only by the debtor demonstrating special circumstances such as a serious medical condition or call to active duty in the armed services. The debtor must then demonstrate that these special circumstances require the adjustment of income or of expenses such that the rule for the nonexistence of abuse is satisfied if such adjustments to income or expenses are taken into account.

As if all this were not sufficiently complicated, notwithstanding the above, no party is permitted to file a motion to have a Chapter 7 proceeding dismissed or converted by reason of abuse under the above rules if the family income of the debtor is less than the median family income for the debtor's state of residence as reported by the Bureau of the Census and as adjusted for changes in the consumer price index. It is this provision that appears to limit the benefits of a Chapter 7 consumer bankruptcy to those with lower than average incomes.

Of course a creditor may always file an objection to a bankruptcy filing by an individual who otherwise meets the above criteria if she believes that the taxpayer has used credit abusively.

To compute monthly income for purposes of the bankruptcy testing the debtor uses an average of monthly income from all sources without regard to whether or not the income is taxable with the exception of Social Security benefits and payments on account of acts of terrorism. The averaging is generally done over a six month period.

In computing the expenses, start with the applicable monthly expenses that the IRS publishes as allowable expenses for the area in which the debtor lives. There are then numerous adjustments that are made. For example, there are additional adjustments for health insurance, limited payments for a child to attend school and secured debt payments. The result is that certain expenses are actually counted twice, once because they are included in the IRS standards and again because the law allows them to be added to the monthly allowable expense.

Federal tax liabilities have been determined by courts not to be consumer debts. Hence, a taxpayer who has, say, federal income tax liabilities, but whose non-tax liabilities are not primarily consumer debt, may not be subject to the means test for eligibility for Chapter 7 relief described above. The impact of this aspect of the 2005 Act on taxpayers has yet to be determined.

To further discourage excessive Chapter 7 filings, 11 U.S.C. §707(b) provides that where a Chapter 7 case is converted to Chapter 13 or dismissed because of the abuse statute, the court may order the debtor's attorney to pay reasonable costs, including attorney's fees, of the trustee or the United States' trustee if it is found that he did not make a reasonable inquiry into the facts of the case or did not act in good faith.

The abuse testing rules are used in a Chapter 13 filing for purposes of determining the required payment to unsecured creditors as well as the length of time that payments must be made. A further discussion of how these apply to Chapter 13 filings is beyond the scope of this text.

Discharge of Tax Liabilities in Bankruptcy

The primary motivating factor for most individuals contemplating bankruptcy is the discharge of debts. Simply put, if a debt is discharged in a bankruptcy, the debtor is relieved of the legal obligation to pay the debt and can make a fresh start in his working or business life. The general rule is that a debtor who is an individual may be discharged from his private debts in a Chapter 7 bankruptcy proceeding. Corporations may be discharged in a Chapter 11 proceeding but not in a Chapter 7. We discuss the discharge of tax liabilities in a Chapter 13 bankruptcy below. Chapter 13 is more flexible than Chapter 7.

We begin our discussion of the discharge of liabilities by discussing the priority in bankruptcy of creditors' claims.

Priorities of Creditors' Claims

From the creditor's point of view, the most important aspects of a bankruptcy are the rules setting forth the priorities of the creditors' claims. The following is a summary of those rules:

- First in priority are creditors with perfected security interests.¹³⁰ A creditor is deemed to have a security interest only to the extent of the value of the property securing the debt.¹³¹ Hence, a creditor with a mortgage of \$100,000 against property worth only \$75,000 is a secured creditor to the extent of \$75,000 and an unsecured creditor with respect to the remaining \$25,000. Certain costs of the trustee in preserving or disposing of the property

¹³⁰ 11 USC §726.

¹³¹ 11 USC §506(a).

subject to a security interest may be charged against the property. As indicated above, a federal tax lien is perfected only after the filing of the NFTL. Federal tax liens are treated somewhat differently from other security interests and these differences are discussed below.

- Second in priority are administrative expenses as defined in 11 USC §503(b). These include payments of fees to lawyers, accountants, and so on. The administrative expenses are second in priority to the extent that they do not include interest charges. These costs are paid without interest. Tax liabilities incurred by the bankruptcy estate itself are included in here as well.
- Then follow special claims (priorities 3 through 7) which Congress has considered to be particularly deserving of priority.¹³²
- The eighth priority of unsecured claims includes the federal, state, and local tax claims. These priority claims related to taxes are not dischargeable:
 - An income or gross receipts tax
 - For a taxable year ending on or before the date of the filing of the bankruptcy petition for which a return, if required, was due (including extensions) within three years before the date of the filing of the petition.
 - Assessed within 240 days before the date of the filing of the petition. The 240-day period is tolled for the period within the 240-day period during which an offer in compromise is pending or in effect plus 30 days. The 240-day period is also tolled for any time a stay of collections was in effect in a prior bankruptcy case during the 240-day period plus 90 days.
 - Not assessed before, but assessable under applicable law, or by agreement after the filing of a bankruptcy petition (but not if no return was filed, or the return was filed late and within two years of the filing of the bankruptcy petition). Under the BRA, the automatic stay no longer operates to prevent assessment.
 - A tax required to be collected or withheld by the debtor.¹³³
 - A tax not yet assessed and assessable after the commencement of the case.¹³⁴

2005 Act and the Tolling of Priority Time Periods

The time periods set forth above for eighth-priority claims are stayed for any period plus 90 days during which the taxing authority is stayed from collecting a tax debt by reason of non-bankruptcy law that prohibits collection as a result of the taxpayer having appealed a collection action. The time periods set forth above for eighth-priority claims are also stayed for any period plus 90 days during which the stay of proceedings was in effect by reason of any confirmed

¹³² 11 USC §507(a)(3)-(7).

¹³³ 11 USC §507(a)(8)(C).

¹³⁴ 11 USC §507(a)(8)(A)(iii).

bankruptcy plan in a previous bankruptcy. Therefore, if a tax was assessed, say by examination, 300 days before the filing, and that amount was subject to a collections due process hearing which took 90 days to complete, for purposes of this statute, it would fall within the 240-day window and therefore not be dischargeable in the bankruptcy.

Example 7-3

Joe Contractor had his 2007 tax return audited in January 2010. On April 30, 2010, he was assessed an amount as a result of the audit and collection procedures commenced. Joe submitted an installment agreement request that was denied and consequently requested a collection due process hearing. The CDP hearing tolls the statute for purposes of the 240-day rule. Therefore, if Joe files bankruptcy only 240 days after April 30, 2010, the assessed amount will not be dischargeable. If he files bankruptcy within three years of his original filing for the 2007 return, it is similarly not dischargeable.

Therefore, it is imperative for the practitioner to obtain a record of assessment and determine if any actions were taken that would stay the statute of limitations for bankruptcy purposes.

Under 11 USC §507(a)(7)(G), penalties on tax claims having a priority status have themselves a priority status only if they are pecuniary (monetary) penalties compensating the taxing authority for loss. Most penalties, including those for the failure-to-pay tax, failure-to-file, and the accuracy-related penalty, are punitive rather than pecuniary and do not, therefore, have priority. Otherwise, punitive penalties would operate to punish the taxpayer's other creditors as much, if not more, than the taxpayer. Indeed, sometimes in Chapter 11 proceedings, the IRS claim for nonpecuniary penalties has been equitably subordinated to those of the general unsecured creditors.¹³⁵

Discharge of Tax Debts and Priority of Creditors' Claims

There is a close relationship between the concepts of dischargeability of taxes and the priority of taxing authorities' claims under a Chapter 7 bankruptcy. 11 USC §523(a)(1) provides that tax debts which have priority status under 11 USC §507(a)(8) are nondischargeable. These are the exceptions described above. It further provides that any tax with respect to which a return, if required, was not filed or was filed late (taking account of extensions) and within two years before the date of the filing of the petition or with respect to which the debtor made a fraudulent return or willfully attempted to evade or defeat taxes is not dischargeable even though such taxes do not represent priority claims.

In *John Howard Payne*, 2006 USTC ¶ 50,106,¹³⁶ the IRS determined that the taxpayer had not filed an income tax return for 1986. In 1990, the IRS assessed a tax for 1986. The taxpayer eventually filed a return for 1986 in 1992 and, in 1997, filed for bankruptcy.

The issue in the case turned upon whether the taxpayer had filed a return within the meaning of 11 USC 523(a)(1)(B). If so, the 1986 liability was dischargeable because the late return was filed more than two years before the bankruptcy proceeding.¹³⁷ If not, then no return had been filed

¹³⁵ 11 USC §510(b).

¹³⁶ 7th Cir. 2005.

¹³⁷ 11 USC 523(a)(1)(B)(ii).

and the tax liability was nondischargeable under 11 USC 523(a)(1)(B)(i). The court took the position that no return had been filed and that the tax liability was nondischargeable. It reasoned that one requirement for a filed document to be considered a return under the case law is that the filing of the return must evince an honest and genuine endeavor to satisfy the law. The court noted that in this case the taxpayer had given no explanation for not timely filing a return for 1986, had filed a return only after the IRS had determined from its own sources that no return had been filed, and that the filing of the return was of no assistance to the IRS because the tax for 1986 had already been assessed.

There is vast case law on how the willful attempt to evade or defeat taxes is to be interpreted. *Toti*, 24 F.3d 806,¹³⁸ for example, follows a modern trend of giving the term an expansive meaning. The court held that a tax debt was nondischargeable under this provision by reason of the debtor's conscious failure to file returns. According to this court, no act of commission was necessary to establish the necessary degree of willfulness.

11 USC §523(14) provides that any loan or other debt incurred to pay a nondischargeable tax obligation to the United States is deemed nondischargeable. Under prior law, individual debtors would often obtain cash advances against a credit card or loan in order to pay off federal taxes and then seek to have those loans discharged in a bankruptcy proceeding.

As indicated above, trust fund taxes are priority claims and are therefore nondischargeable. It is because of this provision that neither trust fund tax obligations nor the trust fund recovery penalty of §6672 is dischargeable.¹³⁹

The BAPCPA requires Chapter 13 debtors to be in filing compliance with the IRS for the four years preceding a bankruptcy petition and also requires taxpayers to file returns or an extension for returns due during the commencement of the bankruptcy. If the taxpayer fails to meet these requirements, the court can convert or dismiss the case if the IRS should so request.

Federal Tax Liens and Bankruptcy

The value of a bankruptcy for purposes of assisting the taxpayer in his attempt to get a fresh start depends upon whether the IRS has filed federal tax liens. An advisor should bear in mind, however, that federal tax liens will normally have been filed by the time a delinquent taxpayer begins to think about bankruptcy.

Federal Tax Liens: A Primer

We set forth below a brief discussion in order that the treatment of federal tax liens in a bankruptcy can be better understood. Briefly, the priority of federal tax liens can be summarized thus:

- Under §6323(a), the unfiled federal tax lien is subordinate to the interests of
 - A purchaser of property subject to the lien who pays full and adequate consideration for it,

¹³⁸ 6th Cir. 1994.

¹³⁹ *Sotello v. U.S.*, 436 U.S. 268 (1978).

- A perfected security interest under state law to the extent the lender has parted with money or money's worth,
 - A mechanic's lien, and a lien of a judgment creditor. The nature of a judgment creditor's lien depends upon state law.
- The Notice of Federal Tax Lien (NFTL), when properly filed, has priority over most subsequently perfected liens. Also, other than for statutory exceptions and purchase money liens, the tax lien immediately attaches to, and becomes a first lien on, property the taxpayer acquires after the NFTL's filing.

Section 6323(b) sets forth a number of exceptions to the above priority rules. These include an exception for personal property purchased at retail and subsequently attaching real property tax liens.

Section 6323(c) and (d) set forth limited exceptions to the after-acquired property rule described above. These rules provide a means for creditors who secure loans with floating liens on, say, inventory and construction loan lenders to protect the priority of their security interests in after-acquired property.

Under IRC §6323(a), a federal tax lien is only perfected against the claims of most arm's-length third parties if it is filed. Hence, the claims of the IRS are unsecured for purposes of establishing priority in a bankruptcy if the lien is unfiled. The unfiled lien may be avoided by the trustee.¹⁴⁰

The Confusion Regarding Tax Liens

What happens to a tax lien in bankruptcy is confusing and worth some additional explanation. There are two types of ways a creditor can enforce a claim, in *personam* (a personal claim) or *in rem*. An *in personam* action is one that is directed toward a particular person, while an *in rem* action is directed at a specific piece of property. Bankruptcy discharge extinguishes only *in personam* actions.

If a NFTL was filed prior to the bankruptcy and the taxpayer goes through a full discharge of all federal debts, the pre-petition tax lien on the taxpayer's exempted, excluded, or abandoned property will remain and the IRS can still collect on it. The IRS may collect on those assets by foreclosing its lien interest.

If assets were excluded from the bankruptcy estate, the IRS does not need a pre-petition tax lien to collect against those assets. For example, if a retirement account has been excluded from the bankruptcy estate, the IRS does not have to have filed a NFTL to still be able to collect with respect to that retirement account.

Note, also, that where a lien continues to attach to property after the bankruptcy, the IRS view is that the IRS is not authorized under the law to discharge the lien for payment of an amount that is less than the value of the property to which the lien attaches.¹⁴¹

¹⁴⁰ Speers v. U.S., 382 U.S. 266, 275 (1965) 11 USC §545(2).

¹⁴¹ Chief Counsel Advice 200248008.

Federal Tax Liens and Priority Secured Claims

If the U.S. tax lien is perfected by the filing of an NFTL, the United States is a secured creditor and is treated as such in a bankruptcy proceeding. The priority of a tax lien, however, is different from that of other perfected security interests. Under 11 USC §724(b), an NFTL is subordinated to priority unsecured claims (that is, administrative costs and so on) under 11 USC §507(a)(1)(7). Under the 2005 Act, however, 11 USC § 724 is amended to significantly limit the classes of liens that may be subordinated. Most significantly, it excludes from the subordination provisions *ad valorem* taxes on the bankruptcy estate's real or personal property (for example, state property taxes).

Bankruptcy Exemptions

If the discharge of debts is the most important consequence of a bankruptcy proceeding for most debtors, the second most important consequence is often the ability to put property beyond the reach of creditors. 11 USC 522 permits an individual debtor to exempt certain property from inclusion within the bankruptcy estate, thus making it unavailable to pay creditor claims in the event of a liquidating Chapter 7 bankruptcy.

Homestead Exemptions

The Bankruptcy Code gives a debtor a choice between federal and state exemptions.¹⁴² Before the effective date of relevant provisions of the 2005 Act, the laws of some states, such as Florida and Texas, provided for generous homestead exemptions that enabled the bankrupt taxpayer to put his or her personal residence beyond the reach of the IRS and other creditors.

The homestead exemption is limited under the 2005 Act. Under the 2005 Act, the homestead exemption for residential property acquired within the 1215-day period preceding the bankruptcy filing is limited to \$125,000. This provision is effective as of April 20, 2005, the date of enactment of the 2005 Act, rather than the usual effective date, which is six months after that. In addition, the homestead exemption is denied in an amount equal to the value of any property sold by the debtor in fraud of creditors within the ten-year period preceding the bankruptcy filing. The domiciliary requirements for the purpose of claiming the exemptions of any state are tightened under the 2005 Act.

The exemptions from the claims of creditors under state law are, however, likely in most cases to remain more generous than those offered under the Bankruptcy Code. In other states, the debtor is denied the option of federal exemptions and is limited to the usually less generous exemptions of state law. The practitioner must consult state law and state property exemptions to determine whether the federal exemptions are available and whether the debtor gets more favorable treatment under federal or state law exemptions.

¹⁴² 11 USC §522(b)(1).

Retirement Savings and Education Plan Exemptions

In *Patterson v. Shumate*, 504 U.S. 753,¹⁴³ the U. S. Supreme Court held that ERISA employee welfare benefit plans did not constitute part of the bankrupt estate. Such plans are therefore exempt from the bankruptcy proceeding.

The decision in *Patterson* was based on the effect of the required clause in ERISA pension plans that prohibits the plan proceeds from being assigned, voluntarily or involuntarily. This anti-alienation clause, however, does not prevent a federal tax lien from attaching to an ERISA plan. It also does not render an ERISA plan exempt from IRS levy, although the IRS, when it levies, has no greater rights to the assets than has the pension beneficiary. Thus, the IRS is not able to levy on plan assets until those assets are distributed, or distributable, to the pension beneficiary.

In 2004, the IRS acquiesced with respect to the Ninth Circuit Court of Appeals decision in the bankruptcy case of *IRS v. Snyder*, 343 F3d 1171.¹⁴⁴ In *Snyder*, the IRS had filed a lien against the taxpayer which had attached, among other things, to the taxpayer's interest in an ERISA pension plan. The IRS took the position in the case that, notwithstanding *Patterson*, it should be treated as a secured creditor in the bankruptcy to the extent of its lien on the pension plan. If the IRS had prevailed, the plan assets would have been treated as assets of the bankruptcy estate simply for the purpose of establishing the value of the secured interest of the IRS. This would have likely resulted in a greater payout to the IRS from the non-ERISA plan assets of the bankruptcy estate. Essentially, the recovery of the IRS in respect of its lien on the ERISA plan assets would have been accelerated. The court held, however, that the IRS would not be treated as a secured creditor within the bankruptcy proceeding in respect of the bankrupt's interest in the ERISA plan.

Many retirement vehicles such as IRAs, Keogh plans, and executive deferred compensation plans are not governed by ERISA. In *Rousey v. Jackoway*, 95 AFTR 2d 2005-1716, –US–,¹⁴⁵ however, the Supreme Court held that 11 USC 522(d)(10)(E) of the Bankruptcy Code applied to IRAs.

Section 224 of the 2005 Act amends Section 522 of the Bankruptcy Code to provide that IRAs and other non-ERISA plans are exempt from the bankruptcy estate. An exception, however, is made for IRAs (including Roth IRAs but not including simplified employee pensions and simple retirement accounts) with balances of \$100,000 attributable to sources other than rollovers from qualified plans. This amount is permitted to be increased by the Bankruptcy Court in the interests of justice.

Federal Tax Liens and Discharged Tax Liabilities

We indicated above that the discharge of the underlying tax liability in bankruptcy does not discharge an NFTL attaching to prepetition property. The NFTL attaches to property regardless of whether it is exempt from levy under Internal Revenue Code Section 6334 or not part of the

¹⁴³ 1992.

¹⁴⁴ 2003.

¹⁴⁵ 2005.

bankruptcy estate under 11 USC §522. Consequently, even though a tax liability may be discharged in bankruptcy, the NFTL remains in effect and attaches to prepetition property.¹⁴⁶

This result significantly diminishes the importance of exemption planning in bankruptcy. IRS policy is to file an NFTL in nearly every situation in which there is a significant tax delinquency. If an NFTL is filed before a bankruptcy filing, after the bankruptcy the IRS can enforce its lien against prepetition property to which it attached (but not after-acquired property if the tax liability was discharged), notwithstanding that the property was exempt from the claims of creditors under the Bankruptcy Code.

In *Imarah v. Comm*,¹⁴⁷ the IRS was prevented from pursuing collection related to a bankruptcy case.

The taxpayers, Joseph and Chantal Imarah, filed several bankruptcy petitions:

- November 13, 1996, they filed a Chapter 7 bankruptcy petition. The bankruptcy court entered an order of discharge.
- April 15, 1997, the Imarahs filed their 1996 income tax return with money due. The IRS assessed the tax and sent them a demand for payment.
- July 13, 1997, the Imarahs filed a Chapter 13 bankruptcy petition (a separate petition from the Nov. 13, 1996, filing).
- On April 15, 1999 the Imarahs filed their 1998 tax return with money due. The IRS assessed the liability and sent a demand for payment.
- On May 24, 1999, the Imarahs filed a motion to vacate the discharge order entered for the 1996 case and convert it from Chapter 7 to Chapter 11.
- On July 8, 1999, the bankruptcy court dismissed the 1997 Chapter 13 filing.
- On May 21, 2003, the taxpayers again filed a Chapter 7 petition and the court entered an order of discharge.

The IRS claimed that the Imarahs unpaid tax liabilities for the years 1996 and 1998 were not discharged in the 2003 filing and filed a Notice of Federal Tax Lien.

The Tax Court held that the 1996 and 1998 liabilities were discharged in the 2003 bankruptcy because the due dates for those returns fell beyond the 3-year look-back period. This included the tolling of the statute required by the July 1997 bankruptcy filing. The court determined that the lookback period had been extended to May 27, 1998.

The 1998 tax return was also discharged because that liability arose after the filing of the first two petitions. Since the return was due after the first two bankruptcy filings, its lookback period was not extended by the prior bankruptcies and was therefore dischargeable on May 21, 2003.

¹⁴⁶ 11 USC §522(c)(2)(B).

¹⁴⁷ T.C. Memo, 2008-137.

The Automatic Stay

Since one of the policy purposes of the Bankruptcy Code is to distribute funds to creditors according to priorities established by Congress, it is clearly necessary to prevent a creditor free-for-all when a debtor makes a bankruptcy filing. Although temporary, the automatic stay under 11 USC §362 is an attractive feature of bankruptcy for the taxpayer whose assets are being executed or levied upon by creditors. The automatic stay serves as a shield to protect a debtor's assets and property from the reach of its creditors, including the IRS. The filing of a bankruptcy typically stays or prohibits the continuation of the following activities:

- The commencement or continuation of an action against the debtor to recover a claim against the debtor that arose before the commencement of the bankruptcy;
- The enforcement against the debtor or against property of the estate of a judgment obtained before the commencement of the bankruptcy;
- Any act to obtain possession or property of the estate, or of property from the estate or to exercise control of property of the estate;
- Any act to create, perfect, or enforce against property of the debtor any lien to the extent that such a lien secures a claim that arose before the commencement of the bankruptcy;
- The commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

There is a cause of action against the IRS if it willfully violates provisions of the Bankruptcy Code relating to the automatic stay or the discharge of tax. The stay may be lifted by the court upon the application of a creditor under certain circumstances. Secured creditors are frequently permitted to proceed against collateral when the estate has no equity in the collateral.

The Automatic Stay and IRS Action

The IRS is generally subject to the stay. It may not, therefore, send a notice of deficiency, file an NFTL, or seize property after the commencement of the proceeding. There are exceptions to the stay which apply to the IRS. Notwithstanding the stay, the IRS can conduct a tax audit, make a demand for tax returns, assess an uncollected tax liability which arose prior to the filing of a bankruptcy case, and demand payment of the assessment.¹⁴⁸

There are other limitations on the effect of the stay on IRS action:

- The automatic stay is personal to the debtor and property of the estate. The Bankruptcy Court cannot enjoin the IRS from seeking a trust fund recovery tax assessment or collection against any corporate officer. Neither can it prevent the IRS from levying on an ERISA plan or other property not constituting the bankrupt estate.

¹⁴⁸ 11 USC §362(b)(9).

- A Bankruptcy Court cannot enjoin the IRS from seeking collection from a nondebtor spouse who has not filed for bankruptcy relief.¹⁴⁹

The BAPCPA made a change in the provisions for stays in the case of serial filers. For debtors who file bankruptcy on or after October 17, 2005, and have had one or more bankruptcy cases dismissed within the preceding twelve-month period, the automatic stay may either terminate within 30 days with respect to the debtor and the debtor's property that is not property of the bankruptcy estate or not go into effect at all.¹⁵⁰

Effects of a Violation of the Automatic Stay

Typically, any action taken by the IRS while the automatic stay is in effect is rendered null and void.

Preferences

The ability of the trustee to set aside certain prebankruptcy transfers of assets by the debtor is necessary to ensure that it is the Bankruptcy Code rather than the debtor that determines the priority in which creditors get paid. 11 USC §547(b) provides that a trustee may avoid certain transfers made to creditors in the 90-day period preceding a bankruptcy filing (or one year in the case of a creditor who is an *insider*, such as a relative of the debtor) with respect to debts incurred before the transfer. "Transfer" includes the granting of a security interest.¹⁵¹

There are numerous exceptions to the general rule. These include payments made in the ordinary course of business and payments that do not increase the preferred creditor's recovery from the debtor.

Federal tax payments made during the preference period or amounts recovered by the IRS from levies made during the preference period are subject to avoidance by the trustee if none of the exceptions apply.

11 USC §547(c)(6) provides that an NFTL filed within 90 days of a bankruptcy filing may not be avoided by the Trustee as an avoidable preference. An NFTL is avoidable, if at all, only under 11 USC §545. Generally, only an unfiled federal tax lien is avoidable under 11 USC §545. A number of courts have held (on the basis of fairly complex statutory interpretation) that even where the taxpayer's property comes within one of the IRC §6323(b) exceptions to the priority of the filed lien, the lien as to such property is not avoidable.¹⁵²

The payment of trust fund taxes cannot constitute an avoidable transfer because such a payment is deemed to be from a trust held for the benefit of the United States.¹⁵³ This is a very important result for insolvency planning in situations in which trust fund recovery taxes are owed.

¹⁴⁹ *In re Hall*, 123 B.R. 441 (1990).

¹⁵⁰ See IRM 5.9.5.7.

¹⁵¹ 11 USC §101(54).

¹⁵² E.g., *Berg v. U.S.*, 121 F.3d. 535 (9th Cir. 1997).

¹⁵³ *Begier v. U.S.*, 496 U.S. 545 (1990).

Property of the Estate

The bankrupt estate constitutes the property over which the Bankruptcy Court has jurisdiction in a bankruptcy proceeding. It comprises all property, legal or equitable, in which the debtor has an interest from the commencement of the proceeding. This includes certain property and rights to property which the debtor acquires within 180 days *after* the filing of the petition by

- Bequest, devise, or inheritance,
- Result of any property settlement agreement with the debtor's spouse, or
- Beneficiary of a life insurance policy or of a death benefit plan.¹⁵⁴

The case of *Patterson v. Shumate* discussed above in the context of exempt property was a case in which the issue was whether an ERISA plan was includible in the property of the estate.

One of the recurring themes of this book is the importance of attempting to prevent a business with substantial goodwill from being closed down either as a result of IRS levy or other action by creditors. In *Whiting Pools*, 462 U.S. 198,¹⁵⁵ the IRS had seized a debtor's business for failure to respond to assessments and demands for payment by the IRS. After the seizure, but prior to the tax sale, the debtor filed a Chapter 11 petition in bankruptcy. Then, the debtor moved in the Bankruptcy Court for a turnover order pursuant to 11 USC § 542 contending that the business assets that were seized by the IRS were necessary to the debtor's reorganization effort. It was not disputed that the seized assets had a higher value as a going concern than that value which the IRS would receive in a forced liquidation sale. The Supreme Court affirmed the Bankruptcy Court's ruling that the debtor was entitled to an order which provided a turnover of the seized assets to the debtor subject to the IRS liens continuing and the IRS receiving adequate protection under 11 USC §363(e). Typically, adequate protection of a secured interest would require a combination of either a cash payment or periodic cash payments to protect a creditor's decrease in the value of the property being used in a debtor's business, a replacement lien to the extent of a decrease in the value of a creditor's lien or any other form of relief which would guard against a diminution of the value of a secured interest.

IRS Procedures in Bankruptcy

IRS procedures for bankrupt taxpayers are contained in IRM 5.9. The IRM emphasizes that no collection action be taken once the bankruptcy petition has been filed. The IRS can be held liable for attorney's fees and damages if prohibited actions take place once the IRS has been notified of the filing even if that particular employee was not aware of it.

IRM 5.9.3.5.1.1 discusses issues that occur regarding property in a community property state. All of the property of one spouse and all community property as of the commencement of the case, under the sole, equal, or joint management of the debtor spouse, become a part of the bankruptcy

¹⁵⁴ 11 USC §541(a).

¹⁵⁵ 1983.

estate, *including the interest of the non-debtor spouse*.¹⁵⁶ Community property also becomes property of the estate to the extent it is liable for an allowed claim against the debtor.¹⁵⁷

Because the non-debtor spouse's interest in community property also becomes a part of the estate, the automatic stay bars attempts to collect the non-debtor spouse's separate tax liabilities from community property. Wages earned by the non-debtor spouse are presumed to be community property and will most likely be included in the bankruptcy estate.

Once a bankruptcy is petitioned, the IRS may not file a notice of federal tax lien for pre-petition taxes. Similarly, no levies should be proposed or made for pre-petition taxes. If an NFTL is filed in violation of the automatic stay, it must be withdrawn.¹⁵⁸

The Taxpayer Advocate's Report of 2010 describes the post-petition processes. Once the proceeding is complete, the IRS separates out collection activity for dischargeable debts and nondischargeable debts. Nondischarged debts are returned to the normal collection process. The IRS will screen real and personal property to see if any discharged debts could be collected from that property. While the IRS is conducting this investigation, filed tax liens will continue to be in the public record. Once the investigation is complete, the IRS has 30 days to release any pre-petition liens.

The Bankruptcy Court as a Tax Forum

11 USC §505(a) grants jurisdiction to the Bankruptcy Court to determine the tax liability of the debtor and the bankrupt estate, except where the liability was contested and adjudicated by a court or administrative tribunal before the bankruptcy filing.

Where a Tax Court proceeding is in process at the time of the bankruptcy filing, the Bankruptcy Court might, upon the request of a party, modify the automatic stay to permit the action to continue on the grounds that it is desirable to have the issue adjudicated by an expert tribunal more familiar with tax matters.¹⁵⁹

Comprehensive Example

Several of the above concepts are well illustrated in the recent USTC Case, *In re Donald Vincent Bernardo, Debtor*, No. 08-80681.¹⁶⁰

In this case, Donald Vincent Bernardo voluntarily filed for bankruptcy relief under Chapter 7 in May, 2008. Mr. Bernardo and his wife owned real estate as tenants in the entirety. The trustee appointed in the case sold the real estate and netted cash of approximately \$104,000 for the bankruptcy estate.

The IRS had filed a NFTL against Mr. Bernardo prior to the filing. The IRS now served a notice of levy on the entire \$104,000, claiming that it was entitled to the entire amount. The trustee was not willing to release the full amount without a court order because half of the amount would

¹⁵⁶ 11 USC § 541(a)(2)(A).

¹⁵⁷ 11 USC § 541(a)(2)(B).

¹⁵⁸ IRM 5.9.3.7.

¹⁵⁹ 11 USC §362(d).

¹⁶⁰ Bankr. M.D. N.C. Jan 5, 2010.

appear to be due to Mrs. Bernardo. The IRS argued that it had acquired the rights to Mrs. Bernardo's proceeds because the tax liability was a joint liability.

The question at hand was whether the Bankruptcy Code requires the Trustee to disburse the money acquired from the sale of joint property to the co-owner even though the payments are subject to an IRS levy.

The legal discussion points out several important concepts.

- The Service's interest in seized property is its lien on that property. The Service has the same rights that the taxpayer would have to that property.
- The Tax Code gives the IRS authority to levy and seize property by any means possible and to sell it to satisfy the lien.
- Third parties are required to surrender property subject to IRS tax liens. This includes the trustee of the bankruptcy estate. The IRS had served a levy on the trustee.
- Suits to enjoin the IRS from collection of taxes are prohibited.
- If the bankruptcy court had distributed the funds to the spouse, they could be subject to levy by the IRS.

Therefore, the Court ordered the Trustee to comply with the IRS levy and distribute all of the net proceeds from the sale of the real estate to the IRS.

Income Tax Election under IRC §1398(d)(2)

IRC §1398 has little to do with the collection of delinquent taxes but does contain provisions with which tax advisors should be familiar. The election for which IRC §1398(d)(2) provides may be very important with respect to bankruptcy tax planning. This Section grants to an individual taxpayer in a Chapter 7 or 11 bankruptcy proceeding (who has assets) the right to elect to have his or her tax year close one day before the bankruptcy filing. If the election is made, the individual's federal income tax liabilities for the short taxable year preceding the bankruptcy filing are a liability of the bankruptcy estate and are potentially entitled to be satisfied from the assets of the bankruptcy estate. If the election is not made, however, the tax year will not end until after the bankruptcy filing and the federal income tax liabilities for the year will be required to be paid out of post-petition assets. Thus, the failure to make the election may result in the taxpayer's assets being applied to otherwise dischargeable obligations when they might otherwise have been used to satisfy nondischargeable tax obligations. Please refer to example 7-4 on the following page.

A §1398 election is made by filing a Form 1040 for the short year by the 15th day of the 4th full month following the end of that short tax year.

Example 7-4

Mary Smith is self-employed and has filed a bankruptcy petition on July 1, 2010. Between January 1 and June 30, she earned \$30,000 of which \$5,000 is in the bank. Mary's receives her discharge on September 30. If Mary does not file an election under §1398, the taxes on that \$30,000 that she earned in the first half of the year must be paid with assets acquired after the bankruptcy petition. The \$5,000 that she had in the bank will have been used to pay creditors.

If she does file the election, the tax on the \$30,000 becomes part of the bankruptcy estate and she can pay the taxes from the estate.

Chapter 8

The Trust Fund Recovery Penalty of IRC §6672

Introduction

IRC §6672 imposes a penalty on “any person required to collect, truthfully account for and pay over any tax imposed by this title who willfully fails to collect such tax or truthfully account for and pay over such...[tax].” The amount of the penalty is the amount of the tax not collected, truthfully accounted for, or paid over. The IRS calls the IRC §6672 penalty the trust fund recovery penalty. It used to be called the 100 percent penalty, and this term is still used.

IRC §6672 applies in those situations where the Code imposes on persons a duty to collect a tax by withholding it from a payment otherwise due to the person liable to pay the tax. IRC §7501 provides that where there is such a duty, the withheld tax is deemed held in trust for the benefit of the United States.

Examples of so-called trust fund taxes are employer-withheld income taxes on wages and salary,¹⁶¹ employee Social Security taxes,¹⁶² backup withholding,¹⁶³ and taxes on gambling winnings.¹⁶⁴ The trust fund recovery penalty is most commonly asserted for employment taxes.

Employment and Trust Fund Taxes

The employer is required to pay the employer portion, and collect from its employees and pay to the government the following employment taxes:

- Withholding of income taxes on wages and salary pursuant to IRC §3402.
- Withholding and payment of taxes under the Federal Insurance Contributions Act (FICA).
 - FICA imposes a tax on both employers and employees in connection with the funding of benefits for the retired and disabled.¹⁶⁵
 - The employer is required to withhold from wages or salary the employee portion of the tax.
 - This includes the Medicare portion of FICA.

¹⁶¹ IRC §3402(a).

¹⁶² IRC §3102.

¹⁶³ IRC §3406.

¹⁶⁴ IRC §3403(q).

¹⁶⁵ IRC §§3111(a) & (b) and 3101(a) & (b).

- Federal Unemployment Tax Act (FUTA)
 - FUTA imposes on employers a tax to fund unemployment benefits.¹⁶⁶
 - There is no FUTA tax imposed upon employees.

Of the above taxes, wage withholding under IRC §3402 and the employee portion of FICA and Medicare are trust fund taxes for the purposes of IRC §6672. The employer withholds these amounts from the employees' wages in trust for the government. If those taxes are not collected, truthfully accounted for, and paid to the government, persons having the duty to do so can be assessed the IRC §6672 penalty. No part of FUTA is a trust fund tax.

Employers report FICA taxes and withheld income taxes on Form 941, in most cases on a quarterly basis. FUTA taxes are reported on Form 940, which is filed annually.

Withheld taxes, FICA, and FUTA taxes are paid to the government under the Federal Tax Deposit System (FTD), pursuant to IRC §6302(c) and its regulations. Under the FTD system, the employer pays the taxes by making deposits in a Federal Reserve Bank or authorized financial institution such as a commercial bank the EFTPS system. The United States is then credited with the amount of the deposit. The use of payment coupons is no longer allowed effective January 1, 2011.¹⁶⁷

The frequency with which FTDs must be made depends upon the tax in question and other factors as are set forth in the IRC §6302 regulations.

The early appeal of employment tax issues is possible when an examination is still in progress. See Rev. Proc. 99-28.

Crediting of Payment of Employment Taxes

While not related to the trust fund recovery penalty as such, it is of interest to note that the Internal Revenue Service Restructuring and Reform Act of 1998 amended IRC §6656(a) to provide that a person can designate the period to which a deposit of employment taxes is to be credited. The designation must be made during the 90-day period following the date of any notice advising the taxpayer of the imposition of failure to deposit penalties with respect to the specified tax period to which the deposit relates.

The effect of this is to prevent the cascading of penalties when the taxpayer misses one deposit and then accrues a penalty in every reporting period because current payments are credited to the earliest period for which there is an outstanding liability.

In any event, deposits are now credited by the IRS to the most recent period or periods for which there is a delinquency.

¹⁶⁶ IRC §3301.

¹⁶⁷ T.D. 9507 Notice 2010-87.

Responsible Persons

Financially troubled businesses with exhausted credit lines frequently resort to using or “borrowing” government trust funds for the purpose of operating the business. The legislative purpose of IRC §6672 is to make this source of financing less tempting to businesses by rendering the persons deemed responsible for its nonpayment personally liable for the tax. The IRS is particularly concerned with the proper collection and payment of the trust fund portion of employment taxes and income tax withholding because it credits the individual employees with the payment even if the government does not get paid. Therefore, an employee will still get his tax refund from excess withholding even if the employer does not remit those funds to the government. Similarly, the employee gets full credit for the FICA contributions for purposes of computing Social Security benefits.

Persons potentially subject to the IRC §6672 penalty are those required to collect, truthfully account for, and pay over trust fund taxes. These are the responsible persons. Every entity required to collect trust fund taxes has at least one responsible person and may have several.

In any given situation, the identification of responsible persons depends upon specific facts and it is difficult to make generalizations. Usually, the responsible person will be a person deemed to have been responsible for using government trust funds to pay business expenses, creditors, or even worse, non-business expenses rather than the IRS.

When IRS agents investigate an employment tax delinquency, they will attempt to interview all possible responsible persons. Even if these individuals are represented by a tax practitioner, the agents will insist that they each attend the meeting in person. The findings from the interview will be reported on Form 4180. Employees may be requested to complete Form 4181. The agents will use the information reported on the forms as the basis of recommendations regarding the assertion of the trust fund recovery penalty.

Policy Statement P-5-60 of the IRM

In February 1993, the IRS revised Policy Statement P-5-60 of the IRM (Policy Statement).

Before the Policy Statement, IRS policy had been to use a scattershot approach to collecting unpaid trust fund taxes. Typically, the Collection Division agent would assert the penalty against all corporate officers regardless of their actual involvement in, or responsibility for, the operation of the corporation’s business. The agent might then move down the corporate hierarchy, asserting the penalty against all those apparently having some responsibility for paying creditors. This process would often not end until quite junior employees such as bookkeepers had been swept into the net. Such persons frequently had no more than ministerial responsibility for paying bills.

Under the Policy Statement, the IRS undertakes to exercise restraint in the assertion of the penalty. Specifically, “...non-owner employees of the business entity who act solely under the dominion and control of others, and who are not in a position to make independent decisions on behalf of the business entity, will not be asserted the trust fund recovery penalty.”

In a further repudiation of the scattershot technique, the Policy Statement provides that the penalty will not be asserted against a person without evidence of that person’s active

involvement in the business entity at the time of the failure to pay the trust fund taxes to the government. An exception is made, however, if the person “intentionally makes information unavailable to impede the investigation.”

The IRM continues to refer IRS collection employees to the Policy Statement although the text of the IRM does not repeat the threat against those who fail to cooperate. The current IRS policy probably results in the trust fund recovery penalty being asserted in more limited circumstances than could be justified by some court opinions. In *Roth v. U.S.*, 779 F.2d 1567,¹⁶⁸ for example, there was a jury finding that the president and chief executive officer had instructed an employee not to pay trust fund taxes to the government. The employee had authority to sign checks, pay bills, including payroll, and hire employees. The court held that the employee was liable for the trust fund recovery penalty since he had an absolute duty to remit trust funds to the government, regardless of orders to the contrary. This is probably a fact situation in which the IRS would not now assert the trust fund recovery penalty.

As indicated above, the Policy Statement attaches some significance to whether or not the presumptive responsible person was a “non-owner employee.” This was one of the factors employed by the court in *Melindez Benitez v. U.S.*, 2006-2 USTC ¶150,598. Here, the plaintiff had the power to countersign checks and held a nominal position as an officer. The court held that she had no effective power to control whether trust fund taxes were paid, noting as one relevant factor, her lack of an ownership interest in the employer entity.

Since there must always be at least one responsible person, the most common defense of taxpayers is that it was somebody else who was responsible for the nonpayment of trust fund taxes. Tax advisors must be aware of the conflict of interest issues that can arise in situations where several executives and the corporation are relying on the same practitioner to advise them.

The balance of this section discusses some of the more important characteristics that have been deemed relevant for identifying responsible persons.

Responsibility for General Financial Affairs

Since the focus of the inquiry in an IRC §6672 investigation is the identity of those persons responsible for the misapplication of trust funds, general responsibility for financial affairs is an important characteristic of a responsible person.

Among the external characteristics of the person having such responsibilities might be title, job description, the authority to sign checks, and the responsibility for filing 941 forms or of making FTDs. The IRM¹⁶⁹ now states that check signing authority alone is not a fact sufficient to justify the assertion of the penalty.

When the penalty is asserted against an employee, the defense is frequently that the employee's responsibilities were ministerial in nature, and decision-making power rests elsewhere. This argument may or may not prevail.

The lack of knowledge of a person of the nonpayment of trust fund taxes is, of course, not an absolute defense for a person whose position in the corporate hierarchy may have been such as to

¹⁶⁸ 11th Cir. 1985.

¹⁶⁹ 5.7.3.3.

place on him the duty to know. Several examples of such determinations of the courts are set forth below.

Corporate Officers

Item 8 of Section I of Form 4180 is directed toward discovering the identities of officers and directors. The IRM now requires that specific facts be developed by the investigating agent to support the assertion of the penalty. Merely being an officer or shareholder is not alone a sufficient basis for asserting the penalty.¹⁷⁰ Note, however, that the government is not limited to this and other positions taken in the IRM. In *Vinick v. U.S.*, 205 F.3d 1¹⁷¹ the government argued, although unsuccessfully, that the fiduciary duty of an inside director is sufficient to render that director liable for the trust fund recovery penalty.

Third Parties

The IRC §6672 penalty liability is not limited to officers, directors, and employees of the taxpayer. Liability for the penalty arises from the possession of the authority or power to determine whether or how trust fund taxes are collected and paid to the government. If that power rests in persons outside the corporate hierarchy, those persons may be liable.

In *William Mahler et al.*, 2000-2 USTC ¶ 50,808,¹⁷² for example, a party having no official title and not owning equity in the corporation was held to be a responsible person by reason of his “practical ability to cause specific creditors of the company to be paid.”

Example 8-1

- In *Quattrone Accountants, Inc.*, 88 B.R. 713 (B.C. DC Pa., 1988), the taxpayer’s accountant operated as its in-house accounting department, handling payroll, withholding, and the remittance of payroll taxes to the government.
- It signed company checks using facsimile stamps.
 - The accounting firm was held liable for the trust fund recovery penalty.

Discussion

- In this connection, if a lender or other third party assumes responsibility for directly paying the employees of the taxpayer, the third party becomes directly liable under IRC §3505.
- The effect of IRC §3505 is to impose on the third party the same responsibilities that are imposed on an employer with regard to trust fund taxes.

¹⁷⁰ IRM 5.7.3.3.

¹⁷¹ 1st Cir. 2000.

¹⁷² D. Conn. 2000.

Lender Liability

In addition, IRC §3505(b) provides that, where a lender or other third party supplies funds to a taxpayer for the purpose of paying wages, the third party is liable for the failure of the taxpayer to pay the trust portion of employment taxes, if the third party has actual knowledge the taxpayer does not intend or will not be able to pay such taxes. Liability under this section is limited to 25 percent of the value of the funds advanced.

One important difference between liability under IRC §6672 and §3505 is that under §3505 the responsible person may be held responsible to pay not only the unpaid trust fund taxes but also the accrued interest on those taxes.

Example 8-2

- Deadbeat Construction, Inc., as general contractor, hires Dry Wall, Inc., as a subcontractor on a construction project.
- Because of Dry Wall's near insolvency, Deadbeat agrees to pay to Dry Wall each week an amount equal to Dry Wall's payroll expense net of all payroll taxes. This is to enable Dry Wall to meet its payroll obligations.
- Subcontractor agreement further provides that Dry Wall will be paid the balance of the amount due under the contract upon completion of the work in five months' time.

Analysis

- If Dry Wall never pays its trust fund payroll taxes, Deadbeat might be liable under IRC §3505(b).
 - This is because the contractor payments were made for the specific purpose of paying wages and, on the facts, a court might hold that Deadbeat had actual knowledge the payroll taxes were not being paid.
- If Deadbeat directly pays Dry Wall's employees, Deadbeat would be liable under IRC §3505(a) without regard to its knowledge of non-payment of trust fund taxes and without the 25 percent limitation of IRC §3505(b).

Willfulness

In some respects, establishing liability under IRC §6672 is a two-step process. First, the taxpayer must have been a responsible person; second, the nonpayment of taxes must have been willful. On some occasions, an otherwise responsible person will be able to escape liability for the trust fund recovery penalty on the grounds that the failure to pay the tax was not willful.

Willfulness under IRC §6672 requires either knowledge or a reckless disregard of a likelihood that trust fund taxes are being misapplied. Willfulness is established in most cases by a showing

that the alleged responsible person paid other creditors with knowledge that trust fund taxes had not been paid.¹⁷³

Mere negligence, in the absence of actual knowledge of the tax delinquency or plainly indifferent to the requirements of the law, is not sufficient to establish liability for the IRC §6672 penalty.¹⁷⁴ If, however, a responsible person has failed to investigate in suspicious circumstances whether trust fund taxes have been paid, courts have tended to characterize the conduct as reckless and the penalty has been upheld. Further, once a responsible person who is not willfully failing to pay trust fund taxes receives actual notice that trust fund taxes are not being paid, it is clear that he or she becomes liable for the penalty at that time and going forward.

Where there is neither knowledge nor a reckless disregard, the party might escape liability.

Example 8-3

- In *Feist*, 607 F.2d 954,^{*} the chairman of the board of directors and treasurer of the employer became aware of a deficiency in remittances of trust fund taxes only shortly before he sold the company.
 - The Court determined that the chairman made adequate provision for the new owner to pay the taxes since they could not reasonably have been paid before the closing.
 - The chairman was held not liable for the trust fund recovery penalty, because his failure to provide payment was not willful.
- In *Sederoff*, 90-2 USTC ¶150,558,^{**} however, the court determined that although a newly hired financial officer was apparently ignorant of the employer's failure to pay payroll taxes, he had a duty to investigate since the company was unable to pay its other creditors.
 - The Court held that his failure to investigate constituted a reckless disregard of a known risk.
 - The financial officer was thus held liable for the trust fund recovery penalty.

^{*} Cls. Ct. 1979.

^{**} D.C. Cal., 1990.

As is evident in the *Sederoff* case, simply not knowing is not an adequate defense. An individual may be held responsible if he should have *suspected* that the trust fund taxes were not being paid and failed to investigate.

The IRS usually takes the position that the element of willfulness is not negated when the putative responsible person delegates the responsibility to make payroll tax payments.

On occasion, courts have found the element of willfulness was lacking when the individual has diminished capacity by reason of age or a lack of business experience.

¹⁷³ see *Gustin*, 876 F.2d 485 (5th Cir. 1989).

¹⁷⁴ *Kalb*, 505 F.2d 506 (2d Cir. 1974), *cert. denied*, 421 U.S. 977 (1975).

Example 8-4

- In *Busey*, 89-2 USTC ¶9493,^{*} the penalty had been asserted against a restaurant manager who had replaced her husband in the position after he had a heart attack.
 - Her ignorance of tax matters in view of her limited business experience was held negligent but not reckless, and the element of willfulness was deemed lacking.

* D.C. Idaho, 1989.

Frequently, taxpayers have argued that the element of willfulness is negated when reasonable cause exists for the delinquency. While this argument has received limited support, see *Newsome*, 431 F.2d 742,¹⁷⁵ most courts have rejected it.¹⁷⁶

There was an unfortunate outcome in *Jefferson v. United States* No. 06-4082¹⁷⁷ for the taxpayer. In this case the individual served in a volunteer capacity as the president of a day care center's board of trustees. As a member of the board, Jefferson had the authority to direct and authorize payment of bills including federal tax deposits. The court held that even though Jefferson was not involved in the day-to-day operations of the center, he had sufficient involvement in the financial affairs of the organization to make him a responsible person. The court also found that there were sufficient signs of unpaid tax liabilities that were ignored, and even though he did not specifically know that the taxes were going unpaid, Jefferson recklessly disregarded a known risk that the taxes were going unpaid, and therefore the act was willful.

Use of a Payroll Agent

A taxpayer that uses a payroll agent to submit payroll taxes is still liable if the agent does not remit the funds to the government. In *D.T. Floormasters v. United States of America*,¹⁷⁸ D.T. Floormasters (DTF) leased employees from an Indiana payroll company that also issued the payroll checks. Prior to issuing the checks, the payroll service would invoice DTF for the entire payroll including taxes, and DTF wired the funds to the payroll company's bank account. Unfortunately, the payroll service owed money to the IRS and the IRS placed a levy on the bank account the day after DTF had wired funds. The IRS took the money and DTF sued for improper levy claiming that the payroll service held the funds in trust for DTF. The District Court held that under Indiana law the funds were not held in trust. Therefore, the levy was proper. DTF was liable for paying those payroll taxes to the government and would have to seek restitution from the payroll company.

It is well established that making payments of payroll taxes to a payroll service does not relieve a company of its obligations for payroll deposits if the payroll service fails to deposit those funds. There have been, unfortunately, some unscrupulous payroll services that have absconded with their clients' money. The client is still responsible for paying its payroll taxes to the government.

¹⁷⁵ 5th Cir. 1970.

¹⁷⁶ See *Monday v. U.S.*, 421 F.2d 121 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970).

¹⁷⁷ 7th Circuit, 10/8/08.

¹⁷⁸ July 10, 2008.

Responsibility for Different Functions

IRC §6672 imposes the trust fund recovery penalty on those required to collect, account for, and pay over trust fund taxes. The Supreme Court, however, has held that it is not necessary for a person to be responsible for all three functions in order to be liable for the penalty.¹⁷⁹

Example 8-5

- In *Slodov*, the alleged responsible person purchased the stock of a corporation which, unknown to him, was delinquent in employment tax payments.
 - Court held that the purchaser of the stock could be held liable for the trust fund recovery penalty only to the extent the purchaser did not remit to the government the unencumbered cash of the corporation on the date he became a responsible person (in this case the date of sale of the employer's stock).
 - Purchaser of the stock could not be held liable for the penalty, however, by reason of his failure to remit cash acquired by the corporation after the date of the sale of the corporate stock.
 - Moreover, the purchaser of the stock did not have a duty to sell equipment of the corporation to raise cash to pay the trust fund taxes.

Discussion

- Logic of the Court's position was
 - Unencumbered cash of the corporation on the date of the sale of the stock constituted trust funds held for the government's benefit.
 - Consequently, if the purchaser of the stock failed to remit that cash to the government, he would be liable under IRC §6672 for the misapplication of such funds.
 - There happened to be no such cash in *Slodov*.

The Supreme Court stated in *Slodov* that to hold a purchasing party responsible for the trust fund payment deficiencies of a former owner of the corporation would undesirably inhibit the sale of businesses. The courts have tended to limit the holding for subsequent cases to the facts of the case. Thus, for example, a person who was a responsible person at the time of the nonpayment of trust fund taxes, but was not chargeable under IRC §6672 because of a lack of knowledge that negated willfulness, would be required to pay all after-acquired funds to the government in satisfaction of trust fund liabilities upon his or her becoming aware of the trust fund delinquency.¹⁸⁰

¹⁷⁹ *Slodov*, 436 U.S. 238 (1977).

¹⁸⁰ *Kinney*, 93-1 USTC ¶ 50,311 (6th Cir. 1993).

Corporate and LLC Protection

Because §6672 imposes the penalty on the responsible person, the IRS ignores the corporate or LLC liability protection in regard to the trust fund taxes. Even if the entity liquidates, the responsible parties will be assessed.

A corporation and an LLC will protect the owners against from the IRS's collection attempts for the non-trust fund portions of the employment taxes. The IRS may only collect these from the entity itself.

Reg. §301.7702-2 addresses the issue of LLC entities and liabilities. An entity that is recognized by state law as separate from its owner is so treated for tax law, including a Single Member LLC (SMLLC). This designation applies to payroll and excise taxes. Therefore, an LLC is treated as a corporation for purposes of these taxes, the owners will be held liable for trust fund taxes, but the entity is liable for non-trust fund taxes. This applies to a SMLLC as well.

The Regulation also states that although the entity is considered a separate entity from its owner, in the case of a SMLLC, the owner files a Schedule C and is individually responsible for his own self-employment taxes.

Penalties and Interest

IRC §6672 renders responsible persons liable only for trust fund taxes. It does not provide for personal liability for interest or penalties imposed on the employer or other primary obligor. Further, the accuracy-related and fraud penalties cannot be asserted against the responsible person in connection with IRC §6672 liability.¹⁸¹

The responsible person is liable for interest at the underpayment rate on the IRC §6672 penalty from the date of assessment.

Assessment Limitation Period

The limitation period for the assessment of the IRC §6672 penalty is that of IRC §6501(a). Courts have agreed that the statute of limitations for assessment of the trust fund liability lies with the underlying employment tax return (generally the Form 941). Thus, the limitation period will generally be three years from the later of the due date or the filing date of the employment tax return in question. Where no employment tax return is filed, the assessment limitation period remains open. See below for circumstances in which the statutory limitation on assessment may be tolled.

Deduction of Trust Fund Recovery Penalty Payments

Treas. Reg. §1.162-21(a) provides that payments made by responsible persons pursuant to IRC §6672 are not deductible as ordinary and necessary business expenses. Courts have also generally denied a bad debt deduction although there might be an argument for a bad debt deduction in light of IRC §6672(d) providing for a right of contribution against other responsible persons.

¹⁸¹ IRC §6672(a).

Assessment and Appeal of IRC §6672 Penalty

Employment taxes of Subtitle C of the Code are not subject to deficiency procedures and can therefore be summarily assessed.¹⁸² The IRC §6672 trust fund recovery penalty is an assessable penalty of Subchapter B of Chapter 68 of the Code and is therefore also summarily assessable.¹⁸³

A valid assessment is required to accurately state the period to which the assessment relates. In *Stallard*, 12 F.3d 489,¹⁸⁴ the taxpayer escaped IRC §6672 tax liability because the assessment incorrectly reported the period to which it related. The IRS could not correct its error because the assessment limitation period had run out by then.

Although the IRS is entitled to assess the trust fund recovery penalty summarily against a responsible person, in most circumstances it grants a preassessment administrative appeal.¹⁸⁵

Rev. Proc. 2005-34 provides that the IRS will give a taxpayer a 60 day notice of liability before the final notice and demand is sent. This does not prevent assessment, but if the notice is sent before assessment, the limitation period on assessment cannot run until the later of 90 days after sending of the notice or, if the taxpayer makes a preassessment administrative appeal, until 30 days after the conclusion of the appeal.

Enclosed with the appeal notice is Form 2751, which sets forth the proposed penalty assessment. The responsible person is requested to sign at the bottom of Form 2751 and concede liability for the penalty. This invitation will be repeated by the IRS agent who interviews the responsible person in connection with the liability.

The IRS offers a small case appeal for cases in which the proposed assessment is \$25,000 or less. In such cases, the taxpayer files the small case appeal request rather than a protest, which has a laundry list of requirements. Upon receipt of a protest, the district office will determine whether it wishes to revise its position before forwarding the protest to the Appeals Office.

Following a hearing, the penalty will either be withdrawn or assessed. Once the penalty is assessed, the IRS is entitled to enforce payment. It will consider administrative abatement after assessment only in exceptional circumstances.¹⁸⁶

Refund Claim

Refund Claim and Counterclaim

A responsible person who pays the trust fund recovery penalty may file a claim for a refund on Form 843. This can be done after an unsuccessful appeal or in lieu of an appeal. Following a denial of the refund claim or the elapse of six months, whichever is shorter, the responsible person can file a refund action in the Claims Court or Federal District Court.

¹⁸² IRC §6213(a).

¹⁸³ IRC §6671(a).

¹⁸⁴ 5th Cir. 1994.

¹⁸⁵ Rev. Proc. 2005-34, IRB 2005-24.

¹⁸⁶ Rev. Proc. 84-78, *supra*.

Employment taxes are considered divisible under the rule of *Flora*, 357 U.S. 63.¹⁸⁷ The claimant may file for federal court jurisdiction by paying the tax for only one employee for one quarter. In such an action, the IRS can counterclaim for all other amounts alleged due under IRC §6672 for the relevant taxable periods.¹⁸⁸ If the IRS counterclaims, the refund claim and the counterclaim will together cover all the amounts in dispute; the judgment of the court will be conclusive for the liability of the parties for the trust fund recovery penalty for the relevant periods.

The IRS may join in the action against other persons whom it alleges liable for the trust fund recovery penalty should the court determine the plaintiff is not liable for the penalty.

STAY OF COLLECTION

IRC §6331(i)(3) provides, with respect to unpaid tax attributable to post-1998 taxable periods, that the IRS is generally prohibited from levying on the taxpayer's property during the pendency of any refund proceeding brought in court for the recovery of a trust fund recovery penalty amount or employment taxes.

The collection statute of limitations under IRC §6502 is suspended for the time that collection is stayed.¹⁸⁹

If the IRS attempts to enforce collection of the assessment in violation of the stay for which IRC §6672(c) provides, a court may issue an injunction enjoining collection.¹⁹⁰ This is one of the exceptions to IRC §7421(a), which generally prohibits courts from enjoining the assessment or collection of taxes by the IRS.

Repeat Offenders

IRC §6672 operates as an after-the-fact collection device. Except to the extent that it is a deterrent, it does not prevent an employer from continuing to operate a business at the government's expense. The IRS is very concerned to prevent this practice, which it calls *pyramiding*.

The IRS has implemented methods for identifying repeat offenders and taking immediate action against them to prevent further loss to the Treasury. The enforcement measures include immediate filing of NFTLs and levying on the business. If these actions prove inadequate, there are more direct measures available.

Separate Accounting

When a taxpayer is delinquent in collecting, truthfully accounting for, or paying over trust fund employment taxes or certain excise taxes, the IRS is authorized under IRC §7512 to impose the following requirements on a responsible person:

¹⁸⁷ 1958.

¹⁸⁸ IRC §6672(b)(1).

¹⁸⁹ IRC §6672(b)(4).

¹⁹⁰ IRC §6672(c)(1).

- To collect applicable trust fund taxes as required by law;¹⁹¹ and
- To deposit collected trust fund taxes in a bank account no later than two banking days after collection.
 - Bank account must be designated as a trust account for the benefit of the United States.¹⁹²

Form 2481 is the notice requiring compliance with IRC §7512. The notice must be hand-delivered. Where the taxpayer is a corporation, service on any officer is deemed notice to all officers and employees.¹⁹³

A person failing to comply with IRC §7512(b) after being given proper notice may be subject to the criminal sanctions set forth in §7215 (Offenses With Respect to Collected Taxes), as well as the more general tax crimes of IRC §§7201, 7202, and 7203.¹⁹⁴ In addition, special regulations under IRC §7512 authorize the IRS to impose a monthly (as opposed to the usual quarterly) Form 941 filing obligation. If monthly filing is required, deposits or payments of tax are required to be made no later than the filing date.¹⁹⁵

Injunction

IRC §7402(a) grants general jurisdiction to federal district courts to grant relief, including injunctions, as may be necessary or appropriate for the enforcement of the IRS laws.

The IRS can therefore bring an action in court to have a taxpayer enjoined from failing to collect, truthfully account for, or pay over trust fund taxes.¹⁹⁶ Following the issue of an injunction, a party continuing to commit trust fund tax collection or payment violations would be subject to contempt-of-court proceedings.

Designating Remittances

As indicated above, not all employment taxes are trust fund taxes subject to IRC §6672. If, therefore, the employer pays the IRS less than the total amount of employment taxes due, it is in the interests of the responsible persons to have those payments credited against the trust fund tax liability for which they can otherwise be held personally liable.

Voluntary vs. Involuntary Payment

IRS procedure is that if a taxpayer pays taxes voluntarily, the IRS will allocate the payments in the manner specifically directed by the taxpayer in writing.¹⁹⁷ If no such designation is made, the IRS will first credit the payment against non-trust fund tax liabilities.

¹⁹¹ IRC §7512(b).

¹⁹² Treas. Reg. §301.7512-1(c).

¹⁹³ IRC §7512(a)(2).

¹⁹⁴ Treas. Reg. §301.7512-1(f).

¹⁹⁵ Treas. Reg. §39.1-2 et seq..

¹⁹⁶ IRC §6232.

¹⁹⁷ Rev. Rul. 79-284, 1979-2 C.B. 83.

Payments deemed to have been made involuntarily may be allocated by the IRS to the non-trust fund portion of taxes, regardless of the instructions or the wishes of the taxpayer. Involuntary payments occur when they arise as the result of a tax levy or pursuant to a court proceeding in which the government is a party.¹⁹⁸ Once an installment agreement has been executed, the taxpayer may not designate payments.

To direct the IRS to apply a payment against trust fund taxes, make the request in writing. Write the instructions on the check itself and maintain adequate records. It is not unheard of for the IRS to misapply funds. Therefore, periodically checking the transcript of the applicable employment tax quarters is essential.

Before June 19, 2000, the IRS allocated payments which were made involuntarily, or for which no taxpayer designation was made, first to the non-trust fund portion of the tax and then to penalties and interest chargeable to the employer, but not to the responsible person. Since June 19, 2000, however, the IRS has allocated payments to the trust fund portion of the tax before making any allocation to penalties and interest.¹⁹⁹ Practitioners should check that any allocations have been made in accordance with post-June 19, 2000, procedures.

Failing Businesses

If a business is becoming insolvent, the simple way for a responsible person to avoid the assertion of the trust fund recovery penalty is to ensure that priority is given to paying payroll taxes. If payroll taxes cannot be paid, the business should cease operating.

Frequently, however, the principals of a business will hang on hoping the business will turn the corner. In that event, and particularly when it eventually becomes apparent the business is doomed, all available cash should be used to pay delinquent trust fund taxes. As a practical matter, such a payment should not be made as a federal tax deposit (FTD).

Bankruptcy Preference Issues

The Bankruptcy Code sets forth in §574(b) circumstances under which a trustee in bankruptcy can recover from a transferee those amounts paid to the transferee by the bankrupt for an antecedent debt. The trustee is entitled to make this recovery if the payment was made when the bankrupt was insolvent or if the payment was made within certain periods preceding the bankruptcy.

The policy purpose of this provision is to deprive the insolvent debtor of the right to determine which unsecured creditors get paid and which do not.

In *Begier*, 496 U.S. 53,²⁰⁰ the Supreme Court determined that trust fund taxes paid to the IRS by a debtor during the relevant preference period preceding bankruptcy were not recoverable by the trustee in bankruptcy as voidable preferences. The court reasoned, using the legislative history of the Bankruptcy Code of 1978, that the trust fund status of withheld payroll taxes pursuant to IRC §7501 meant that the payments made to the IRS were the government's property rather than the

¹⁹⁸ E.g., *Amos*, 47 T.C. 65, 69 (1966).

¹⁹⁹ IRM 5.19.7.2.2.

²⁰⁰ 1990.

debtor's. Without *Begier*, a responsible person of a sinking business would not be able to use available funds to pay trust fund taxes.

Personal Liability for Corporate Debts

So far we have implicitly assumed that the responsible person is not personally liable for the corporate debts which have remained unpaid because available cash was used to pay trust fund taxes. Preferring trust fund tax obligations over other corporate liabilities continues to make sense, however, even if the responsible person has guaranteed the unpaid corporate debts since the trust fund recovery penalty (like trust fund taxes themselves) may not be discharged in bankruptcy.²⁰¹ Debts under a personal guarantee of corporate obligations, however, will normally be dischargeable in bankruptcy.

Allocation of Payments in Bankruptcy Cases

The issue of allocating payments between trust fund and non-trust fund tax liabilities has been much litigated in bankruptcy situations.

In *Energy Resource Co., Inc.*, 495 U.S. 545,²⁰² the Supreme Court held that the bankruptcy court did have the authority in a reorganization proceeding to order that payments made to the IRS be credited first to the trust fund portion of taxes. The logic of the Court's position was that under the Bankruptcy Code, the bankruptcy court is authorized and empowered to make such orders as may be necessary for the success of a reorganization plan. Thus, the thrust of *Energy Resource Co., Inc.* is that the bankruptcy court may require an allocation of federal tax payments to the non-trust fund portion of the liability if that makes it more likely that creditors, taken as a whole, are more likely to receive payment.

The Court in *Energy Resource* did not decide, because it deemed that it was not required to do so, whether payments made to the IRS in a bankruptcy situation are voluntary for the purpose of the trust fund allocation rule. In *In re Compass Marine Services, Inc.*, 2002-1 USTC ¶ 50,439, the court upheld the determination of the bankruptcy court that payments made under the plan of reorganization be allocated to the non-trust fund portion of the tax liability but admitted that there existed little authority with regard to the standards that should be applied in making such a determination. See *Pepperman*, 976 F.2d 123,²⁰³ for a holding that payments to creditors pursuant to a Chapter 7 liquidation proceeding are involuntary.

Courts have construed the holding of *Energy Resource* to be limited to reorganization proceedings.²⁰⁴ If the bankrupt is liquidating, there appears to be no provision of the Bankruptcy Code and no policy purpose which would authorize the bankruptcy court to order the IRS to credit payments to the trust portion of taxes. But see *In re Deer Park*, 10 F. 3d 1478,²⁰⁵ for the holding that *Energy Resource* applied where the plan of reorganization provided for a liquidation.

²⁰¹ *Sotelo*, 436 U.S. 268 (1978).

²⁰² 1990.

²⁰³ 3rd Cir. 1992.

²⁰⁴ *Kare*, 935 F.2d 243 (11th Cir., 1991).

²⁰⁵ 9th Cir. 1992.

Contribution, Indemnification, and Abatement

Joint and Several Liability

The IRS frequently assesses the trust fund recovery penalty against more than one person for the same taxable period of the employer. Where this happens, the responsible persons are jointly and severally liable. The IRS is entitled to collect the unpaid tax from any one or more of the responsible persons assessed. The Service will, naturally, go where the money is.

Where more than one person is responsible for the same penalty, the person who makes payment can recover from all other responsible persons their *pro rata* share of the penalty.²⁰⁶ Further, any person held responsible for the penalty can compel the IRS to disclose the identities of other persons asserted to be liable and generally to provide information with regard to collection activity.²⁰⁷

Abatement

By its express terms, IRC §6672 is a penalty which may be imposed to the extent there has been a delinquency of trust fund tax remittances. The IRS is therefore not permitted to recover as a trust-fund-recovery penalty amounts that it has already been paid as tax by the taxpayer. What is less clear, however, is whether IRC §6672 prohibits the government from recovering from responsible persons an aggregate amount that exceeds the tax delinquency. Regardless of what the statute may permit, however, IRS policy is that it will not permit itself to be enriched by multiple recoveries of trust fund recovery penalties.

This does not mean, however, that the IRS will abate assessments once it has been made whole. This is because a responsible person has the right to make a claim for a refund action during the two-year period following payment. The IRS position is that it may continue to assess and collect IRC §6672 penalties until the limitation period on refund claims has expired. Only then will it abate *surplus* assessments.²⁰⁸

Appeals

The Trust Fund Penalty is subject to fast track mediation provisions. These provisions are available to small businesses. Fast track mediation will generally result in a resolution of the issue within 30–40 days. The decision is not binding on the taxpayer. The procedures for Fast Track Mediation are set forth in Rev. Proc. 2003-41.

New Test of Procedures for Mediation and Arbitration

The IRS issued Announcement 2008-111 indicating a new test of procedures for Mediation and Arbitration for Offers in Compromise and Trust Fund Recovery Penalty Cases in Appeals.

The new pilot program provides for the taxpayer and the Office of Appeals to request *binding* mediation on any issue that remains unresolved after the appellate process. The IRS will be entering into a two-year test program in the following cities: Atlanta, GA; Chicago, IL;

²⁰⁶ IRC §6672(e).

²⁰⁷ §6013(e)(9).

²⁰⁸ See *USLIFE Title Insurance Co.*, 784 F.2d 1238 (5th Cir. 1986).

Cincinnati, OH; Houston, TX; Indianapolis, IN; Louisville, KY; Phoenix, AZ; and San Francisco, CA. The IRS has extended this program until December 31, 2012. Appeals under this program should follow the procedures set forth in Rev. Proc. 2009-44, IRB 2009-40, 462.

These procedures are not available for cases where the taxpayer has already attempted to resolve the matter through Fast Track Mediation. The procedures for requesting the test pilot are covered in the Announcement for those living in the affected cities.

Offers in Compromise and Installment Agreements

In many situations, the responsible person will not have any defenses to the imposition of the trust fund recovery penalty.

We observed above that the trust fund recovery penalty is not dischargeable in bankruptcy. Thus, the responsible person who can pay the penalty might be well advised to attempt to obtain an offer in compromise. Please see practice points 8-1 on the following page.

Summary

The IRC §6672 penalty liability is not limited to officers, directors, and employees of the taxpayer. If that power rests in persons outside the corporate hierarchy, they may be liable. IRC §6672 imposes the trust fund recovery penalty on those required to collect, account for, and pay over trust fund taxes. When the IRC §6672 penalty is asserted, the alleged responsible person is sent a notice advising that the appeal right must be exercised within 30 days. Once the penalty is assessed, the IRS is entitled to enforce payment, usually 60 days after having given the person notice.

Practice Points 8-1

The following is a summary of practice points to bear in mind in connection with the trust fund recovery penalty:

- At every opportunity, the practitioner should seek to educate clients about the trust fund recovery penalty.
- When representing employers with employment tax delinquencies, practitioners should be alert to the conflict of interest problems that can arise when advising the employer and its responsible persons.
- Early intervention by the practitioner is desirable in order that, while the employer still has liquid cash, it can be applied to trust fund tax liabilities.
- The practitioner must be aware of the opportunities and limitations of bankruptcy.
 - If a liquidation bankruptcy filing is made, payments to the IRS will be allocated to the non-trust fund portion of the liability.
 - In a reorganization, however, the court might be persuaded to require payments to be applied to the trust fund portion of the tax before the nontrust fund portion.
 - In all events, however, the result of a bankruptcy cannot be worse than the result of the IRS levying on assets.
- A responsible person is one who determines which of the employer's creditors get paid. A corporate officer or employee responsible for financial matters may escape liability if he or she is negligent in failing to ensure that trust fund taxes are paid but not if grossly negligent or reckless.
- Liability for the trust fund recovery penalty can arise unexpectedly for the uninitiated. In certain circumstances, a person can be assessed the penalty for failure to remit trust fund taxes to the government even though the failure of the employer to collect the taxes and timely pay them to the government occurred at a time before the person had any responsibility for such matters.
- If the IRS asserts the trust fund recovery penalty against an individual, it usually grants an appeal before assessing it. Interest on the liability does not begin to accrue until after assessment.
- The IRS permits taxpayers to designate in writing the tax liability which is to be credited with a tax payment. An employer may therefore designate that a payment must be credited against the trust fund portion of the employer's tax liabilities. This gives considerable scope for tax planning. Further, the payments of trust fund taxes are not a preference voidable by the Bankruptcy court after the employer files for bankruptcy.

Exhibit 8-1

<p>Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes</p>	<p style="text-align: center;">Instructions</p> <p>The interviewer <i>must</i> prepare this form either in person or via telephone. <i>Do not</i> leave any information blank. Enter "N/A" if an item is not applicable.</p>	<p style="text-align: center;">Interview Handouts <i>("X" if given or explain why not in case history.)</i></p> <p><input type="checkbox"/> Notice 609, Privacy Act Notice</p> <p><input type="checkbox"/> Notice 784, Could You be Personally Liable for Certain Unpaid Federal Taxes?</p>
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<p>Type of Interview <i>("x" one.)</i></p>	<p><input type="checkbox"/> IRC 6672, Failure to collect and pay over tax from (mmddyyyy) _____ to _____</p> <p><input type="checkbox"/> IRC 4103, Failure to pay excise taxes from (mmddyyyy) _____ to _____</p>
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Section I. Background Information for Person Interviewed

1. Name	2. Social Security Number (SSN)
3. Address (Street, City, State, ZIP code)	4. Home telephone number ()
	5. Work telephone number ()

6. What was your job title and how were you associated with the business? *(Describe your duties and responsibilities and dates of employment.)*

<p>7. Did you resign from your position?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>a. When? _____</p> <p>b. Is a copy available? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>c. To whom was it submitted? _____</p>	<p>8. Did you have your name removed from the bank signature cards?</p> <p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>When? _____</p>
--	---

<p>9. Do you have any money invested in the business?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <p>What amount do you have invested?</p> <p>\$ _____</p>	<p>10. Have you ever been involved in another business that had tax problems?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <i>(Provide explanation; i.e., Name of business, ID number, amount, etc.)</i></p>
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Section II. Background Information for Business Entity
(Complete shaded items only if this is the first Form 4180 secured on the business entity.)

1. Name of Business	2. Business telephone number: ()
3. Address (Street City State, ZIP code)	4. Has the business ever filed bankruptcy? <input type="checkbox"/> No <input type="checkbox"/> Yes Date filed: _____ Chapter: _____ Petition # _____

5. Type of Entity

<p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Corporation</p> <p><input type="checkbox"/> Date incorporated _____</p> <p>State where incorporated _____</p> <p>Has the state ever revoked the charter?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>When? _____</p>	<p><input type="checkbox"/> Sole Proprietor</p> <p><input type="checkbox"/> Limited Liability Company (LLC)</p> <p>How is the LLC treated for tax purposes?</p> <p><input type="checkbox"/> Disregarded Entity</p> <p><input type="checkbox"/> Taxed as a Partnership</p> <p><input type="checkbox"/> Taxed as a Corporation</p>
---	--

Section II. — continued **Business Entity Background Information**

<p>6. Is the business still operating?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>When did it stop operating? _____</p> <p>What happened to the assets? _____</p>	<p>7. Was any property of the business sold, transferred, quit-claimed, donated, or otherwise disposed of, for less than full value?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes <i>(Provide explanation.)</i></p>
---	--

8. Which banks or financial institutions did the business use for transactions such as checking, savings, loans, financing agreements, etc.?

Name	Address	Types of Transactions	Dates

9. Please provide the names and dates of service for the positions indicated below. (Continue in Section VI, if necessary.)

Position	Name	Address	Dates
Chairman of the Board			
Other Directors <i>(List)</i>			
President			
Vice President			
Treasurer			
Secretary			
Other shareholders, members, owners			

10. Other than those previously listed, please provide the name, address, and telephone number of anyone else who may have additional knowledge about or control over the company's financial affairs.

Name	Telephone Number	Address
	()	
	()	
	()	

Section III.

Responsibility

1. Please state whether you performed any of the duties / functions listed below for the business and the time periods during which you performed these duties. Please also provide the names and time periods that any other person performed these duties.

Did you...	Yes	No	Dates		Who else performed this duty?	Dates	
			From	To		From	To
a. Determine financial policy for the business?	<input type="checkbox"/>	<input type="checkbox"/>					
b. Direct or authorize payments of bills?	<input type="checkbox"/>	<input type="checkbox"/>					
c. Open or close bank accounts for the business?	<input type="checkbox"/>	<input type="checkbox"/>					
d. Guarantee or co-sign loans?	<input type="checkbox"/>	<input type="checkbox"/>					
e. Sign or counter-sign checks?	<input type="checkbox"/>	<input type="checkbox"/>					
f. Authorize or sign payroll checks?	<input type="checkbox"/>	<input type="checkbox"/>					
g. Authorize or make Federal Tax Deposits?	<input type="checkbox"/>	<input type="checkbox"/>					
h. Prepare, review, sign, transmit payroll tax returns?	<input type="checkbox"/>	<input type="checkbox"/>					

2. Does the business use the Electronic Federal Tax Payment System (EFTPS) to make Federal Tax Deposits (FTDs) or payments?

No Yes

To whom are the PINs or passwords assigned?

Who authorized the assignment of EFTPS PINs/ passwords? (if more than one, list dates.)

3. Other than the EFTPS, does the business do any other banking electronically?

No Yes

Where?

To whom are the PiNs/passwords assigned?

Who authorizes changes to the PiNs/passwords?

4. Does the business file Form 941 electronically?

No Yes

Who is authorized to sign Form 941 ?

The Adviser's Guide to Doing Business With the IRS

Section IV.		Knowledge / Willfulness	
<p>1. When and how did you first become aware of the delinquent taxes?</p>	<p>2. What actions did you take to see that the taxes were paid?</p>		
<p>3. Were discussions ever held by stockholders, officers, or other interested parties regarding nonpayment of the taxes?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Identify who attended, dates, any decisions reached, and whether any documentation is available.</p>	<p>4. Who handled IRS contacts such as phone calls, correspondence, or visits by IRS personnel?</p> <p>When did these contacts take place, and what were the results of these contacts?</p>		
<p>5. During the time the delinquent taxes were increasing, or at any time thereafter, were any financial obligations of the business paid?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p style="padding-left: 40px;">Which obligations were paid?</p> <p style="padding-left: 40px;">Who authorized them to be paid?</p>			
<p>6. When there was not enough money to pay all of the bills, what decisions were made?</p> <p>Who made these decisions?</p> <p>What actions were taken to deal with the situation?</p>	<p>7. Were all or a portion of the payrolls met?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Did any person or organization provide funds to pay net corporate payroll?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes <i>(Explain in detail.)</i></p>		
<p>8. Did the business employ an outside accountant?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Did you personally have any discussions with the bookkeeper or accountant regarding the finances of the business?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p>	<p>9. Were financial statements ever prepared for the business?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>Who reviewed the financial statements?</p>		

Section V. Personal Liability for Excise Tax Cases <i>(Complete only if Business is required to file Excise Tax Returns)</i>	
1. Are you aware of any required excise tax returns which have not been filed? <input type="checkbox"/> No <input type="checkbox"/> Yes <i>(List periods.)</i>	2. With respect to excise taxes, were the patrons or customers informed that the tax was included in the sales price? <input type="checkbox"/> No <input type="checkbox"/> Yes
3. If the liability is one of the "collected" taxes <i>(transportation of persons or property and communications)</i> , was the tax collected? <input type="checkbox"/> No <input type="checkbox"/> Yes	4. Were you aware, during the period tax accrued, that the law required collection of the tax? <input type="checkbox"/> No <input type="checkbox"/> Yes
5. Who prepared the excise tax returns?	6. Who reviewed and signed the excise tax returns?

Section VI. Continuation of Answers / Additional Comments
(Please use this space to identify continued answers, by both section and item numbers.)

(Please use this space to provide any additional comments you wish to make regarding this interview.)

Section VII. Signatures	
I declare that I have examined the information given in this interview and to the best of my knowledge and belief, it is true, correct, and complete.	
Signature of person interviewed	Date
Signature of Interviewer	Date
Date copy of completed interview form given to person interviewed	▶

Chapter 9

Practice Before the Internal Revenue Service

Introduction

The regulations addressing admission to practice before the IRS and standards of tax practice are set forth in Title 31, Part 10, of the Code of Federal Regulations (CFR). The greater part of those regulations is contained in Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service* (Circular 230). Circular 230 is available on the IRS website and is essential reading for anyone who practices before the IRS. This chapter discusses the provisions of Circular 230 that relate to CPAs. In so doing, the regulations are sometimes quoted but generally merely summarized. The details of regulatory materials can be very important for the purposes of compliance. Practitioners should therefore consult the text of the regulations themselves, rather than any summary given below, if addressing any compliance issue.

Overview of Standards of Tax Practice

Overview and enforcement of the provisions of Circular 230 have been the responsibility of the Office of the Director of Practice. Effective 2003, however, the new Office of Professional Responsibility (OPR) has assumed that responsibility. The OPR has been reported as having twice the staff that was available under the Office of the Director of Practice for enforcing standards of practice.

AICPA Statements on Standards for Tax Services

The AICPA Statements, issued by the Tax Executive Committee of the AICPA, set forth ethical tax practice standards for members. The standards bear a close relationship to the standards set forth in Circular 230. The Statements give more practical guidance to practitioners than does Circular 230. While Circular 230 applies only to federal tax practice, the AICPA standards apply also to state, local, and other tax practice. The Statements are interpretive of Circular 230 and not binding on the IRS with respect to compliance with Circular 230.

The SSTs address the following issues:

1. Tax Return Positions
2. Answers to Questions on Returns
3. Certain Procedural Aspects of Preparing Returns
4. Use of Estimates

5. Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision
6. Knowledge of Error: Return Preparation and Administrative Proceedings
7. Form and Content of Advice to Taxpayers

We make reference to the AICPA Statements but do not set forth in detail the contents of the Statements as they relate to Circular 230 because they are clear, well written, and readily available to members. CPAs would do well to read them in their entirety. They were updated effective January 1, 2010, and are available from the AICPA at www.aicpa.org.

Authority to Practice Before the IRS

Much of Circular 230 is concerned with the required qualifications of those who are eligible to practice before the IRS. The term *practice* in this context means almost all aspects of federal tax practice from return preparation to representing a taxpayer at Appeals and other conferences to generally communicating with the IRS on behalf of taxpayers. The American Jobs Creation Act of 2004 (2004 Act) expanded the scope of the definition of tax practice before the IRS. Effective September 26, 2007, the definition of practice before the IRS under §10.2(a) includes "...rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion...." Hence, the mere rendering of written tax advice can be practice before the IRS. CPAs and attorneys are not generally concerned with issues of eligibility to practice, since they are automatically authorized to practice before the IRS provided they are neither under suspension nor disbarment.

CPAs can be disbarred or otherwise sanctioned by the IRS, regardless of state licensure, for violations of the regulations governing practice. The Director of the OPR (Director) will give notice to state licensing bodies of the sanctioning of a practitioner, including a CPA. The Sanctions for offenders are discussed in the following text.

Duties and Restrictions Relating to Practice Before the IRS

Definition of Practice Before the IRS

Circular 230, §10.0 sets forth, among other things, rules relating to the authority to practice before the Internal Revenue Service and the duties and restrictions relating to such practice. §10.2(a)(4) defines what constitutes practice before the Internal Revenue Service. §10.2(a)(4) provides that practice before the IRS "comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service." The Regulation then goes on to give some examples of activity constituting practice before the IRS. While the pre-2007 Regulations limited the examples to activities closely related to communications with the IRS, the 2007 amendments add as an example, "...rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion...." The broad scope of this statement suggests that there may be very little that tax advisors do that is not subject to the strictures of Circular 230.

Knowledge of Client's Omission

§10.21 provides that if a practitioner becomes aware of a client's noncompliance with the tax laws by reason of an error or omission in a return or other submission to the IRS, the practitioner must advise the client of the consequences under the Internal Revenue Code of such noncompliance. AICPA Statement No. 6 goes a little further. It provides that, whether or not the tax practitioner prepared the tax return in question, the tax practitioner, upon discovery of a significant error, is required to advise the taxpayer of the error and recommend that the error be corrected. If the taxpayer does not correct the error, AICPA Statement No. 6 warns the practitioner that continued representation might create a conflict of interest under which the practitioner cannot both provide professional service to the taxpayer and discharge other ethical professional obligations. The practitioner may therefore consider whether further representation is appropriate. The practitioner may not compound the error by repeating it on any return he prepares.

Under AICPA Statement No. 6, if a practitioner becomes aware of a significant error in a return in the course of, say, an administrative appeal, the practitioner must advise the taxpayer and seek the client's permission to disclose the error. If the taxpayer does not consent to disclosure, the practitioner is not free to disclose the error because of his or her obligation to keep client information confidential. The practitioner may, however, consider whether continued representation is appropriate. The practitioner should consider taking legal advice in this situation. A practitioner might very well be in legal jeopardy if he or she continues to represent a client in an administrative appeal, for example, when the practitioner is aware that the client's position is grounded on an inaccurate premise.

Diligence as to Accuracy

§10.22 of Circular 230 requires that a practitioner must exercise due diligence (i) in preparing and filing tax returns and making other submissions to the IRS, and (ii) in determining the correctness of written and oral representations made by the practitioner both to the IRS and to the client. For this purpose, the practitioner may reasonably rely upon the work product of others but will be held responsible for the proper training of employees in certain circumstances.

Prompt Disposition of Pending Matters

§10.23 of the Circular 230 requires that a practitioner may not unreasonably delay any matter before the IRS. An IRS employee may initiate procedures to bypass a power of attorney if that representative delays or impedes a case.

Assistance from or to Disbarred or Suspended Persons and Former Internal Revenue Service Employees

Under §10.24 of the regulations, a practitioner may not assist in a federal tax matter, nor accept assistance from, any person under disbarment or suspension by the IRS. The Director maintains a roster of those enrolled to practice and those censured, suspended, or disbarred which is available for public inspection. Notice is also posted in the Internal Revenue Bulletin (IRB). Enrolled agents are given cards evidencing their status which carry expiration dates. With respect to

accepting the assistance of former government employees, this regulation requires compliance with §10.25, which is discussed below.

Practice by Former Government Employees, Their Partners, and Associates

One important aspect of §10.25 is apparent from the heading. It places prohibitions and limitations on former government employees practicing before the IRS and may impose obligations and burdens on those associating or practicing with such persons.

Basically, the rule (as amended by the 2007 Regulations) provides as follows:

1. No government employee may practice before the IRS if it would be a crime under 18 USC §207. 18 USC §207 sets forth restrictions on former government employees at great length and in great detail.
2. A former government employee who participated in a transaction while employed by the government may not, once he has left government employment, knowingly represent or assist any person who was a specific party to that particular matter.
3. A former government employee who participated in a transaction within one year before the termination of his employment may not, for a period of two years following his or her government employment, knowingly represent or assist any person who was a specific party to that transaction *in any other transaction*. Note that the prohibition on assistance and representation is not limited to Treasury Department matters.
4. A former government employee may not, within one year after the termination of his government employment, communicate with or appear before, with the intent to influence, any Treasury Department employee in connection with the amendment, withdrawal, and so on, of a rule (for example., a Treasury regulation) that the employee participated in or in the development of which the employee had official responsibility during the one-year period before the termination of his employment. The former government employee may represent himself or herself or a client before the IRS on a matter that involves the rule provided the former government employee neither utilizes nor discloses confidential information.
5. If a former government employee is a partner or employee, and so on, of a firm, all other partners, employees, and so on, of that firm are subject to the same restrictions as the former government employee under §10.25 unless the former government employee is isolated from the representation in question and certain certifications to that effect are filed with the OPR.

Notaries

Under §10.26, a practitioner who is a notary may not perform any official act as a notary with respect to any IRS matter in which he or she is involved as a practitioner.

Fees for Professional Services

Under §10.27, fees for representing a client before the Internal Revenue Service are not permitted to be unconscionable.

For the purpose of §10.27, a contingent fee is a fee that depends in any manner on the outcome of a proceeding with the IRS. It includes, for example, any cash-back guarantee given by a practitioner as well as the more conventional contingent fee based upon a percentage of the tax refund obtained as a result of the tax practitioner's representation.

§10.27 is amended by the September 26, 2007, Regulations. T.D. 9359 explains that primary concern of the IRS with respect to contingent fees is that such fees may encourage practitioners to exploit the audit lottery presumably by taking unreasonable positions on tax returns that maximize tax savings. Consequently, the Regulations seek to limit contingent fee arrangements to situations in which the tax issue will receive, or is likely to receive, review by the IRS. Under §10.27, contingent fees are permitted only in the following circumstances:

1. Where the IRS is examining or challenging an original tax return or examining or challenging an amended return or claim for a refund or credit where the claim was made within 120 days of the taxpayer receiving a written audit notice or other written notice challenging the original tax return.
2. Where the taxpayer makes a claim for a refund or credit solely in connection with the determination of statutory interest or penalties.
3. Where practitioner services are performed in connection with litigation arising under the Internal Revenue Code.

§10.27, as amended, applies to fee arrangements entered into after March 26, 2008.

Return of Clients' Records

§10.28 requires a practitioner to promptly return records to a client that are necessary for the client to comply with the client's federal tax obligations. A fee dispute will not entitle the practitioner to refuse to turn over records except where permitted under state law in which case the practitioner must still turn over any documents that must be attached to the taxpayer's tax return. If state law allows the client to make copies of any documents in the practitioner's possession, the practitioner must comply with such statutes.

Conflicts of Interest

Under §10.29, practitioners are required to avoid representation that involves a conflict of interest. If the practitioner reasonably believes that the conflict will not prevent the practitioner from representing the clients competently and diligently and the representation is not prohibited by law, the practitioner may represent the clients notwithstanding the conflict if they waive the conflict and give informed consent to the representation. Any such consent must be confirmed in writing by the client within 30 days of the consent. The written waivers of the conflict are to be kept by the practitioner for 36 months following the termination of the representation.

Advertising and Solicitation

Under §10.30, a practitioner is prohibited from making a false, fraudulent, or coercive statement or claim, or a misleading or deceptive statement or claim, in connection with any IRS matter. Solicitations of employment with respect to IRS matters, if not otherwise prohibited or illegal, must identify themselves as such. Sources of any information given in the solicitation must also be given. In the case of radio and television advertising and e-mail or direct mail solicitations, copies must be kept by the practitioner for at least 36 months from the date of the last transmission or use.

Disclosure and Use of Return Information

On December 29, 2009, the IRS issued T.D. 9478 amending Reg. §301.7216-0 and Reg. §301.7216-2. This document contains final and temporary regulations regarding the disclosure and use of tax return information by tax return preparers including the use of information for solicitation of tax return business. It also limits the use of statistical compilations of data for marketing purposes.

The substance of this notice includes the following provisions:²⁰⁹

- Additional flexibility for preparers to compile and maintain lists for solicitation of tax return business.
- Amending the prohibition against disclosing or using statistical compilations of tax return information without taxpayer consent under certain circumstances. The rules allow the disclosure of anonymous data for limited purposes. It further defines what is required for the data to be “anonymous.”
- Tax practitioners are prohibited from using any statistical compilations that identify dollar amounts of refunds, credits, or deductions associated with tax returns whether or not the data is statistical, averaged, aggregated, or anonymous.
- A tax return preparer may not sell statistical compilations of the above data.

The Reg. contains numerous examples of the application of these principles. It is well worth noting that these Regulations relate to IRC §7216 and violation of these rules would subject the practitioner to preparer penalties and referral to the Director of OPR.

Negotiation of Taxpayer Checks

Under §10.31, a practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to the client by the government with respect to a federal tax liability. This information is repeated on Form 2848 (Power of Attorney).

²⁰⁹ Reg. §301-7216-2T.

Standards for Advising on Tax Return Positions and for Preparing or Signing Returns

§10.34 is probably the most significant regulation of Circular 230 governing the conduct of the CPA engaged in a typical tax practice. §10.34 sets forth the standards imposed upon the practitioner in preparing and signing returns and in advising the taxpayer with regard to positions taken on returns. §10.34 was substantially revised under Regulations that became effective September 26, 2007.

Generally, the relevant provisions of the 2007 Act replaced the “realistic possibility” standard, to which tax preparers were held under former IRC §6694, with a “more-likely-than-not” standard. Subsequently, this provision was repealed except in the case of tax shelters and listed transactions.

Under IRC §6694, as amended, the penalty for taking an unreasonable position (as opposed to willful or reckless conduct) is the greater of \$1,000 or half the tax preparer’s fee.

If it is determined that the preparer engaged in willful or reckless conduct, the penalty increases to the greater of \$5,000 or half the tax preparer’s fee.

Sources of Authority

Reg. 1.6662-4(d)(3)(iii) defines the *substantial authority* standard, which is employed in the analysis of whether there has been a substantial understatement of tax for the purpose of the accuracy-related penalty under IRC §6662(d). The authorities include all the obvious official sources of federal tax authority such as statutes, regulations (including proposed regulations), revenue rulings, private letter rulings (addressed by the IRS to a taxpayer other than the one relying on it), legislative histories, and so on, but do not include conclusions reached in legal treatises and legal periodicals. Private letter rulings cease to be authority for this purpose when inconsistent with later authority. Court opinions are authority for this purpose if not overruled by a higher court having jurisdiction over the lower court. A Tax Court opinion, however, is not considered to be overruled or modified by an opinion of a United States Court of Appeals for a circuit other than that to which the taxpayer has a right of appeal.

Documents, Affidavits, and Other Papers

The primary thrust of §10.34(b) under the 2007 amendments to the Regulations is to prohibit the practitioner from advising the client to submit documents to the IRS for the purpose of delaying or impeding the administration of the tax laws or which are frivolous or which evidence an intentional disregard of a rule or regulation.

Advice as to Penalties

Under Regulation §10.34(c), the practitioner is required to inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported on the tax return. It is difficult to know what this means since it appears that if the taxpayer is likely to be exposed to a penalty, the practitioner must be in violation of Circular 230. The practitioner is also required to advise the taxpayer whether there is an opportunity to avoid penalties by making appropriate disclosure.

Reliance on Client Information

The practitioner may rely without verification on information supplied by the taxpayer in determining the positions that may be taken on a return, but that reliance must be in good faith. The practitioner has a duty to make reasonable inquiries if the information provided by the taxpayer appears inconsistent with other information known to the practitioner or is incomplete. The practitioner is well advised to keep a record of the sources of factual information relied upon. Further, to the extent possible, factual information should be provided in writing.

Frivolous Positions

Frivolous positions are those that are patently improper.

Penalties

§10.34 requires the practitioner to be knowledgeable with regard to the penalty provisions of the Code. The Practitioner is required both to advise the client of any opportunity to avoid the accuracy-related penalty and to inform the client of the penalties reasonably likely to apply in a given situation. This chapter does not attempt to give a full account of penalties under the Code or even of the accuracy-related penalty, which is detailed and complex. With respect to the accuracy-related penalty of IRC §6662, however, the following is a summary of the issues with respect to which the practitioner will frequently be required to advise under §10.34.

Accuracy-Related Penalty Under IRC §6662

IRC §6662 imposes a penalty for “negligence or disregard of rules or regulations”²¹⁰ and various understatements, most commonly a “substantial understatement of income tax.”²¹¹ Negligence is defined to include “any failure to make a reasonable attempt to comply with the provisions of ... (the Internal Revenue Code)²¹²,” and the term disregard includes any careless, reckless, or intentional disregard. The components of the IRC §6662 penalties may not be stacked.

The understatement penalties will not be imposed if there was substantial authority for the taxpayer's position. According to Treas. Reg. 1.6662-4(d)(3)(i), “There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists.”

In a report issued by the Treasury Inspector General for Tax Administration (TIGTA) dated June 4, 2010, it was recommended that correspondence examiners undergo more training to specifically address when the accuracy-related penalty is applicable. The review of a statistical sample of correspondence audits closed in Fiscal Year 2008 found that penalties were not considered in 92 percent of the audits. It is estimated that this resulted in lost revenue and interest in the amount of \$3.5 million. Each of the audits resulted in at least \$5,000 of additional tax and

²¹⁰ IRC §6662(b)(1).

²¹¹ IRC §6662(b)(2).

²¹² IRC §6662(c).

the taxpayer had agreed to the assessment. Therefore, it is reasonable to assume that we will be seeing the Service Centers proposing more accuracy-related penalties in the future.

Avoiding the Accuracy-Related Penalty

REASONABLE CAUSE

IRC §6664(c)(1) provides that the accuracy-related (and fraud) penalties may not be imposed if it has been “shown that there was a reasonable cause...and that the taxpayer acted in good faith...” Most commonly, the grounds for a reasonable-cause claim are reasonable reliance upon the advice of a properly qualified professional.

DISCLOSURE

1. Negligence, within the meaning of IRC §6662(b)(1), cannot be avoided by disclosure of a return position.²¹³
2. The penalties for disregarding rules and regulations under IRC §6662(b)(1) and the substantial understatement of income tax under IRC §6662(b)(2) can be avoided by disclosure only if the return position has a reasonable basis.²¹⁴ *Reasonable basis*, according to Treas. Reg. 1.6662-3(b)(2), is “a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper.” The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. The reasonable basis standard is presumably higher than the realistic possibility standard under §10.34.
3. Where disclosure may cause the penalty to be avoided, it should be made on Form 8275 or 8275(R).
4. Where the position taken on the return is contrary to a regulation, in addition to the disclosure requirement, the position represents a good faith challenge to the validity of the regulation.
5. A tax shelter cannot avoid a penalty under IRC §6662 by making disclosure.

The regulations under IRC §6011 provide for reportable transactions that are subject to taxpayer disclosure rules and list maintenance rules. Treas. Reg. 1.6664-4(d) provides that if a reportable transaction is not disclosed as required in the regulations, the nondisclosure is a strong indication that the taxpayer did not act in good faith. This presumption will preclude a taxpayer from eligibility for the good faith and reasonable cause defense in many or most cases in which the understatement of tax is attributable to a reportable transaction that has not been disclosed.

Note that there are several cases (predating the above regulation) in which courts have held that a taxpayer did not have reasonable cause for an understatement of tax for the purposes of the accuracy-related penalty where the professional opinion or advice relied upon was from an interested party, for example, *Neontology Assoc. v. Com’r*, 299 F.3d 221.²¹⁵

²¹³ Treas. Reg. 1.6662-7(b).

²¹⁴ Treas. Reg. 1.6662-7(d).

²¹⁵ 2002.

Substantial Understatements and Tax Shelters

IRC §6662(d)(2)(C)(iii) defines a tax shelter in terms of whether “a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax”. In the case of a tax shelter, for entities other than corporations to avoid the penalty it is not only necessary to have substantial authority for the tax treatment of the item in question, it is also necessary for the taxpayer reasonably to believe that the treatment was more likely than not the proper treatment. This is the origin of the *more-likely-than-not* tax shelter opinion. Generally, Treas. Reg. 1.6662-4(g)(4) permits a taxpayer to rely in good faith on an unambiguous opinion of a tax advisor that there is a greater than 50 percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service. Corporations, however, cannot avoid the penalty in the case of a tax shelter either by having substantial authority or by making disclosure.²¹⁶

Tax Shelter Opinions and the Circular 230 Regulations

The above discussion of tax shelters makes some reference to tax shelter opinion letters. The tax shelter opinion letter has historically been an important element in the marketing of tax shelters for the following reasons:

- Investors rely upon the opinion letter to validate claimed tax advantages of the transaction. This is particularly the case in syndicated offerings.
- Investors rely on the opinion letter to protect them from tax penalties if the treatment of tax items is other than as represented by the promoter.

Circular 230 has addressed the special obligations of the practitioner with regard to tax shelter opinions. In 2002, however, when final Circular 230 amending regulations were published and put into effect, the existing proposed regulations addressing tax shelters were not incorporated into the final 2002 regulations. The 2001 tax shelter opinion proposed regulations were replaced by further proposed regulations published December 30, 2003, and these proposed regulations were made final in December 2004. The December 2004 tax shelter regulations are effective for opinions to be given on or after June 20, 2005. It is these regulations that we discuss below.

Judicial and Legislative Developments Regarding Tax Shelter Opinions

Before discussing the final tax shelter regulations, we briefly comment on judicial and legislative developments that are likely to complement Circular 230 in its regulation of tax shelter opinions.

Firstly, and probably most importantly, the American Jobs Creation Act of 2004 (2004 Act) contains provisions that are likely to have a significant impact on the ability of tax opinion letters to protect taxpayers from tax penalties. The 2004 Act adds to the Code IRC §§6664(d) and 6662A. These provisions apply to certain reportable transactions as defined in IRC §6707A(c). (A reportable transaction is a transaction of a class determined by the Treasury as having a potential for tax avoidance or evasion. A listed transaction is a reportable transaction of a class specifically designated as a tax avoidance transaction.)

²¹⁶ IRC §6662(d)(2)(C)(ii).

IRC 6662A introduces an accuracy-related penalty for (i) listed transactions and (ii) any reportable transaction that is determined to have, as a significant purpose, the avoidance or evasion of federal income tax. IRC §6664(d)(1) provides that the IRC §6662A penalty will not apply to a reportable transaction understatement of a tax liability if there was a reasonable cause for the position taken and the taxpayer acted in good faith with respect to the position taken. IRC §6664(d)(2), however, sets forth limiting conditions under which the reasonable cause and good faith rules will apply. Among those conditions is the condition that the taxpayer must have reasonably believed that the treatment reported on the return was more likely than not the proper treatment. That reasonable belief may not be based upon a tax opinion if, among other things, the opinion (i) is based on unreasonable factual or legal assumptions (including assumptions as to future events), (ii) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person, (iii) does not identify and consider all relevant facts, or (iv) fails to meet any other requirement as the Secretary may prescribe.

Secondly, the court in *Long Term Capital Holdings v. United States*, 330 F. Supp. 2d 122,²¹⁷ in a very long and complicated opinion, held that, on the facts of the case, legal tax opinions of certain prestigious law firms did not protect the taxpayer from liability for certain of the penalties under IRC §§6662 and 6663. The court held that the *reasonable cause and good faith* exceptions of IRC §6664(c) did not apply because the legal opinions were, in the opinion of the court, grounded in a deficient legal analysis and the opinions relied upon unreasonable factual assumptions that were not investigated by counsel giving the opinions.

Finally, we note that the 2004 Act contains provisions relating to Circular 230 not yet incorporated into regulations. Section 822(a) of the Act amends 31 USC 330 to authorize the Treasury Secretary to impose monetary sanctions for the violation of the provisions of Circular 230. Section 822(b) of the Act makes clear that the Treasury Secretary has the authority to impose standards regarding tax opinions with respect to transactions having the potential for tax avoidance.

The developments described above are likely to diminish the ability of the tax opinion to protect the taxpayer from penalties and are likely to have a significant impact on investors and promoters alike.

Summary and General Comments on the Circular 230 Tax Shelter Regulations

As indicated above, the Circular 230 tax shelter regulations are effective for opinions to be given on or after June 20, 2005. The following is a summary of the requirements of the Circular 230 regulations relating to tax shelter opinions:

§10.35 of the Circular 230 tax shelter opinion regulations define a “covered opinion.” A covered opinion is a written opinion (e-mails qualify as *written*) that is (i) a listed transaction under IRC §6011, (ii) a transaction the principal purpose of which is the avoidance or evasion of any federal tax, (iii) a reliance opinion, (iv) a marketed opinion, (v) an opinion subject to confidentiality conditions, or (vi) an opinion with contractual protection. Listed transactions or transactions the principal purpose of which is the avoidance or evasion of any federal tax are always covered opinions. Reliance, marketed,

²¹⁷ D.C. Conn. 2004.

confidential, and contractual protection opinions are opinions that have particular characteristics. These characteristics are discussed below. A necessary condition, however, for an opinion to be a reliance, marketed, confidential, or contractual protection opinion is that it have as a significant purpose the avoidance or evasion of a federal tax. Under some circumstances, reliance, marketed, confidential, and contractual protection opinions may not be covered opinions if the opinion makes appropriate disclosures as set forth in the regulations.

If an opinion is a covered opinion, the practitioner has the burden of disclosing the assumptions that underlay the opinion and of making a reasonable investigation into the accuracy of those assumptions. The opinion must set forth the practitioner's opinion with respect to each relevant federal tax issue unless the special conditions for a limited scope opinion are met. Disclosure must be made of any determination that a *more-likely-than-not* opinion may not be given with respect to any tax issue. The regulations set forth required disclosures with regard to covered opinions.

For the practitioner, one of the important threshold issues will be whether the plan or transaction has, as the principal purpose, the avoidance or evasion of any federal tax or whether the avoidance or evasion of a federal tax is merely a significant purpose. This will frequently be the difference between an opinion that is a covered opinion and one that is not. Practitioners will need to take care that they do not find themselves giving covered opinions without realizing that they are doing so and in ignorance of the specific requirements that attach to such opinions.

Commentators have observed that the scope of the regulations may be construed very broadly. The regulations might well sweep into the definition of covered opinion routine estate planning advice or advice with regard to transactions such as like-kind exchanges that are expressly permitted under the tax statutes. The procedural burden, alone, of complying with the tax shelter opinion regulations in these situations would be quite significant. The most significant source of concern, however, is the requirement that the practitioner investigate the facts of the matter rather than rely upon client representations. There would appear to be no public policy objective served by imposing this requirement on tax advisors where the tax planning being made in connection with the transaction is legitimate.

A More Detailed Description of the Circular 230 Tax Shelter Opinion Regulations

Covered Opinions

The regulations define *covered opinions*. A **covered opinion** is written advice (including electronic communications) by a practitioner concerning one or more federal tax issues arising from any of the following:

1. A transaction that is a listed transaction identified by the IRS under IRC §6011.
2. Any plan or arrangement, the principal purpose of which is the avoidance or evasion of any federal tax.
3. An opinion, a significant purpose of which is the avoidance or evasion of any federal tax if the opinion

- a. Is a *reliance opinion*. A **reliance opinion** is written advice that gives a *more-likely-than-not* opinion that significant federal tax issues would be resolved in the taxpayer's favor. An opinion is not a reliance opinion, however, if the opinion prominently discloses that it was not intended or written by the practitioner to be used, and that it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. (This exception does not apply to any opinions described under 1 or 2 above.)
- b. Is a *marketed opinion*. A **marketed opinion** is written advice where the practitioner knows or has reason to know that the written advice will be used or referred to by a person in promoting or marketing the plan to taxpayers. An opinion is not a marketed opinion, however, if the opinion contains the penalty avoidance disclosure set forth in reliance opinion above, discloses that the opinion was written to support the marketing of the transaction, and advises the taxpayer that he or she should seek advice from an independent tax advisor. (This exception does not apply to any opinions described under 1 or 2 above.)
- c. Is subject to conditions of confidentiality. This occurs where the taxpayer is subject to a limitation on his or her ability to disclose the nature of the transaction.
- d. Is subject to contractual protection. This occurs when the taxpayer is entitled to a refund from the practitioner if the represented tax benefits are not realized or if the practitioner's fee is contingent on such benefits being realized.

Notwithstanding the above, certain preliminary written advice provided to a client will not be a covered opinion if there is reasonably expected to be certain subsequent written advice. Also, limited protection is given to advice regarding qualified plans, state or local bond opinions, and opinions included in documents to be filed with the SEC.

Many of the disclosures required to be set forth in the opinions set forth above are required to be *prominently disclosed*. In order that an item be prominently disclosed, it must be set forth in a separate section at the beginning of the written advice in a bolded typeface that is larger than any other typeface used in the written advice.

EXCLUSIONS FROM DEFINITION OF COVERED OPINION

Provided the transaction is neither a listed transaction nor one the principal purpose of which is the avoidance of tax, opinions (1) with regard to the qualification of a retirement plan, (2) the tax-exempt status of state or local bonds, and (3) included in documents required to be filed with the Securities and Exchange Commission are not covered opinions.

REQUIREMENTS FOR COVERED OPINIONS

If written advice is a covered opinion, the practitioner must comply with requirements that include the following section.

Factual Investigation

The practitioner is not free to “play dumb” with regard to the facts. The practitioner must use reasonable efforts to identify and ascertain relevant facts. The practitioner may not make factual assumptions that he or she knows, or should know, are incorrect or incomplete. The Regulations give, as an example, the assumption that a transaction has a business purpose. A practitioner is not entitled to assume that a transaction has a business purpose on the basis of a representation made to the practitioner unless the representation includes a specific description of the business purpose and the practitioner neither knows nor should know that the representation is inaccurate or incomplete. If assumptions are based upon forecasts or appraisals, the practitioner must be satisfied that they were prepared by somebody having the skills or qualifications necessary to prepare them. The opinion must identify in a separate section all factual assumptions relied upon by the practitioner.

The opinion must identify all facts that the practitioner deems to be relevant. The opinion is required to relate the applicable law to the relevant facts and to employ consistent legal analysis.

The opinion must not contain internally inconsistent legal analyses or conclusions and, except to the extent it is either a limited scope opinion or permissibly relies upon the opinion of others, the opinion is required to address all significant federal tax issues. A significant tax issue is one with respect to which the IRS would have a reasonable basis for challenging and the result of the challenge would be likely to have a significant impact on the tax treatment of the transaction in question. With respect to each of those significant federal tax issues, the opinion must either assess the likelihood that the taxpayer will prevail upon the merits or state that the practitioner is unable to reach a conclusion with respect thereto.

If the opinion is a marketed opinion, the opinion with respect to each significant federal tax issue must be a *more-likely-than-not* opinion.

Limited Scope Opinions

We have indicated above that a covered opinion is generally required to address all significant federal tax issues. Under certain circumstances, however, the practitioner is permitted to give an opinion that is limited in its scope. A limited scope opinion may be given in the following circumstances:

- Where the taxpayer and the practitioner agree to the limited scope and where any taxpayer reliance on the opinion for purposes of avoiding penalties is agreed to be limited to the federal tax issues addressed in the opinion.
- Where the transaction in question neither is a listed transaction, has the principal purpose of avoidance or evasion of taxes, nor is a marketed opinion.
- The opinion includes the disclosures set forth below.
- The opinion provides an overall conclusion as to the likelihood that the federal tax treatment of the transaction that is the subject of the opinion is the proper treatment and the reasons for that conclusion. If the practitioner is unable to reach an overall

conclusion, the opinion must state that the practitioner is unable to reach an overall conclusion and describe the reasons for the practitioner's inability to reach a conclusion.

If the limited scope opinion is a marketed opinion, the opinion must provide the practitioner's overall conclusion that the federal tax treatment of the transaction or matter that is the subject of the opinion is the proper treatment at a confidence level of at least more likely than not.

RELIANCE ON OPINION OF OTHERS

Notwithstanding the general rule that the opinion address every significant federal tax issue, the limited opinion may rely on the opinion of another practitioner with respect to one or more significant federal tax issues, unless the practitioner knows or should know that the opinion of the other practitioner should not be relied on. If a practitioner relies on the opinion of another practitioner, the relying practitioner's opinion must identify the other opinion and set forth the conclusions reached in the other opinion. If there is reliance upon the opinion of another, the practitioner must be satisfied that the combined analysis of the opinions satisfies the requirements of the regulations.

REQUIRED DISCLOSURES FOR LIMITED SCOPE OPINIONS

Limited scope opinions must disclose that the opinion is so limited that additional issues may exist that could affect the tax treatment of the transaction and that the opinion was not written and may not be used by the taxpayer to avoid penalties with respect to tax issues that are outside the scope of the opinion.

General Disclosure Rules for Covered Opinions

In addition to disclosures elsewhere described,

- Covered opinions are required to prominently disclose the existence of certain compensation or referral agreements between the practitioner and promoters of the transaction in question.
- Marketed opinions must prominently disclose that the opinion was written to support the promotion or marketing of the transaction or matter addressed in the opinion and that the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.
- Opinions that do not reach a conclusion on a more-likely-than-not basis must prominently disclose that fact and disclose that such an opinion may not be used to avoid the imposition of penalties.

Effect of Opinion That Meets the Required Standards

Other law may still apply to opinions that meet the requirements of Circular 230.

Procedures to Ensure Compliance under the Regulations

§10.36 of the regulations imposes upon tax advisors with responsibility for overseeing a firm's practice of providing federal tax advice the obligation to take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are adequate for the purpose of complying with the tax shelter regulations.

§10.36 also provides that persons who have principal authority and responsibility for overseeing a firm's practice of providing federal tax advice will be subject to discipline if by reason of "willfulness, recklessness, or gross incompetence" the firm lacks adequate procedures to comply with the tax shelter regulations and if employees, and so on, engage "in a pattern or practice... of failing to comply with §10.35." Such persons will be also be subject to discipline if such persons know or should have known of noncompliance of §10.35 and fail to take prompt action to correct the noncompliance.

Requirements for Other Written Advice Other Than Covered Opinions

Under §10.37, even if the practitioner is giving other than a covered opinion, he or she must not give written tax advice that is based upon unreasonable factual or legal assumptions and does not consider all relevant facts that the practitioner knows or should know. If the practitioner knows or has reason to know that the advice will be used or referred to in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan, or arrangement a significant purpose of which is the avoidance or evasion of federal tax, the determination of whether a practitioner has failed to comply with the regulations will be made on the basis of a heightened standard of care because of the greater risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances.

Reporting Uncertain Tax Positions

The IRS issued Announcement 2010-75 and Announcement 2010-76 requiring qualified corporations to file Schedule UTP, Uncertain Tax Position Statement, for the years beginning in 2010 and later if they have assets that equal or exceed \$100 million and have taken uncertain tax positions on the return.

An affected taxpayer must provide a description of the tax position, a description of the relevant facts and other information that is reasonable to inform the IRS as to the nature of the tax position and the issue. Affected taxpayers include C corporations, foreign corporations, and property, casualty and life insurance companies.

The IRS has stated that the threshold for reporting will be reduced to \$50 million of assets beginning with 2012 and to \$10 million starting with the 2014 tax year. The IRS may extend the requirements to passthrough entities and others for 2011 and later tax years.

Preparer Penalties

IRS Procedures for Assessment

The procedures for the assessment or preparer penalties by IRS personnel are in IRM 20. Specifically, IRM 20.1.6.1.3 requires examiners to make a determination if return preparer

violations exist for every examination and record that determination in their workpapers. Penalties are never supposed to be proposed in the presence of the taxpayer being audited. The preparer penalty case is an independent case from the income tax case and is determined without any regard to the underlying tax case. Generally, the preparer penalty is not proposed until the underlying income tax examination is complete at the group level; therefore the case will have been closed out and processed at the group level. An examiner needs managerial approval to start a Return Preparer investigation.

Preparer penalties may be appealed. The appeal process differs depending on the penalty. Fast Track Settlement and Mediation procedures are also available. Reg. §1.6694-4(a)(1) allows for pre-assessment appeal rights of IRC §6694 (Understatement due to Unreasonable Position) penalties. The IRS will also follow the same guidelines for §6695 penalties. The §6695 penalties include failure to furnish a copy of a return to a taxpayer, failure to sign a return, failure to furnish identifying numbers, failure to retain a copy or list of returns prepared, failure to file correct information returns, negotiation of a taxpayer's check, and failure to be diligent in determining a taxpayer's eligibility for the Earned Income Tax Credit.

The assessment statute runs with the return. If the IRS requests an extension and the preparer refuses, the IRM states that the penalty will be assessed and the preparer will be provided post-assessment appeal rights in the same manner as pre-assessment appeal rights.

No Automatic Referrals to OPR Per IRS Official

On January 21, 2009, the IRS issued a statement assuring practitioners that a §6694(a) penalty will not automatically trigger a referral to the Service's Office of Professional Responsibility. This assurance was given in the context of a teleconference on IRC §6694 regulations. It is not in the Regulations.

Best Practices for Tax Advisors

§10.33 of the regulations sets forth best practice principles for practitioners to follow in providing advice and in preparing or assisting in the preparation of submissions to the IRS. Tax advisors should provide clients with the highest quality representation. The best practice principles are as follows:

- Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.
- Establishing the facts, determining which facts are relevant, and evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.
- Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

- Acting fairly and with integrity in practice before the Internal Revenue Service.

Tax advisors with responsibility for overseeing a firm's practice of providing federal tax advice should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices requirements.

The Summary of the Regulations describes the best practice provisions as *aspirational* and states that practitioners who fail to comply with the best practice provisions will not be subject to discipline. Practitioners remain concerned that the best practices provisions will influence the standard of care imposed under civil law on practitioners in professional liability matters.

Sanctions for Violation of Regulations

Under §10.50(a) of Circular 230, a practitioner could be censured, suspended, or disbarred from practice before the IRS if he or she (i) failed to comply with Circular 230, (ii) with intent to defraud, willfully and knowingly mislead a client or potential client, or (iii) was shown to be incompetent or disreputable. Section 822 of the 2004 Act expanded the sanctions available to the Secretary of the Treasury to include monetary penalties.²¹⁸ The final 207 Regulations incorporate the imposition of monetary penalties.

Under §10.50(c), the IRS is authorized to impose monetary penalties in addition to other penalties in an amount not to exceed the gross income the practitioner derived or is to derive from the conduct giving rise to the penalty. A monetary penalty may be imposed upon the employer if the employer knew or reasonably should have known of the conduct.

Under §10.51, a practitioner may be subject to sanctions for being incompetent or disreputable if he or she

- is convicted of one or more of certain kinds of criminal offense;
- knowingly gives, or participates in the giving of false or misleading information to the IRS or any tribunal in connection with the determination of the federal tax. The content of tax returns, financial statements, and so on, submitted in connection with such proceedings can be false or misleading information for this purpose;
- solicits employment in violation of §10.30 or intimates that the practitioner is able to obtain special consideration or action from the IRS with respect to the matter in question;
- willingly evades federal tax or knowingly counsels or suggests to a client or prospective client an illegal plan to evade taxes;
- misappropriates funds received from a client for the payment of taxes;
- improperly influences (for example, by bribery) or attempts to influence the official action of any IRS employee;
- is disbarred or suspended as a CPA or attorney or aids and abets a disbarred person to practice before the IRS;

²¹⁸ See Notice 2007-39.

- engages in contemptuous conduct in connection with practice before the IRS such as using abusive language and making false accusations;
- knowingly, recklessly, or through gross incompetence gives a false opinion. Reckless conduct for this purpose is conduct that represents an extreme departure from the standards of ordinary care that a practitioner should observe. A pattern of conduct may indicate that the conduct is knowing or reckless;
- willfully fails to sign a tax return as a preparer when such signature is required when the failure is by reason of willful neglect;
- willfully uses a tax return or tax return information in a manner not authorized under the Internal Revenue Code.

Under §10.52, a practitioner may be sanctioned for willfully violating any Regulation under Circular 230 (except for violation of §10.33, the best practices provision). The lower standard of recklessness and gross incompetence, however, applies to violations of §10.64 through §10.37.

Disciplinary Procedures

When the OPR determines that a practitioner violated any provision of Circular 230 it may institute a disciplinary proceeding against him or her. A practitioner may consent to censure, suspension, or disbarment, and an enrolled agent may offer to resign, but the OPR is not required to accept any such consent or resignation.

The first stage of the disciplinary proceeding may be a conference. If a complaint is filed, the matter proceeds under the jurisdiction of an Administrative Law Judge appointed under federal law. Ultimately, unless earlier resolved, the judge will decide the matter following a hearing. The OPR is required to prove the factual components of its case on the basis of a preponderance of the evidence standard if the sanction is a censure or suspension for less than six months. The OPR is required to prove the factual components of its case on the basis of clear and convincing evidence in the record if the sanction is disbarment or suspension for greater than six months.

The decision of the judge may be appealed to the Secretary of the Treasury. Notice of sanctions against practitioners is given in the Internal Revenue Bulletin. In the case of a CPA, the OPR will notify the state licensing authority of the sanction. Ultimately, a practitioner may appeal to the courts, but there are rather few reported cases.

The OPR may consider, after five years, a petition for reinstatement from a suspended or disbarred practitioner.

Summary

Circular 230 summarizes the rules for practice before the IRS. Generally, they define the standards for taking a position on a tax return, substantial authority, and allowable billing practices. They discuss the extent to which a preparer may rely on information provided to him by a client or third parties. The AICPA has also issued Statements on Standards for Tax Services. Failure to adhere to IRS rules may result in preparer penalties or, in severe cases, disbarment from practice before the IRS.

Appendix A

IRS Hotlines and Toll-Free Numbers

IRS Telephone Lines and Hours of Operation		
Service	Telephone Number	Hours of Operation
Practitioner Priority Service	(866) 860-4259	M–F, 8:00 a.m.–8:00 p.m., local time
IRS Tax Help Line for Individuals	(800) 829-1040	M–F, 7:00 a.m.–10:00 p.m., local time
Business and Specialty Tax Line	(800) 829-4933	M–F, 7:00 a.m.–10:00 p.m., local time
e-Help (Practitioners Only)	(866) 255-0654	e-Help Desk Hours
Refund Hotline	(800) 829-1954	Automated service is available 24/7
Forms and Publications	(800) 829-3676	M–F, 7:00 a.m.–10:00 p.m., local time
National Taxpayer Advocate Help Line	(877) 777-4778	M–F, 7:00 a.m.–10:00 p.m., local time
Telephone Device for the Deaf (TDD): Forms, Tax Help, TAS	(800) 829-4059	M–F, 7:00 a.m.–10:00 p.m., local time
Electronic Federal Tax Payment System	(800) 555-4477	24/7
Tax Exempt and Government Entities (TEGE) Help Line	(877) 829-5500	M–F, 7:00 a.m. – 5:30 p.m., CT
TeleTax Topics and Refund Status	(800) 829-4477	24/7
Forms 706 and 709 Help Line	(866) 699-4083	M–F, 7:00 a.m.–7:00 p.m., local time
Employer Identification Number (EIN)	(800) 829-4933	M–F, 7:00 a.m.–10:00 p.m., local time
Excise Tax and Form 2290 Help Line	(866) 699-4096	M–F, 8:00 a.m.–6:00 p.m., ET
Information Return Reporting	(866) 455-7438	M–F, 8:30 a.m.–4:30 p.m., ET
Disaster or Combat Zone Special Hotline	(866) 562-5227	M–F, 7:00 a.m.–10:00 p.m., local time

Tax Glossary

401(k) Plan—A qualified retirement plan to which contributions from salary are made from pre-tax dollars.

Accelerated Depreciation—Computation of depreciation to provide greater deductions in earlier years of equipment and other business or investment property.

Accounting Method—Rules applied in determining when and how to report income and expenses on tax returns.

Accrual Method—Method of accounting that reports income when it is earned, disregarding when it may be received, and expense when incurred, disregarding when it is actually paid.

Acquisition Debt—Mortgage taken to buy, hold, or substantially improve main or second home that serves as security.

Active Participation—Rental real estate activity involving property management at a level that permits deduction of losses.

Adjusted Basis—Basis in property increased by some expenses (for example, by capital improvements) or decreased by some tax benefit (for example, by depreciation).

Adjusted Gross Income (AGI)—Gross income minus above-the-line deductions (that is, deductions other than itemized deductions, the standard deduction, and personal and dependency exemptions).

Alimony—Payments for the support or maintenance of one's spouse pursuant to a judicial decree or written agreement related to divorce or separation.

Alternative Minimum Tax (AMT)—System comparing the tax results with and without the benefit of tax preference items for the purpose of preventing tax avoidance.

Amortization—Write-off of an intangible asset's cost over a number of years.

Applicable Federal Rate (AFR)—An interest rate determined by reference to the average market yield on U.S. government obligations. Used in §7872 to determine the treatment of loans with below-market interest rates.

At-Risk Rules—Limits on tax losses to business activities in which an individual taxpayer has an economic stake.

Backup Withholding—Withholding at a rate of 31 percent on interest or dividend payments by a payor that has not received required taxpayer identification number (TIN) information.

Bad Debt—Uncollectible debt deductible as an ordinary loss if associated with a business and otherwise deductible as short-term capital loss.

Basis—Amount determined by a taxpayer's investment in property for purposes of determining gain or loss on the sale of property or in computing depreciation.

Cafeteria Plan—Written plan allowing employees to choose among two or more benefits (consisting of cash and qualified benefits) and to pay for the benefits with pretax dollars. Must conform to Sec. 125 requirements.

Capital Asset—Investments (for example, stocks, bonds, and mutual funds) and personal property (for example, home).

Capital Gain/Loss—Profit (net of losses) on the sale or exchange of a capital asset or §1231 property, subject to favorable tax rates, and loss on such sales or exchanges (net of gains) deductible against \$3,000 of ordinary income.

Capitalization—Addition of cost or expense to the basis of property.

Carryovers (Carryforwards) and Carrybacks—Tax deductions and credits not fully used in one year and chargeable against prior or future tax years.

Conservation Reserve Program (CRP)—A voluntary program for soil, water, and wildlife conservation, wetland establishment and restoration and reforestation, administered by the U.S. Department of Agriculture.

Credit—Amount subtracted from income tax liability.

Deduction—Expense subtracted in computing adjusted gross income.

Defined Benefit Plan—Qualified retirement plan basing annual contributions on targeted benefit amounts.

Defined Contribution Plan—Qualified retirement plan with annual contributions based on a percentage of compensation.

Depletion—Deduction for the extent a natural resource is used.

Depreciation—Proportionate deduction based on the cost of business or investment property with a useful life (or recovery period) greater than one year.

Earned Income—Wages, bonuses, vacation pay, and other remuneration, including self-employment income, for services rendered.

Earned Income Credit—Refundable credit available to low-income individuals.

Employee Stock Ownership Plan (ESOP)—Defined contribution plan that is a stock bonus plan or a combined stock bonus and money purchase plan designed to invest primarily in qualifying employer securities.

Estimated Tax—Quarterly payments of income tax liability by individuals, corporations, trusts and estates.

Exemption—A deduction against net income based on taxpayer status (that is, single, head of household, married filing jointly or separately, trusts, and estates).

Fair Market Value—The price that would be agreed upon by a willing seller and willing buyer, established by markets for publicly-traded stocks, or determined by appraisal.

Fiscal Year—A 12-month taxable period ending on any date other than December 31.

Foreign Tax—Income tax paid to a foreign country and deductible or creditable, at the taxpayer's election, against U.S. income tax.

Gift—Transfer of money or property without expectation of anything in return, and excludable from income by the recipient. A gift may still be affected by the unified estate and gift transfer tax applicable to the gift's maker.

Goodwill—A business asset, intangible in nature, adding a value beyond the business's tangible assets.

Gross Income—Income from any and all sources, after any exclusions and before any deductions are taken into consideration.

Half-Year Convention—A depreciation rule assuming property other than real estate is placed in service in the middle of the tax year.

Head-of-Household—An unmarried individual who provides and maintains a household for a qualifying dependent and therefore is subject to distinct tax rates.

Health Savings Account (HSA)—A trust operated exclusively for purposes of paying qualified medical expenses of the account beneficiary and thus providing for deductible contributions, tax-deferred earnings, and exclusion of tax on any monies withdrawn for medical purposes.

Holding Period—The period of time a taxpayer holds onto property, therefore affecting tax treatment on its disposition.

Imputed Interest—Income deemed attributable to deferred-payment transfers, such as below-market loans, for which no interest or unrealistically low interest is charged.

Incentive Stock Option (ISO)—An option to purchase stock in connection with an individual's employment, which defers tax liability until all of the stock acquired by means of the option is sold or exchanged.

Income in Respect of a Decedent (IRD)—Income earned by a person but not paid until after his or her death.

Independent Contractor—A self-employed individual whose work method or time is not controlled by an employer.

Indexing—Adjustments in deductions, credits, exemptions and exclusions, plan contributions, AGI limits, and so on, to reflect annual inflation figures.

Individual Retirement Account (IRA)—Tax-exempt trust created or organized in the U.S. for the exclusive benefit of an individual or the individual's beneficiaries.

Information Returns—Statements of income and other items recognizable for tax purposes provided to the IRS and the taxpayer. Form W-2 and forms in the 1099 series, as well as Schedules K-1, are the prominent examples.

Installment Method—Tax accounting method for reporting gain on a sale over the period of tax years during which payments are made, that is, over the payment period specified in an installment sale agreement.

Intangible Property—Items such as patents, copyrights, and goodwill.

Inventory—Goods held for sale to customers, including materials used in the production of those goods.

Involuntary Conversion—A forced disposition (for example, casualty, theft, condemnation) for which deferral of gain may be available.

Jeopardy—For tax purposes, a determination that payment of a tax deficiency may be assessed immediately as the most viable means of ensuring its payment.

Keogh Plan—A qualified retirement plan available to self-employed persons.

Key Employee—Officers, employees, and officers defined by the Internal Revenue Code for purposes of determining whether a plan is “top heavy.”

Kiddie Tax—Application of parents' maximum tax rate to unearned income of their child under age 18.

Lien—A charge upon property after a tax assessment has been made and until tax liability is satisfied.

Like-Kind Exchange—Tax-free exchange of business or investment property for property that is similar or related in service or use.

Listed Property—Items subject to special restrictions on depreciation (for example, cars, computers, cell phones).

Lump-Sum Distribution—Distribution of an individual's entire interest in a qualified retirement plan within one tax year.

Marginal Tax Rate—The highest tax bracket applicable to an individual's income.

Material Participation—The measurement of an individual's involvement in business operations for purposes of the passive activity loss rules.

Mid-Month Convention—Assumption, for purposes of computing depreciation, that all real property is placed in service in the middle of the month.

Mid-Quarter Convention—Assumption, for purposes of computing depreciation, that all property other than real property is placed in service in the middle of the quarter, when the basis of property placed in service in the final quarter exceeds a statutory percentage of the basis of all property placed in service during the year.

Minimum Distribution—A retirement plan distribution, based on life expectancies, that an individual must take after age 70 ½ in order to avoid tax penalties.

Minimum Funding Requirements—Associated with defined benefit plans and certain other plans, such as money purchase plans, assuring the plan has enough assets to satisfy its current and anticipated liabilities.

Miscellaneous Itemized Deduction—Deductions for certain expenses (for example, unreimbursed employee expenses) limited to only the amount by which they exceed 2 percent of adjusted gross income.

Money Purchase Plan—Defined contribution plan in which the contributions by the employer are mandatory and established other than by reference to the employer's profits.

Net Operating Loss (NOL)—A business or casualty loss for which amounts exceeding the allowable deduction in the current tax year may be carried back 2 years to reduce previous tax liability and forward 20 years to cover any remaining unused loss deduction.

Nonresident Alien—An individual who is neither a citizen nor a resident of the United States and who is taxed on income effectively connected with a U.S. trade or business.

Original Issue Discount (OID)—The excess of face value over issue price set by a purchase agreement.

Passive Activity Loss (PAL)—Losses allowable only to the extent of income derived each year (that is, by means of carryover) from rental property or business activities in which the taxpayer does not materially participate.

Pass-Through Entities—Partnerships, LLCs, LLPs, S corporations, and trusts and estates whose income or loss is reported by the partner, member, shareholder, or beneficiary.

Personal Holding Company (PHC)—A corporation, usually closely-held, that exists to hold investments such as stocks, bonds, or personal service contracts and to time distributions of income in a manner that limits the owner(s) tax liability.

Qualified Subchapter S Trust (QSST)—A trust that qualifies specific requirements for eligibility as an S corporation shareholder.

Real Estate Investment Trust (REIT)—A form of investment in which a trust holds real estate or mortgages and distributes income, in whole or in part, to the beneficiaries (that is, investors).

Real Estate Mortgage Investment Conduit (REMIC)—Treated as a partnership, investors purchase interests in this entity which holds a fixed pool of mortgages.

Realized Gain or Loss—The difference between property's basis and the amount received upon its sale or exchange.

Recapture—The amount of a prior deduction or credit recognized as income or affecting its characterization (capital gain vs. ordinary income) when the property giving rise to the deduction or credit is disposed of.

Recognized Gain or Loss—The amount of realized gain or loss that must be included in taxable income.

Regulated Investment Company (RIC)—A corporation serving as a mutual fund that acts as investment agents for shareholders and customarily dealing in government and corporate securities.

Reorganization—Restructuring of corporations under specific Internal Revenue Code rules so as to result in nonrecognition of gain.

Resident Alien—An individual who is a permanent resident, has substantial presence, or, under specific election rules is taxed as a U.S. citizen.

Roth IRA—Form of individual retirement account that produces, subject to holding period requirements, nontaxable earnings.

S Corporation—A corporation that, upon satisfying requirements concerning its ownership, may elect to act as a pass-through entity.

Saver's Credit—Term commonly used to describe Sec. 25B credit for qualified contributions to a retirement plan or via elective deferrals.

Sec. 1231 Property—Depreciable business property eligible for capital gains treatment.

Sec. 1244 Stock—Closely held stock whose sale may produce an ordinary, rather than capital, loss (subject to caps).

Split-Dollar Life Insurance—Arrangement between an employer and employee under which the life insurance policy benefits are contractually split, and the costs (premiums) are also split.

Statutory Employee—An insurance agent or other specified worker who is subject to social security taxes on wages but eligible to claim deductions available to the self-employed.

Stock Bonus Plan—A plan established and maintained to provide benefits similar to those of a profit-sharing plan, except the benefits must be distributable in stock of the employer company.

Tax Preference Items—Tax benefits deemed includable for purposes of the alternative minimum tax.

Tax Shelter—A tax-favored investment, typically in the form of a partnership or joint venture, that is subject to scrutiny as tax-avoidance device.

Tentative Tax—Income tax liability before taking into account certain credits, and AMT liability over the regular tax liability.

Transportation Expense—The cost of transportation from one point to another.

Travel Expense—Transportation, meals, and lodging costs incurred away from home and for trade or business purposes.

Unearned Income—Income from investments (that is, interest, dividends, and capital gains).

Uniform Capitalization Rules (UNICAP)—Rules requiring capitalization of property used in a business or income-producing activity (for example, items used in producing inventory) and to certain property acquired for resale.

Unrelated Business Income (UBIT)—Exempt organization income produced by activities beyond the organization's exempt purposes and therefore taxable.

Wash Sale—Sale of securities preceded or followed within 30 days by a purchase of substantially identical securities. Recognition of any loss on the sale is disallowed.

