Eighth Edition

THE ULTIMATE GUIDE TO

TAX RESOLUTION

Stephan | Cohen

The Ultimate Guide to Tax Resolution

Eighth Edition

Helping Tax Professionals Help Their Clients™
A Tax Resolution Institute Publication

Peter Stephan
Matthew Cohen

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21700 Oxnard Street, Suite 1160
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www.taxresolutioninstitute.org

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Table of Contents

About the Authors

Peter Stephan

Peter Y. Stephan is a Certified Public Accountant (CPA) licensed in California. Peter's early research into IRS tax code led him to specialize in IRS practices and procedures; in particular the area of collection which led him to enter into practicing tax resolution. Peter built his firm by combining his unique blend of skills in the areas of accounting, taxation, and business consulting.

In addition to practicing tax resolution, Mr. Stephan is frequently retained by fellow CPAs and Attorneys to perform forensic accounting and provide litigation support including expert witness services relating to various accounting, fraud and tax compliance matters.

Peter is qualified by the State Bar of California, California Board of Accountancy and the Internal Revenue Service to provide continuing professional education to Attorneys, Certified Public Accountants and Enrolled Agents in the area of tax resolution.

In addition to authoring this textbook The Ultimate Guide to Tax Resolution, Peter has created several tax resolution manuals providing fellow professionals with “one-of-a-kind” instruction allowing them to resolve all types of tax resolution issues. As a professional speaker, Mr. Stephan frequently appears at seminars, radio talk show programs relating to tax matters. In addition, Peter has been quoted in newspaper and magazine articles. Mr. Stephan is a member of the California Society of Certified Public Accountants as well as the American Institute of Certified Public Accountants.

Matthew Cohen

Matthew S. Cohen is a CPA licensed in California. Matthew attended the University of California at San Diego where he graduated with a degree in Economics. Mr. Cohen came to the Tax Resolution Institute with more than 15 years business management experience.

His extensive knowledge in the areas of taxation, business logistics, development and planning enable Matthew’s ability to provide comprehensive strategies to tackle even the most difficult tax issues.

About Tax Resolution Institute

The Tax Resolution Institute (TRI) is comprised of experienced Certified Public Accountants and Tax Attorneys who are well versed in numerous areas of taxation including collection, assessment business management, finance and accounting. TRI has served tens of thousands of businesses and individuals successfully. Utilizing our comprehensive understanding, along with subsequent design and implementation of effective solutions, we continue to provide relief to our clients day in and day out.

We provide instruction to tax professionals including attorneys, CPA's and Enrolled Agents in all areas of tax resolution. We offer a full array of live courses, webinars, and eLearning courses. In addition, we offer books and other educational materials in this subject area. If you are interested, we also offer instruction in selling and marketing for practicing professionals.

For more information visit our professional's website at www.taxresolutioninstitute.org

Chapter 1
Introduction

We wrote **The Ultimate Guide to Tax Resolution** to provide professionals with a comprehensive textbook so they have a one-stop-shop to practice in this area.

To ensure that you get the most out of this book, we recommend you read it from cover to cover and then keep it handy as a reference guide when a specific matter arises.

Solving Income Tax Issues

The majority of income tax issues including unfiled returns and unpaid liabilities are best resolved using one of the following five methods:

- Preparing an Installment Agreement.
- Placement into Currently Not Collectible ("CNC") Status.
- Preparing a Partial Pay Installment Agreement ("PPIA").
- Preparing an Offer in Compromise ("OIC").
- Filing for Bankruptcy - (under the 3-year rule, 2-year rule or 240-day rule).

In addition to learning how to resolve tax issues, this book teaches you everything you need to know related to the actual resolution of cases including completion of necessary forms such as powers of attorney and obtaining tax transcripts to determine reported income information as well as which returns have yet to be filed (by obtaining both IRS wage & income transcripts and IRS tax return transcripts).

Solving Payroll Tax Issues

Unlike income taxes, payroll taxes are non-dischargeable in bankruptcy. There are four main aspects which comprise delinquent payroll taxes. They are:

- Trust fund portion ("Responsible Persons" are liable for this portion as a Civil Penalty)
- Non-trust fund portion
- Interest (compounded daily)
- Penalties

Possible Payroll Tax Solutions:

- Preparing an Installment Agreement.
- Partial Pay Installment Agreement (PPIA).
- Preparing an in-business Offer in Compromise ("OIC").
- Selling the business with complete knowledge of the IRS for liquidation value then submitting an Offer in Compromise on behalf of the Responsible Person/s.

Chapter 2
Sequence of Events

Without having a clear understanding of how the process works, resolving tax matters is often seen as a difficult enterprise. In actuality, practicing tax resolution is manageable and can even be simple in many cases, if you practice using our systematic approach.

Like building a house, having a proper foundation makes the entire process easier. If you begin building a house with a foundation that is not level or square, each subsequent step in building the house takes additional work to compensate for the poorly built foundation.

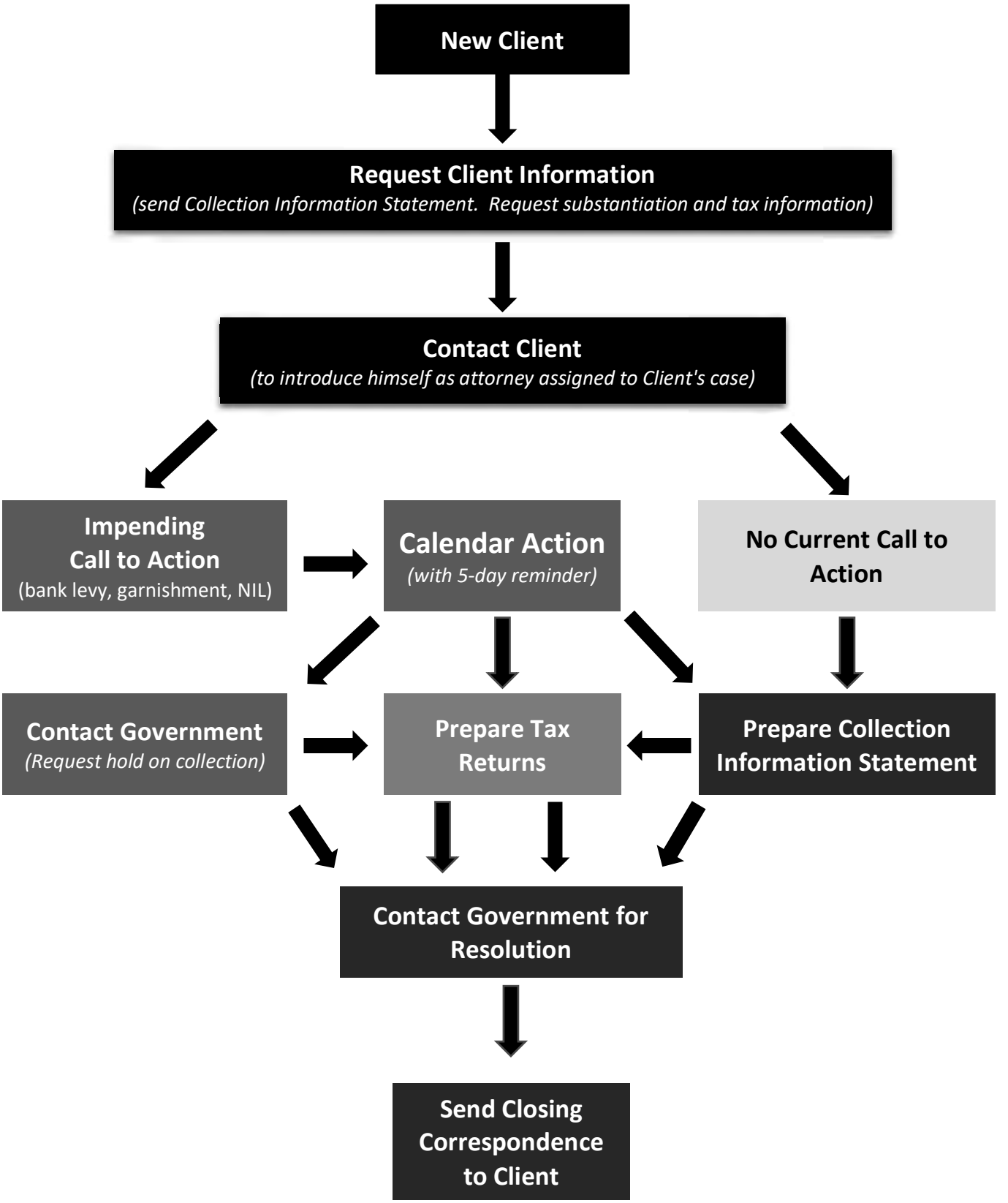
Practicing tax resolution is no different. You must understand how and when each step occurs and make sure you follow these steps in the right order and properly.

Part of ensuring you stay on track is keeping thorough notes. This not only provides a comprehensive roadmap of what has been accomplished to date, but also provides you a layer of protection if a client ever questions what has been done to service their case. Keeping and reviewing your notes also allows you to make adjustments to your overall case strategy as things progress. We recommend you keep a few sheets of paper in the physical file, a spreadsheet or word processing document in the electronic file or both. Make sure you can easily access the notes platform you use to ensure that you are diligent about updating them on a regular basis.

An important thing to keep in mind when practicing in this area is that the clients are not always the most organized. People and businesses often get into these types of problems because of this. If you request information from a client several times and bill them accordingly, you may get some pushback days or weeks later when the client receives the bill. With thorough notes, you can remind the client that it was because of them that you spent as much time as you did.

Before we delve into the specifics of the process, take a look at the flow chart below showing how the tax resolution process works.

Tax resolution flow chart (typical resolution case)



Setting up the client file

Setting up a client's file may seem like basic information but again, having a good foundation ensures you are prepared to work your case from start to finish. In your client file, you want to make sure you have set things up properly.

Client Folder Checklist

- Routing sheet
- Checklist
- Notes pertaining to the client's situation as well as your scope of work
- Engagement letter
- Power of attorney for the IRS (and if applicable State/s)
- Section for correspondence to/from client
- Section for correspondence to/from government
- Section for notices pertaining to tax issues

You will notice that the first item on the list is a routing sheet. This is a valuable tool, even for the most seasoned professional. If you have one client it is easy to keep track of the status of your case. If, on the other hand you have several clients, this is an easy way to pick up a client file at any given time and know exactly where you are in the case.

PROTIP 1

Client Files

Some people prefer to keep resolution client information in paper form. Others prefer to keep electronic files.

Our recommendation is that you do a 'hybrid' version. Often paper files make it easier to track work. Electronic files are easier to share with colleagues outside the physical office.

By doing both you have the best of both worlds. In the table below, you will see a sample tax resolution routing slip.

Sample routing slip

Client Routing Slip

Client Name _____ Client # _____

Billing Name (if different) _____ Billing # _____

RO _____ Badge #_____ Mgr. _____

Client Type: ☐ Individual ☐ Business ☐ Other _____

Work to be completed: ☐ Tax Returns ☐ Installment Agreement ☐ OIC ☐ CNC

☐ Penalty Abatement ☐ 4180 ☐ Wage Garnishment Release ☐ Bank Levy Release

☐ Other _____

Years Owed:	Years to be Prepared:	Manager:

Transcripts to be pulled: ☐ Account ☐ W&I ☐ Tax Return ☐ Other _____

(circle all that apply – check when complete)

Assigned to	**Type of Work**	**Complete**
_____	_____	☐
_____	_____	☐
_____	_____	☐
_____	_____	☐

Notes: _____

_____

Submitting a Power of Attorney

To submit a power of attorney to the IRS, we recommend you fax it in advance of wanting to speak with a representative or Revenue Officer. You have the option of waiting until you are on the phone with the IRS but this takes additional time and sometimes the IRS hangs up when you step away from the phone to send the fax.

You have three options when faxing the form to the IRS. You can fax the power of Attorney to the Centralized Authorization File ("CAF") unit in Ogden, Memphis or Philadelphia (for taxpayers residing abroad). Where you send the form is based upon where your client resides. Below is a list of contact numbers and a chart showing where the fax should be sent based upon location.

CAF Units Contact Information

Ogden (OAMC)
1973 N. Rulon White Blvd.
M/S 6737, Ogden, UT 84201
Fax: (855) 214-7522

Memphis (MAMC)
5333 Getwell Rd
Stop 8423, Memphis, TN 38118
Fax: (855) 214-7519

Philadelphia (PAMC)
International CAF MS 4.H14.123
2970 Market Street
Philadelphia, PA 19104
Fax: (855) 772-3156
Fax: (304) 707-9785 Outside the United States (US)

Hint: States west of the Mississippi should submit authorizations to OAMC; States east of the Mississippi should submit authorizations to MAMC.

Exceptions

- Authorizations related to taxpayers residing abroad, are submitted to PAMC
- Arkansas and Louisiana submit authorizations to MAMC
- Wisconsin authorizations are submitted to Ogden.

State Mapping of CAF Units		
State	**OAMC CAF Unit**	**MAMC CAF Unit**
Alabama		X
Alaska	X	
Arizona	X	
Arkansas		X
California	X	
Colorado	X	
Connecticut		X
Delaware		X
District of Columbia		X
Florida		X
Georgia		X
Hawaii	X	
Idaho	X	
Illinois		X
Indiana		X
Iowa	X	
Kansas	X	
Kentucky		X
Louisiana		X
Maine		X
Maryland		X
Massachusetts		X
Michigan		X
Minnesota	X	
Mississippi		X
Missouri	X	
Montana	X	
Nebraska	X	
Nevada	X	
New Hampshire		X
New Jersey		X
New Mexico	X	
New York		X
North Carolina		X
North Dakota	X	
Ohio		X
Oklahoma	X	
Oregon	X	

State Mapping of CAF Units		
State	**OAMC CAF Unit**	**MAMC CAF Unit**
Pennsylvania		X
Rhode Island		X
South Carolina		X
South Dakota	X	
Tennessee		X
Texas	X	
Utah	X	
Vermont		X
Virginia		X
Washington	X	
West Virginia		X
Wisconsin	X	
Wyoming	X	

PROTIP 2

IRS eServices

To save time a ton of time register for and use IRS e-Services. This service allows tax professionals to access transcripts and other information in a fraction of the time it takes to contact a person at the IRS and receive the same information.

In addition, when speaking with a representative, you are limited to the amount of information you can obtain each time. With e-Services, you can get as much information as is covered under each power of attorney.

Meeting with the client

Assuming you have been marketing to your prospective client base and successfully completed the sales process, you have a client and are ready to meet with them for the first time.

By now you should have already provided them an agreement which sets forth the items you are including in your engagement. It is important to be specific about what you are and are not including, especially if you are working for a fixed fee.

Again, it is important to understand that tax resolution clients may not be in a position to pay you as easily as your traditional tax clients, and even if they have the ability, it may be hard to get them to pay.

Once you have the client in front of you, the first step is to gauge the extent of their issue(s). In many cases a client bases their assessment of what issues they have, on the notices they receive. Often their issues span much further than the issues described in a notice. You need to explain to the client that just because they receive a notice showing they owe a certain amount pertaining to a given year, there may be other years for which they owe. More often than not, a client will underestimate their liability.

Later on in the process you will contact the government and obtain tax transcripts to determine the full scope of a client's issues. In the meantime, you want to give the client an idea of what they are facing.

In order to obtain relevant tax transcripts, you must identify the years, periods, and tax form types in question. Because this information is ambiguous, you want to span a period beyond what the client estimates is an issue. Often, the client is unaware that they have unfiled returns which further contributes to their problems.

Assuming you have already estimated the fees and have an agreement with the client, you will want to make sure you have correctly completed a power of attorney form. For the IRS, this is done on Form 2848. For a sample of an IRS Form 2848, power of attorney, reference **The Ultimate Guide to Tax Resolution** textbook or see the forms online at…

https://www.taxresolutioninstitute.org/forms-library/

Make contact with a Revenue Officer or Automated Collections

Depending on the dollar amount owed by your client, their case will either be assigned to IRS Automated Collections ("ACS") or a Revenue Officer. You often do not have a choice but we find that Revenue Officers are easier to deal with than ACS.

When given the opportunity, we request that a case be transferred to a Revenue Officer. In addition to increasing the chance of having someone more reasonable to discuss our client's case, we gain time as a hold is placed on collection during the transfer process, giving our client anywhere from 30 to 60 days of relief.

Once you get in touch with the representative, you will indicate that you have been retained to represent your client in their tax matter. You will then ask for the representative to provide a complete description of the client's tax issues. Of course, you want a total of the tax amount owed, but this information is only the beginning. On the next page, you will find a complete checklist of information you will want to request from the IRS so that you can create a comprehensive plan to resolve your client's tax issues.

IRS initial contact checklist

Initial IRS Contact Checklist

- □ Have routing slip in front of you
- □ Have paper or program open to take notes
- □ Request account transcripts for all years owing and unfiled years
- □ Request wage and income transcripts for all unfiled years
- □ Request collection statue expiration dates ("CSED") for all unpaid assessments by year (indicate in notes)
- □ Total amount owing (indicate in notes)
- □ Years owing (indicate on routing slip)
- □ Amount owing by year (indicate in notes)
- □ For which years are there unfiled returns (indicate on routing slip)

"Buying" Time

When you begin working with a resolution client, the government is often actively collecting against your client. In other cases, impending collection action suggests your client may be in trouble very soon. In the sales segment of this program, you learned that prospective clients contact salespeople based upon some type of motivation. It is often the case that the motivation the client had to contact you stemmed from some fear that related to collection action.

You want to do everything in your power to stop collection. The first place to start is requesting a hold on collection. Without some compelling reason, this request works less than 20% of the time. The government figures that if they are actively collecting, what incentive do they have to stop? Nonetheless, it's worth a try.

Assuming your request to stop collection is denied, you next may consider having a Collection Information Statement prepared. Preparation of this form is covered later in this segment. Keep in mind that preparing this form correctly including supporting documents supplied by your client may take several hours to compile and prepare, and depending on the diligence of your client, may take a few weeks to complete. In this case, since you are making initial contact, you want to prepare a rough draft with little to no substantiation to see if it may be accepted right away. This method too, has a low success rate.

PROTIP 3

Full Pay Option

As an option consider indicating that your client will be able to full pay within 60 days from the time you make contact. Typically, the IRS will put a hold on an account that will be fully paid in 60 days.

Note that the 60-day time period tends to be a "moving target" meaning you may ask for a longer hold or be given less time. Be careful not to overplay this card. Especially if you do enough of this work and come across the same representatives at the IRS.

Before you end your first call with the IRS, determine specifically, what other information they want from the client in order to proceed with their case.

Obtaining and analyzing tax transcripts

There are two types of transcripts you will utilize more than 90% of the time. They are (1) account transcripts and (2) wage and income transcripts. The IRS offers other types such as payroll transcripts and tax returns transcripts but these types are rarely used.

Account transcripts are used to get an overall picture of a client's tax account for a given year or period. Some of the information provided in the form includes balance owing, penalties and interest accrued, if and when a tax return was filed and when other events occurred such as entering into an installment agreement or defaulting on an installment agreement.

Wage and income transcripts are used to show what income information was reported to the IRS via forms such as W-2's and 1099's and K-1's. W-2's obviously reflect wage information but 1099's cover a wider spectrum of income including self-employment income, royalties, retirement distributions, investment income and gambling winnings. K-1's reflect pass-through income from entities such as partnerships, LLC's and trusts.

In addition to income information, wage and income transcripts reflect mortgage interest as reported on form 1098 and recent cost basis for securities purchases.

Once you have tax transcripts in hand, you want to review the information within. Depending on your client's situation, you will determine what information you are seeking. If you think your client has unfiled returns, you will begin by seeing which returns show being filed and which do not in the account transcripts. If a client owes for unpaid years, you will determine year-by-year how much they owe in tax, penalties and interest. If the client made interim payments or was subject to collections for the delinquent periods, compare the client's payment history to payments reflected in the transcripts.

If your client has unfiled returns, you will not be able to get accurate liability information from the taxing agencies. Once you prepare returns, you will want to calculate the tax, penalties and interest.

Obtain tax return from client if already prepared

If a filing deadline has passed or payment is delinquent, completing this step takes little effort and will go a long way. It does not happen very often, but in a select number of cases, the client will have the unfiled tax returns that the IRS requested in his or her possession. More often than not, if tax returns are unfiled, you will need to prepare them or have someone prepare them for your client.

Prepare tax returns if necessary

In order to negotiate with the government, your client must be in compliance. This includes having all tax returns filed. If the client has unfiled delinquent returns which have not yet been prepared, you should prepare them as soon as possible.

You should always prepare complete and accurate returns. Often with delinquent returns a tax preparer will rush to prepare returns and cause their clients to acquire a much higher liability than needed to be assessed.

Be sure to use IRS wage and income transcripts to ensure you include all income related information that was reported to the IRS. In these transcripts you will also receive reported mortgage interest information. As an added benefit, you gain a large portion of information from the government that may be difficult to extract directly from the client.

PROTIP 4

Duplicate Original Copies

Once tax returns have been prepared, have the client sign and date two copies. One to file with the government and the other to retain as a duplicate original.

Often, delinquent returns take a long time to post. If a Revenue Officer or other taxing agency representative asks for proof of filing, you can send them confirmation from the Post Office, FedEx, etc. that the return was received along with the duplicate original copy.

Send the client a Collection Information Statement

As mentioned earlier, this form is used to gather information from a taxpayer relating to personal and sometimes business income, expenses, assets and liabilities. In addition to using these questionnaires to negotiate with the government, you can use the financial information you obtain to plan a course of action to resolve the client's matter.

It is after receiving a collection information statement that you can better determine if an offer in compromise will work for your client. The information the client gives you in a sales consultation is usually incomplete and often inaccurate. In addition to the benefits above, you also capture other relevant information including residing address, phone numbers, and number of persons in the household.

Revising the Collection Information Statement

Once you receive the collection information statement, carefully review the information provided by the client. In the many years we have been practicing in this area, not one time has a client furnished information that was ready to submit for negotiation. This is not surprising and justifies why we are able to charge the fees that we do. This step will take more time than all other steps in the process and the time spent is well worth it.

To begin with, clients are lazy. Many of them have tax problems for a reason. When asked to compete these forms, it is not uncommon to receive “ballpark” estimates. The government does not like estimates. They are determining if a taxpayer has the right to claim hardship, and if they are willing to make concessions, they need accurate proof. Unless it is a coincidence, you do not want to have numbers ending in “00” or 50” on the form. It is acceptable to round to the nearest dollar, but by including a number to the penny shows no estimation was made. When negotiating on behalf of the client, most often your goal is to minimize the amount they will have to pay over time. This may happen via a one-time settlement or a monthly payment.

In order to do so, you must prove that your client’s monthly disposable income (“MDI”) multiplied by the number of months remaining on the collection statute, equates to an amount less than the full amount owed. MDI is calculated by taking the client’s take home pay/income and subtracting their necessary and reasonable living expenses.

What remains is what the taxing agencies consider to be the amount they can continually afford to pay over an extended period of time. If you provide an inaccurate or unallowable expense on a Collection Information Statement, you will obtain a result that is worse than what you could have received and based upon the fact that the number will be unaffordable, undesirable to your client.

Make sure that the numbers in the form jive with your substantiation. By substantiation we are referring to 3-months proof of income, expenses and payments. As far as income goes, pay stubs and bank statements are usually sufficient. If you receive paystubs, be sure to calculate the monthly amount correctly.

For example, if the client gets paid every two weeks, be sure to multiply the take home amount times 26 and divide by 12. This amounts to more than doubling the check amount if someone gets paid two times per month. A mistake that most clients make when including income, is not referencing the bank deposits with the substantiation they provide otherwise. If the average of three months bank deposits (assuming there are no loans or transfers) is higher than the amount shown on paystubs, the government will use the higher of the two. This may occur if a taxpayer has a subsequent job or investment income they forgot about.

As far as expenses go, the client must not only show you they owe it, but that they are making payments. To illustrate, let's say a client has an $1,100 monthly health insurance premium, but has not made a payment in the last three months. In this case you will not be able to justify the expense based solely on a billing invoice. Expenses must be substantiated with billing statements AND proof of payment via cancelled checks or bank statements. The taxing agencies look at these numbers from a cash flow basis.

Another thing you want to watch out for is expenses that will be disallowed. This will be discussed in more detail in the installment agreements section.

Contact the Government to Negotiate

Prior to picking up the phone, be sure you are prepared to contact the government. Whether you are billing hourly or charging a fixed fee, it is important to know that it takes a long time for the IRS to pick up the phone. In addition to the wait, you may be transferred several times before reaching the person with which you will negotiate.

For example, assume you have called the IRS to negotiate an installment agreement so you can have a wage levy removed. Also assume, as is often the case that you have been on the phone for over an hour both waiting on hold and being transferred from ACS to the large dollar unit. You finally reach the "right" person, begin to make your case which includes providing the data you entered into the Collection Information Statement.

The Revenue Officer agrees to terms and proceeds by telling you that he or she will send the client instructions regarding the installment payment. All good, right? Not necessarily. The Revenue Officer then asks you for the fax number to the taxpayer's payroll department so that they may fax over a release to remove the wage garnishment.

At this point you realize that you forgot to get the fax number to the client's payroll department. Because of this minor oversight, you are going have to call back after getting the number from your client. This could easily involve an additional few hours of phone time with the IRS, just to supply a fax number. If you were on the phone with ACS, you may have to start all over again and there's no guarantee you will receive the same result.

In this particular instance, you can request that a copy of the release to be sent to you, and you can in turn forward it to your client's payroll tax department. But until the release is in hand, you cannot be sure you will get it. The point is…BE PREAPERED!!!

Contact the Client to discuss the results of your Negotiation

As you become more familiar practicing in this area, you will become better at estimating what outcome your clients will receive. That being said, you never know when the IRS will throw you a curve ball.

If you did your homework and everything was in order prior to contacting the IRS, discussing the potential outcome of your client's case on a broad basis should have been an easy conversation. Assuming your estimate was accurate, your follow up should only take a few minutes.

On the other hand, if the outcome is different from what you discussed but positive, the conversation will be pleasant. If on the other hand, the outcome was negative, how the conversation progresses, depends on (1) how well you did your job and more importantly (2) how you communicated with the client thus far. In the latter case, be sure you explain why the outcome was worse than expected. This may have been because the taxing agency was unreasonable or because the taxpayer provided insufficient or inaccurate information. Be sure to let the taxpayer know when they are not living up to their end of the bargain.

PROTIP 5

Make sure you are "paid up" at the time the case is complete

In many cases you will receive final word from the government when you least expect it. If your client has a balance owing, it may be hard to collect the final payment.

Keep in mind that some clients go years without paying the IRS. Once you solve their case you may go to the bottom of the list.

On the following page, you will see a checklist pertaining to the sequence of events. We recommend you use this until you become comfortable with the process.

Sequence of events checklist

Sequence of Events

- □ Set up client file
- □ Submit powers of attorney
- □ Meet with client
- □ Contact taxing agency
- □ Obtain transcripts
- □ Obtain/Prepare tax returns
- □ Complete collection forms
- □ Negotiate with taxing agency
- □ Discuss results with client

Chapter 3

Installment Agreements

An **Installment Agreement** for tax resolution purposes is a program that allows a delinquent taxpayer to pay their liability over an extended period of time rather than when the tax was originally due. These payments are made on a monthly basis. Taxing agencies prefer that one pays the tax debt when it is due; however, based upon the statute of limitations on collection, the IRS has 10 years from the date of assessment to collect the tax and in turn, allow additional time for the taxpayer to pay it.

If an individual or a business files a tax return, and realizes they will be unable to pay the liability, an Installment Agreement offers a relatively easy solution. In this case, the taxpayer is allowed to make affordable monthly payments over time. Some Installment Agreements require that full payment of the tax, penalties and interest be paid over a prescribed period of time. In the case of the IRS, the maximum time allowed is 72 months which is less than the 10 year collection statute period. Other Installment Agreements allow the taxpayer to partially pay their liability over the full span of the collection statute period. Both types are discussed below.

In order to be eligible to enter into an Installment Agreement, a taxpayer must be in compliance, and remain so as long as the installment agreement is in effect. Compliance is defined as having all tax returns filed and being up to date with estimated tax payments for the current year or period/s. The rules vary depending on which type of tax is delinquent. Even though the definition of compliance requires that tax payments be current, the taxing agencies will usually forego this requirement if payments remain current once the installment agreement is accepted, and remain current going forward.

Once delinquent tax returns have been filed, and the tax liability has been determined, a taxpayer may enter into an installment agreement. Keep in mind that it is the goal of the taxing agencies to collect as much tax as possible within the collection statute period. As mentioned earlier, the IRS has the authority to collect outstanding federal taxes for ten years from the date of assessment. State tax collection statutes vary from State to State.

If a taxpayer can prove they are unable to full-pay their liability, even over time, they may enter into a payment plan which prescribes a payment amount based upon ability to pay. This type of payment plan allows the taxpayer to cover their necessary and reasonable living expenses, and is referred to as a **Partial Pay Installment Agreement** ("**PPIA**").

The IRS charges a nominal fee to set-up an Installment Agreement. As mentioned earlier, the taxpayer is required to stay in compliance. This means that they must, in addition to making the agreed upon monthly installments, continue to file future tax returns and pay all future tax liabilities in full. This must be done over the entire course of the Installment Agreement period otherwise the taxpayer will be in default and the installment agreement will be cancelled. Although a new installment agreement may be an option, by definition, the delinquent taxpayer will be responsible to pay the full liability immediately.

Taxpayers that are in installment agreements are notorious for falling out of compliance by accruing new liability relating to future tax filings. As professionals, we are often asked by the taxpayer to include the new liability in their existing payment plan. This practice is referred to as "pyramiding the liability". While the taxing agencies look down upon this practice, the majority of delinquent taxpayers are not able to remain in compliance.

Streamlined Installment Agreements

If a taxpayer is able to full-pay their liability over the taxing agency's prescribed period of time (within 72 months for the IRS), they may qualify for a streamlined installment agreement. In order to qualify for an IRS streamlined installment agreement, a taxpayer must owe less than $50,000 and be in compliance. If the taxpayer owes less than $25,000, the information the taxpayer needs to provide is reduced and the taxpayer may request that a Federal tax lien not be filed. If a tax lien has already been filed, the taxpayer may request that it be removed (note: The $25,000 and $50,000 thresholds are based upon the tax liability and do not include interest and penalties).

Currently Non-Collectable Status

If a taxpayer qualifies for an installment agreement for hardship reasons, and can prove that their monthly disposable income nets to or is less than $0, they may be placed into **Currently Not-Collectable** ("CNC") status. CNC status is temporary. The IRS allows a taxpayer to remain in this status for up to two years. Once this time has passed, the IRS will ask for updated financial information from the taxpayer to see if their financial condition has improved. If so, the IRS will require that the taxpayer make installment payments equal to their adjusted monthly disposable income

Installment Agreement Forms

There are two types of forms used to prepare installment agreements. The first which was already discussed is a Collection Information Statement. The second is a payment collection form used to obtain bank information to make automatic debits. Below is a list of forms used for IRS installment agreements. Copies of these forms can be found online at:

https://www.taxresolutioninstitute.org/forms-library/

Collection Information Statements

- 433A - used for individuals assigned to a Revenue Officer
- 433F - used for individuals assigned to Automated Collections
- 433B - used for businesses

Payment Forms

- 433D – payment form to request electronic debit
- 9465 – official request for installment agreement (cover sheet for collection information statements)

Installment Agreements Summary

A negotiated payment plan in the form of an Installment Agreement is always better than worrying about having one's wages garnished, bank levied or assets seized. If a person cannot afford to pay their taxes in full, and they do not qualify for an offer in compromise, an installment agreement is usually the best way to resolve their tax matters.

To summarize, the IRS allows a person or business up to 72 months to pay their liability in full. In certain hardship cases, a taxpayer may be given more time to pay, assuming it is within the collection statute of limitations.

Prior to granting an installment agreement, the IRS may require the taxpayer to attempt to make an alternative form of payment such as obtaining a bank loan or using available credit on a credit card. Since these alternatives are rarely practical, they can easily be argued.

Installment Agreement Preparation Analysis

If you are going to request a streamlined installment agreement for your client, little information is needed and the forms are self-explanatory. Assuming your client qualifies, this task should be simple.

In order to prepare and submit an installment agreement request based upon hardship, we need to look at areas within the collection information statement where issues typically arise.

We begin by looking at the taxpayer's income, expenses, assets and liabilities as input into a collection information statement. If the taxpayer is in automated collections, you will need to complete a 433-F. If a Revenue Officer has been assigned to their case, you will need to prepare and submit a 433-A.

To access these and many other forms visit the TRI online forms library at:

https://www.taxresolutioninstitute.org/forms-library/

The information entered into the above-mentioned collection information statements is used to calculate, on a monthly basis the amount a taxpayer must pay toward their delinquent taxes. It is important to be thorough and accurate when completing this form. It is also important to note that in addition to providing income and expense information, you are providing the IRS supplementary collection information. For instance, the 433-F requires you enter the county of residence for the delinquent taxpayer. This information helps the IRS file a lien. They also look at assets which may not be applicable to the installment agreement at hand, but may be levied upon if the taxpayer falls out of compliance.

At first appearance, the 433-F and even the 433-A seem like a simple forms to complete. The information requested in each form is similar to what one would find in a loan application. When the client sees the form, they wonder why they are paying you to complete this process.

Here is why. If you fill out a loan application incorrectly, it may be rejected. This would be disappointing but having learned your lesson, you can apply for another loan and move on. On the other hand, if you fill out a 433-F or 433-A incorrectly, you could be sentencing your client to ten years of paying a much higher monthly installment amount than they can otherwise afford.

Completing IRS Form 433F

IRS Form 433-F (Page 1)

The first section of the form is where you will enter your client's static information. Make sure you are accurate when entering their name and tax identification number. Spell everything correctly and include middle initials if they appear on the client's tax returns. The IRS will often cross reference this information with the information they have on file.

Below the top section, you will see a section requesting basic business information. This section pertains to taxpayers that are self-employed. Once again be sure to enter the requested business information accurately. If you are a wage earner, you should enter "N/A" in the first box in this section and move onto the next section.

Note that whenever something does not apply to your client, always enter "N/A" in the first box of the section. This lets the IRS know that you did not miss the inapplicable section by mistake. Also be sure to enter "$0" in the dollar amount box for the same reason.

Where indicated, enter both the number of people in the household that are under 65, and over age of 65. The IRS uses this information to determine which Out-of-Pocket health costs national standard applies to your client. In order to include someone as part of your client's household expenses, they should appear in the client's prior filed tax return as a taxpayer, spouse, or dependent.

The subsequent section, **Section 'A'** of the form asks for bank, investment and retirement account information. Be sure to include **ALL** applicable accounts. The IRS will most likely have at least a snapshot of this information and if something is excluded from the form, it will reflect poorly on the accuracy of all information included and may negatively affect the outcome of your installment agreement request.

If there are too many accounts to fit on the form, include an addendum that lists the additional accounts, and place the total sum of all accounts on the main form.

Section 'B' of the form covers Real property you own. As mentioned earlier, be complete and thorough when completing this and all other sections. If the current value of the client's property is less than the balance owed (the property has negative equity), enter $0 in the equity box. Do not enter a negative amount. If you have two house payments (i.e. a 1st mortgage and a 2nd mortgage), be sure to include all applicable information.

Section 'C' of the form lists personal property you own or lease. The majority of information listed in this section pertains to vehicles. Note that if you are single, the IRS will usually allow the ownership cost of only one vehicle. If you are marred, the IRS will typically allow for two vehicles. If a person or couple has more than one vehicle per person, the IRS will not allow the cost to own or lease the additional vehicles. In some cases, the IRS has disallowed the second vehicle because only one spouse was working.

IRS Form 433-F (Page 2)

Section 'D' of IRS Form 433-F is where you enter your client's credit card information. It is important to know that credit card payments are for practical purposes, not considered to be an allowable expense. While the IRS contends that minimum credit card payments are allowable, they consider these payments as part of the Food, Clothing and Miscellaneous Items allowance in the section below. In a minute when we cover that portion, you will see why credit card payments carry no practical bearing with regard to an allowable expense.

Section 'E' of the form is where a self-employed person will enter their business-related asset and liability information. You will notice that this section is similar to the bank account and credit card sections we covered previously. As is always the case, be complete and accurate when entering information in this section. If your information does not fit on the form, include additional information in an addendum as necessary and enter the sum of information in the "Total" box on the form.

Section 'F' of the form is a critical section. Here you will enter your client's employer, wage and income information. Even if you client is not an employee earning a wage, you should at least enter the static information for the company for which they work. You will see check boxes in this section asking for the frequency in which your client receives pay.

PAY CLOSE ATTENTION TO THIS SECTION. When you calculate your client's take-home pay, be sure to do the math properly. When estimating what your client will need to pay as a monthly installment payment, you determine their take-home pay and subtract out necessary and reasonable living expenses. If you calculate the take-home pay incorrectly, you will lose substantial leverage in negotiation.

If your client gets paid monthly, the math is easy. If they get paid semi-monthly, once again it is not hard to calculate. On the other hand, if they get paid weekly, be sure to multiply the average net income of the checks you are including as substantiation by 52 and divide by 12. If your client gets paid every other week, you must multiply the average net income of the substantiated pay periods by 26 and divide by 12. On the following page, we have provided examples of a taxpayer being paid monthly, semi-monthly, every two weeks and once per week. In the second and third examples the check amounts are the same. Note the scenario in these two examples change the monthly average for the net take-home pay.

Wage earner's take-home pay calculation for installment agreements and offers

Examples below are based upon approximately 3-month's pay

1. **Monthly** (sum 3 checks; divide by 3)

Check 1:	$6,000
Check 2:	$5,200
Check 3:	$8,000
Monthly Average:	**$6,400**

2. **Bi-monthly** (sum 6 checks; divide by 3)

Check 1:	$3,300	Check 4:	$1,900
Check 2:	$2,700	Check 5:	$4,400
Check 3:	$3,300	Check 6:	$3,600
	Monthly Average:		**$6,400**

3. **Every two weeks** (sum 6 checks; divide by 6; multiply times 26; divide by 12)

Check 1:	$3,300	Check 4:	$1,900
Check 2:	$2,700	Check 5:	$4,400
Check 3:	$3,300	Check 6:	$3,600
	Monthly Average:		**$6,933**

(note that the same check amounts equate to more take home pay when compared to bi-monthly)

4. **Weekly** (sum 12 checks; divide by 12; multiply times 52; divide by 12)

Check 1:	$1,600	Check 4:	$1,000	Check 7:	$900	Check 10:	$1,000
Check 2:	$1,400	Check 5:	$2,200	Check 8:	$1,100	Check 11:	$1,000
Check 3:	$1,600	Check 6:	$1,800	Check 9:	$900	Check 12:	$1,100
					Monthly Average:		**$5,633**

In most cases, when determining what amount to include in the form as gross pay and corresponding taxes withheld, you will take the monthly over a three-month period. If you can show that your client earned less over an expanded period of time, you may go back 6 months, 1 year, or up to 2 years.

Section 'G' of the form addresses other types of income. Here you will include income other than wages including social security income and self-employed net business income. If you are self-employed and have net business income, the IRS may ask for additional substantiation which may include a Profit and Loss Statement to tie into the amount included in the form.

Section 'H' is the final section on Form 433-F. Like Section 'F', this section plays directly into how much your client will pay in monthly installments. The amounts included in this section, along with the income, car payment and mortgage payment amounts entered earlier in the form will determine how much your client will pay.

In "#1: of this section, you will enter the amount your client spends on Food, Clothing & Miscellaneous Items. In "#2" of this section, you enter the amount your clients spends on either Transportation operating costs or public transportation. In #4 if this section you enter your client's Out of Pocket Health Care. In all three of the above-mentioned sections, you enter the current IRS national or local standards. These standards can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library/

Remember that each standard increases as the number of people in the household goes up. For the three items listed above, the IRS will allow you to enter the standard without providing substantiation.

As mentioned earlier, minimum credit card payments are in theory, allowed under the Food, Clothing and Miscellaneous items section. Because the entire standard is allowed with no substantiation, if credit card payments are included in this section they will in essence be reducing other standard amounts. This means, they have no practical bearing and will make your client no better off in terms of their ability to pay.

The other amounts you enter into the form including amounts for Housing and Utilities, health insurance and the remainder of items listed under section #5 "Other" should reflect the actual amounts your client pays. Keep in mind that **all** income and expenses other than the few times listed above need to be substantiated.

To substantiate the amount you take home in pay, provide three-months paycheck stubs if you are a wage earner. If you are self-employed, provide three-months bank statements showing deposits.

To substantiate non-standard expenses, you need to provide three-months proof of expense in addition to proof of payment. Simply owing something does not make it an allowable expense. In addition, you must provide three-months bank statements for all personal accounts listed on page one, and all business accounts listed on page two.

Be sure to include the amount your client paid for CURRENT estimated tax payments as well as the amount they paid for delinquent tax payments to governmental agencies other than the IRS. **Do not include a current IRS installment payment because the IRS will assume your client is able to cover this expense and will require you to include it as part of the proposed payment amount you are submitting**.

Once the form is complete, calculate your client's net take-home pay and subtract out the necessary and reasonable living expenses. The result will determine a proposed payment amount for the client's monthly installment agreement.

The information that the IRS requires to be entered into IRS form 433-F (the short from) is similar to that requested in IRS form 433-A. The main difference is that the 433-A requires that more detail be given for each item listed on the form.

The amounts you enter into the form, and the disposable income you calculate on both forms should come out the same. Be sure to enter accurate numbers that are rounded at most to the nearest dollar. Do not round beyond that. If the IRS believes you are estimating amounts, they will ask you to revise the information provided in the form. When preparing these documents, both form and function play an important role.

PROTIP 6

Installment Agreements with no Backup

Until recently, unless the taxpayer was requesting a full pay installment agreement under $50,000 IRS automated collections required that a taxpayer submit 3-months substantiation to backup the information reflected in form 433-F.

As it stands, in many cases the IRS will not only accept the information reflected in the 433-F without backup, they often accept the information over the phone.

To save you time and your clients fees, you can try and place your client into an installment agreement without the hassle of gathering backup. You need to know that doing this comes with some risk.

If you choose this option you should know and also forewarn your client that the IRS may ask for you to remit this information.

If the IRS does request backup and it does not match what your client indicated in the 433-F, it may cause problems for your client. Either carry out your due diligence, let the client know they are at risk if the information does not match or do both.

Keep in mind that a 433-F is used for cases assigned to automated collections. If a taxpayer's liability is high enough their case is often assigned to a Revenue Officer and substantiation will need to be provided.

Typically, cases exceeding $250,000 are assigned to Revenue Officers. We have seen cases exceeding this amount be assigned to automated collections and have been able to negotiate installment agreements over the phone.

Installment agreement tips and traps

Installment Agreement Tips and Traps

1. Be sure to complete Form 433-F or 433-A before you contact the IRS.

2. The information in Form 433-F is often supplied to the IRS over the phone.

3. Be sure to fill on all boxes in sections that apply to your client. The IRS does not like blanks.

4. Create a separate sheet showing your income and expenses. Calculate your client's take-home income minus their living expenses prior to contacting the IRS. This will be the amount the IRS will expect you to pay on a monthly basis.

5. The installment agreement calculation may be negative. If the amount is less than zero, request to be placed into Currently Not Collectable status.

6. If your calculation is too low (i.e. substantially below zero) then the IRS may not consider your client's expenses to be real.

7. The IRS will compare your client's bank account deposits with the amount they claim as take-home income. Be sure that either these amounts match or that you can trace excess deposits as non-income (i.e. loans, transfers from savings, transfers from other accounts listed on the 433).

8. Provide three months billing statements, invoices, etc. to substantiate living expenses. Also include proof of payment either as copies of checks or bank statements showing the paid expenses. Simply owing the money is not enough to make an expense allowable.

9. If your client has more Monthly Disposable Income ("MDI") than they are able to pay to the IRS as an ongoing installment payment, they can increase their expenses to lower their MDI. For example they could:

    a. Trade in a car they own outright and lease or purchase another car. Note that leasing a car will add a new allowable expense without adding an additional asset.

    b. If they are self-employed they can make or increase estimated tax payments for the current tax year. This will lower their disposable income and increase the chance of staying in compliance moving forward.

    c. If your client is an employee they can increase their withholding tax if they typically owe taxes at the end of the year. Be careful not to have them over withhold as refunds will be kept by the IRS and applied to the back taxes owed.

    d. They can buy term life insurance. This is an allowable expense that carries no cash value.

10. **6 Year Rule** - ask for 72 months to pay. If your client's MDI is too high and they can afford to full pay their liability within 6 years, try taking their total liability and dividing it by 72. If the amount is less than their MDI, you may request that their full liability be paid over the 6-year period. This does not always work but it is worth a try.

Chapter 4

Offers in Compromise

An Offer in Compromise (OIC) is an agreement between a taxpayer and the IRS that resolves the taxpayer's tax debt by settling for an amount less than that which has been assessed. The IRS has the authority to settle or "compromise" Federal tax liabilities by accepting less than full payment under certain circumstances. A tax debt may be legally compromised under any of the following conditions:

Doubt as to Collectability - doubt exists that the taxpayer would ever be able to pay the full amount of tax owed.

Doubt as to Liability - doubt exists that the assessed tax is correct.

Effective Tax Administration - there is no doubt the assessed tax is correct, and there is no doubt that the full amount owed could be collected, but an extraordinary circumstance exists that allows the IRS to consider a taxpayer's OIC. To be eligible for a compromise on this basis, the taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable.

Taxpayers should be made aware that most companies claiming to be able to settle their debt for "pennies on the dollar" through the IRS Offer in Compromise program are false. While this can be accomplished in a few instances, it is imperative that you as professionals understand the offer in compromise requirements, and verify that your clients will qualify with a fair amount of certainty.

The goal of an Offer in Compromise is to settle, reduce or eliminate a tax liability that is in both the Government's and the taxpayer's best interest. The IRS will accept an offer-in-compromise to settle unpaid accounts for less than the amount owed when there is doubt that the liability can be collected in full over the remaining collection statute, and the amount offered reasonably reflects the taxpayer’s full collection potential.

In addition to submitting the forms necessary to file an offer, we include a cover page that lists what forms and corresponding substantiation we have included in the package. In addition, we include a brief paragraph painting a financial “picture” of the taxpayer. This provides the Offer Specialist a depiction that supports our case.

The IRS also considers a taxpayer’s doubt as to liability and effective tax administration as alternative options to compromise the tax. "Liability" is a complex legal issue (*i.e., whether a person is a "responsible person" to pay the payroll taxes*) requiring sophisticated and well-reasoned issues of fact and law to garner success.

In order to submit an offer-in-compromise, you must complete Form 656. In addition, you should know that the IRS will not accept an offer unless the taxpayer is in compliance.

For persons earning wages (employees), compliance would require that all tax returns be filed up to the time of an offer being submitted. Not only is this required by the IRS, but it makes practical sense as well. The IRS cannot settle a tax liability for which tax has yet to be assessed. Filed tax returns are important because they result in IRS tax assessments.

In addition to filing all tax returns as required, self-employed persons are considered to be in compliance if all estimated tax payments have been made for the current tax year. If a taxpayer has employees (for the purpose of offer submissions), they must file quarterly payroll tax returns and make the corresponding tax deposits timely for the current quarter and the preceding two quarters.

Form 656 was redesigned in May of 2012 which made it easier to qualify for an offer in compromise. At the time these changes were part of the IRS Fresh Start program but has since become the standard. The changes were made to assist the taxpayer in the correct preparation of an OIC, as well as reduce the burden associated with the process. The 2012 revision was the culmination of a partnership effort involving the IRS, the National Taxpayer Advocate, as well as a number of tax professional organizations.

National and Local Standards

To streamline the process, the IRS uses national and local standards for certain items. This not only sets limits but makes it easier for submitters to enter what otherwise may be difficult information to gauge such as how much someone spends on food each month. Allowances for food, clothing, medications and other items are set up as a national standard. Other items where costs vary based upon one's State and County of residence for Housing are set up as local standards. These include housing, utilities, and transportation. National and local standards also vary based upon family size.

Risks related to not filing tax returns

In addition to meeting the offer requirements, filing tax returns satisfies Section 7230 of the Internal Revenue Code. This section permits the IRS to charge one with the "willful failure to file a tax return." The statute subjects a person to the risk of being guilty of a misdemeanor and a $25,000 penalty ($100,000 in case of a corporation) and imprisonment for not more than one year. If the failure to file is "willful" the charge is a "felony" and the imprisonment is up to five years.

Note that this case law was tested in 2016 and the courts determined that it is the taxpayer's responsibility to ensure returns are filed timely. In one case the courts sided with the IRS even though the taxpayer's preparer had brain cancer. In another case, the courts again sided with the IRS, even though the tax preparer lied to the taxpayer and indicated that the returns were prepared and filed when they were not.

Bankruptcy

The IRS will not process an offer in compromise if your client is currently in bankruptcy.

Offer in Compromise (Example 1)

Taxpayer "A" owes $250,000 to the IRS

- *She owes $50,000 in personal Federal income taxes (1040)*
- *She owes $200,000 in payroll taxes from a business that went bankrupt 3 years ago*
- Taxpayer "A" earns $3,500 per month from her consulting business
- She makes an estimated tax payment of $2,500 per quarter ($833.33/month)
- Taxpayer "A's" spouse earns $3,000 per month as a telemarketer
- He receives a W-2 with $803.50 withheld in Federal and State income taxes
- He has an additional $250 taken from his pay for health insurance
- Taxpayer "A" has a monthly mortgage payment of $2,600
- She has real estate taxes and utilities totaling $700
- Taxpayer "A" leases an automobile for $625/month
- Her spouse purchased an automobile and has a monthly payment of $400/month
- There are 24 payments remaining on the car payment
- She has a term life insurance policy and pays $175 per month in premiums

Entering this information into IRS Form 433A (OIC) and subsequently IRS Form 656, it appears that this taxpayer may qualify for an offer. These forms can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

What we mean by "may qualify" is that there are other facts that could lower the probability of acceptance. For instance, the numbers provided above do not account for the Taxpayer's assets. The IRS will require that an offer submitter include approximately 80% of the quick sale value of their assets. If a taxpayer has substantial assets, perhaps in the form of home equity or retirement, they may not be able to pay the amount reflected in the offer. Another case in which a taxpayer's income may be limited but may not qualify for an offer relates to pending litigation. If the submitter is a plaintiff in an open lawsuit, the IRS may reject the offer or tie a prospective civil award to the offer amount in the form of a collateral agreement.

Another circumstance that may affect the offer is the submitters ability to pay going forward. If the submitter is self-employed and the IRS believes their income may increase substantially within the collection statute (10 years from the date of assessment), they again may reject the offer or require a collateral agreement.

Assuming the couple in this example have little-to-no assets and will most likely earn the same amount or less than they are currently earning, they fit the model to submit an Offer in Compromise. When completing a Form 433A (OIC) and Form 656 you will see that both forms have a checklist including items necessary to submit with the form/s. Be sure to send a complete package when submitting documents to the IRS.

Brief History of the OIC Program

Since the 1860s, taxpayers have had the ability to compromise and settle deficiencies as a last resort. Historically, this has been good business for the government. In testimony before the House Small Business Committee on April 5, 2006 Nina Olsen, an IRS Taxpayer Advocate, said that, on average accepted OICs have resulted in the Service collecting 16 cents on every dollar owed. This is a statistically significant improved return compared to the 13 cents on the dollar which is what the IRS had typically collected on debts aged two or more years. According to Ms. Olsen, for cases in which OIC applications are rejected, the IRS collects an average of less than 80% of what it could have collected under an initial taxpayer offer, and in over 20% of the rejected cases, the Service recoups nothing at all.

Below is a chart showing the number of Offers submitted compared to the Offers accepted for 2010 through 2020:

Year	**Receipts**	**Acceptances**	**%**
2010	56,539	13,886	24.56%
2011	59,411	19,562	32.93%
2012	63,801	23,628	37.03%
2013	74,217	30,840	41.55%
2014	69,735	26,924	38.60%
2016	63,000	27,000	42.86%
2017	62,000	25,000	40.32%
2018	59,127	23,929	40.47%
2019	54,225	17,890	32.99%
2020	44,809	14,288	31.89%

Due to impediments introduced with the TIPRA, many practitioners and advocates have expressed concern that the new legislation will effectively kill the OIC program.

How many taxpayers will be willing to incur the emotional and financial costs of providing a partial payment, believing their chances of having an offer accepted are slim? The most common means of financing an OIC payment are:

1. Cashing in an IRA and paying tax and penalties
2. Refinancing real estate with a loan
3. Obtaining funds from family or friends

Is it Possible to avoid the 20% down payment?

As a way to avoid the 20% initial payment, some commentators propose structuring an OIC to include more than five installments. Under this scenario, taxpayers would make monthly installments while awaiting IRS approval. However, as final approval may take several years, this approach may be impractical.

Conclusion

The Joint Committee on Taxation has estimated that revenue will increase by almost $2 billion from this provision. On the contrary, many practitioners predict that the 20% partial payment is a significant barrier that will encourage taxpayers not to apply for an OIC and will result in an overall decrease in revenue. We have found that typically if someone qualifies for an Offer and can pay for the Offer, they typically will not let the 20% down payment stand in their way.

2006 Tax Law

The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), section 509, made major changes to the IRS OIC program. These changes affect all offers received by the IRS on or after July 16, 2006. The postmark date on the offer is irrelevant. TIPRA section 509 amends IRC section 7122 by adding a new subsection (c) “Rules for Submission of Offers-in-Compromise.”

A taxpayer filing a lump-sum offer must pay 20% of the offer amount with the application (IRC 7122(c) (1) (A)). A lump-sum offer means any offer of payments made in five or fewer installments.

A taxpayer filing a periodic-payment offer must pay the first proposed installment payment with the application and pay additional installments while the IRS is evaluating the offer (IRC section 7122(c) (1) (B)). A periodic-payment offer means any offer of payments made in six or more installments.

Taxpayers can avoid delays in processing their OIC applications by making all required payments in full and on time. Failure to pay the 20 percent on a lump-sum offer, or the first installment payment on a periodic-payment offer, will result in the IRS returning the offer to the taxpayer as non-processable (IRC section 7122(d) (3) (C) as amended by TIPRA).

The 20 percent payment for a lump-sum offer and the installment payments on a periodic payment offer are “payments on tax” and are not refundable deposits (IRC section 7809(b) and Treasury Regulation 301.7122-1(h)).

Taxpayers must specify in writing when submitting their offers how to apply the payments to the tax, penalty and interest due. Otherwise, the IRS will apply the payments in the best interest of the government (IRC section 7122(c) (2) (A)).

The OIC application fee reduces the assessed tax or other amounts due. A taxpayer may not specify how to apply the $150 application fee. Taxpayers failing to make installment payments on periodic-payment offers after providing the initial payment will cause the IRS to treat the offer as a withdrawal. The IRS will return the offer application to the taxpayer (IRC section 7122(c) (1) (B) (ii)).

A lump-sum offer accompanied by a payment that is below the required 20 percent threshold will be deemed processable. However, the taxpayer will be asked to pay the remaining balance in order to avoid having the offer returned. Failure to submit the remaining balance will cause the IRS to return the offer and retain the $150 application fee.

Taxpayers filing periodic-payment offers must submit the full amount of their first installment payment in order to meet the processability criteria. Otherwise, the IRS will deem the offer as non-processable and will return the application to the taxpayer along with the $150 fee.

Under the new law, taxpayers qualifying as low-income or filing an offer solely based on doubt as to liability qualify for a waiver of the new partial payment requirements. Taxpayers qualifying for the low-income exemption or filing a doubt-as-to- liability offer only are not liable for paying the application fee, or the payments imposed by TIPRA section 509.

A low-income taxpayer is an individual whose income falls at or below poverty levels based on guidelines established by the U.S. Department of Health and Human Services (HHS). Taxpayers claiming the low-income exception must complete and submit the Income Certification for Offer in Compromise Application Fee worksheet, along with their Form 656 application package.

The IRS will deem an OIC “accepted” that is not withdrawn, returned, or rejected within 24 months after IRS receipt. When calculating the 24-month timeframe, the IRS will disregard any time periods during which a liability included in the OIC is the subject of a dispute in any judicial proceeding (IRC section 7122(f) as amended by TIPRA).

Changes to the IRS Offer in Compromise Program (previously known as the "Fresh Start" Initiative of 2012)

In May of 2012 the IRS reduced the requirements necessary to qualify for an offer in compromise as part of their "Fresh Start" initiative. In order to make it easier for an applicant to qualify for an offer in compromise, the IRS reduced the minimum multiple of Monthly Disposable Income ("MDI") used in the offer calculation from 48 to 12 months and the maximum from 60 to 24 months. This change makes it much easier for a taxpayer to qualify for an offer.

The IRS claims it broadened the scope of allowable expenses to include credit card payments. This is not practically helpful because the payments are included under the Food, Clothing and Miscellaneous standard which can be taken without substantiation.

The IRS claims student loan payments may be included but we have not tested this as of yet. In all, these changes make it substantially easier to qualify for an offer in compromise.

Offer in Compromise (Example 2)

Taxpayers "B" and "C" owe $247,000 to the IRS

In order to illustrate how an Offer in Compromise works we will look at a married couple filing jointly. In our example, the taxpayers have two young children. The taxpayers own a home. They are both employees earning wages and receiving Forms W-2. They own one vehicle and lease another. In this example, we reference how the information is input in the offer in compromise forms.

To summarize:

- Family of 4
- Living in Los Angeles (for IRS local Standard purposes)
- Taxpayer and Spouse both work
- They own 1 vehicle and lease another
- They own a single family home
- They owe $247,000 from unpaid taxes

IRS Form 433-A (OIC)

This form can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

We will now take the income, expenses, assets and liabilities and see how they are to be entered into the offer in compromise collection information statement (433A-OIC). This form is similar to the 433-F described in earlier pages of this manual.

There are two significant differences. The first is that this form takes 7 pages to input information that was covered in two pages in the 433-F. It is very important to be thorough and accurate when completing this form. The second difference is that, unlike the 433-F where you can input actual expenses for items such as housing and utility payments and car payments, in this form you must include the amount you pay up to the IRS standard. If you pay more than the IRS standard for living expenses, the amount over the standard is disallowed for purposes of an offer.

In our example, the taxpayer's adjusted assets for the purpose of the offer, equal $4,438. We used the word adjusted because the IRS considers the quick sale value of assets, not the "retail" value one would receive by selling their assets in an open market. This amount included in the offer equates closer to what one would receive selling their stuff at a garage sale.

The taxpayer's Monthly Disposable Income ("MDI") for purposes of the offer equals $919 per month. Inputting these numbers into the offer in compromise forms, equates to an offer amount of $15,466. This is significantly less than the $247,000 they currently owe. See the formula below to see how the offer amount was calculated.

MDI:	$919
Months per lump sum offer:	12
	$11,028

Quick sale value of assets: $4,438

Income (12 x MDI)		Assets (QSV)		Offer Amount
11,028	+	4,438	=	$15,466

When completing the offer in compromise forms, be careful to see how each section should be completed. You will note that each section has a total box where you enter the sum of amounts for each category. If the taxpayers do not have anything to enter in a particular section, you should input "$0" in the "Total" box and place an "N/A" in the first description box of the applicable section.

Each section has a total box where you add all of the elements included in that section. It is important to calculate these totals properly. You will notice that 'Box A' on page 4 and 'Box B' on Page 5 show the totals of boxes from their related sections. Do not forget to enter numbers in these boxes. They are used to calculate your offer on Page 7.

Be careful when completing Page 6 of the form. Here you enter the taxpayer's expenses similar to completing IRS Form 433-F. The difference once again, is that the entries may not exceed the IRS National and Local Standards. In our example, the housing and utilities payment made by the taxpayers was higher than the IRS standard.

To have the offer accepted, we must input the standard and not the higher actual amount into the form. In this case the difference will be added to the taxpayer's MDI. This will require them to pay 12 times the difference in housing and utilities toward the offer.

On Page 7 of Form 433-A (OIC) you will transfer numbers from the previous section totals to calculate the amounts to include in the offer. You will see that you have a 12-month option and a 24-month option. Yes, you read this correctly. The Offer in Compromise MDI amount is double if you decide to pay in more than 5 months from the date of acceptance of the offer. It almost always makes sense to choose the 12-month option.

Finally, page 8 is a checklist of items to include with the offer. Be sure that each item on the list is either not applicable or included with the offer. Do not forget to sign and date the form. Once this form is complete, you will move onto completing the actual offer application, Form 656. This is covered after the 433-A (OIC) sample form that follows.

IRS Form 656

This form can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

The Offer in Compromise application Form 656 (we refer to this form as the "cover sheet") is much simpler to complete than the 433-A (OIC). This 7-page form consists of information easy to obtain. Page 1 of the form is where you enter your static information including the type of tax you owe, and the years or periods for which you owe. It is important to know for exactly which years or periods you owe. If you accidentally exclude a year or quarter, the amount you owe for said year or quarter will be excluded from the offer if it is accepted. If the amount is significant, this could wipe out the benefit of entering into an offer.

On page 2 of the offer, you enter business related information. In addition, you will enter what type of offer you are submitting. For example, doubt as to collectability, the most common type.

The last information you will enter on this page is a brief explanation of why your Client is submitting the offer. It is advantageous to show extenuating circumstances as to why they were unable to pay the tax. For example, if your Client was sick or disabled, you should mention their condition here. Also, if your Client is of retirement age and they are unable to work or must cut down on work, that should be mentioned here as well. At the **Tax Resolution Institute,** we also include a cover letter including an expanded explanation of why the offer is being submitted.

At the top of Page 3 is where you calculate the down payment and the 5 lump sum payments. These amounts come from the offer amount calculated on page 7 of the 433-A (OIC). The offer down payment is derived from 20% of the total offer amount. The down payment must be submitted in addition to the offer application fee of $186 with the offer. Subsequently, break down the remaining 80% of the offer amount into 5 payments. These payments must be made within 5 months of acceptance of the offer.

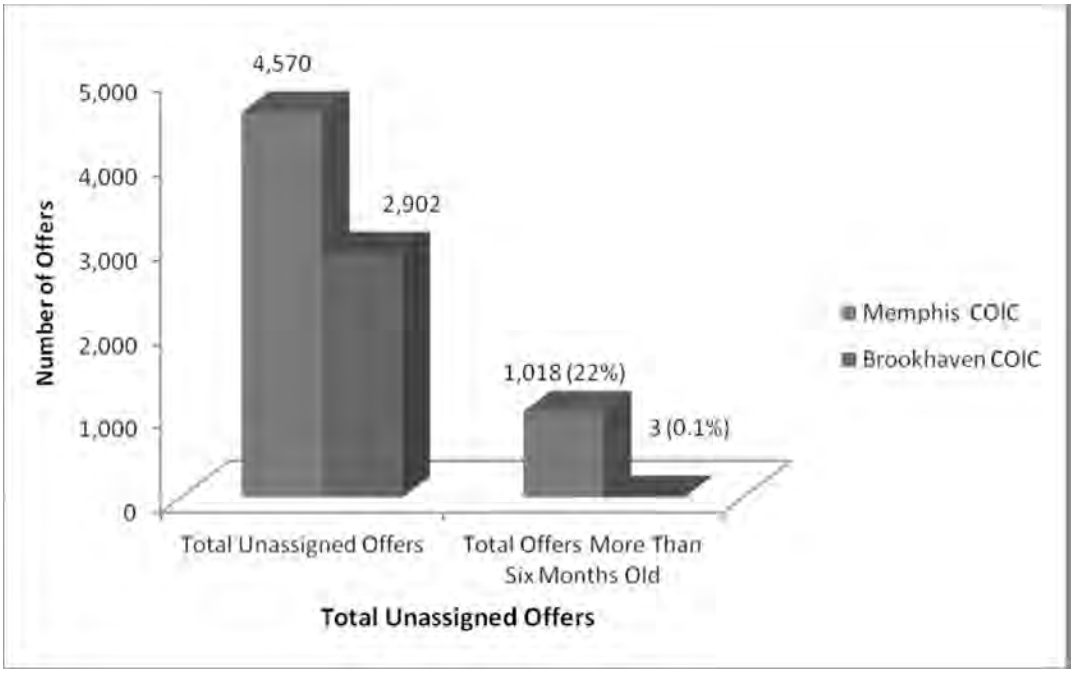
Leave the bottom of page 3 blank. In the next section on page 4 you explain where your client is obtaining the funds to pay the offer. It is best if your client is borrowing the funds from family and friends. Page four also asks a few questions pertaining to compliance. Be sure to check all that apply and just as important, make sure your client is in current compliance and remains so during the offer consideration period.

Page 5 sets forth the offer terms. Page 6 of the offer is where your client inputs their signature and date, and you do the same if you are acting as their preparer. Page 7 of the offer is a checklist. Do not ignore this page. It helps ensure you are submitting a complete offer.

Once the offer is complete you will mail it into the processing unit in your region. In order to determine to which processing unit, refer to the 656 booklet. This can be found in the TRI forms library at:

https://www.taxresolutioninstitute.org/forms-library

IRS Offer in compromise statistics



Source: IRS AOIC Inventory Management Reports, as of October 2011

TIGTA's (US Treasury Inspector General for Tax Administration) Findings

"The combined impact of a weak economy and IRS efforts to promote the OIC Program has increased the number of requested offers by 28 percent between Fiscal Year 2007 and Fiscal Year 2011. However, the resources available to work the offers have decreased. TIGTA reviewed a statistically valid sample of offers and found the IRS did not process all offers timely. In 73 of 99 offers (74 percent), the IRS failed to contact the taxpayer by the promised date. TIGTA estimates that 9,509 taxpayers who submitted offers between July 1 and December 31, 2010, may not have been contacted when promised. Additionally, as of October 25, 2011, there were 7,472 unassigned offers in holding queues awaiting assignment to OIC staff. TIGTA found that one processing site had more than four times as many unassigned offers from self-employed taxpayers compared with the other site, and 37 percent of the offers were more than six months old. TIGTA also determined that an incorrect date was used when offers were returned to the IRS because of IRS processing errors.

TIGTA estimates that the wrong date may have been used for 712 taxpayers who submitted offers between July 1 and December 31, 2010. Finally, the IRS does not have formal performance measures for the streamlined offers."

What TIGTA Recommended

"TIGTA recommended that the IRS revise OIC processing procedures, train employees, add a formal performance measure for the streamlined offers or apply the streamlined process to all offers.

In their response to the report, IRS officials agreed with the recommendations and plan to take appropriate corrective actions. The plans to keep taxpayers better informed by increasing the amount of time they tell taxpayers it will take until they are contacted as well as issuing an interim letter if contact is not made within the specified time. The IRS plans to initiate reassignment of offers between the sites as needed. In addition, the IRS plans to revamp most aspects of the streamlined process to the remainder of the OIC cases. Also, the IRS agreed with the outcome measures in the report."

Analysis of Timeliness of Taxpayer Contact for Offers With a "Combo A" Letter Sent

Type of Sampled Case	Offers With a "Combo A" Letter Sent	Offers in Which Taxpayer Was Not Contacted by the Date Promised	Offers With an Interim Letter Sent	Number of Days Late Contacting the Taxpayer (Range)
Non-Streamlined Cases	39	24	5	10 – 195 days
Streamlined Cases	60	49	2	8 – 155 days
Total Cases	99	73	7	8 – 195 days

Source: TIGTA's analysis of sampled offer cases received from July 1 through December 31, 2010

Sample Offer in Compromise Cover Letter

Via Certified Mail #_____

Return Receipt Requested

Memphis Internal Revenue Service
Center COIC Unit
P O Box 30803, AMC
Memphis, Tenn. 38130-0803

-or-

Brookhaven Internal Revenue Service
Center COIC Unit
P.O. Box 9007
Holtsville, New York 11742-9007

RE: _____
SSN/EIN: _____
Offer in Compromise

Dear Offer in Compromise Reviewer:
I represent the above taxpayer(s). The taxpayer(s) would like to compromise his tax _____ liabilities for tax year(s) _____ to _____, totaling approximately $_____. This offer is based solely upon the taxpayer's assets, which are nominal. A review of the enclosed 433-A Section 9, monthly income and expense, substantiates that this Offer in Compromise has no future income component

Enclosed please find the following documents:

1. Power of Attorney, which should already be registered with the CAF Unit.
2. Original Form 656
3. Copy of the taxpayer's completed 433-A (and/or 433-B) with supporting documentation.
4. A deposit of $_____, representing the required 20% payment (or first monthly payment).

We would like the enclosed payments to be designated to the following tax periods _____.

If you have any questions or require additional information please do not hesitate to contact the undersigned.

Implementing a Future Income Collateral Agreement In Lieu of Income Averaging

There is an important development you should be aware of if you are working on an Offer in Compromise or a Lien Release case. This is also pertinent if you are working on a Collection Due Process stemming from an Offer in Compromise or a Lien Release case.

The Internal Revenue Service has insisted upon utilizing income averaging in cases that involve a citizen that is (1) unemployed, (2) underemployed or (3) a self-employed person whose income has decreased due to conditions such as recession. When income averaging is implemented, it is often impossible for an individual to fund an Offer in Compromise.

Internal Revenue Manual section 5.8.5.6, Future Income (09-23-2008), paragraph (7) states:

"In some instances, a future income collateral agreement may be used in lieu of including the estimated value of future income in RCP [Reasonable Collection Potential]. When investigating an offer where current or past income does not provide an ability to accurately estimate future income, the use of a future income collateral agreement may provide a better means of calculating an acceptable offer amount."

The argument that a future income collateral agreement is a better solution than income averaging is also supported by the Tax Court case of **Sampson v. Commissioner**, T.C. Summ. Op. 2006-75, in which the Tax Court in a Collections Due Process judicial appeal held that the Internal Revenue Service abused its discretion in establishing future income without considering a collateral agreement.

An important development occurred in March of 2010 regarding this matter. The Internal Revenue Service issued **IR-20 10-29** that addressed said argument. The Internal Revenue Service specifically stated in a press release that under the current economic conditions, the agency should be using a future income collateral agreement and not projecting future income on the basis of income averaging.

In the same press release, the Internal Revenue Service also addressed the issue of releasing liens. The Internal Revenue Service stated that they "will accelerate lien relief" for individuals who are attempting to "refinance or sell" property but cannot "because of a tax lien". This situation arises in many cases, including Collections Due Process lien appeals.

Offer in compromise tips and traps

Offer in Compromise Tips and Traps

1. It can take up to two years for an Offer to be accepted or rejected. By IRS definition an Offer is deemed accepted if no answer is given within the 2-year period. The **Tax Resolution Institute** has yet to see an Offer be accepted based upon this rule.

2. A typical Offer takes 12-18 months to be accepted.

3. It can take up to 6 months for an Offer just to be deemed processable.

4. If an Offer is not processable, the taxpayer must correct the items that deem it non-processable and resubmit the Offer.

5. The chance of having an Offer accepted is much lower than the chance of entering into a manageable installment agreement.

6. There is a 10-year statute of limitation for the IRS to actively collect against a tax assessment. Submitting and Offer freezes the statute for the time the Offer is under consideration plus a time period following if the Offer is rejected or accepted and then the taxpayer defaults on the Offer.

7. If a taxpayer is near the end of their collection statute, it may make sense to forgo an Offer and request an installment agreement based upon hardship.

8. Acceptance of an Offer is based upon a taxpayer's ability to pay over the life of the statute of limitations on collection. Just because a taxpayer is unable to pay at the time an Offer is submitted, does not mean that their situation will not improve within the 10-year collection period. One example of this may be a realtor in a down market or a Lawyer that has been laid off by previously earned a significant salary.

9. A taxpayer must stay in compliance for 5 years after an Offer has been accepted. If they default on these terms of the Offer, the original liability, penalties and interest are placed back on the taxpayer's account and they will again be exposed to collection.

10. A taxpayer is often required to resubmit financial substantiation within the time period an Offer is being considered.

11. The IRS will often negotiate certain parts of an Offer in lieu of rejecting an Offer outright.

12. When an Offer is rejected, the IRS' reason is almost always that the taxpayer has the ability to full-pay their liability within the collection statute.

13. The amount to be paid for an Offer is formula based. That is 12 or 24 times one's monthly disposable income plus the quick-sale value of their assets. Some people, in planning for an Offer may try and sell, give away or transfer their assets in order to lower the Offer amount. If this is done solely with the intention of lowering one's Offer amount or done within a certain period of time prior to submission of the Offer, the asset in question may still be included in the Offer calculation by the IRS. For example, if a person refinances their home to pay off credit card debt, the IRS may include the cash taken out of the refinance as a dissipated asset for Offer purposes. Their contention is that Federal taxes should be paid prior to credit card companies.

14. When entering bank balances on Form 433-A (OIC) it is prudent to put the ending balance of the most current bank statement if the amount is relatively low. If not include the lowest average daily balance within the three-month period of the statements being submitted.

Chapter 5

IRS Transcripts

IRS Transcripts and Form 2848 (Power of Attorney)

There are various types tax transcripts you can obtain from the IRS. The three most common types are account transcripts, wage and income transcripts and tax return transcripts.

Account Transcripts include general activity relating to the taxpayers account including when and if a return was filed. They also show what payments if any were made and how much is currently owing on the account.

In addition, other more specific items such as when a taxpayer was placed into Currently Not Collectable ("CNC") status or when an Offer in Compromise was accepted or rejected appears on the transcript. The Account Transcript offers valuable information pertaining to a taxpayer's fillings for the year in which the transcript was obtained. This transcript does not however include any information pertaining to the items that need to be included in the tax return itself.

The best place to find tax information reported directly to the IRS from payors is the wage and income transcript. If a taxpayer has unfiled returns and/or has prepared returns that do not correspond with the information that the IRS has on file, most information can be found in a wage and income transcript. Items including wages and self-employment income (via forms 1099) appear on a wage and income transcript.

In addition, Federal tax, Medicare and social security withholding will also appear on a wage and income transcript for employees. State tax withholding does not appear on a Federal wage and income transcript. This information must be obtained from the wage earner's W-2 or by contacting the State taxing agency in which the tax was withheld. In addition, interest income, dividend income and other investment income such as K-1 activity will appear on a wage and income transcript.

If a taxpayer traded stocks, typically the proceeds from the sales of said stocks will appear on a wage and income transcript. However, the transactions showing the purchase of said stocks (the "basis") do not always show up on the transcripts. It is important to note that the proceeds from the stock sale will be included in an IRS Substitute for Return ("SFR") when determining the tax liability for an unfiled return whether the basis is accounted for or not. For this reason it is important for the tax preparer to obtain the basis information from the taxpayer for all stock transactions that occurred during the year of the delinquent return being prepared.

A Tax Return Transcript can be a valuable tool in determining what was included in a previously filed return. It is a hybrid of the Account Transcript and the Wage and Income Transcript. This Transcript is particularly valuable when changing an unfiled return or amending a previously filed return.

In order to obtain transcripts as a taxpayers representative, you must submit an IRS Form 2848, power of attorney. To view this and many other Forms visit the TRI Forms library located at…

https://www.taxresolutioninstitute.org/forms-library/

Sample IRS Account Transcript

In the pages following you will find a sample of an IRS Account transcript pertaining to an individual taxpayer's account. Notice that in the transcript there is basic information including the name and taxpayer identification number of the taxpayer (which are redacted from this particluar transcript), the amount owed on account for the given tax year/period, whether a return has been filed and if so, when it was filed. In addtion to this basic information there is various other details that can be seen pertaining to a taxpayers account for a given tax year or period.

As you review the transcrit, be sure to read each line to see which type of events get recorded. In this case there are items that appear including levies, payments and submissions of an offer in compromise.

Internal Revenue Service e-services

DEPARTMENT OF THE TREASURY

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 06-12-2009
Response Date: 05-12-2009
Tracking Number: 100045052838

FORM NUMBER: 1040A

TAX PERIOD: Dec 31, 2001

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:	94,269.33	
ACCRUED INTEREST:	13,969.66	AS OF: Jun. 08, 2009
ACCRUED PENALTY:	0.00	AS OF: Jun. 08, 2009

ACCOUNT BALANCE PLUS ACCRUALS
(this is not a payoff amount): 58,225.21

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:		04 FILING STATUS: Single
ADJUSTED GROSS INCOME:	80,102.00	
TAXABLE INCOME:	63,962.00	
TAX PER RETURN:	0.00	
SE TAXABLE INCOME TAXPAYER:	80,400.00	
SE TAX/\BLS INCOME SPOUSE:	0.00	
TOTAL SELF EMPLOYMENT TAX:	12,308.00	

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)
PROCESSING DATE

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Substitute tax return prepared by IRS		12-29-2003	60.00

	49210-334-28288-3			
140	Inquiry for non-filing of tax return		03-17-2003	$0.00
570	Additional account action pending		12-29-2003	$0.00
420	Examination of tax return		12-23-2003	$0.00
170	Penalty for not pre-paying tax	20043508	09-13-2004	$936.00
160	Penalty for filing tax return after the due date	20043508	09-13-2004	$5,832.00
300	Additional tax assessed by examination	20043508	09-13-2004	$50,034.00
	49247-639-00298-4			
336	Interest charged for late payment	20043508	09-13-2004	$7,868.74
276	Penalty for late payment of tax	20043508	09-13-2004	$7,254.93
976	Duplicate return filed		08-13-2004	$0.00
	89221-228-31849-4			
977	Amended return filed		08-13-2004	$0.00
	49277-445-01093-5			
161	Reduced or removed penalty for filing tax return after the due date		09-13-2004	-$5,425.65
163	Penalty for filing tax return after the due date	20043508	09-13-2004	$5,425.65
171	Reduced or removed penalty for not pre-paying tax		09-13-2004	-$1,044.00
173	Penalty for not pre-paying tax	20043508	09-13-2004	$1,044.00
291	Prior tax abated		03-14-2005	-$24,114.00
	49254-445-00168-5			
277	Reduced or removed penalty for late payment of tax		03-14-2005	-$2,718.93
197	Reduced or removed interest charged for late payment		03-14-2005	-$2,771.19
530	Balance due account currently not collectable		04-28-2005	$0.00
960	Appointed representative		04-27-2005	$0.00
531	Account currently considered collectable		05-02-2005	$0.00
480	Offer in compromise received		06-21-2005	$0.00
971	Tax period blocked from automated levy program		07-11-2005	$0.00
481	Denied offer in compromise		08-18-2005	$0.00
582	Lien placed on assets due to balance owed		09-23-2005	$0.00
961	Removed appointed representative		12-08-2005	$0.00
480	Offer in compromise received		01-17-2006	$0.00
483	Removed offer in compromise		01-27-2006	$0.00
960	Appointed representative		03-02-2006	$0.00
971	Tax period blocked from automated levy program		05-08-2006	$0.00
480	Offer in compromise received		06-14-2006	$0.00
481	Denied offer in compromise		01-22-2007	$0.00
530	Balance due account currently not collectable		03-06-2007	$0.00

Sample IRS Wage and Income Transcript

On the follow page you will find a sample of a partial IRS wage and income transcript. Notice how the 1099-B transactions show the proceeds from the sales of stocks but show no basis. The IRS includes the proceeds from these types of transactions in their Substitutes for Returns ("SFR"s). They exclude the basis amounts as they are not provided.

Keep in mind that this will cause the income in the SFRs to be much high than the actual realized income of the taxpayer. This is one of many reasons why it is important to obtain wage and income transcripts and file actual returns to replace SFRs. Not doing so could cause the taxpayer to owe more than they should. In the case of a day trader this could amount to millions of dollars if not corrected.

Internal Revenue Service
United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Wage and Income Transcript

Request Date: 03-07-2013
Response Date: 03-07-2013
Tracking Number: 100155526506

SSN Provided: [redacted]
Tax Period Requested: December, 2007

Form W-2 Wage and Tax Statement

Employer:
Employer Identification Number (EIN): [redacted]
[redacted]

Employee:
Employee's Social Security Number: [redacted]
[redacted]

Submission Type:	Original document
Wages, Tips and Other Compensation:	$114,915.00
Federal Income Tax Withheld:	$0.00
Social Security Wages:	$97,500.00
Social Security Tax Withheld:	$6,045.00
Medicare Wages and Tips:	$122,665.00
Medicare Tax Withheld:	$1,778.00
Social Security Tips:	$0.00
Allocated Tips:	$0.00
Advanced EIC Payment:	$0.00
Dependent Care Benefits:	$0.00
Deferred Compensation:	$7,750.00
Code "Q" Nontaxable Combat Pay:	$0.00
Code "W" Employer Contributions to a Health Savings Account:	$0.00
Code "Y" Deferrals under a section 409A nonqualified Deferred Compensation plan:	$0.00
Code "Z" Income under section 409A on a nonqualified Deferred Compensation plan:	$0.00
Code "R" Employer's Contribution to MSA:	$0.00
Code "S" Employer's Contribution to Simple Account:	$0.00
Code "T" Expenses Incurred for Qualified Adoptions:	$0.00
Code "V" Income from exercise of non-statutory stock options:	$0.00
Code "AA" Designated Roth Contributions under a Section 401(k) Plan:	$7,750.00
Code "BB" Designated Roth Contributions under a Section 403(b) Plan:	$0.00
Third Party Sick Pay Indicator:	Unanswered
Retirement Plan Indicator:	Yes
Statutory Employee:	Not Statutory Employee

Form 5498 Individual Retirement Arrangement Contribution Information

Trustee:

Trustee/Issuer's Federal Identification Number (FIN): [redacted]

[redacted]

Participant:

Participant's Identification Number: [redacted]

[redacted]

Submission Type:	Original document
Account Number (Optional):	[redacted]
IRA Contributions:	0.00
Rollover Contributions:	0.00
Roth Conversion Amount:	0.00
Recharacterized Contributions:	0.00
Fair Market Value of Account:	$221.00
Life Insurance Cost Included in Box 1:	0.00
SEP Code:	Not Checked
IRA Code:	Checked
Simple Code:	Not Checked
Roth IRA Code:	Not Checked
RMD For Subsequent Year:	N/A
SEP Contributions:	0.00
SIMPLE Contributions:	0.00
Roth IRA Contributions:	0.00

Form 5498 Individual Retirement Arrangement Contribution Information

Trustee:

Trustee/Issuer's Federal Identification Number (FIN): [redacted]

[redacted]

Participant:

Participant's Identification Number: [redacted]

[redacted]

Submission Type:	Original document
Account Number (Optional):	[redacted]
IRA Contributions:	0.00
Rollover Contributions:	$29.00
Roth Conversion Amount:	0.00
Recharacterized Contributions:	0.00
Fair Market Value of Account:	$36.00
Life Insurance Cost Included in Box 1:	0.00
SEP Code:	Not Checked
IRA Code:	Checked
Simple Code:	Not Checked
Roth IRA Code:	Not Checked

RMD For Subsequent Year:	N/A
SEP Contributions:	0.00
SIMPLE Contributions:	0.00
Roth IRA Contributions:	0.00

Form 5498 Individual Retirement Arrangement Contribution Information

Trustee:

Trustee/Issuer's Federal Identification Number (FIN): [redacted]

[redacted]

Participant:

Participant's Identification Number: [redacted]

[redacted]

Submission Type:	Original document
Account Number (Optional):	[redacted]
IRA Contributions:	0.00
Rollover Contributions:	0.00
Roth Conversion Amount:	0.00
Recharacterized Contributions:	0.00
Fair Market Value of Account:	$117.00
Life Insurance Cost Included in Box 1:	0.00
SEP Code:	Not Checked
IRA Code:	Checked
Simple Code:	Not Checked
Roth IRA Code:	Not Checked
RMD For Subsequent Year:	N/A
SEP Contributions:	0.00
SIMPLE Contributions:	0.00
Roth IRA Contributions:	0.00

Form 1099-B Proceeds From Broker and Barter Exchange Transactions

Payer: [redacted]

Payer's Federal Identification Number (FIN): [redacted]

E TRADE CLEARING LLC

[redacted]

Recipient:

Recipient's Identification Number: [redacted]

[redacted]

Submission Type:	Original document
Account Number:	[redacted]
Date of Sale or Exchange:	07-25-2007
CUSIP Number:	73935A104

Gross Proceeds:	Gross proceeds minus commissions
Bartering:	0.00
Federal Income Tax Withheld:	0.00
Stocks and Bonds:	$24,599.00
Aggregate Profit or (Loss):	0.00
Realized Profit or (Loss):	0.00
Unrealized Profit or (Loss) 12/31 Prior Year:	0.00
Unrealized Profit or (Loss) 12/31 Current Year:	0.00
Description:	POWERSHARES QQQ TRUST
Second Notice Indicator:	No Second Notice
Number of Shares Exchanged:	0000000000000
Class/Classes of Stock Exchanged:	
Recipient Indicator:	Loss can be taken on tax return

Form 1099-B Proceeds From Broker and Barter Exchange Transactions

Payer:

Payer's Federal Identification Number (FIN): [redacted]
E TRADE CLEARING LLC
[redacted]

Recipient:

Recipient's Identification Number: [redacted]
[redacted]

Submission Type:	Original document
Account Number:	[redacted]
Date of Sale or Exchange:	09-20-2007
CUSIP Number:	16941X105
Gross Proceeds:	Gross proceeds minus commissions
Bartering:	0.00
Federal Income Tax Withheld:	0.00
Stocks and Bonds:	$677.00
Aggregate Profit or (Loss):	0.00
Realized Profit or (Loss):	0.00
Unrealized Profit or (Loss) 12/31 Prior Year:	0.00
Unrealized Profit or (Loss) 12/31 Current Year:	0.00
Description:	CHINA SHENGHUO PHARMACEUTICAL
Second Notice Indicator:	No Second Notice
Number of Shares Exchanged:	0000000000000
Class/Classes of Stock Exchanged:	
Recipient Indicator:	Loss can be taken on tax return

Form 1099-B Proceeds From Broker and Barter Exchange Transactions

Payer:

Payer's Federal Identification Number (FIN): 320012683
E TRADE CLEARING LLC
PO BOX 1542
MERRIFIELD, VA 22116-9949

Recipient:

Code Definitions Required to Read IRS Account Transcripts

Most frequently seen Transaction Code numbers: in numerical sequence

150 = SFR filed or tax assessed

460 = Extension to file return

240 = Penalty - may indicate fraud or tax evasion conduct. Used with "reference" numbers.

290 = Additional tax assessed

300 = Additional tax assessed

320 = Fraud penalty

420 = Audit commenced (421 = ended)

480 = Offer-in-compromise submitted (481 = rejected, withdrawn)

520 = Prior bankruptcy, tax litigation or Due Process request filed (521 = ended)

582 = Tax lien filed (does not list which county)

608 = Statute of limitations expired

780 = Offer-in-compromise accepted (781 = defaulted)

971 = Could be one of many things:

971 + 031 = Discharged in BK

971 + 069 = Filed a request for due-process hearing

971 + 069 = Request for Due Process Hearing filed

976, 977 = "Amended tax return filed" (could be late original)

910, 914, 916, 918 = Criminal investigation

Chapter 6

IRS Notices

With hundreds of types out there, some IRS notices can be difficult to navigate. They can range from one that shows how is due in unpaid tax, to another that shows that a refund is due.

Other notices provide information showing that a taxpayer's assets (most commonly their bank accounts) may be levied upon or their wages may be garnished. Notices such as a Notice of Unpaid Tax Due (CP501) and a Notice of Intent to Levy (CP504) are self-explanatory. Others are not as easy to navigate.

With the less common notices, you must be careful to read the details in the notice explaining why it was sent. If you or your client receives a notice that is "out of the box" and you cannot figure out why it was sent, you can refer to the chart below for assistance.

To show how some notices may be confusing, a taxpayer may receive a notice of a tax lien being filed (2603C) after they have entered into an installment agreement and think the IRS is taking further active collection action against them. In this type of notice, it states that the IRS has a right to and is exercising said right to protect their interest by filing a lien. Filing a lien does not typically affect a taxpayer on a day-to-day basis. Many taxpayers mistake a lien for a levy and assume the funds in their bank accounts are again at risk of being frozen and remitted to the IRS. Once again, it is important to understand the process and read each notice carefully, especially those that you do not see on a regular basis carefully.

Although most notices provide instructions, it is better to understand how the systems works before deciding to follow the notice instructions verbatim. For example, if your client receives a notice of tax due, it states that the balance must be paid in full within the prescribed period of time.

If your client is unable to pay their liability in full, they will obviously be unable to fulfill the obligations set forth in the notice. In other cases, your client may wish to prolong the payment period even if they can full-pay the liability at the time the notice was received. Knowing the system will help you advise your client accordingly.

It is also important to know (1) when you should answer a notice via correspondence, (2) when you should contact the IRS directly and (3) when you can ignore a notice. These scenarios are covered in more detail throughout this book (*for examples, see Installment Agreements, Offers in Compromise and Penalty Abatement*).

If a new resolution client retains you, it is important to request copies of all notices received to date. This will provide a clearer picture of what issues your client is facing. Often a client will claim to owe an amount of unpaid tax based upon a single year or a couple of years when in fact they owe much more. In many of these cases they are basing their estimate of amount owing on specific collection activity such as a wage garnishment in which the notice of garnishment specifies a certain tax year or tax years owing. If your client provides ALL notices received to date rather than just the one notice of garnishment, you will often find that the garnishment did not cover all years owing.

The IRS has redesigned their notices to be clearer and more concise. In most cases the notice with describe an action that the taxpayer is expected to take. Below is a list of the most common IRS notices[i] and a description of what they entail…

IRS Notice types

Notice Number	**Description**	**Topic**
CP01	We received the information that you provided and have verified your claim of identity theft. We have placed an identity theft indicator on your account.	Identity Theft
CP01A	This notice tells you about the Identity Protection Personal Identification Number (IP PIN) we sent you.	Identity Theft
CP01H	You received a CP 01H notice because we were unable to process your tax return. The IRS has locked your account because the Social Security Administration informed us that the Social Security number (SSN) of the primary or secondary taxpayer on the return belongs to someone who was deceased prior to the current tax year (before January 1, 2010 for a 2010 tax return).	
CP01S	We received your Form 14039 or similar statement for your identity theft claim. We'll contact you when we finish processing your case or if we need additional information	
CP02H	You owe a balance due as a result of amending your tax return to show receipt of a grant received as a result of Hurricane Katrina, Rita or Wilma.	Balance Due
CP03C	You received a tax credit (called the First-Time Homebuyer Credit) for a house you purchased. You may need to file a form to report a change in ownership to the house you purchased.	

Notice Number	**Description**	**Topic**
CP04	Our records show that you or your spouse served in a combat zone, a qualified contingency operation, or a hazardous duty station during the tax year specified on your notice. As a result, you may be eligible for tax deferment.	
CP05	We're reviewing your tax return.	
CP05A	We are examining your return and we need documentation.	
CP07	We received your tax return and are holding your refund until we complete a more thorough review of the benefits you claimed under a treaty and/or the deductions claimed on Schedule A.	
CP08	You may qualify for the Additional Child Tax Credit and be entitled to some additional money.	Additional Child Tax Credit
CP09	We've sent you this notice because our records indicate you may be eligible for the Earned Income Credit (EIC), but didn't claim it on your tax return.	
CP10	We made a change(s) to your return because we believe there's a miscalculation. This change(s) affected the estimated tax payment you wanted applied to your taxes for next year.	Change To Your Estimated Tax Credit Amount
CP10A	We made a change(s) to your return because we believe there's a miscalculation involving your Earned Income Credit. This change(s) affected the estimated tax payment you wanted applied to your taxes for next year.	Change To Your Estimated Tax Credit Amount
CP11	We made changes to your return because we believe there's a miscalculation. You owe money on your taxes as a result of these changes.	Balance Due
CP11A	We made changes to your return because we believe there's a miscalculation involving your Earned Income Credit. You owe money on your taxes as a result of these changes.	Balance Due
CP11M	We made changes to your return involving the Making Work Pay and Government Retiree Credit. You owe money on your taxes as a result of these changes.	Balance Due

Notice Number	**Description**	**Topic**
CP12	We made changes to correct a miscalculation on your return.	
CP12A	We made changes to correct the Earned Income Credit (EIC) claimed on your tax return.	
CP12E or CP12F	We made changes to correct a miscalculation on your return.	
CP12M	We made changes to the computation of the Making Work Pay and/or Government Retiree Credits on your return.	
CP12R	We made changes to the computation of the Rebate Recovery Credit on your return.	
CP13	We made changes to your return because we believe there's a miscalculation. You're not due a refund nor do you owe an additional amount because of our changes. Your account balance is zero.	
CP13A	We made changes to your return because we found an error involving your Earned Income Credit. You're not due a refund nor do you owe an additional amount because of our changes. Your account balance is zero.	
CP13M	We made changes to your return involving the Making Work Pay credit or the Government Retiree Credit. You're not due a refund nor do you owe an additional amount because of our changes. Your account balance is zero.	
CP13R	We made changes to your return involving the Recovery Rebate Credit. You're not due a refund nor do you owe an additional amount because of our changes. Your account balance is zero.	
CP14	We sent you this notice because you owe money on unpaid taxes.	
LT14	You owe money on unpaid taxes.	
CP14I	You owe taxes and penalties because you didn't take out the minimum amount you had to from your traditional individual retirement arrangement (IRA). Or, you put into a tax-sheltered account more than you can legally.	

Notice Number	**Description**	**Topic**
CP15B	We charged you a Trust Fund Recovery Penalty (TFRP) for not paying employment or excise taxes.	
CP16	We sent you this notice to tell you about changes we made to your return that affect your refund. We made these changes because we believe there was a miscalculation. Our records show you owe other tax debts and we applied all or part of your refund to them.	
CP18	We believe you incorrectly claimed one or more deductions or credits. As a result, your refund is less than you expected.	
CP19	We have increased the amount of tax you owe because we believe you incorrectly claimed one or more deductions or credits.	
CP20	We believe you incorrectly claimed one or more deductions or credits. As a result, your refund is less than you expected.	
CP21A	We made the change(s) you requested to your tax return for the tax year specified on the notice. You owe money on your taxes as a result of the change(s).	Balance Due
CP21B	We made the change(s) you requested to your tax return for the tax year specified on the notice. You should receive your refund within 2-3 weeks of your notice.	Refund
CP21C	We made the change(s) you requested to your tax return for the tax year specified on the notice. You're not due a refund nor do you owe any additional amount. Your account balance for this tax form and tax year is zero.	Even Balance
CP21E	As a result of your recent audit, we made changes to your tax return for the tax year specified on the notice. You owe money on your taxes as a result of these changes.	Balance Due
CP21I	We made changes to your tax return for the tax year specified on the notice for Individual Retirement Arrangement (IRA) taxes. You owe money on your taxes as a result of these changes.	Balance Due
CP22A	We made the change(s) you requested to your tax return for the tax year specified on the notice. You owe money on your taxes as a result of the change(s).	Balance Due

Notice Number	**Description**	**Topic**
CP22E	As a result of your recent audit, we made changes to your tax return for the tax year specified on the notice. You owe money on your taxes as a result of these changes.	Balance Due
CP22I	We made changes to your tax return for the tax year specified on the notice for Individual Retirement Arrangement (IRA) taxes. You owe money on your taxes as a result of these changes.	Balance Due
CP23	We made changes to your return because we found a difference between the amount of estimated tax payments on your tax return and the amount we posted to your account. You have a balance due because of these changes.	
CP24	We made changes to your return because we found a difference between the amount of estimated tax payments on your tax return and the amount we posted to your account. You have a potential overpayment credit because of these changes.	
CP24E	We made changes to your return because we found a difference between the amount of estimated tax payments on your tax return and the amount we posted to your account. You have a potential overpayment credit because of these changes.	
CP25	We made changes to your return because we found a difference between the amount of estimated tax payments on your tax return and the amount we posted to your account. You're not due a refund nor do you owe an additional amount because of our changes. Your account balance is zero.	
LT26	You were previously asked information regarding the filing of your tax return for a specific tax period.	
CP27	We've sent you this notice because our records indicate you may be eligible for the Earned Income Credit (EIC), but didn't claim it on your tax return.	
CP30	We charged you a penalty for not pre-paying enough of your tax either by having taxes withheld from your income, or by making timely estimated tax payments.	
CP30A	We reduced or removed the penalty for underpayment of estimated tax reported on your tax return.	
CP31	Your refund check was returned to us, so you need to update your address.	Refund

Notice Number	**Description**	**Topic**
CP32	We sent you a replacement refund check.	
CP32A	Call us to request your refund check.	
CP39	We used a refund from your spouse or former spouse to pay your past due tax debt. You may still owe money.	
CP42	The amount of your refund has changed because we used it to pay your spouse's past due tax debt.	
CP44	There is a delay processing your refund because you may owe other federal taxes.	
CP45	We were unable to apply your overpayment to your estimated tax as you requested.	Overpayment
CP49	We sent you this notice to tell you we used all or part of your refund to pay a tax debt.	Overpayment
CP51A	We computed the tax on your Form 1040, 1040A or 1040EZ. You owe taxes.	
CP51B	We computed the tax on your Form 1040, 1040A or 1040EZ. You owe taxes.	
CP51C	We computed the tax on your Form 1040, 1040A or 1040EZ. You owe taxes.	
CP53	We can't provide your refund through direct deposit, so we're sending you a refund check by mail.	Direct Deposits
CP53A	We tried to direct deposit your refund, but the financial institution couldn’t process it. We are researching your account, but it will take 8 to 10 weeks to reissue your refund.	
CP53B	We tried to direct deposit your refund, but the financial institution couldn’t process it. We are researching your account, but it will take 8 to 10 weeks to complete our review and verify this refund.	

Notice Number	**Description**	**Topic**
CP53C	We tried to direct deposit your refund, but the financial institution couldn't process it. When refund payments are questionable, we review related returns to ensure the return is valid. We are researching your account, but it will take 8 to 10 weeks to complete our review and verify this refund.	
CP54B	Your tax return shows a different name and/or ID number from the information we have for your account. Please provide more information to us in order to receive your refund.	
CP54E	Your tax return shows a different name and/or ID number from the information we have for your account. Please provide the requested information.	
CP54G	Your tax return shows a different name and/or ID number from the information we have for your account. Please provide the requested information.	
CP54Q	Your tax return shows a different name and/or ID number from the information we have on file for you or from the information from the Social Security Administration (SSA).We previously sent you a notice asking you to provide us some updated information. We still haven't received a response from you.	
CP59	We sent you this notice because we have no record that you filed your prior personal tax return or returns.	
CP60	We removed a payment erroneously applied to your account.	
CP62	We applied a payment to your account.	
CP63	We are holding your refund because you have not filed one or more tax returns and we believe you will owe tax.	
CP71	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP71A	You received this notice to remind you of the amount you owe in tax, penalty and interest.	

Notice Number	**Description**	**Topic**
CP71C	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP71D	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP72	You may have claimed a frivolous position on your tax return. A frivolous return is identified when some information on the return has no basis in the law.	
CP74	You are recertified for EITC. You don't have to fill out Form 8862, Information To Claim Earned Income Credit After Disallowance, in the future. You'll receive your EIC refund within 6 weeks as long as you don't owe other tax or debts we're required to collect.	
CP75	We're auditing your tax return and we need documentation to verify the Earned Income Credit (EIC) that you claimed. The Earned Income Credit and/or the Additional Child Tax Credit (ACTC) portion(s) of your refund is being held pending the results of the audit.	
CP75A	We're auditing your tax return and need documentation to verify the Earned Income Credit (EIC), dependent exemption(s) and filing status you claimed.	
CP75C	You were banned from claiming the Earned Income Credit (EIC) in a prior tax year due to your intentional disregard of the rules or a fraudulent claim. Since your ban is still in effect, we disallowed the EIC for your current tax year.	
CP75D	We're auditing your tax return and we need documentation to verify the income and withholding you reported on your tax return. This may affect your eligibility for the Earned Income Credit (EIC), dependent exemption(s) and other refundable credits that you claimed. We are holding your refund pending the results of the audit.	
CP76	We are allowing your Earned Income Credit as claimed on your tax return. You will receive any expected refund in 8 weeks provided you owe no other taxes or legal debts we are required to collect.	
CP80	We credited payments and/or other credits to your tax account for the tax period shown on your notice. However, we haven't received your tax return.	

Notice Number	**Description**	**Topic**
CP080	We credited payments and/or other credits to your tax account for the form and tax period shown on your notice. However, we haven't received your tax return.	
CP81	We haven't received your tax return for a specific tax year. The statute of limitations to claim a refund of your credit or payment for that tax year is about to expire.	
CP081	We haven't received your tax return for a specific tax year. The statute of limitations to claim a refund of your credit or payment for that tax year is about to expire.	
CP88	We are holding your refund because you have not filed one or more tax returns and we believe you will owe tax.	
CP90C	We levied you for unpaid taxes. You have the right to a Collection Due Process hearing.	
CP102	We made changes to your return because we believe there's a miscalculation. You owe money on your taxes as a result of these changes.	
CP103	We made changes to your railroad retirement tax return because we believe there was a miscalculation. As a result of these changes, you have a balance due.	
CP104	We made changes to your excise tax return because we believe there was a miscalculation. As a result of these changes, there is a balance due.	
CP108	You are receiving this notice because you made a payment of $XXXXX on XXXXX, and we can't determine the correct form or tax year to apply it to.	
CP112	We made changes to your return because we believe there's a miscalculation. As a result, you are due a refund.	
CP113	We made changes to your railroad retirement tax return because we believe there was a miscalculation. As a result of these changes, you have an overpayment on your account.	
CP114	We made changes to your excise tax return because we believe there was a miscalculation. As a result of these changes, there is an overpayment on your account.	

Notice Number	**Description**	**Topic**
CP120	You need to send us documentation of your tax-exempt status.	Tax Exemptions
CP120A	Your organization's tax-exempt status has been revoked for failure to file a Form 990 series return for three consecutive years. In addition, you are no longer eligible to sponsor a tax-sheltered annuity plan (Internal Revenue Code section 403(b) retirement plan).	
CP123	We made changes to your excise tax return because we believe there was a miscalculation. As a result of these changes, you have a balance due of less than $1.	
CP124	We made changes to your excise tax return because we believe there was a miscalculation. As a result of these changes, there is a balance due of less than $1.	
CP130	Your tax return filing requirements may have changed: You may no longer need to pay the Alternative Minimum Tax.	Filing Requirements
CP138	This notice tells you that all or part of the overpayment on a return you filed was applied to other federal taxes you owe.	
CP141C	You are receiving this notice because you did not respond to a previous request for missing or incomplete information on your return and your return is late.	
CP141I	You are receiving this notice because you did not respond to a previous request for missing or incomplete information on your return.	
CP141L	You are receiving this notice because you didn’t file your return by the due date.	
CP142	We sent you this notice because you filed your information returns late.	
CP143	We accepted your explanation for filing your information return late. We will continue processing your returns.	

Notice Number	**Description**	**Topic**
CP145	We were unable to credit the full amount you requested to the succeeding tax period.	
CP152	We have received your return.	Confirmation of Return Receipt
CP152A	We received your Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds and provides an explanation for the reduced credit payment amount.	
CP153	We can't provide you with your refund through a direct deposit, so we're sending you a refund check/credit payment by mail.	Refund
CP156	We received your Form 990-T, Exempt Organization Business Income Tax Return and Form 8941, Credit for Small Employer Health Premiums.	
CP160	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP161	You received this notice because of the money you owe from your tax return.	
CP163	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP166	We were unable to process your monthly payment because there were insufficient funds in your bank account.	Payment Process
CP169	You received this notice because we couldn't locate the return you said was previously filed.	
CP171	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP178	Your tax return filing requirements may have changed: You may no longer owe excise tax.	Filing Requirements
CP180/CP181	We sent you this notice because your tax return is missing a schedule or form.	

Notice Number	**Description**	**Topic**
CP182	We sent you this notice because your tax return is missing Form 3468.	
CP187	You received this notice to remind you of the amount you owe in tax, penalty and interest.	
CP188	We are holding your refund until we determine you owe no other taxes.	
CP210/CP220	We made change(s) for the tax year specified on the notice.	
CP211A	We approved your Form 8868, Application for Extension of Time To File an Exempt Organization Return.	
CP211B	We denied your request to extend the time to file your Exempt Organization Return because your Form 8868, Application for Extension of Time To File an Exempt Organization Return, wasn't signed or was signed by someone who wasn't authorized.	
CP211C	We denied your request to extend the time to file your Exempt Organization Return because your Form 8868, Application for Extension of Time To File an Exempt Organization Return, wasn't received on time. A request for an extension of the time to file your Exempt Organization Return must be received on or before the due date of your return.	
CP211D	We denied your request to extend the time to file your Exempt Organization Return for an additional three months because your Form 8868, Application for Extension of Time To File an Exempt Organization Return, Part II, Line 7 didn't explain the need for additional time OR establish reasons that prevented you from filing by the extended due date.	
CP211E	We denied your request to extend the time to file your Exempt Organization Return because your Form 8868, Application for Extension of Time To File an Exempt Organization Return, didn't meet one or more of the requirements.	
CP231	Your refund or credit payment was returned to us and we need you to update your current address.	Address Update Needed

Notice Number	Description	Topic
CP232A	We approved your request for an extension to file your Form 5330.	
CP232B	We denied your request to extend the time to file Form 5330 because your Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, wasn't received on time. A request for an extension of the time to file Form 5330 must be received on or before the due date of your return.	
CP232C	We denied your request to extend the time to file Form 5330 because your Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, wasn't signed or was signed by someone who wasn't authorized.	
CP232D	We denied your request to extend the time to file Form 5330 because your Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, didn't state a reason why you need the extension.	
CP237	We sent you a replacement refund check.	
CP237A	Call us to request your refund check.	
CP254	Your organization submitted a paper return for the tax period in question. Because our records show that you must file electronically, the paper return doesn't satisfy your filing obligation.	
CP255	We need information to complete the termination of your private foundation status.	
CP259	We've sent you this notice because our records indicate you didn't file the required business tax return identified in the notice.	
CP259A	We sent you this notice because our records indicate you did not file a required Form 990/990-EZ, Return of Organization Exempt From Income Tax.	
CP259B	We sent you this notice because our records indicate you didn't file a required Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.	

Notice Number	**Description**	**Topic**
CP259C	We sent you this notice because our records indicate you are presumed to be a private foundation and you didn't file a required Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.	
CP259D	We sent you this notice because our records indicate you did not file a required Form 990-T, Exempt Organization Business Income Tax Return.	
CP259E	We sent you this notice because our records indicate you did not file a required Form 990-N, e-Postcard.	
CP259F	We're sending you this notice because our records indicate you did not file a required Form 5227, Split-Interest Trust information Return.	
CP259G	We sent you this notice because our records indicate you did not file a required Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations.	
CP259H	We sent you this notice because our records indicate you are a tax-exempt political organization and you did not file a required Form 990/990-EZ, Return of Organization Exempt From Income Tax.	
CP261	CP261 is the approval notice for Form 2553, Election by a Small Business Corporation.	
CP264	CP264 is the notice for denial of Form 2553, Election by a Small Business Corporation.	
CP267A	You received a CP267A Notice because you've overpaid the Branded Prescription Drug Fee.	
CP267B	You received a CP267B notice because you overpaid your Insurance Provider Fee under Section 9010 of ACA.	
CP268	We made changes to your return because we believe there is a miscalculation on your return. You have a potential overpayment credit because of this miscalculation.	
CP276A	We didn't receive a correctly completed tax liability schedule. We normally charge a Federal Tax Deposit (FTD) penalty when this happens. We decided not to do so this time.	FTD Penalty

Notice Number	Description	Topic
CP276B	We didn't receive the correct amount of tax deposits. We normally charge a Federal Tax Deposit penalty when this happens. We decided not to do so this time.	FTD Penalty
CP279	CP279 is the notice of acceptance to the parent corporation of a Qualified Subchapter S Subsidiary (QSub) from Form 8869, Qualified Subchapter S Subsidiary Election.	
CP279A	CP279A is the notice of acceptance for a Qualified Subchapter S Subsidiary.	
CP282	You received this notice because you indicated on your Form 1065, U.S. Return of Partnership Income, or Form1065-B, U.S. Return of Income for Electing Large Partnerships, that you have foreign partners.	
CP283C	We charged you a penalty for filing a late or incomplete Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits.	
CP284	We approved your Form 1128, Application to Adopt, Change, or Retain a Tax Year.	
CP285	CP285 notifies BMF taxpayers the reason their Form 1128, Application To Adopt, Change, or Retain a Tax Year, was denied.	
CP286	We send this notice when we approve Form 8716, Election To Have a Tax Year Other Than a Required Tax Year.	
CP288	We accepted your election to be treated as a Qualified Subchapter S Trust (QSST).	
CP290	We're approving your Electing Small Business Trust (ESBT) election.	
CP291	We're revoking your Electing Small Business Trust (ESBT) election.	
CP292	We're revoking your Qualified Subchapter S Trust (QSST) election.	

Notice Number	**Description**	**Topic**
CP295	We charged you a penalty on your Form 5500.	
CP295A	We charged you a penalty on your Form 5500.	
CP297C	We levied you for unpaid taxes. You have the right to a Collection Due Process hearing.	
CP299	Your organization may be required to file an annual electronic notice (e-Postcard), Form 990-N.	
CP301	We sent you this notice to inform that you visited IRS online services website and went through Identity Verification process.	
CP501	You have a balance due (money you owe the IRS) on one of your tax accounts.	
CP503	We have not heard from you and you still have an unpaid balance on one of your tax accounts.	
CP504	You have an unpaid amount due on your account. If you do not pay the amount due immediately, the IRS will seize (levy) your state income tax refund and apply it to pay the amount you owe.	
CP504B	You have an unpaid amount due on your account. If you do not pay the amount due immediately, the IRS will seize (levy) certain property or rights to property and apply it to pay the amount you owe.	
CP515I	This is a reminder notice that we still have no record that you filed your prior tax return or returns.	
CP515B	You received this reminder notice because our records indicate you didn't file a business tax return.	
CP516	This is a reminder notice that we still have no record that you filed your prior tax return or returns.	

Notice Number	Description	Topic
CP518I	This is a final reminder notice that we still have no record that you filed your prior tax return(s).	
CP518B	This is a final reminder notice that our records still indicate you haven't filed a business tax return.	
CP521	This notice is to remind you that you have an installment agreement payment due. Please send your payment immediately.	
CP523	This notice informs you of our intent to terminate your installment agreement and seize (levy) your assets. You have defaulted on your agreement.	
CP547	We received your Form 2848, 8821, or 706, and we assigned you a Centralized Authorization File (CAF) number.	
CP563	We reviewed your Form W-7A, Application for Taxpayer Identification Number for Pending U.S. Adoptions, and we need additional information in order to process it.	
CP565	We gave you an Individual Taxpayer Identification Number (ITIN).	
CP566	We need more information to process your application for an Individual Taxpayer Identification Number (ITIN). You may have sent us an incomplete form. You may have sent us the wrong documents.	
CP567	We rejected your application for an Individual Taxpayer Identification Number (ITIN). You may not be eligible for an ITIN. Your documents may be invalid. We may not have received a reply when we asked for more information.	
CP2000	The income and/or payment information we have on file doesn’t match the information you reported on your tax return. This could affect your tax return; it may cause an increase or decrease in your tax, or may not change it at all.	
CP2005	We accepted the information you sent us. We're not going to change your tax return. We've closed our review of it.	
CP2006	We received your information. We'll look at it and let you know what we're going to do.	

Notice Number	**Description**	**Topic**
CP2030	We are proposing changes in income, credits, and deductions reported on your U.S. Corporation Income Tax Return. We compared your information with items reported to us by banks, businesses and other payers.	
CP2057	You need to file an amended return. We've received information not reported on your tax return.	
CP2501	You need to contact us. We've received information not reported on your tax return.	
CP2531	Your Tax Return does not match the information we have on file.	
CP2566	We didn't receive your tax return. We have calculated your tax, penalty and interest based on wages and other income reported to us by employers, financial institutions and others.	
CP2566R	We previously sent you a CP63 notice informing you we are holding your refund until we receive one or more unfiled tax returns. Because we received no reply to our previous notice, we have calculated your tax, penalty and interest based on wages and other income reported to us by employers, financial institutions and others.	
CP3219A	We've received information that is different from what you reported on your tax return. This may result in an increase or decrease in your tax. The notice explains how the amount was calculated and how you can challenge it in U.S. Tax Court.	
CP3219B	This Statutory Notice of Deficiency notifies you of the IRS's intent to assess a tax deficiency and informs you of your right to petition the United States Tax Court to dispute the proposed adjustments. .	
CP3219N	We didn't receive your tax return. We have calculated your tax, penalty and interest based on wages and other income reported to us by employers, financial institutions and others.	
-		
Other Notices and Letters		
Notice or Letter Number	**Title**	-

Notice Number	**Description**	**Topic**
CP 57	Notice of Insufficient Funds	
CP 90 / CP 297	Final Notice - Notice of Intent to Levy and Notice of Your Right to a Hearing	
CP 297A	Notice of Levy and Notice of Your Right to a Hearing	
CP 91 / CP 298	Final Notice Before Levy on Social Security Benefits	
Letter 0484C	Collection Information Statement Requested (Form 433F/433D); Inability to Pay/Transfer	
Letter 0549C	Balance Due on Account is Paid	
Letter 668D(LP 68)	We released the taxpayer's levy.	
Letter 0681C	Proposal to Pay Accepted	
Letter 0757C	Installment Privilege Terminated	
Letter 1058 (LT 11)	Final Notice prior to levy; your right to a hearing	
Letter 1615 (LT 18)	Mail us your overdue tax returns.	
Letter 1731 (LP 64)	Please help us locate a taxpayer.	
Letter 1737 (LT 27)	Please complete and site Form 433F, Collection Information Statement.	
Letter 1961C	Installment Agreement for Direct Debit 433-G	
Letter 1962C	Installment Agreement Reply to Taxpayer	
Letter 2050 (LT 16)	Please call us about your overdue taxes or tax return.	
Letter 2257C	Balance Due Total to Taxpayer	

Notice Number	**Description**	**Topic**
Letter 2271C	Installment Agreement for Direct Debit Revisions	
Letter 2272C	Installment Agreement Cannot be Considered	
Letter 2273C	Installment Agreement Accepted: Terms Explained	
Letter 2318C	Installment Agreement: Payroll Deduction (F2159) Incomplete	
Letter 2357C	Abatement of Penalties and Interest	
Letter 2603C	Installment Agreement Accepted - Notice of Federal Tax Lien Will be Filed	
Letter 2604C	Pre-assessed Installment Agreement	
Letter 2761C	Request for Combat Zone Service Dates	
Letter 2789C	Taxpayer Response to Reminder of Balance Due	
Letter 2800C	Incorrect Form W-4, Employee's Withholding Allowance Certificate	
Letter 2801C	Exempt Status May not be Allowed	
Letter 2802C	Your withholding doesn’t comply with IRS guidelines	
Letter 2840C	CC IAPND Installment Agreement Confirmation	
Letter 3030C	Balance Due Explained: Tax/Interest Not Paid	
Letter 3127C	Revision to Installment Agreement	
Letter 3217C	Installment Agreement Accepted: Terms Explained	
Letter 3228 (LT 39)	Reminder notice.	

Notice Number	**Description**	**Topic**
Letter 4458C	We wrote to you because we didn't receive your monthly installment payment.	
Letter 4883C	We received your federal income tax return; however, we need more information from you to process it.	
Letter 5071C	We received your federal income tax return; however, we need more information from you to process it.	
Letter LP 47	Address Information Request	
Letter LP 59	Please contact us about the taxpayer levy.	

Chapter 7

IRS Contact Information

Contacting the IRS can be a daunting task. Let's assume your client received a notice of levy from their financial institution. They call you in a panic and tell you that their bank account was just levied by the IRS. You pick up the phone and call the priority practitioner line. After waiting on hold for an hour, someone finally picks up the line. You tell them what is going on, and they respond by telling you that they need to transfer you to a different department. After being placed on hold again you get disconnected and need to start over.

On your second attempt, you get placed in the right department after another hour and twenty minutes of being on hold. The person in the bank levy department tells you that your client's case is assigned to a Revenue Officer and that you need to speak with her.

Imagine how much easier this process would unfold if you had the right number to begin with. In this particular case, the notice of levy issued by the IRS probably had a contact number for the Revenue Officer. Each time you speak with someone at the IRS, you should keep a log of the people with whom you speak. The log should include their contact information including their name, department, phone number, address, and badge or ID number.

Having practiced for numerous years, we have created a comprehensive list. Below you will find the contact information we have compiled over more than twenty years of practicing in this area. If you use these numbers, you will have a leg up.

Must have IRS contact numbers

1. Priority Practitioner Service ("PPS") Line (866) 860-4259

    a. General Tax Law Questions Option 1
    b. Individual Accounts not in Collection or Examination Status Option 2
    c. Business Accounts not in Collection or Examination Status Option 3
    d. Client's Account is in Automated Collection System (ACS) Status Option 4
    e. Automated Under-reporter Notice Rcv'd by Client (e.g., CP2000) Option 5
    f. Client's Account Under Correspondence Examination Option 6

2. Centralized Authorization File ("CAF") Unit fax number

    a. Ogden (OAMC)* (855) 214-7522
    b. Memphis (MAMC)** (855) 214-7519
    c. Philadelphia (PAMC)*** (855) 772-3156

3. Amended Return Hotline Amended Return Hotline (current yr & 3 yrs prior) (866) 464-2050

4. Automated Substitute for Return ("ASFR") (866) 681-4271

5. Employer Identification Number (EIN) Inquiries (800) 829-4933

6. Employer Identification Number (EIN) – International (267) 941-1099

7. FBAR/BSA and Title 31 Help Line (866) 270-0733

8. FBAR/BSA and Title 31 Help Line – International (313) 234-6146

9. Identity Protection Specialized Unit (800) 908-4490

10. Installment Agreements – Manually Monitored (866) 897-4289

11. Installment Agreements - Partial Pay (SBSE) (800) 831-0273

12. National Taxpayer Advocate Help Line (877) 777-4778

13. Refund Hotline (Where's My Refund?) (800) 829-1954

14. Transcripts Order Line (800) 908-9946

* Services Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin and Wyoming

** Services Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia

*** Services taxpayers residing abroad

IRS Directory of Practitioners

SERVICE	TELEPHONE	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 8:00 a.m. - 8:00 p.m., local time
Business and Specialty Tax Line	(800) 829-4933	M-F 8:00 a.m. - 8:00 p.m., local time
e-Help (Practitioners Only)	(866) 255-0654	M-F 7:30 a.m. - 6:00 p.m., ET
e-Help (Practitioners Only)	(866) 255-0654	M-F 7:30 a.m. - 5:00 p.m., MT
Refund Hotline (Automated svc after hrs)	(800) 829-1954	M-F 8:00 a.m. - 8:00 p.m., local time
Forms and Publications	(800) 829-3676	M-F 8:00 a.m. - 8:00 p.m., local time
National Taxpayer Advocate's Help Line	(877) 777-4778	M-F 8:00 a.m. - 8:00 p.m., local time
Centralized Lien Payoff	(800) 913-6050	M-F 8:00 a.m. - 11:00 p.m., ET
Centralized Bankruptcy	(800) 913-9358	M-F 7:00 a.m. - 10:00 p.m., ET
Telephone Device for the Deaf (TDD)	(800) 829-4059	M-F 8:00 a.m. - 8:00 p.m., local time
Electronic Federal Tax Payment System	(800) 555-4477	24/7
Government Entities (TEGE) Help Line	(877) 829-5500	M-F 8:30 a.m. - 4:30 p.m., ET
Extension to File	(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
Automated Collection System (Business)	(800) 829-3903	M-F 8:00 a.m. - 8:00 p.m., local time
Automated Collection System (Individual)	(800) 829-7650	M-F 8:00 a.m. - 8:00 p.m., local time
Criminal Investigation Informant Hotline	(800) 829-0433	M-F 8:00 a.m. - 8:00 p.m., local time
Employer Identification Number (EIN)	(800) 829-4933	M-F 8:00 a.m. - 8:00 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
Terrorist Act or Combat Zone Spcl Htlne	(866) 562-5227	M-F 8:00 a.m. - 8:00 p.m., local time

General IRS contact numbers

Last	First	Agency	Title	Phone	_	Department
Brooks	L'Tanya	IRS	Acting Area Director	(559) 454-6600		Acting Area Director
Donahue	Patricia	IRS	Area Counsel	(415) 227-5171		San Francisco
Nelson	James	IRS	Area Counsel	(213) 894-3027		Los Angeles
Patton	Collleen	IRS	Area Director	(720) 956-4533		Area Director
Petrillo	Linda	IRS	Area Director	(213) 576-3000		Area Director
Tarn	John	IRS	Area Director	(510) 637-3068		Area Director
Crawford	Joan	IRS	Area Director - Collection	(510) 637-2700		Area Director - Collection
Adams	Connie	IRS	Area Manager	(949) 389-4804		Laguna Niguel
Collins	Suzanne	IRS	Area Manager	(602) 207-8291		Area Manager
Curran	Dorry	IRS	Area Manager	(949) 389-4808		Los Angeles
Joan	Hirsch	IRS	Area Manager	(562) 400-1801		Area Manager
Peneau	Joyce	IRS	Area Manager	(510) 637-4360		Area Manager
Todaro	Tiffany	IRS	Area Manager	(510) 637-3079		Oakland
Fischer	Bernice	IRS	Area Manager - Western Area	(510) 637-3024		Western Area
Walshburn	Michael	IRS	Attorney	(213) 894-3027		
		IRS	Centralized Lien Function	(800) 913-6050		Centralized Lien Function
Shadrooz	Penina	IRS	Counsel	213) 894-3027		
Brantley	Charlie	IRS	Director	(732) 452-8101		Director
Coles	Glen	IRS	Director, Field Assistance	(559) 456-5066		Director, Field Assistance
Dial	Brenda	IRS	Director, Field Operations	(202) 283-2518		Director, Field Operations
Hunter	Charles	IRS	Director, Field Operations	(972) 308-1791		Director, Field Operations
Hwang	Maria	IRS	Director, Field Ops (West)	(510) 637-2570		Director, Field Operations (W)
Walker (acting)	Erwin	IRS	Director, Field Ops (West)	(818) 265-2313		Director, Field Operations (W)
De La Rocha	Lorena	IRS	Disclosure Officer	(213) 833-1203		Laguna Niguel/Los Angeles
Neal	Celeste	IRS	Disclosure Officer	(510) 637-2171		Oakland/Fresno
Bayer	Helen	IRS	Examination Technician	(818) 274-0747		Woodland Hills
Caruth	Michael	IRS	Examination Technician	(818) 274-0709		Woodland Hills
Garkanian	Rita	IRS	Examination Technician	(661) 753-5315		Santa Clarita
Grady	Richard	IRS	Examination Technician			Glendale
Fabin	Paulmikell	IRS	General Attorney	(213) 894-3027		
Renville	Gary	IRS	Governmental Liason	(916) 974-5585		Sacramento
Runow	Jill	IRS	Governmental Liason	(510) 637-3277		Fresno
Yau	David	IRS	Governmental Liason	(213) 576-4094		Los Angeles
John	Saltmarsh	IRS	Indian Tribal Gvts Area Mgr	(909) 388-8162		

Last	First	Agency	Title	Phone	_	Department
Carter	Ms. R	IRS	Offer Specialist - OIC	(909) 388-8231		
Snyder	David	IRS	Offer Specialist - OIC	(818) 637-3933		
Brenneman	Glenn	IRS	Offer Specialist Grp Mgr -OIC			
Tuler	Jeff	IRS	Offer Specialist Terri Mgr -OIC	(714) 347-9254		
Meyer	Ted	IRS	Program Manager	(818) 543-2300		Glendale
Simmons	Christopher	IRS	Program Manager	(818) 274-0833		Woodland Hills
Antell	Theresa	IRS	Program Manager	(510) 637-2707		Oakland
Larkin	Janice	IRS	Program Manager	(213) 576-3059		Program Manager
Checchi	Charles	IRS	Program Manager - Area 9	(415) 227-5075		San Francisco
Streeter	Annette	IRS	Program Manager - Area 9	(951) 276-6441		Laguna Niguel
Walker	Erwin	IRS	Program Manager - Terr 12	(818) 265-2313		
Topping	Jacquelyn	IRS	Program Manager - Terr 13	(602) 636-9412		
Acuna	Diego	IRS	Revenue Agent			Woodland Hills
Adafre	Marie	IRS	Revenue Agent	(818) 274-0716		Woodland Hills
Akopyan	Mariam	IRS	Revenue Agent	(818) 756-4558		Glendale
Alzate	Vicente	IRS	Revenue Agent	(818) 543-2317		Glendale
Arrieta	Crystal	IRS	Revenue Agent	(818) 274-0744		Woodland Hills
Batres	Xiomara	IRS	Revenue Agent	(818) 543-2294		Glendale
Bell	Zlpporah	IRS	Revenue Agent	(818) 274-0822		Woodland Hills
Bergeron	John	IRS	Revenue Agent	(818) 274-0732		Woodland Hills
Bohanon	Rosemary	IRS	Revenue Agent	(661) 753-5307		Santa Clarita
Capplello	Christopher	IRS	Revenue Agent	(818) 756-4558		Glendale
Cervantes	Walter	IRS	Revenue Agent	(818) 274-0735		Woodland Hills
Chan	Cheuk-MIng	IRS	Revenue Agent	(818) 274-0777		Woodland Hills
Chan	Maggie	IRS	Revenue Agent	(818) 543-2297		Glendale
Chong	Young	IRS	Revenue Agent	(818) 274-0743		Woodland Hills
Chow	Frances	IRS	Revenue Agent	(818) 543-2299		Glendale
Cortes	Carlos	IRS	Revenue Agent			
Cuenca	Luis	IRS	Revenue Agent	(818) 274-0772		Woodland Hills
Daei	Shahrouz	IRS	Revenue Agent	(818) 543-2243		Glendale
Denuna	Max	IRS	Revenue Agent	(818) 543-2309		Glendale
Galstian	Men	IRS	Revenue Agent	(818) 756-4549		Glendale
Gharibian	Karineh	IRS	Revenue Agent	(818) 543-2244		Glendale
Griffin	Sonya	IRS	Revenue Agent	(818) 756-4558		Glendale
Grigoryan	Sona	IRS	Revenue Agent	(818) 274-0758		Woodland Hills
Halfen	William	IRS	Revenue Agent	(661) 753-5317		Santa Clarita
HartMelanfeM		IRS	Revenue Agent	(818) 543-2501		Glendale
Heermans	Wanna	IRS	Revenue Agent	(818) 543-2513		Glendale
Holsombach	Carrie	IRS	Revenue Agent	(760) 866-6115		
Holt	Mercedes	IRS	Revenue Agent	(310) 543-2257		Glendale
Hu	Simln	IRS	Revenue Agent	(818) 543-2304		Glendale "
Huynh	Phuong	IRS	Revenue Agent	(661) 753-5319		Santa Clarita

Last	First	Agency	Title	Phone	-	Department
Iturbe	Marcia	IRS	Revenue Agent	(818) 274-0757		Woodland Hills
Jackson	Lupe	IRS	Revenue Agent	(818) 543-2245		Glendale
Johnson	Byron	IRS	Revenue Agent	(661) 753-5321		Santa Clarita
JouryAvfvaE		IRS	Revenue Agent	(818) 274-0761		Woodland Hills
Kabadaian	Sebouh	IRS	Revenue Agent	(818) 274-0830		Woodland Hills
Karaoglanian	Lilit	IRS	Revenue Agent	(818) 543-2302		Glendale
Karimi	Nahid	IRS	Revenue Agent	(661) 753-5346		Santa Clarita
Kawano	Sandra	IRS	Revenue Agent	(818) 543-2323		Glendale
Kim	Alicia	IRS	Revenue Agent	(818) 543-2238		Glendale
Kim	Michael	IRS	Revenue Agent	(818) 543-2306		Glendale
Landyshev	Michael	IRS	Revenue Agent			Woodland Hills
Lea	Jonathan	IRS	Revenue Agent	(818) 274-0773		Woodland Hills
Lee	Deborah	IRS	Revenue Agent	(818) 543-2314		Glendale
Lee	Dong	IRS	Revenue Agent	(818) 543-2364		Glendale
Leyva	Janette	IRS	Revenue Agent	(661) 753-5325		Santa Clarita
Magadamyan	Anet	IRS	Revenue Agent	(818) 543-2292		Glendale
MinAlexS		IRS	Revenue Agent			Glendale
Moon	Holly	IRS	Revenue Agent	(818) 543-2229		Glendate
Nwabueze	Joy	IRS	Revenue Agent	(661) 753-5336		Santa Clarita
Oaks	Erin	IRS	Revenue Agent	(661) 753-5340		Santa Clarita
Oh	Jennifer	IRS	Revenue Agent	(618) 274-805		Woodland Hills
Ortiz	Rafael	IRS	Revenue Agent	(818) 543-2315		Glendale
Osunsanmi	Kola	IRS	Revenue Agent	(661) 753-5339		Santa Clarita
Park	Byong	IRS	Revenue Agent	(818) 543-2296		Glendale
Peterson	Jennifer	IRS	Revenue Agent	(818) 756-4558		Glendale
Pham	Lan	IRS	Revenue Agent	(818) 543-2366		Glendale
Qazi	Zuhair	IRS	Revenue Agent	(818) 543-2288		Glendale
Reed	Eric	IRS	Revenue Agent	(661) 753-5338		Santa Clarita
Reinaga	Kristy	IRS	Revenue Agent	(818) 756-4549		Woodland Hills
Retana	Danny	IRS	Revenue Agent	(816) 543-2295		Glendale Woodland Hills
Rodriguez	Maria	IRS	Revenue Agent	(818) 274-0762		Woodland Hlits
Rubtsov	Ivan	IRS	Revenue Agent	(818) 756-4556		Glendale
Ruiz	Cindy	IRS	Revenue Agent	(661) 753-5341		Santa Clarita
Sahimi	Katherine	IRS	Revenue Agent	(818) 543-2307		Glendale
Santos	A	IRS	Revenue Agent	(818) 756-4554		Santa Clarita
Schwartz	Sherry	IRS	Revenue Agent	(818) 274-0723		Woodland Hiils
Shirvanian	Monfque	IRS	Revenue Agent	(818) 543-2312		Glendale
Shushetovsky	Danny	IRS	Revenue Agent	(818) 543-2293		Glendale
Singh	Tejinder	IRS	Revenue Agent	(818) 274-0721		Woodland Hills
Sivakumar	Pamawathy	IRS	Revenue Agent	(818) 274-0766		Woodland Hiils
Sohn	Grace	IRS	Revenue Agent	(818) 543-2508		Glendale
Ta	Quan	IRS	Revenue Agent	(818) 543-2319		Glendale
Tom	Kim	IRS	Revenue Agent	(818) 543-2298		Glendale
Trim	Kyle	IRS	Revenue Agent	(818) 543-2329		Glendale
Tuazon	Melissa	IRS	Revenue Agent	(818) 543-2509		Glendale
Tuszynski	Nida	IRS	Revenue Agent	(818) 543-2318		Glendale

Last	First	Agency	Title	Phone		Department
Ukagba	Thomas	IRS	Revenue Agent	(818) 274-0768		Woodland Hills
Vasquez-Mora	Magaiis	IRS	Revenue Agent	(661) 753-5324		Santa Clarita
Wallace	Kelvit	IRS	Revenue Agent	(818) 274-0756		Woodland Hills
Witter	Garth	IRS	Revenue Agent	(818) 274-0749		Woodland Hills
Wong	Sophia	IRS	Revenue Agent	(818) 274-0725		Woodland Hills
WungLesha		IRS	Revenue Agent	(818) 274-0712		Woodland Hills
Wyatt	Jordan	IRS	Revenue Agent	(661) 753-5349		Santa Clarita
Yaron	Ely	IRS	Revenue Agent	(818) 543-2242		Glendale
Zakaryan	Ani	IRS	Revenue Agent	(818) 543-2308		Glendale
Bates	Paul	IRS	Revenue Agent - Supervisor	(818) 274-0829		Woodland Hills
Lee	Chong	IRS	Revenue Agent - Supervisor	(661) 753-5326		Santa Clarita
Lopez	Gabriela	IRS	Revenue Agent - Supervisor	(818) 543-2224		Glendale
Muriiio	Alicia	IRS	Revenue Agent - Supervisor	(818) 274-0764		Woodland Hills
Ng	Carol	IRS	Revenue Agent - Supervisor	(818) 274-0741		Woodland Hills
Rakusin	Barry	IRS	Revenue Agent - Supervisor	(818) 543-2520		Glendale
Ryan	James	IRS	Revenue Agent - Supervisor	(818) 543-2470		Glendale
Sim	Tiffany	IRS	Revenue Agent - Supervisor	(626) 312-5092		Glendale
Andrews	John	IRS	Revenue Officer	(681) 753-5306		Santa Clarita
Arceo	Crystal	IRS	Revenue Officer	(818) 543-2402		Glendale
Austin	Steven	IRS	Revenue Officer	(818) 543-2485		Glendale
Barner		IRS	Revenue Officer	(909) 388-8223		
Bautista	Alex	IRS	Revenue Officer	(305) 445-4553		Camarillo
Bautista	Alex	IRS	Revenue Officer	(805) 445-4553		Camarillo
Breed	Ms. M	IRS	Revenue Officer	(619) 615-9445		San Diego
Bridgewater	Karen	IRS	Revenue Officer	(818) 756-4513		Santa Clarita
Calhoun	Albert	IRS	Revenue Officer	(818) 543-2487		Glendale
Capistrano	Ivan-Rey	IRS	Revenue Officer	(661) 753-5309		Santa Clarita
Carrillo	Lionel	IRS	Revenue Officer	(818) 543-2473		Glendale
Carter		IRS	Revenue Officer	(909)388-8231		
Charles	Sarah	IRS	Revenue Officer	(661) 753-5312		Santa Clarita
Chen	Christina	IRS	Revenue Officer	(714) 347-9366		Glendale
Contreras	Victor	IRS	Revenue Officer	(813) 543-2488		Glendale
Coombs	Marie	IRS	Revenue Officer	(305) 982-5165		
Davis	Patricia	IRS	Revenue officer	(360) 905-1177		
De Legarret	Jess	IRS	Revenue Officer	(818) 543-2499		Glendale
Descieux	Ms. S	IRS	Revenue Officer	(213) 833-1247		Los Angeles
Elliff	James	IRS	Revenue Officer	(318) 543-2493		Glendale
Floras	Gilbert	IRS	Revenue Officer	(818) 543-2497		Glendale
Fox	Kenneth R.	IRS	Revenue Officer	(616) 487-4878		
Garcia	Alex	IRS	Revenue Officer	(210) 841-2425		Texas
Gonzales	Arturo	IRS	Revenue Officer	(818) 543-2502		Glendale

Last	First	Agency	Title	Phone	-	Department
Greschner	Mr. J.	IRS	Revenue Officer	(914) 684-7166		New York
Hannosh	Loteta	IRS	Revenue Officer	(818) 543-2404		Glendale
Hanson	Ted	IRS	Revenue Officer	(818) 543-2504		Glendale
Harada	Yukio	IRS	Revenue Officer	(818) 543-2505		Glendale
Hernandez	Leticia	IRS	Revenue Officer	(818) 543-2475		Glendale
Hicks	Pier	IRS	Revenue Officer	(818) 543-2405		Glendale
Hill	Patricia	IRS	Revenue Officer	979-268-1504		
Hubbard		IRS	Revenue Officer	(949) 389-4237		
Huerta	Ms. B	IRS	Revenue Officer	(310) 414-3682		El Segundo
Jones	Latanuza	IRS	Revenue Officer	(661) 753-5322		Santa Clarita
Kalman	Robert	IRS	Revenue Officer			
Knight	Ms F.	IRS	Revenue Officer	(702) 868-5358		Las Vegas
Krause	Katherine	IRS	Revenue Officer	(203) 340-7743		Norwalk
Laohapanich	Mr.	IRS	Revenue Officer	(213) 576-3448		
Lewis	Romney	IRS	Revenue Officer	(818) 265-2335		Glendale
Lewis	David	IRS	Revenue Officer	(818) 543-2406		Glendale
Lin	TK	IRS	Revenue Officer	(818) 543-2407		Glendale
Lomax	Mr. C	IRS	Revenue Officer	(718) 760-6029		New York
Lopez	Roman	IRS	Revenue Officer	(818) 543-2527		Glendale
M'beguere	Monica	IRS	Revenue Officer	(818) 543-2408		Glendale
McBride	Kenneth	IRS	Revenue Officer	(661) 753-5333		Santa Clarita
Mejia	Mr. E	IRS	Revenue Officer	(213) 833-1120		Los Angeles
Mia	Mohammad	IRS	Revenue Officer	(661) 753-5329		Santa Clarita
Mohammad	Mia	IRS	Revenue Officer	(661) 753-5329		
Mohluddin	Fatema	IRS	Revenue Officer	(661) 753-5330		Santa Clarita
Murray	Erin	IRS	Revenue Officer	(818) 543-2489		Glendale
Parayno	Anna	IRS	Revenue Officer	(818) 543-2409		Glendale
Perin	Loifta	IRS	Revenue Officer	(818) 543-2478		Glendale
Pfelffer	Peter	IRS	Revenue Officer	(818) 543-2479		Glendale
Puig		IRS	Revenue Officer	(626) 312 - 5038		
Quach		IRS	Revenue Officer	(818) 543-2409		
Reed	Jennifer	IRS	Revenue Officer	(818) 543-2520		Glendale
Rennie	Georgia	IRS	Revenue Officer	(541) 342-8726		Oregon
Riddick-Parham	Eleanor	IRS	Revenue Officer	(562) 491-7713		Long Beach/SD
Ritchie	Noeline	IRS	Revenue Officer	(269) 323-4928		Michigan
Salvatore	Gary	IRS	Revenue Officer	(661) 753-5342		Santa Clarita
Scott	Nathan	IRS	Revenue Officer	(714) 347-9375		Santa Clarita
Shaw	Susan	IRS	Revenue Officer	(850) 475-7338		Florida
Sosa	Ms. E	IRS	Revenue Officer	(626) 927-1247		El Monte
Stallings	Kevin	IRS	Revenue Officer	(818) 543-2493		Glendale
Stayer	Laura	IRS	Revenue Officer	(618) 543-2410		Glendale
Stevens	Farrell	IRS	Revenue Officer	(818) 543-2506		Glendale
Stiff	James	IRS	Revenue Officer	(818) 543-2498		Glendale
Strickle	Mr. R	IRS	Revenue Officer	(619) 615-9534		San Diego
Tchuldjian	Una	IRS	Revenue Officer	(818) 543-2411		Glendale
Wagner Tartagiino	Linda	IRS	Revenue Officer	(818) 543-2483		Glendale

Last	First	Agency	Title	Phone		Department
Warner	J	IRS	Revenue Officer	(618) 543-2494		Glendale
Warr	Frank	IRS	Revenue Officer	(626) 927 -1240		
Webb	Jason	IRS	Revenue Officer	(281)721-3332		Texas
Wells	Leon	IRS	Revenue Officer	(818) 543-2528		Glendale
Wilkerson	David	IRS	Revenue Officer	(818) 543-2352		Glendale
Winker	Lisa	IRS	Revenue Officer	(818) 543-2495		Glendale
Witt	Jon	IRS	Revenue Officer	(502) 572-2223		Kentucky
Chavez	Thomas	IRS	Revenue Officer - Group Mgr	(626) 927-1440		
Chavez	Thomas	IRS	Revenue Officer - Group Mgr	(626) 927-1440		
Stayer	Laura	IRS	Revenue Officer - Group Mgr	(818) 543-2410		
Beeman	Donna	IRS	Revenue Officer - Supervisor	(818) 543-2480		Glendale
Borbon	Rhonda	IRS	Revenue Officer - Supervisor	(818) 543-2320		Glendale
Dipla	Brittanny	IRS	Revenue Officer - Supervisor	(805) 479-2552		Glendale
Ejimofdr	John	IRS	Revenue Officer - Supervisor	(818) 543-2490		Glendale
Jaymeson	Edward	IRS	Revenue Officer - Supervisor	(661) 753-5320		Santa Clarita
Olivas	Ms.	IRS	Revenue Officer - Supervisor			
Rodriguez	Sandra	IRS	Revenue Officer - Supervisor	(818) 543-2400		Glendale
Wingate	Terry	IRS	Revenue Offier	(805) 352- 0340		
Midgley	Elizabeth	IRS	Secretaiy (Office Automation)	(818) 543-2521		Glendate
Padilla	Zaira	IRS	Secretaiy (Office Automation)	(818) 274-0722		Woodland Hills
Minassian	Eileen	IRS	Secretary (OA)	(818) 543-2301		Glendale
Aguilar Garcia	Monica	IRS	Secretary (Office Automation)	(818) 543-2351		Glendale
Comett	Marjorie	IRS	Secretary (Office Automation)	(818) 543-2401		Glendale Woodiand Hills
Delmatoff	Marilyn	IRS	Secretary (Office Automation)	(818) 543-2491		Glendale
Kim	Sarah	IRS	Secretary (Office Automation)	(818) 543-2471		Glendale
Lam	Miu	IRS	Secretary (Office Automation)	(818) 543-2371		Glendale
Nord	Helen	IRS	Secretary (Office Automation)	(661) 753-5334		Santa Clarita
Rhein	Erica	IRS	Secretary (Office Automation)	(818) 274-0737		
Scott	Karen	IRS	Secretary (Office Automation)	(818) 274-0750		Woodland Hills
Antal	Vivienne	IRS	SL Specialist	(415) 522-6384		Oakland
Breece	Dan	IRS	SL Specialist	(714) 347-9244		Santa Ana
Cacioppo	Lori	IRS	SL Specialist	(949) 389-4609		Laguna Niguel
Cervantes	Alejandro	IRS	SL Specialist	(213) 833-1258		Los Angeles
Footit	Christine	IRS	SL Specialist	(702) 868-5330		Las Vegas

Last	First	Agency	Title	Phone	-	Department
Henrie-Brown	Jennifer	IRS	SL Specialist	(510) 637-2199		Oakland
Jaramillo	Maria	IRS	SL Specialist	(213) 833-1226		Los Angeles
Kelly-Brenner	Gerry	IRS	SL Specialist	(510) 637-3036		Oakland
Kershner	Keith	IRS	SL Specialist	(213) 435-8755		El Monte
Kinsey	James	IRS	SL Specialist	(408) 817-6842		San Jose
Lauridsen	Gina	IRS	SL Specialist	(619) 615-7768		San Diego
LeBlanc	Nancy	IRS	SL Specialist	(714) 347-9255		Santa Ana
Olsen	Kathy	IRS	SL Specialist	(702) 868-5307		Las Vegas
Ortiz	Cathy	IRS	SL Specialist	(213) 833-1227		Los Angeles
Sanchez	Christella	IRS	SL Specialist	(916) 974-5281		Sacramento
Sanders	Sharon	IRS	SL Specialist	(213) 833-1224		Los Angeles
Smith	Amy	IRS	SL Specialist	(909) 388-8234		San Bernardino
Vollmer	Traci	IRS	SL Specialist	(559) 443-7587		Fresno
Williams	Katie	IRS	SL Specialist	(619) 615-7771		San Diego
Zine	Marc	IRS	SL Specialist	(916) 974-5281		
Demarco	Leslie	IRS	Special Agent in Charge	(213) 576-3205		Los Angles
O'Briant	Scott	IRS	Special Agent in Charge, Los	(510) 637-2688		Oakland Field Office
Afmuete	Clarita	IRS	Supervisory Tax Specialist	(818) 274-0705		Woodland Hills
Bergsrud	Denise	IRS	Supervisory Tax Specialist	(818) 543-2350		Glendale
CapizzoLisaA		IRS	Supervisory Tax Specialist	(661) 753-5310		Santa Clarita
Heitmann	Karl	IRS	Supervisory Tax Specialist	(818) 274-0752		Woodland Hills
Phillips	Marsha	IRS	Supervisory Tax Specialist	(510) 637-2636		Supervisory Tax Specialist
Kwan	Bak	IRS	Tax Compliance Officer	(818) 543 - 2333		Glendale
Carrillo	Vivian	IRS	Tax Examining Technician	(818) 543-2496		Glendale
Griffin	Ethel	IRS	Tax Examining Technician	(818) 543-2503		Glendale
Hubbs	Michael	IRS	Tax Examining Technician	(818) 543-2412		
Lautsbaugh	Theresa	IRS	Tax Examining Technician	(818) 543-2476		Glendale
Mejia	Gilberto	IRS	Tax Examining Technician	(213) 576-4080		Glendale
Alessi	Mtehefe	IRS	Tax Specialist	(661) 753-5302		Santa Clarita
Anderson	Sandra	IRS	Tax Specialist	(818) 543-2332		Glendale
Arriola	Aldo	IRS	Tax Specialist			Woodland Hills
Becker	Alan	IRS	Tax Specialist	(818) 274-0748		Woodland Hills
Benson	Shauna	IRS	Tax Specialist	(818) 274-0734		Woodland Hilts
Britten	Fen	IRS	Tax Specialist	(818) 265-2309		Glendale
Chang	Raymond	IRS	Tax Specialist	(661) 753-5311		Santa Clarita
Chiou	Sheuerong	IRS	Tax Specialist	(818) 274-0707		Woodland Hills
Cross	Ronald	IRS	Tax Specialist	(661) 753-5313		Santa Clarita
Duarte	Heidi	IRS	Tax Specialist	(818) 274-0713		Woodland Hills

Last	First	Agency	Title	Phone	_	Department
Garcia	Edras	IRS	Tax Specialist	(661) 353-5314		Santa Clarita
Gibbs	Shirley	IRS	Tax Specialist	(818) 756-4539		Woodland Hills
Hassricfc	Royal	IRS	Tax Specialist	(818) 543-2344		Glendale
Holbert	Sharon	IRS	Tax Specialist	(818) 274-0745		Woodland Hills
Howard-Rubinstein	Mia	IRS	Tax Specialist	(818) 274-0778		Woodland Hills
Kasparian	Hovannes	IRS	Tax Specialist	(818) 543-2346		Glendale
Kwan	Bak	IRS	Tax Specialist	(618) 543-2333		Glendale
Macis	Eric	IRS	Tax Specialist	(661) 753-5327		Santa Clarita
Mora	Alexander	IRS	Tax Specialist	(661) 753-5331		Santa Clarita
Morrow	Emily	IRS	Tax Specialist	(818) 274-0711		Woodland Hills
Mouradian	Ani	IRS	Tax Specialist	(818) 756-4539		Woodland Hills
Munro	Marie	IRS	Tax Specialist	(661) 753-5332		Santa Clarita
O Dena	Neil	IRS	Tax Specialist	(818) 543-2334		Glendale
Sanchez	Cleofas	IRS	Tax Specialist	(818) 274-0753		Woodland Hills
Sherman	Diana	IRS	Tax Specialist			Woodland Hills
Uvernois	Robert	IRS	Tax Specialist	(818) 274-0710		Woodland Hills
Vu	Heidi	IRS	Tax Specialist	(818) 274-0803		Woodland Hills
Vu-Nguyen	Cynthia	IRS	Tax Specialist	(818) 274-0751		Woodland Hills
Walsh	John	IRS	Tax Specialist	(818) 543-2348		Glendale
Wilson	Leticia	IRS	Tax Specialist	(661) 753-5348		Santa Clarita
Allevato	Anthony	IRS	Territory Manager	(949) 389-4391		Laguna Niguel
Alvarado	Leo	IRS	Territory Manager	(310) 535-7429		El Segundo
Bass	Leah	IRS	Territory Manager	(916) 974-5482		Sacramento
Bennett	Alonzo	IRS	Territory Manager	(408) 817-6705		San Jose
Branson	Nancy	IRS	Territory Manager	(415) 522-6165		San Francisco
Chezbaum	Rick	IRS	Territory Manager	(805) 352-0331		Fresno
Cox	Kathleen (acting)	IRS	Territory Manager	(510) 637-2707		Oakland
Cuomo	Donna	IRS	Territory Manager	(213) 576-3875		Los Angeles
Dunn	Shelly	IRS	Territory Manager	(510) 637-3163		Oakland
Edwards	Phil	IRS	Territory Manager	(909) 388-8239		San Diego
Fleming	Sandra	IRS	Territory Manager	(213) 576-3057		Los Angeles
Focht	Don	IRS	Territory Manager	(415) 522-6083		San Francisco
Frank	Deirda	IRS	Territory Manager	(562) 491-7789		Long Beach/SD
Jaramillo	Mark	IRS	Territory Manager	(909) 388-8294		San Bernardino
Jones	Tamara	IRS	Territory Manager	(408) 817-6903		San Jose
Jones	Tamara	IRS	Territory Manager	(408) 817-6903		San Francisco
Kelly	Tim	IRS	Territory Manager	(707) 535-3850		San Franciso
Kuhns	Barbara	IRS	Territory Manager	(949) 389-4595		Southern CA/Alaska
LaCour	DeGina	IRS	Territory Manager	(213) 576-3847		PSP
Lee	Stella	IRS	Territory Manager	(408) 817-6554		Oakland/San Jose
McDaniel	Ethelyn	IRS	Territory Manager	(949) 389-4107		Laguna Niguel
Meyer	Ted	IRS	Territory Manager	(818) 265-2363		Glendale
Miller	Dorothy	IRS	Territory Manager	(916) 974-5371		Fresno
Mitchell	Tonya	IRS	Territory Manager	(626) 312-5068		El Monte
Parker	Sheryl	IRS	Territory Manager	(510) 637-4614		Oakland

Last	First	Agency	Title	Phone	-	Department
Russell	Dorothy	IRS	Territory Manager	(714) 347-9511		Santa Ana
Schoonmaker	Neil	IRS	Territory Manager	(559) 443-7698		Fresno
Shabazz	Tony	IRS	Territory Manager	(408) 817-6275		San Jose
Stewart	Connie	IRS	Territory Manager	(213) 576-3439		Los Angeles
Thompson	Jim	IRS	Territory Manager	(805) 445-4437		Camarillo
Thomson	Diane	IRS	Territory Manager	(714) 347-9209		Santa Ana
Tracht	Mark	IRS	Territory Manager	(213) 576-3688		Central Coast
Turner	Steve (acting)	IRS	Territory Manager	(310) 535-4611		El Segundo
Veasiy	John	IRS	Territory Manager	(714) 347-9330		Santa Ana
Wreyford	Claudia	IRS	Territory Manager	(916) 974-5589		Oakland/Sacramento
Swarts	Howard	IRS	Territory Manager	(916) 974-5178		

Chapter 8

Trust Fund Recovery

(Formerly the 100% Penalty)

Facing possible retributions such as civil liability for unpaid employment taxes, including penalties and interest, and possible criminal liability, employer delinquencies in the payment of employment taxes remain one of the most serious collection problems of the IRS.

Under the Internal Revenue Code certain persons, other than taxpayers, may be designated as agents or responsible persons for the collection of taxes due to the United States. The most common example of this type of provision is the requirement that employers collect and withhold income and social security (or more properly, Federal Insurance Contributions Act [FICA]) taxes, which are by far the most commonly collected from persons other than the taxpayers.

A corporation or partnership unable to obtain outside financing or having insufficient funds to pay all its obligations may attempt to continue in business by failing to pay employment taxes. Because the IRS does not immediately detect delinquencies or take enforced collection action, employers thus are tempted to treat the government as an ordinary creditor. In effect, they borrow from the government the amount of employment taxes required to be paid over.

In most cases, persons responsible for deciding how the funds of the employer's business will be spent do not intend to defraud the government. They decide to prefer creditors other than the government in hope that the business will "turn the corner" so that sufficient funds will then be available to pay all creditors, including the government. To compensate the government for part of the taxes due it upon the failure of a business, Section 6672 of the Internal Revenue Code (which is included at the end of this chapter) imposes a penalty equal to the tax required to have been paid over (hence the former term "100% Penalty") on any person who (1) was required "to collect, truthfully account for and pay over" employment taxes; and (2) willfully failed to do so.

Under the so-called “Trust Fund Recovery Penalty” or TFRP provision, the IRS may assess and collect a penalty in the amount equal to the unpaid corporate **trust fund** taxes from any person who was required, but failed, “to collect, truthfully account for, and pay over the tax.”

In order to assert the trust fund recovery penalty assessment, the IRS must establish two elements. First, the person subject to penalty must be “responsible” for seeing that the corporation’s withheld trust fund taxes were paid to the government. Generally, a finding of responsibility will attach to persons charged with “control over the corporation’s business affairs (and) who participate in decisions concerning payment of creditors, or those who have “the final word as to what bills should or should not be paid, and when.” Second, the IRS must prove that the person “willfully” failed to pay over the taxes.

In this context, willfulness means a voluntary, conscious, and intentional choice to pay other creditors instead of the government at the time the wages were paid and the withholding taxes were due for deposit. Mere negligence is insufficient to establish willfulness under this provision. A reckless disregard of the risk that the tax may not be paid over to the government may, however, constitute willfulness.

The following points should be noted regarding the trust fund recovery penalty under IRC section 6672;

1. The trust fund recovery penalty does not make the government whole in the event of the failure to pay over employment taxes. The penalty only returns to the government the amount of the taxes collected and not paid over—that is, the trust fund portion of employment taxes and not the portion of the taxes imposed on the employer.
2. The term penalty is somewhat misleading. The amount of the liability imposed by Section 6672 is equal to the amount of the delinquent trust fund taxes and is not in addition to those taxes. Consequently, the “penalty” is actually a collection device designed for the purpose of collecting the taxes the employer should have paid over.
3. There is a distinction between the amount of the liability and the existence of liability for the penalty. The amount of the liability is affected by the lack of payment of trust fund taxes by the corporation. However, liability for the penalty is a direct and primary obligation of the responsible person for failure to withhold and pay over the trust fund tax. This liability is separate and distinct from the liability of the employer under this wage withholding provisions.

4. The trust fund recovery penalty is not necessary in the case where a business is conducted as a proprietorship. The individual owners are personally and directly liable for employment taxes. Accordingly, Section 6672 applies where a corporation or partnership is the "employer" and a "person" subject to the trust fund recovery penalty includes "an officer, or employee of a partnership, who …is under a duty to perform the act in respect of which the violation occurs." The statute states "any person" having the duty to collect and pay over may be liable for the penalty and, accordingly, the penalty may be, and frequently is, asserted against more than one person."
5. No negligence or fraud penalty may by assessed against a person in the event that the trust fund recovery penalty is assessed.
6. In addition to collecting and paying over income taxes from employees, an Employer is required to report and pay his own portion of FICA taxes, as well as federal unemployment tax, or FUTA taxes. These amounts are referred to as the employer's portions of employment taxes.
7. In the event that an employer fails to collect and pay over, he may be required, on notice, to create a special bank account in trust for the withheld taxes. If the employer fails to comply with these trust provisions, he may be prosecuted under Section 725 for committing a misdemeanor punishable by a fine of not more than $ 5,000 or imprisonment for not more than one year, or both.
8. Civil penalties and interest may be imposed if the employer fails to file returns or to pay over the entire correct amount of employment taxes.
9. In aggravated cases of nonpayment, criminal prosecution may be instituted. A felony prosecution might also be brought under one of the criminal statutes described in Section 7204 for fraudulent withholding statements or willful failure to supply such statements to employees, Section 7207 for fraudulent written statements given to the Service, or on Section 7203 for willful failure to supply information.
10. In the event that the employer has no assets, then no taxes, penalties, or interest can be collected from the employer. Nevertheless, employees are entitled to credit for the amount of income and FICA taxes withheld whether or not the employer pays over the withheld taxes to the government.

The IRS' practice is to assert 100% penalties against all executive officers. However, a person may be an officer (or a director) of a corporation without having real or effective control over financial affairs. This may be true even when an officer has authority to sign checks. Accordingly, the officer's scope of authority in dealing with the payment of taxes should be described. If the person has no authority over tax matters, an employment agreement, resolution, or other official documents should say so.

Joint-and-Several Liability and Contribution

A taxpayer who is jointly and severally liable for the payment of an unpaid tax along with other responsible persons cannot avoid collection on the basis that the government should first collect, or attempt to collect, the tax from the other persons. The obligation to collect and pay over is the individual and primary obligation of the responsible person. For this reason, some courts have also found that the IRS need not have first attempted to recover the tax from a corporation, although this may not be true if it can be established the corporation was solvent and had assets available at the time the Service should have collected the liability as joint and several. The amount of liability will not be apportioned or divided between or among alleged responsible persons.

Statute of Limitations

Except in cases of a failure to file a return, filing false returns, or willful attempted evasion, the statutory period of assessment is three years after a return is filed. This general rule applies to the assessment of the trust fund recovery penalty of Section 6672 against a responsible person. Tax returns for employment taxes are filed quarterly. Since the 100 percent penalty is a device for collection of the trust fund portion of these taxes, the penalty should be subject to the same period of limitations as the tax itself—that is, the three-year period following the filing of the employment tax return. The statute of limitations of assessment can remain open more than three years after the date of the failure to act. If the return is filed after the due date, the limitations period is measured from the actual filing date, and if no return is filed, the limitations period remains open indefinitely. Once the tax is assessed, the Service may collect the tax by a levy or proceeding in court within ten years after the assessment. The assessment that is collectible within the ten-year period is the assessment under Section 6672, not the assessment against the employer. An action against a responsible person has nevertheless been held timely when brought within ten years of the date of the assessment against the employer.

Corporate officers or other persons who might be considered responsible for paying over trust fund taxes should instruct the IRS to apply payments to the trust fund portions of employment taxes accrued during their period of responsibility before making any other application of the payment. The elimination of any delinquency in trust fund taxes eliminates the trust fund recovery penalty as well. Specific designation of a payment is necessary because the IRS's procedure is to consider that any payment on a corporate account represents a payment of the employer portions of the liability (including assessed penalty and interest) unless there is some specific designation to the contrary. Only the balance of the payment, if any is applied to the trust fund portion of the liability. The IRS will not recognize any right of designation where enforced collection of the delinquency is made.

The IRS determines whether to pursue the Trust Fund Recovery Penalty:

- After the initial contact of trust fund taxpayer
- As soon as possible but no later than 120 calendar days after assignment of the balance due accounts in the Collection Field.

Note: Although this decision must be made within six month period, there's no requirement that the entire investigation be completed within a specific time period. However, when the Revenue Officer makes the decision to assert, the investigation will proceed as expeditiously as possible. If the business is no longer operating, the Trust Fund Recovery Penalty will generally be completed within 120 days of the determination date.

In the event that certain facts surface during the IRS investigation, which may indicate that transfers of corporate stock and/or capital assets have occurred, the IRS will, in addition to pursuing the Trust Fund Recovery Penalty, consider recovery of the unpaid corporate liability by recommending:

- Transferee assessment
- Suit to establish a transferee liability
- Suit to set aside a fraudulent transfer
- Examination referral

TFRP Interviews and Investigations (4180 Interview)

1. During the initial contact with the taxpayer the Revenue Officer will attempt to conduct interviews with all potentially responsible persons. The revenue officer should take the following actions during the interview:
    a. Provide Publication 1, Your Rights as a Taxpayer, and document the history that the publication was delivered;
    b. Explain the Trust Fund Recovery Penalty;
    c. Advise all potentially responsible persons, to the extent possible, that they may be held personally liable for the Trust Fund Recovery Penalty;
    d. Provide Notice 784, Could You Be Personally Liable for Certain Unpaid Federal Taxes?

e. Advise the person(s) being interviewed of the proper actions to take to avoid such liability;

f. Begin asking questions and gathering information and documents, such as bank statements and cancelled checks, in support of assertion of the penalty;

g. Attempt to secure at least one Form 4180, Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Tax, from a potentially responsible person;

h. Secure additional Forms 4180 from all potentially responsible personas to the extent possible;

i. The Revenue Officer will not give or mail the form to the potentially responsible person(s) or representative for completion by that person. **It will be completed in person or over the phone;**

j. The Revenue Officer will always request the presence of the potentially responsible person when conducting an interview with a representative having a Power of Attorney;

k. A summons may be necessary to require the potentially responsible person's presence at the interview;

l. A statement can be updated at a later date with the changes, initiated by the Revenue Officer and the person interviewed.

Third Party Interviews and Third Party Contact Considerations

It may be necessary to contact a third party for the purpose of gathering information concerning other officers or employees.

The Revenue Officer will secure and include in the file documentation of sources of income and assets and all necessary supporting documents in order for the initiating revenue officer to make a recommendation for assertion or non-assertion of the Trust Fund Revenue Penalty, including non-assertion due to collectability.

Evidence That May Support Recommendations

In the majority of cases, the largest portion of evidence that is secured to support recommendations of Trust Fund Recovery Penalty is either corporate records or bank records.

Note: Determination of the amount of documentation required to support the recommendation to assert the penalty is done so on a case by case basis. There must be sufficient documentation in the file to support each recommendation for assertion. Bank records and copies of the applicable tax returns will be secured on almost every case. If they are not secured, the case file must be documented with the reason(s) why they were not secured and why they are not necessary to support the recommendation.

Corporate records that can be reviewed include:

- Articles of Incorporation
- Minute Books
- Forms 941 and 1120 or 1065
- Payroll records
- Any other records that may be relevant to determining the roles and responsibilities of individuals involved with the corporation

The corporate records should be reviewed to determine:

- Duties (and changes to duties) of officers, directors, etc.
- Appointments and resignations of officers, directors, etc.
- Responsibilities of individuals to file and pay tax returns
- Issuance of stock to officers
- Assets transferred to officers
- Loans made to officers
- Unreported payroll and other taxes
- Diversion of funds
- Borrowing of funds not used to pay taxes

Bank records that can be reviewed include:

- Cancelled checks and bank statements
- Signature cards and correspondence to the bank relative to changes affecting the signature cards
- Loan applications and records of loans
- Any other records that may be relevant to determining which individuals were involved in the financial affairs of the business

The bank records should be reviewed to determine:

- Authority of persons to sign checks and deposit funds
- Authority of persons to obligate the corporation by borrowing
- Diversion of funds to officers, members, etc.
- Deposits and withdrawals of alleged loans to corporation by officers, members, directors, etc.
- Excessive salaries, expenses, etc.
- Payment of other obligations
- Deposit records for monies received for sale of assets
- Deposit records of payments for stock in the corporation
- Any other relevant records

Calculating the TFRP

If a taxpayer submits a partial payment of a liability when there are assessments for more than one taxable period, and the taxpayer did not provide specific written instructions as to the application of the partial payment, the payment will be applied in a manner serving the best interests of the government. The payment will be applied to satisfy the liability for successive periods in descending order of priority until the payment is absorbed. If the amount applied to a period is less than the liability for the period, the amount will be applied to tax, penalty, and interest, in that order, until the amount is absorbed. When considering the best interest of the government and period of priority, in addition to statute and lien priority issues, consideration will be given to first applying payments to the non-trust funds.

Note: If returns were calculated under IRC 6020(b) and the liability is being included as part of the TFRP assessment, said returns must be submitted for processing and must be included as pre-assessed modules if the assessment has not yet posted.

Determining the TFRP balance applies:

- On cases where the Letter 1153(DO) is issued on or after June 19, 2000
- For all payments received on or after January 1, 2003 for cases where the Letter 1153(DO) was issued before June 19, 2000

All undesignated payments on a tax period are applied following the guidelines below:

SEQUENCE OF PAYMENT APPLICATION

Non-trust fund portion of tax (employer's share of FICA, or the non-trust fund reported on Form 720)

Trust fund portion of tax (withholding and employee's share of FICA, or the trust fund “collected” excise tax under IRC 6672 on communications or air transportation).

- Assessed lien fees and collection costs
- Assessed penalty
- Assessed interest
- Accrued penalty to date of payment
- Accrued interest to date of payment

Special Payment Application Rules

Proceeds from an offset or a levy on a contract are applied to the liability incurred during the period of the contract even though the application may not serve the best interests of the government.

Payments by Responsible Party on Behalf of the Employer

When efforts to collect the tax, penalty, and interest from the employer have been unsuccessful, it may be suggested to the responsible persons that they have two options:

- Pay the withheld tax liability on behalf of the corporation.
- Have the Trust Fund Recovery Penalty.
  1. If a responsible person chooses to pay on behalf of the corporation then:

     Payment will be made by cash, cashier’s check, certified check, or other acceptable payment form.

The responsible person may provide the funds to the corporation and pay with a corporate check.

If the payment is not made with a corporate check, the responsible person(s) will provide a signed statement certifying that payment is being made on behalf of the corporation for the application to the trust fund liability.

The statement will read as follows: “I/We {Name(s)}, hereby tender payment of $(Amount) and specifically request that such funds be applied to the trust fund tax liability of {Business Name}, {Business E.I.N} for the period(s) ending {List each period}.”

This statement protects the government’s position in cases where a responsible person later files a claim for refund of the TFRP, claiming that their personal tax payment was misapplied or applied against their wishes to the corporate liability.

Retain the signed statement along with a copy of Form 4183 as part of both the balance due and any TFRP case files.

Note: if statement accompanying unsolicited payments are to be accepted as adequate they must clearly indicate the intent to designate payments, along the lines of the statement in (d) above.

The TFRP investigation will continue while awaiting designated payments from a responsible person.

Form 4183 Penalty Assessment Recommendation

The Revenue Officer will review all of the documentation in the case file as well as all Forms 4180 in order to make a determination regarding responsibility and willfulness for each potentially responsible party.

A collectability determination must be completed for each potentially responsible person determined to be both responsible and willful.

Manager’s Review of Trust Fund Recommendations

1. The group manager must complete a thorough review of the Trust Fund Recovery Penalty recommendation to determine the adequacy of the TFRP recommendation prior to the revenue officer issuing the assessment.

2. The manager’s review of the recommendation must address the same issues that the revenue officer addressed. When the answer to any of the questions is "no", the manager should consider whether to return the recommendation to the revenue officer for corrective action and/or further development. Managers must ensure all required documents are in the case file and a collectability determination has been made on each potential responsible officer.

Notification of Proposed Assessment

Once Form 4183 is approved by the group manager, the Revenue Officer should prepare Form 3177, Notice of Action on the Master File, to request input of the TC 130 to freeze any potential refunds for all individuals determined to be responsible for the TFRP. The form may be prepared using the ATFR program. Form 3177 should then be submitted to the CP 44 Unit in Accounting Control/Services for input of the TC 130.

Letter 1153 and Form 2751 are then prepared, and along with Publication 1, they are delivered to the taxpayer. A copy of page 4 of Form 4183 showing the penalty computation may also be included with the documents delivered to the taxpayer so they are aware of how payments were applied to the account.

Letter 1153

- Notifies the responsible party of the proposed assessment
- Contains a description of the available appeal rights
- Affords the responsible party the opportunity to agree to or to appeal the assessment
- Should be modified if the responsible person has filed a bankruptcy proceeding and the automatic stay is still in effect, to delete any references to: the Service "collecting" the TFRP, any actions the taxpayer should take to delay collection activity by the Service, and any collections the Service may take in Jeopardy circumstances

Form 2751

- Provides a report of the corporate liability
- Provides a breakdown of the proposed TFRP assessment for each quarter for which the TFRP assessment is proposed
- Allows the responsible party to agree to the proposed assessment
- Waives the 60 day restriction on notice and demand if signed by the taxpayer
- May be signed by the responsible party at any time during the TFRP investigation or after the Service has issued Letter 1153(DO)

Payroll Tax Withholding and the IRS

It is tempting to "borrow" the payroll taxes withheld from your employees-in order to take advantage of the time between payday and the day you're supposed to pay those amounts over to the Internal Revenue Service.

Section 6672 of the tax code makes you liable' "in addition to other penalties provided by law... to a penalty equal to the total amount of the tax" not accounted for and paid over. There is a civil penalty that may, at the government's discretion be assessed. It may also be augmented by criminal prosecution. The Tax code (section 7202) makes it a felony to willfully fail "to accounts for; and pay over" taxes withheld from employees.

You are deemed to have withheld the taxes (withholding tax, as well as your employees' share of Social Security and Medicare taxes) by paying your employees their wages net the deductions. The withheld amounts constitute a fund you hold in trust for the government. This "trust fund" is not the same as a debt such as accounts payable.

A debt is what you owe your creditors for goods or services, or for a loan you received. Even your personal income tax is your debt to the government. The taxes you withhold from your employees' compensation are treated as the government's money that you hold in trust as agent or trustee. IRS regulations stipulate that once you have withheld the tax, your employees are entitled to credit for it, regardless of when (or if) you pay it over to the government.

You will be held personally liable for the withheld taxes, if: (a) you are responsible for its collection and payment. Whether as the owner of the business or a person authorized to handle its funds; and (b) your failure to collect the tax and pay it over are "willful." You have the burden of proving the absence of at least one of elements.

You do not have to be the owner of the business. The courts have made it clear that you can be held liable for the tax if you are in a position to exercise significant control even if you don't have the final word over the disbursement of funds. Whether you are called the chief financial officer or the bookkeeper, if you authorized to determine which creditors are to be paid, and to issue checks, you can be held responsible even if some payments are subject to a superior's approval.

The easier question has to do with the "willfulness," since the courts have provided an answer that is very simple: Failure to pay withholding taxes is willful within the meaning of irc section 6672 if you pay other creditors when you don't have sufficient funds to pay the taxes you know to be due. Even an employee to whom you owe wages is regarded as just another creditor.

If your company is teetering at the edge, you are generally better advised to close it down than to use the government's money as working capital.

Section 6672[ii]

Failure to collect and pay over tax, or attempt to evade or defeat tax

(a) General rule

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, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

(b) Preliminary notice requirement

(1) In general

No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) or in person that the taxpayer shall be subject to an assessment of such penalty.

(2) Timing of notice

The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

(3) Statute of limitations

If a notice described in paragraph (1) with respect to any penalty is mailed or delivered in person before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of –

(A) the date 90 days after the date on which such notice was mailed or delivered in person, or

(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

(4) Exception for jeopardy

This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

(c) Extension of period of collection where bond is filed

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person -

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3), no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Suit must be brought to determine liability for penalty If,

within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims) (FOOTNOTE 1) for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the

day following the close of the 30-day period referred to in this paragraph.(FOOTNOTE 1) See References in Text note below.

(3) Bond

The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1 1/2 times the amount of excess of the penalty assessed over the payment described in paragraph (1).

(4) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(5) Jeopardy collection

If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

(d) Right of contribution where more than 1 person liable for penalty

If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with -

(1) an action for collection of such penalty brought by the United States, or

(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty.

(e) Exception for voluntary board members of tax-exempt organizations

No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member -

(1) is solely serving in an honorary capacity,

(2) does not participate in the day-to-day or financial operations of the organization, and

(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).

Chapter 9

Collection Information

Tips and Traps - Nine Things You Should Know About Penalties

If you don't file your return and pay your tax by the due date you may have to pay a penalty. Here are nine things the IRS wants you to know about the two different penalties you may face if you do not pay or file on time.

1. If you do not file by the deadline, you might face a failure-to-file penalty.
2. If you do not pay by the due date, you could face a failure-to-pay penalty.
3. The failure-to-file penalty is generally more than the failure-to-pay penalty. So if you cannot pay all the taxes you owe, you should still file your tax return and explore other payment options in the meantime.
4. The penalty for filing late is usually 5% of the unpaid taxes for each month or part of month that return is late. This penalty will not exceed 25% of your unpaid taxes.
5. If you file your return more than 600 days after the due date or extended due date, the minimum penalty is the smaller of $135 or 100% of the unpaid tax.
6. You will have to pay a failure-to-pay penalty of ½ of 1% of your unpaid taxes for each month or part of a month after due date that the taxes are not paid. This penalty can be as much a 25% of your unpaid taxes.
7. If you filed an extension and you paid at least 90% of your actual tax liability by the due date, you will not face with a failure-to-pay penalty if the remaining balance is paid by the extended due date.
8. If both the failure-to-file penalty and the failure-to-pay penalty apply in any month, the 5% failure-to-file penalty is reduced by the failure-to-pay penalty. However, if you file return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of $135 or 100% of the unpaid tax.
9. You will not have the pay a failure-to-file or failure-to-pay penalty if you can show that you failed to file or pay on time because of reasonable cause and not because of willful neglect.

Partial Pay Installment Agreements

When it is not possible for taxpayers to full pay delinquent tax liabilities they may be allowed to pay their liabilities over a prescribed period of time. If full payment cannot be achieved by the Collection Statute Expiration Date (CSED), and taxpayers have some ability to pay, the Service can grant Partial Payment

Installment Agreements (PPIAs). The American Jobs Creation Act of 2004 amended IRC § 6159 to provide this authority.

IRC 6159 requires Partial Payment Installment Agreements (PPIA) be reviewed every two years. Centralized Case Processing (CCP) performs the two year financial review on all PPIAs.

Centralized Case Processing (CCP) monitors installment agreements to ensure taxpayers:

- Make installment payments when due.
- Pay required federal tax deposits.
- File federal tax returns when due.
- Pay additional liabilities when due.

IRC 6159 does not allow for an installment agreement to be defaulted for non-payment of estimated tax.

If taxpayers remain in compliance with filing, paying and depositing requirements, the IRS takes no further case action or makes any further contact with the taxpayer until the agreement is completed.

If the taxpayer does not complete any one of the items in (1) above, the IRS follows the procedures below:

- The IRS contacts the taxpayer and requests the payment, deposit or return, whichever is appropriate.
- If the taxpayer complies within the reasonable time frame given, the IRS does not begin default and termination procedures. They continue to monitor the installment agreement as before.
- If the taxpayer does not comply with the deadline given the installment agreement will be considered in default and the IRS will resume collection activity.

Collection Information Statements

One of the most important things to remember when negotiating with the IRS on behalf of a taxpayer that is unable to pay their liability in full, is that the IRS collects based not upon what a taxpayer owes but rather based upon their ability to pay.

As someone who practices tax resolution, you will often be approached by people with tax liabilities, claiming that they are unable to pay their tax debt in full. In order to determine as far as the IRS is concerned, how much a taxpayer is able to afford, the IRS uses formulas similar to those used to

determine how much a person can afford to make a mortgage payment. The big difference is that banks and other lenders use a multiple of earnings while the IRS takes a taxpayers “take home” income and subtracts out their necessary and reasonable living expenses. The IRS expects that all remaining funds will be paid to them in monthly installments. These payments are applied to the outstanding tax liability.

If you give the IRS information that does not fit their model, they will include funds as income that the taxpayer did not consider or disallow expenses that they taxpayer is making on the basis that they are either unnecessary or unreasonable. The result in either case is that the IRS will demand a larger monthly installment payment that the taxpayer is unable to make without altering their lifestyle or that the IRS will reject an Offer based upon their assertion that the taxpayer has the ability to pay more than they claimed was possible. For this reason it is imperative that a person practicing tax resolution know exactly what is and what is not considered an allowable expense. In addition the practitioner must know how much for each allowable expense is considered reasonable.

To make this determination for purposes of an Offer in Compromise the answer is simple. The IRS publishes at least two times a year, National and Local Standards for living expenses. Upon review of these published standards, you will see that some seem reasonable while others seem low. Especially when looking at large metropolitan areas such as Los Angeles and New York where the cost of living is much higher than other parts of the country.

For purposes of an Installment Agreement; at least at this time, the IRS typically will allow a taxpayer to claim actual living expenses as opposed to their published standards. That being said the living expenses must still be reasonable (i.e. the IRS will typically not allow someone be making mortgage payments on their mansion or car payments on their Rolls Royce).

In order to determine how much a taxpayer nets in monthly income, as well as how much they spend monthly on living expenses, the IRS requires that a delinquent taxpayer submit a Collection Information Statement (433A, 433B or 433F). In this form a taxpayer lists their income, expenses, assets and liabilities. Upon first glance of the forms they seem simple to complete. The problem is that when you ask a delinquent taxpayer to complete one of the above mentioned forms, you will find that they never complete the form completely correct.

One of the most common errors occurs when a taxpayer attempts to enter income information. If they are an employee earning w-2 wages, they will either enter biweekly paycheck information as bimonthly which fails to include two paychecks or they will enter the withholding information incorrectly which can greatly affect the amount they earn as it appears on the form.

If they taxpayer is self-employed they typically never enter the correct monthly net business income but rather guess at the amount. In order to determine how much a self-employed person nets in monthly business income, they must supply a Profit and Loss statement for their business. The net monthly

business income is determined by subtracting the business expenses from the gross income and dividing the net income by the number of months spanning the Profit and Loss statement.

Another common mistake taxpayers make when completing Collection Information Statements is to guess at their living expenses such as food, clothing, car maintenance, gas, car insurance and out of pocket medical expenses. It is difficult for someone to track all of these expenses which is not really an issue because unless a taxpayer can prove they have a very valid reason for spending more, the IRS will only allow the published amount for these items as listed in their National and Local Standards.

The biggest mistake one can make and is usually the case when a taxpayer takes a stab at completing a Collection Information Statement is to not complete the form in its entirety. Every section must be completed and done so accurately. The IRS does not like guesses. If a section does not apply to the taxpayer submitting the form, "N/A" should be placed in the appropriate boxes and "$0" should be entered in the "Total" for said section. Keep in mind that the IRS will typically ask for substantiation for all items that either exceed the amount or are not included in their National and Local Standards for living expenses. Substantiation includes both proof of the expense (i.e. invoices and statements) as well as proof that the expense was paid (i.e. a copy of cancelled check, credit card statements or bank statements). For example, if someone has a $3,500 mortgage payment that has not been paid in 6 months due to negotiation for a loan modification, the mortgage expense will be disallowed.

In the pages following, you will find the Collection Information Statement forms. Notice that the 433A and 433F ask for virtually the same information. The difference is that the 433F, typically used by automated collections is a short version (2 pages). The 433A typically requested by a Revenue Officer asked for similar information in more detail (6 pages).

The 433B is used for business entities and is basically asked for static information in addition to the information one would find in the Company's Profit and Loss statement as well as their Balance Sheet. Note that all of the forms come with instructions. Always be sure to read the instructions carefully and include all supporting information requested in the instructions.

To view these and several other IRS forms visit:

https://www.taxresolutioninstitute.org/forms-library/

Chapter 10
IRS Collection Procedures

IRS National and Local Standards

When a taxpayer owes and is unable to full-pay their liability, under certain circumstances the IRS will allow the taxpayer to pay less than what is owed by claiming hardship. To determine what amount the taxpayer is able to pay, the IRS looks at the taxpayer's Monthly Disposable Income (MDI). This is determined by taking the taxpayer's take home pay and subtracting out necessary and reasonable living expenses.

In order to determine how much is necessary and reasonable, the IRS uses standards of living for the following categories:

- Housing and utilities (local)
- Transportation – cost of ownership (national)
- Transportation – cost of operation/public transportation (local)
- Food, clothing and miscellaneous (national)
- Out of pocket health costs (national)

Some standards are based upon national standards and remain constant for taxpayers throughout the United States. Others are based upon local cities, states or regions and vary depending on the cost of living for the area in which each taxpayer resides. Above notice that each category is followed by the type of standard.

The IRS adjusts these standards at least once per year so it is important to make sure the numbers you use are current. In most cases the standards go up when updated but they can go down as well.

To view the most current IRS National and Local Standards as well as several other IRS forms visit:

https://www.taxresolutioninstitute.org/forms-library

The Power of the IRS to Collect Taxes

The IRS has the power to collect taxes by levying on taxpayer's property stemming from the filing of the Federal Tax Lien. When a person owes taxes, the IRS is able to file a lien on all of said person's assets once they meet necessary statutory requirements. The lien attaches to all rights, title and interest of the taxpayer wherever it may be situated. [IRC § 6321] Once the IRS has a lien on a taxpayer's assets, it may enforce said lien by administratively levying his or her assets.

Lien Rights

Let's take the following example: *a person buys a car and finances the purchase through a bank. The purchase price for the car is $20,000. The purchaser pays a down payment of $2,000 and signs a note with a bank giving it a lien on the car. The bank then lends the buyer $18,000 to complete the purchase. If the buyer defaults on the note, the bank may repossess the car.*

In the case of the IRS it gains a lien on all of a taxpayer's assets and therefore it has the right to seize most of those assets to satisfy unpaid taxes.

Creation of Lien

The liability of a taxpayer for Internal Revenue taxes is personal in nature and, except for the taxes imposed under Subtitle E of the Code relating to distilled spirits, wines, and beer, does not directly attach to his or her property. In this respect the liability is analogous to a simple debt, and without anything more could be enforced only by a court action. To protect the revenue Congress has provided an administrative means by which collection of assessment may be affected. Congress also has statutorily provided for a lien which attaches to a taxpayer's property. The lien is often referred to as the "statutory" or the "general" lien. The following requirements for establishing the lien are contained in the code.

- An assessment must have been made;
- A notice and demand for payment must have been made (the first IRS notice meets this requirement); and
- The taxpayer must have neglected or refused to pay. [IRC § 6321]

Meeting Statutory Requirements

It is surprisingly easy for the IRS to meet the statutory requirements. An assessment occurs when the IRS encodes the return information to its system of records and an assessment officer signs a certificate of assessment. A machine now automatically imposes a signature on assessment documents when return information is posted to the IRS computer system. The notice and demand requirement is met by sending the taxpayer a notice requesting payment.

Correspondence with Compliance Center

It is typically ineffective to write to a Compliance Center. It can take Compliance Centers more than six weeks to process correspondence. For example, if your client receives a Notice 504 even though he paid the tax upon receipt of the Notice 503, a letter to the IRS will not stop assignment to Automated Collection System ("ACS"). The IRS may not process your letter for six weeks, yet the computer continues to automatically refer the matter to ACS on a set cycle. You must speak with someone at the IRS and request that the computer process be stopped while the IRS searches for the lost payment. Even if the Compliance Center has processed your correspondence, the response can be useless. You might receive a postcard acknowledging that correspondence was received but failing to include pertinent basic information including identifying the client in question. If you have written more than one letter, there is no way of determining which matter or to whom the postcard received refers.

Small Dollar Payment Plans

A taxpayer may be able to secure a 72-month payment plan for 1040 liabilities of less than $50,000. The IRS Restructuring and Reform Act of 1998 required the IRS to grant a payment plan to individual taxpayers who owe less than $25,000 but the amount has been increased to $50,000. If the taxpayer desires this type of plan, he or she should respond to the IRS upon receiving the first notice by writing to the Compliance Center requesting 72 months to pay the tax liability. A request for a payment arrangement on small dollar accounts could also be made by transmitting the new IRS Form 9465. On many occasions the IRS has granted the taxpayer a payment plan but failed to confirm the plan. If subsequent notices cease to be sent from the Compliance Center, the taxpayer should assume that the Service has granted a plan. If the Compliance Center continues to issue subsequent notices, the taxpayer should assume that his or her plan has been improperly processed by the Service and contact their support Staff or a Revenue Officer.

Quality of Compliance Centers

Compliance Centers operate at varying degrees of efficiency. At the time this book was written, the Philadelphia Compliance Center was acknowledged to be one of the worst in the country. Fresno, Austin, Holtsville and Atlanta were in close competition to be the runner-ups for worst. Ogden was rated one of the best Compliance Centers. Inefficient Compliance Centers can create large unnecessary problems for your clients. At one time, the Philadelphia Compliance Center lost the federal tax deposit records of approximately 10,000 businesses and dealt with their error by proceeding to bill the companies.

Telephone Collection Efforts

If an account cannot be collected by a Returns Processing Center using notices and/or levies upon the taxpayer's wages or bank account, the matter will then be transferred to a Customer Service Center for telephone collection efforts. Each Customer Service Center, including the Return Processing Center, has a computerized telephone collection system.

Payment Options Comparison Chart					
	Total of All Liabilities	**Time Frame for Full Payment**	**Other Basic Requirements**	**Financial Information**	**Verification of Financial Information**
Streamlined IA	Below $250,000	Within 60 months	Must stay current with all future taxes	Limited	Sometimes
Full-pay IA (< 60 mos.)	No Limits	Up to 60 months	Leverage equity in assets, must stay current with all future taxes, conditional expense may be allowed	Complete	Sometimes
Full-pay IA (>60 mos.)	No Limits	61 months and up, prior to expiration of collection statute	Leverage equity in assets, must stay current with all future taxes, Transition period for conditional expenses may be allowed for up to 12 mos.	Complete	Yes
Partial Pay IA	No Limits	Payment made until collection statute expires	Leverage equity in assets, must stay current with all future taxes, no conditional expenses allowed, no transition period	Complete	Yes
Deferred Payment Offer in Compromise	No Limit	Payment made until statute date or until offer amount received	Net realizable equity must be accounted for in amount offered, No conditional expenses allowed, must stay current with all future taxes	Complete	Yes
IA assigned to automated collections	Below $250,000	72 months	Use IRS form 433-F. Substantiation required upon request. Often negotiated over phone	As reflected on form	Upon request

Chapter 11

Engagement Agreements

Hourly Fee Agreement Sample

(please verify that any engagement agreement you use including this sample does not violate any of your local State laws):

Date

Client Name
Address
City, State, Zip

CLIENT AGREEMENT

*This is intended to be a legally binding agreement under the laws of **State in which company conducts business**.*
Please read it carefully before signing.

RETAINER AGREEMENT FOR TAX REPRESENTATION SERVICES

This Agreement is for tax representation services between NAME ("Client", "you", "your") and the Tax Resolution Institute Inc ("we", "our", "us"). The purpose of this document is to reduce this agreement to writing so that we will understand our obligations to each other.

MATTER IN WHICH REPRESENTATION WILL BE PROVIDED

At your request our engagement is limited to the: (1) Preparation of Power of Attorney for federal income taxes due; (2) Assessment of administrative procedures and administrative remedies available; (3) Meeting with Revenue Officers by telephone or in person; (4) Negotiation of a Federal Installment Agreement, as applicable.

SCOPE OF REPRESENTATION

Our responsibility will be to undertake the above matters, to represent the Client and to do everything necessary to properly handle this matter.

CLIENT TO BE KEPT INFORMED

We will keep the Client fully informed of the status of this matter and will provide copies of all relevant correspondence concerning this matter. We will meet (either in person or over the telephone) at any mutually agreeable time to discuss the status of this matter. The Client is urged to communicate any and all concerns or questions which the Client has in connection with this representation and we will endeavor to promptly respond.

NO PREDICTION OF RESULTS

ALTHOUGH WE WILL USE OUR BEST EFFORTS AS CERTIFIED PUBLIC ACCOUNTANTS FOR THE CLIENT TO REPRESENT THE CLIENT IN ACHIEVING THE MOST FAVORABLE POSSIBLE RESULT UNDER THE LAWS OF THE UNITED STATES, WE MAKE NO REPRESENTATION OR PREDICTION THAT ANY GIVEN RESULT WILL OCCUR AS A RESULT OF SUCH EFFORTS.

COOPERATION OF THE CLIENT

The Client agrees that he/she will (A) promptly respond to any oral or written request by us to provide information and (B) diligently assist us in obtaining any information from any third party. The Client understands that failure to diligently assist us in representing the Client could lead to a less favorable result in this matter and to additional representation fees which would not otherwise be incurred if the Client were to diligently cooperate and assist us.

FEES

The above-described services shall be provided by our firm in consideration of our normal hourly rate in the amount of $400 per hour. The Client agrees to remit a retainer in the amount of $4,000 for the services set forth above. In addition, the Client agrees to maintain a minimum retainer balance of $1,000. If at any time the retainer balance should fall below the $1,000 minimum, the Client agrees to make payment necessary to replenish retainer account within (3) days of notice. If the Client fails to replenish the retainer account as stated above, all work will cease until payments are made current. Please note that work performed before the IRS and other taxing agencies is document and time sensitive. For this reason it is imperative that the Client stays current with regards to payments and responds upon receipt of requests for information and documents. Because our firm has limited resources, we can only accept a finite number of cases. By agreeing to represent you, we are limiting our ability to represent other clients who may also be in need of our services. All fees paid to us by Client in the form of retainer payment or otherwise are non-refundable. We strongly recommend that Client supports our efforts to complete all work in a professional and timely manner including without limitation, supplying documents requested by the IRS, Client's local state taxing agency, and us; completing and returning forms; and making payments as set forth above. Should the Client fail to complete Client's responsibilities in a professional and timely manner as set forth above, we may at our discretion, cease all work in assisting Client to resolve Client's outstanding matters deeming all payments made by client fully earned and non-refundable. Please note that we bill in tenths (.1) of an hour and our minimum charge for any service (phone call, e-mail, etc.) is two-tenths (.2) of an hour.

OUT-OF-POCKET COSTS

The fees set forth in Paragraph 5 above do not include any out-of-pocket costs advanced by us on behalf of the Client, such as messenger fees, express mail, parking, and the like. These out-of-pocket costs will be advanced by us, will be invoiced to the Client by us, and will be due and payable in the same manner as the professional fees which are invoiced to the Client.

TERMINATION OF AGREEMENT

The Client may terminate this agreement at any time for any reason whatsoever, but such termination shall not affect the obligation to pay for any services already rendered or costs already advanced up to the date and time of the termination. We may terminate this Agreement at any time if the Client fails to pay fees when due under the terms of this agreement or fails to cooperate in any other way, or for other legal or just cause. Upon termination of this Agreement for failure to pay fees, we will return to the Client any of the Client's original documents. Upon termination of this Agreement following the payment of all costs and fees, the Tax Resolution Institute Inc will return all documents to which the client is entitled.

We maintain the right to terminate representation for your failure to cooperate and/or your failure to make payment of any fees and/or costs as provided for under the terms of this agreement. Failure to respond within 48 hours of request will result to no responsibility.

Invoices will be mailed monthly (or sooner) and are due when received. If we have not received payment within 7 days of our invoice, all work will be suspended until your account is brought current. Accounts past due more than 30 days will be charged interest and administrative costs at 1.5% per month.

In the event that any provisions or partial provision of this Agreement shall be held to be void, voidable, or unenforceable, the remaining portions hereof shall nevertheless remain in full force and effect.

Each party, by affixing his signature below, does further represent that, prior to entering into this agreement; he consulted with an attorney at law of his own choice, who explained the provisions of this agreement to his personal satisfaction.

This contract, consisting of Paragraphs 1 through 10, is our entire agreement. Any prior or contemporaneous agreements, understandings and representations are merged and superseded by these written terms. Any modification or waiver shall be in writing. Client has been advised that time is of the essence with respect to this matter.

Please sign, date and return this Agreement along with Forms 2848 Power of Attorney. Please return signed form along with a retainer check in the amount of $4,000 to the address listed above promptly so that we may begin working on your case.

Sincerely,

Your Name, Name of Firm

Acknowledged

*By: ____**Client Name**____*

PROTIP 7

Fixed Fee Agreements

Because delinquent taxpayers typically do not know the full extent of their tax issues and therefore additional work beyond the scope of work discussed in an initial consultation with the taxpayer often becomes necessary, it is usually preferable to enter into an agreement based upon collecting hourly fees as opposed to a fixed fee agreement.

Sometimes clients are more comfortable entering into a fixed fee agreement knowing what they will pay in advance.

This type of agreement can too be implemented but if you enter into a fixed fee agreement you must ensure that you specifically describe the work that is to be completed. Make it clear that any additional work that becomes necessary to complete will be done so either under a separate agreement, and/or for an additional cost which can either be an additional fixed fee or done so on an hourly basis based upon your regular published fees. Below you will see a sample of a fixed fee agreement.

Fixed Fee Agreement Sample
(please verify that any engagement agreement you use including this sample does not violate any of your local State laws):

Date

VIA Email: *email*

Name
Street
City, State, Zip

Dear ***Taxpayer***,

This document is being furnished to ***Name*** ('you", "your") in order to ensure that you have a full understanding of terms of our engagement. For this reason ***Your Company*** insists that you read this letter carefully.

Your Company will provide to you our services a follows:

Please note that the items listed below represent the general services necessary to complete the majority of tax resolution cases. It is possible that additional services be required to resolve unforeseen matters that may arise in a client's case. Should subsequent matters not listed below arise with your tax case, you agree to pay, in addition to the amount set forth in this agreement, for additional work necessary to resolve your matter(s). ***Your Company*** will contact you to discuss said matters as well as any applicable fees associated with additional work to be completed by ***Your Company***.

Based upon the information you have provided us, the services or a subset of the services described below are deemed appropriate to resolve your case. In the event that the information you provided us is incomplete, inaccurate or the circumstances of your case change, you authorize ***Your Company*** to employ additional services necessary to achieve the optimal resolution to your case.

Obtaining Transcripts: If necessary, *Your Company* **with your consent will contact the Internal Revenue Service ("IRS") and when appropriate the State in which you pay tax in order to acquire, examine, decipher and evaluate all applicable tax transcripts relating to your Individual and/or Business tax matters for the periods** *beginning year* **through** *ending year***.**

Preparation of Tax Returns: *Your Company* **will prepare your Federal and when applicable State type of tax returns for the periods beginning year through ending year. Your Company will prepare your returns based upon the above-mentioned transcripts and information you provide us via documents and tax organizers.**

Protection Against Collection Activity: Assuming that there is no active collection activity, *Your Company* **will make a best effort attempt to keep the taxing agencies involved with your case from levying your bank account, garnishing your wages, garnishing your income (3rd Party Levy), or seizing your assets for the entire tenure of your engagement with us. If bank levies and/or wage garnishments are already in place, we will make a best effort attempt to have them removed and/or reduced.**

Installment Agreement: Assuming you are in "Current Compliance", *Your Company* **will negotiate with the IRS and when applicable the State in which you owe back taxes, a monthly installment plan in which you make payments based upon your ability to pay (which may be nothing if you qualify for Currently Non Collectible ["CNC"] status).**

Installment Agreement (FOR OFFERS ONLY): Assuming you do not qualify for an Offer in Compromise or you choose not to proceed with an Offer in Compromise and you are in "Current Compliance", *Your Company* **will negotiate with the IRS and when applicable the State in which you owe back taxes, a monthly installment plan in which you make payments based upon your ability to pay (which may be nothing if you qualify for Currently Non Collectible ["CNC"] status).**

Abatement of Penalties: If the facts of your case warrant so, *Your Company* **will negotiate to remove penalties when applicable.**

Preparation of an Offer in Compromise: If *Your Company* **determines you qualify as an Offer in Compromise candidate, we will prepare and submit an "Offer in Compromise" to the IRS on your behalf for your current tax liability. If the offer is rejected and you consent to proceed with the services of** *Your Company* **as they relate to the appeal of your offer, you will pay** *Your Company* **additional fees to warrant the time necessary to file and argue the appeal.**

YOUR COMPANY WILL AT ALL TIMES MAKE A BEST EFFORT ATTEMPT WITHIN THE CONFINES OF THE LAW TO OBTAIN THE BEST RESULT POSSIBLE TO YOU, HOWEVER, AT NO TIME DOES ***YOUR COMPANY*** MAKE ANY PREDICTION OR REPRESENTATION THAT ANY GIVEN RESULT WILL OCCUR AS A RESULT OF OUR EFFORTS.

Client Responsibilities

Current compliance: you agree to make and maintain payments and continue to file returns as required by any agreements, settlements, and/or compromises that are made with the Taxing Agencies involved in your case, or as is required by law.

Client representation: You agree that ***Your Company's*** representation of you is conditioned upon you continuing to remain current on all future tax liabilities as they become due. Failure to stay current with any and all tax liabilities will be cause for termination of this agreement, as it would greatly affect our ability to adequately represent you.

Taxing agency correspondence: Working with the taxing agencies is both time and document sensitive. You agree to respond within five (5) working days with all items requested by ***Your Company***, and the taxing agencies involved with your case.

Agreement execution: You agree and acknowledge that ***Your Company*** has advised you of your obligation to fully and accurately disclose the nature, source and extent of your income, expenses, assets and liabilities. Providing inaccurate information may jeopardize the outcome of your case.

Time is of the essence: ***Your Company*** must respond to tax notices quickly to in order to avoid additional complications to your case. Every notice you receive must be forwarded to us right away.

Time estimates: When requested by you ***Your Company*** will provide estimates of the time it should take to resolve your tax matters. In some instances, the period of time it takes for cases to be completed becomes extended due to factors that are out of our control including without limitation taxing agency delays.

Corresponding with IRS and if applicable the State in which you owe tax: For the tenure of our representation of you, you must not talk to, meet in person, or have any other correspondence with any taxing agency relating to your case without our consent.

Fees for services provided: Our work is typically completed on a retainer basis. ***Your Company*** will estimate a fee for the services to be rendered at the time of our engagement. We typically require anywhere from Fifty percent (50%) to one hundred percent (100%) of the estimated amount be paid prior to the commencement of services. The estimate of our fee is not binding as some cases become more complicated and time consuming than anticipated when the estimate was made. Fees are based on the value of the services rendered considering the expertise required in addition to expended time.

Out of pocket costs: The fees set forth below do not include any out-of-pocket costs advanced by us on behalf of the Client, including without limitation messenger fees, express mail, parking, and travel. The above-mentioned out-of-pocket costs may be advanced by us at our discretion and will be invoiced by us to the Client. The reimbursements of these costs by the Client to us are due and payable upon request.

Non-refundable retainer payments: ***Your Company*** strongly recommends that you contribute to and support our efforts as requested by us. Failure to do so may result in our withdrawal from a matter and all retainer payments and other payments collected by us will be deemed fully earned and non–refundable.

If you fail to meet the responsibilities listed above *Your Company* **reserves the right to terminate this agreement or apply additional fees to compensate for additional work necessary to obtain a resolution to your case.**

Headings: Headings used in this agreement are for convenience of reference only and shall not constitute a part of this agreement for any other purpose or affect the construction of this agreement.

Fees

The cost for these services will be $_____, assuming that the information you provided us thus far is complete and accurate, that you do not add additional work and that you are at all times cooperative and timely regarding our request for information. ***Your Company*** will require an initial payment in the amount of $_____ prior to commencing work. The remaining balance of $_____ shall be due and payable as follows: Three (3) post-dated check(s), or the ACH Automatic Debit Authorization in the amount of $_____ each, dated 30 days apart from one another, starting 30 days after initial payment is made.

Your Company *reserves the right to increase the fees stipulated herein if we have not been retained within 7 days from the date of this Agreement. All work completed by us that exists outside the scope of work set forth above or is necessary to complete due to the lack of cooperation by you will be completed at hour standard hourly rates which range from* **hourly rates** *per hour. All retainer payments as well as other payments for services paid to* **Your Company** *are earned when paid; no refunds will be furnished. All invoices are due upon receipt. Failure to pay either retainer requests or to submit payment as per the agreed upon payment schedule stated above, shall cause our firm to immediately stop providing services without further notice.*

I acknowledge that ***Your Company*** has or will advise me that the dischargeability of this liability in Bankruptcy may or may not be possible.

By signing and dating below you understand and agree to the terms of this agreement. Please mail or scan and send this signed and dated agreement, along with the Powers of Attorney, your retainer deposit in the amount of $ and the 3 post-dated checks(s) or the ACH Automatic Debit Authorization.

Please do not hesitate to call us if we can assist you with any other matters or if you have any questions regarding this agreement.

Sincerely,

_____ _____

Tax Resolution Specialist
Your Company

READ, UNDERSTOOD, AGREED TO,
AND COPY RECEIVED BY CLIENT

Client Name

_____

Date

Chapter 12

Penalties and Interest

When clients make initial contact with a tax resolution provider regarding their tax concerns, one of the first questions they ask is “can you remove my penalties and interest?” Before we discuss penalties, you should know that you will most likely not be successful in removing interest.

Interest generated from delinquent taxes will not be abated with the exception of a few extraordinary circumstances. In order to abate interest the taxpayer must prove that he or she was caused an unwarranted delay that was directly caused by the actions of an IRS employee; and, the delay itself caused the interest to be charged. The IRS and State taxing agencies have a steadfast policy that interest will be charged on delinquent taxes.

There are other ways to eliminate interest such as completing an offer in compromise or entering into a partial pay installment. That being said, if you are able to abate penalties or getting your client’s tax liability reduced, you can in turn reduce the interest that has accrued on said penalties and tax.

Having penalties abated (waived) on the other hand is a different story. There are several steps you can take to have penalties removed or reduced. Assuming your client qualifies to have penalties waived, the question remains as to whether or not it makes economic sense to complete the work necessary to remove the penalties. That is, does the prize justify the price?

For example, if a taxpayer owes $500,000 in back taxes, and the possibility exists to have a $10,000 penalty waived, should said taxpayer pay a professional to have the penalty removed? If the taxpayer has the ability to full-pay their liability within the statute of limitations, the answer may be “yes”. However, if the taxpayer is earning minimum wage and has no assets, he or she would be spending funds they should be applying toward addressing collection activity on the $500,000 liability as opposed to reducing it to $490,000.

There are certain things you must know if you wish to have penalties abated. First and foremost, the IRS will typically not abate a penalty unless it has already been paid. Beyond the necessity to prepay a penalty and related interest on a liability, it can be advantageous for a taxpayer to do so because it will stop the additional interest that continues to accrue if the request to abate the penalty is denied.

As a general rule, you may request an abatement of penalty if you show cause. A taxpayer who voluntarily steps forward and corrects a deficiency in a previously filed return is often successful in requesting penalty abatement. On the other hand, a taxpayer will rarely be successful in requesting an abatement of a penalty that was assessed as a result of an audit.

The most common way to request that a penalty be abated is to write a letter to the IRS office that issued the initial notice. The chances of having the abatement granted increase if the letter is in response to the first notice received and not sent once collection activity has commenced.

Correspondence to the IRS requesting the abatement should be clear and concise. It should include detail explaining why the penalty was assessed. It should also provide supporting documentation showing why the penalty should be removed.

What type of interest and penalties will be charged for filing and paying taxes late?

Interest is compounded daily and charged on any unpaid tax from the due date of the return without regard to any extension of time to file until the date of payment. This means that if the taxpayer files a return one day after the extension filing deadline, it is 6 months and one day late.

The interest rate is determined using the federal short-term rate plus 3 percent. That rate is adjusted every three months. In addition, if the taxpayer did not pay their tax on time, they will generally have to pay a late payment penalty.

The late payment penalty is one-half of one percent of the tax (0.5%) owed for each month, or part of a month, that the tax remains unpaid after the due date, not to exceed 25 percent.

The one-half of one percent rate increases to one percent if the tax remains unpaid after several bills have been sent to the taxpayer and the IRS issues a notice of intent to levy.

If the taxpayer filed a timely return and are paying their tax via an installment agreement, the penalty is one-quarter of one percent for each month, or part of a month, that the installment agreement is in effect.

If they did not file on time and owe tax, they may owe an additional penalty for failure to file. This penalty may be abated if they are able to show reasonable cause.

The combined penalty is 5 percent (4.5% late filing, 0.5% late payment) for each month, or part of a month, that a return was late, up to 25%.

The late filing penalty applies to the net amount due, which is the tax shown on one's return and any additional tax found to be due, as reduced by any credits for withholding and estimated tax payments.

After five months, if the taxpayer still has not paid, the 0.5% failure-to-pay penalty continues to run, up to 25%, until the tax is paid.

The total penalty for failure to file and pay can be 47.5% (22.5% late filing, 25% late payment) of the tax owed.

Determining Income Tax Interest[iii]

20.2.6.1 (06-18-2010)
Method and Rates Used

The methods and rates for computing interest are:

Prior to February 1, 1980, simple annual interest was computed on a Year, Year, Month, Month, Day, Day (YYMMDD) basis.

Beginning February 1, 1980, the method changed to calculate total days times the daily factor.

On January 1, 1983, the method changed to daily compounding of interest (i.e., interest computed on interest).

20.2.6.2 (10-15-2011)
Compound Interest

The Service is required to compound interest on a daily basis per IRC 6622(a). This results in a daily recalculation of the principal amount **plus** accrued interest.

Principal amount (P)

Daily interest rate (R)

Number of days (T)

Interest (I)

The principal amount on which interest is compounded includes tax, penalties (at the point they become subject to interest per IRM 20.2.5.3, *Interest on Penalties and Additions to Tax*), additions to tax and all accrued interest.

The formula to compute interest is as follows:

Interest (I) equals principal (P) times the daily interest rate (R) or I = P x R.

New principal (New P) equals interest plus principal or New P= I + P and continues over the number of days (T) until the principal/new principal amounts are paid.

20.2.6.4 (10-15-2011) Interest Computation Tools

IDRS Command Code (CC) COMPA is used for non-complex interest computations. C C INTST is used if the module is not restricted (-I Freeze Code is one indicator of module restriction). In addition to these command codes, the IRS supports the use of a Commercial-Off-The-Shelf (COTS) software program called InterestNet, commonly referred to as the Automated Computational Tool (DMI/ACT), which can be used for most interest computations, and is recommended for more complex interest computations. This software program is available to all employees, particularly those involved with the calculation of restricted interest. IRM 20.2.8.6, *Reasons for Restriction*, lists some of the reasons interest may need to be restricted on a tax module.

See IRM 2.3.39, *Command Code FTPIN*, for an explanation of CC FTPIN. See IRM 2.3.40, *Command Code PICRD*, for an explanation of CC PICRD. See IRM 2.3.29, *IDRS Terminal Input, Command Codes INTST, ICOMP, and COMPA*, for definers and examples using CC COMPA.

Occasionally, CC INTST does not match the Master File (i.e., CFOL) interest and/or penalty computation. Therefore, before CC INTST results are used, compare total penalty and interest with CFOL command codes BMFOLT or IMFOLT (as appropriate) with total penalty and interest on INTST, computed to the interest date reflected on IMFOLT or BMFOLT. If unable to reconcile computational differences between CFOL and CC INTST, a manual computation must be made to determine which one is correct. If there is a systemic interest problem, send the results to the appropriate person per local procedures (consult your manager or lead), so that either programming can be corrected or an advisory can be issued. If there are no local referral procedures, then send to the Office of Service-wide Interest analyst responsible for programming problems. For contact information see

http://sbseservicewide.web.irs.gov/interest/contacts/213.aspx.

Caution:

C INTST does not update or cause an accurate interest computation on a tax module to be performed when interest is restricted. If the tax module is restricted, a manual interest computation **must** be done. Whenever possible, use a non-restricting TC 340. See IRM 20.2.8.11, *Non-Restricting TC 340*.

20.2.6.5 (10-15-2011) Computer Generated Interest Computations

Master File calculates interest by sorting all money amount transactions in effective date order and computing interest on balances from transaction to transaction (running module balance).

When all transactions are sorted and a liability is established, interest is computed on that liability to the date of the next transaction.

That transaction amount is added to the unpaid liability plus interest, and interest on this new balance is computed to the next transaction date and so on, through all transactions posted, to the current posting (23C) date.

Master File compares the total interest accrued to the net amount of all posted interest transactions in the module and assesses or abates the difference with TC 19X or 33X as appropriate.

No additional penalty or interest accrues on amounts paid within 21 calendar days of notice and demand (10 business days if the amount in the notice is $100,000 or more). See IRM 20.2.5.4, *Notice and Demand and Debit Interest*.

Penalty for Paying Income Taxes After They Were Due

Whether or not you can afford to pay your tax liability, you are better off filing your tax returns timely. If you fail to file your Federal income tax return in a timely manner, you will be charged an additional 5% of the overall liability per month for the first 5 months after the taxes are due. This equates to paying an additional 25% above the original tax liability plus other less significant penalties and interest on both the tax and penalties.

For this reason, a taxpayer would be foolish not to file an extension of time to file (Form 4868) giving them an extra 6 months or 180 days to prepare and file their tax return. The 4868 is a 1-page form requiring relatively little information.

Keep in mind that filing a 4868 does not extend the time necessary to pay the tax owed. That being said, it is still worth saving 25% of the overall tax liability in penalties. In order to avoid a late-payment penalty when filing an extension, a taxpayer must pay at least 90% of the amount they by the due date of the return which is typically April 15th

Example 1:

> If a taxpayer owes $11,000, they would be required to pay $9,900:
>
> $11,000 x 0.90 = $9,900

If the taxpayer did not pay at least $9,900 when they filed their extension, the IRS would assess a late-payment penalty. The penalty is ½% of the amount you owe per month. This penalty continues to accrue until it reaches the prescribed maximum amount equaling 25%... Using the example above, the late-payment penalty would be:

Example 1a:

$11,000 x 0.005 = $55 charged per month

(this amount would continue to accrue until it reached $2,750 which is 25% of $11,000)

To sum up, the sooner a taxpayer can satisfy an outstanding balance, the less they will pay in penalties. If a taxpayer files their return on time and enters into a voluntary installment agreement, the IRS will reduce their late-payment penalty by ¼% per month.

Example 1c:

$11,000 x 0.0025 = $27.50

(in this case the $55 penalty would be reduced to $27.50 which is ½ of the original)

In this same example, if the taxpayer does not file an extension, the late-filing payment fee would be 4.5% of the unpaid tax per month up to five months.

Example 1d:

$11,000 x 0.045 = $495 per month

In addition to accruing penalties for failure to pay timely, any additional tax owed after the due date of the return will also accrue interest. Interest assessed for taxes is compounded daily and will continue to accrue as long as the tax is owed.

The interest rate for unpaid taxes is determined by adding 3% to the federal short-term rate. As of the third quarter of 2016, the interest rate on unpaid individual income taxes is 0.68%.

Example 1e:

monthly interest amount would be $748,

$11,000 x .068 = $748

(and the penalty would be $55 which combined would be

$748 + $55 = **$803 (penalty and interest)**

So the taxpayer would continue to accrue $803 for each month that they failed to pay the original $11,000 they owed in taxes to the IRS. Keep in mind that this example is simple in that it fails to account for interim payments that may have been made as well as interest accruing on penalties and interest accruing on interest.

Payroll Tax Interest and Penalties

If a business has employees, it is the business's responsibility to collect and submit via tax deposits to the IRS and local taxing agencies, the employee's income tax withholding as well as the employee's payroll taxes as well as the employer's matching share of payroll taxes. Unless an employee is exempt, an employer must withhold and submit, usually via electronic deposits, the items described above within a given time frame. If an employer fails to remit income tax withholding as well as payroll tax withholding and the employer's matching share, they will face severe consequences.

In addition to the employee's Federal income tax withholding IRS payroll taxes are made up of two parts: Social Security tax and Medicare tax. An employer is required to match the amount paid of each of these taxes. If the payroll tax liability is under $2,500, the employer may make tax deposits quarterly when they prepare and file their payroll tax returns (Form 941s). If the liability is over $2,500, the deposits must be made sooner (i.e. semi-monthly or monthly).

While most employers are required to make Federal payroll tax deposits semi-monthly or monthly, if they reported taxes greater than $50,000 for the look-back period, they are a semiweekly schedule depositor, and generally must deposit your employment taxes based on the following schedule[iv]:

The employment taxes on payments made to their employees on Wednesday, Thursday, and/or Friday, must be deposited by the following Wednesday.

The employment taxes on payments made to their employees on Saturday, Sunday, Monday, and/or Tuesday, must be deposited by the following Friday.

If any of the 3 weekdays after the end of a semiweekly period is a legal holiday, you will have an additional day for each day that is a legal holiday to make the required deposit. Regardless of whether an employer is a monthly schedule depositor or a semiweekly schedule depositor, if they accumulate taxes of $100,000 or more on any day during a deposit period, they must deposit the tax by the next business day. If this happens, they become a semiweekly depositor for at least the remainder of the calendar year and for the following calendar year.

Since 2012, the IRS determines the late filing penalty based upon the number of days that has passed since the payroll taxes were due. For example, if an employer makes their Federal tax deposit within five days of being due, the IRS will assess a 2% penalty of the total amount. If they deposit is made within 6-15 days of the due date, the penalty increases to 5%. If the tax is more than 15 days late, the penalty increases to 10%. Note that if you outsource your payroll tax duties to a payroll service provider, the IRS holds you responsible for tax errors that the third party makes.

It is important to remember that payroll tax penalties and interest are not only assessed to the business but also to those considered by the IRS to be "Responsible" for determining that the funds withheld to pay the government were earmarked for other items (see *Trust Fund* and *Civil Penalty*).

100% Penalty (Trust Fund Recovery Penalty)

As mentioned above, section 6672 of the Internal Revenue Code allows the IRS to charge any "responsible party" who refuses or fails to collect and pay mandated federal taxes a 100% personal liability "Civil" penalty. The responsible person/s may be a corporate officer or someone who controls the employer's finances or has an authorized signature on the payroll account and will be jointly and severally liable if more than one person is found "Responsible"

The withholding process occurs as follows:

- Employee's income taxes, Social Security taxes, and Medicare taxes are withheld from the employee's pay
- The amounts that were withheld are then paid (usually via electronic tax deposits)
- The amounts withheld and the deposits that were made are reported via payroll tax returns
- At the end of the year, forms W-2 are prepared for each employee and submitted to the Social Security Administration ("SSA") along with a summary of all of the W-2's via Form W-3
- The SSA then forwards the reported withholding data to the IRS.
- If an employer fails to satisfy the requirements set forth above, the employee may face issues that arise from the employer's actions or lack thereof

Statute of Limitations

There is no statute of limitations to assess penalties and interest on a return that has not been prepared. There is also no statute of limitations for penalties and interest stemming from the failure to file and report payroll taxes (Social Security, Medicare, Unemployment, withheld income taxes). In addition, there also is no statute of limitations on the assessment of tax, penalties and interest when a false tax return is filed.

IRS Civil Penalties

	Description	Code Section	Penalty	Defense
1	**Failure to Timely File Returns**	6651(a)(1)	5% of tax shown on return (reduced by credits claimed on taxes timely paid) for each month sot to exceed 25%. Minimum penalty of lesser of $100 or 100% of any unpaid tax for Income tax returns over 60 days late. If failure to pay penalty applies/ failure to file penalty reduced by 0.5%, i.e., aggregate penalties cannot exceed 5% per month for first 5 months. 25% ceilings of each penalty are independently applied.	Reasonable Cause and Not Willful Neglect
	a. Intentional Failure to Timely File Returns	6651(f)	15% of tax shown on return (reduced by taxes timely paid) for each month not to exceed 75%.	Gross Negligence, Honest Belief, Reliance on Tax Advisor
2	**Failure to Pay Tax on Return**	6651(a)(2)	0.5% of tax due per month not to exceed 25%. 1% of tax after notice of intent to levy. 0.25% during installment agreement, after 1999. Does not apply to Estimated Tax or when Civil Fraud Penalty applies.	Reasonable Cause and Not Willful Neglect
	a. Failure to Pay Tax on subsequent Assessment	6651(a)(3) & (h)	0.5% of tax due per month not to exceed 25% (0.25% during installment agreement). 1% of tax after notice of intent to levy. Does not apply to Estimated Tax or When Civil Fraud Penalty applies.	Reasonable Cause and Not Willful Neglect
3	**Failure to File Forms 1099, DIV or PATR relating to payments of less than $10**	6652(a)	$1 per return with $1,000 annual maximum	Reasonable Cause and Not Willful Neglect
4	**Failure to Report Tips**	6652(b)	50% of employee's share of F.I.C.A. tax on unreported amount.	Reasonable Cause and Not Willful Neglect
5	**Failure to File EO Return**	6652(c)(1)	$10 per day with maximum of lesser of $5,000 or 5% annual gross receipts.	Reasonable Cause
	a. Disclosure under I.R.C. §6033 (a)(2) [reportable transaction]	6653(c)(3)	$100 per each day failure to disclose continues, not to exceed $50,000.	Reasonable Cause
6	**Failure to File Plan Registration**	6652(d)	$1 per day for each with $5,000 annual maximum.	Reasonable Cause
7	**Failure to File Plan Returns**	6652(e)	$25 per day with $15,000 maximum.	Reasonable Cause

	Description	Code Section	Penalty	Defense
8	**Failure to File Returns re Foreign Persona investing in U.S. Real Property**	6652(f)	Lesser of $25 per day or 5% of property fair market value.	Reasonable cause and Not Willful Neglect
9	**Failure to File Timely Report for Merger, Consolidation or Termination of Plan or Name and Address of Administrator**	6652(d)(2)	$1 per day with $1,000 maximum.	Reasonable Cause
10	**Failure to File Return Regarding Corporate Changes in Control and Recapitalizations**	6652(1)(k)	$500 each day with $100,000 maximum.	Reasonable Cause, de minimus, exceptions
11	**Failure to Pay Estimated Tax by Individuals**	6654	Penalty computed on amount and duration of underpayment at prevailing rate set in S6621 (not compounded daily). Subject to exceptions plus special rules for farmers and fishermen. Does not apply if tax for current year after credit for withheld taxes is less than $1,000 if taxpayer had no tax liability in prior year, or qualifies under applicable safe harbor.	waiver of penalty— where imposition would be against equity and good conscience where prior year's overpayment credited against current year estimated tax is offset by IRS, aged or disabled taxpayer.
12	**Failure to Pay Estimated Tax by Corporation**	6655	Penalty computed on amount and duration of underpayment at prevailing rate set in S6621 (not compounded daily). Subject to statutory exceptions.	Exceptions
13	**Failure to Deposit**	6656(b)	2% if failure 1 to 5 days, 5% if failure 6 to 15 days, 10% if failure more than. 15 days, 15% if failure 10 days after first delinquency notice or day of jeopardy assessment.	Reasonable Cause and Not Willful Neglect
14	**Dishonored Check**	6657	2% of amount of the check, if check is less than $750, penalty is lesser of $15 or amount of the check.	Good Faith and Reasonable Cause to believe check would be paid.
15	**Accuracy-Related/ Negligence**	6662(a),(c)	20% of underpayment solely due to negligence. No penalty stacking rule.	Disclosure of non-frivolous position (returns due pre 1/1/94), Reasonable Cause, Good Faith
16	**Accuracy-Related/ Substantial understatement**	6662(a), (d)	20% of underpayment due to substantial understatement. No penalty stacking rule.	Reasonable Cause, Good Faith, Substantial. Authority or Disclosure (non-tax shelter), more likely than not (tax shelter)
	a. Individuals	6662(d)(1)(A)	understatement exceeds greater of 10% of required tax or $5,000.	

	Description	Code Section	Penalty	Defense
	b. Corporations	6662 (d)(1)(B)	Understatement exceeds greater of 10% of required tax (or, if greater, $10,000) or $10,000,000.	
17	**Accuracy - Related/Substantial Valuation Overstatement**	6662(a), (e) and (h)	For valuation overstatements in excess of $5,000 ["C" corporations $10,000], 20% for valuations 200% or more of correct amount, 40% if 400% or more of correct amount. No penalty stacking rule.	Reasonable Cause and Good Faith (Qualified Appraiser - charitable contributions)
18	**Accuracy - Related/Substantial Misstatements Under IRC §481**	6662(a), (e)	For misstatements regarding 482 price adjustments - [before 1/1/94] : 20% for 200% or more (50% or less) of correct amount, or $10,000,000 adjustment, 40% for 400% or more (25% or less) of correct amount, or $40,000,000 adjustment, [after 13/31/93]: lesser of $5,000,000 or 10% receipts (40% on $20,000,000 or 20% receipts). No penalty stacking rule.	Reasonable Cause and Good Faith
19	**Accuracy-Related/Substantial Overstatement Pension Liabilities**	6663(a), (f)	For pension liability in excess of $1,000 overstatement, 20% for liabilities 200% or more of correct amount, 40% if 400% or more of correct amount. No penalty stacking rule.	Reasonable Cause and Good Faith
20	**Accuracy - Related/Substantial Estate or Gift Tax Valuation understatement**	6663(a), (g)	For estate or gift tax liability in excess of $5,000 understatement, 20% for 50% or less of correct amount, 40% if 25% or less of correct amount. No penalty stacking rule.	Reasonable Cause and. Good Faith
21	**Accuracy-Related Listed or Reportable Transactions**	6662A	20% of underpayment if disclosed; 30% of underpayment if not disclosed. Transaction amount at highest income tax rate.	Reasonable cause and Good Faith, Adequate Disclosure, Substantial Authority, and Reasonable Belief (non-reliance on disqualified tax advisor or disqualified opinion).
	a. Accuracy-Related Transactions lacking economic substance	6662(b)(6) & (i)	20% of underpayment if disclosed, 40% of underpayment if not disclosed.	No Reasonable Cause exception
	b. Accuracy - Related Transactions involving undisclosed foreign asset	6662(b)(7)	40% of underpayment.	Reasonable Case and Good Faith

	Description	Code Section	Penalty	Defense
22	**Civil Fraud**	6663	75% of underpayment solely due to fraud (tax on highest income tax rate).	Reasonable Cause and Good Faith, Gross Negligence, Honest Belief, Reliance on Tax Advisor, Son-Fraud by Spouse (Joint Return)
23	**Trust Fund Recovery Penalty (100% Penalty)**	6672 6682	Trust fund payroll taxes (withheld income and F.I.C.A. taxes).	Not Responsible and Not willful
24	**False W-4 Claims for withholding**	6692	$500 per statement. No penalty if no decrease In amount withheld or if tax liability does not exceed allowable credits and estimated tax payments.	Reasonable Cause
25	**Failure to File Actuarial Report (Schedule B of Form 5500)**	6694(a)	$1,000 per document.	Reasonable Cause
26	**Failure to File Form 5498 (IRA)**	6693	$50 per document.	Reasonable Cause
27	**Return Preparer - Nonwillful all tax returns**	6694 (a)	May 25. 2007 - Greater of $1,000 or 50% of preparer's income per return. Does not apply when penalty under §6701 is assessed. Pre-May 25, 2007 - $250 per return. Does not apply when penalty under §6701 is assessed.	Substantial Authority, Reasonable Belief & Disclosure Reasonable Case and Good Faith, Realistic Possibility of Being Sustained, Disclosure
28	**Return Preparer—Willful or Reckless Conduct Income Tax Returns**	6694 (b) 6694 (b)	May 25, 2007 - Greater of $5,000 or 50% of preparer's income per return. Does not apply when penalty under §6701 is assessed. Pre-Mav 25, 2007 - $1,000 reduced by penalty paid under §6694(a) per return. Does not apply when penalty under §6701 is assessed.	Gross Negligence, Taxpayer's liability Not Understated Gross Negligence, Taxpayer's liability Not Understated
29	**Return Preparer - Failure to Provide Copy to Taxpayer**	6695 (a)	$50 per failure, not to exceed $25,000.	Reasonable Cause and Not Willful Neglect
30	**Return Preparer— Failure to Sign Return**	6695 (b)	$50 per failure, not to exceed $25,000.	Reasonable Cause and Not Willful Neglect
31	**Return Preparer— Failure to Provide TIN on Return**	6695 (c)	$50 per failure, not to exceed $25,000.	Reasonable Cause and Not Willful Neglect
32	**Return Preparer— Failure to Retain Copy or List of Taxpayers**	6695 (d)	$50 per failure, not to exceed $25,000.	Reasonable Cause and Not Willful Neglect
33	**Return Preparer— Failure to File Correct Information Returns**	6695 (e)	$50 per failure, not to exceed $25,000.	Reasonable Cause and Not Willful Neglect
34	**Return Preparer— Negotiation of Taxpayer**	6695 (f)	$500 per check.	Honest Belief.

	Description Check	Code Section	Penalty	Defense
35	**Failure to File Partnership Return or to Show Required Information on Form 1065**	6698	$195 per partner per month not to exceed 13 months per each partner (less for prior years).	Reasonable Cause
36	**Promoting Abusive Tax Shelters--Furnishing False Statements Representing Tax Benefits for Valuation Overstatement Exceeding 300* of Correct Valuation**	6700	Lesser of $1,000 per activity or 100% of gross income derived from activity (in addition to other penalties, except when penalty under §6701 1b assessed). 50% of gross income if statement false.	Honest Belief. With respect to Valuation Overstatement only, Reasonable Basis for Valuation and Good Faith.
37	**Aiding and Abetting in Understatement of Liability**	6701	$1,000 ($10,000 if corporation) per person per tax period. Applies in addition to any other penalties except when penalties under §6694 and §6700 are assessed.	Non Participant
38	**Frivolous Return and specified frivolous submissions**	6702	$5000 ($500 prior to 12/20/06). Applies in addition to any other penalties.	Non Frivolous
39	**Failure to Keep Trust and Annuity Plan Records**	6704	$50 with $50,000 annual maximum.	Reasonable Cause and Non Willful Neglect
40	**Failure to Furnish Tax Shelter information** Before October 23, 2005			
	a. General rule	6707 (a) (2)	Failure to Register—greater of $500 or 1% of total investment (with maximum of $10,000 pre-1986 Act).	Reasonable Cause
	b. Confidential Arrangements	6707 (a) (3)	Failure to register confidential arrangements - greater of 50% of fees to promoter (75% if intentional) or $10,000.	Reasonable Cause or non-participant in shelter
	c. Failure to Furnish Shelter ID Number	6707 (b) (1) & (2)	Failure to furnish shelter ID number -$100 for each failure. Failure to Include ID Number in Return--$250 for each failure.	Reasonable Cause
	Begin October 23, 3004			
	a. General rule	6707 (b) (1)	Failure to file return under 36111(a) re-reportable transaction - $50,000.	IRS Rescission to promote compliance
	b. Listed transaction	6707 (b) (2)	Greater of $200,000 or 50% gross income derived from transaction [75% if intentional].	None
41	**Failure to Include Reportable Transaction Information with Return**	6707A	**Reportable Transaction.** Natural Persona $10,000. Other Taxpayers $50,000. **Listed Transactions.**	IRS Rescission to promote compliance

	Description	**Code Section**	**Penalty**	**Defense**
			Natural Persons $100,000. Other Taxpayers $200,000.	
42	**Failure to Maintain Tax Shelter List**	6708	$50 each person with $100,000 annual maximum. Applies in addition to any other penalties.	Reasonable Cause and Not Willful Neglect
43	**Begin October 22, 2004 - Failure to Maintain Reportable Transaction List**	6708	$10,000 per day after 20th day following IRS request for list.	Reasonable Cause
44	**Disclosure or use of information by Return Preparer**	6713	$250 each disclosure or use with $10,000 annual maximum.	Exceptions under Code, Order of Court, preparation of State and local tax returns
45	**Failure to File Information Returns; Failure to include Full and Correct Information (Forma 1099, Schedules K, etc.)**	6721	$50 per payee document with $250,000 annual maximum. Reductions: $15 per return (maximum $75,000) if correction within 30 days, $30 per return (maximum $150,000) if correction after 30 days prior to August 1.	Reasonable Cause and Not willful Neglect, de minimus exceptions, small business
	a. Intentional Failure to rile information Returns	6721 (c)	Greater of $100 or 10% of aggregate amount required to be reported fox. certain payors (e.g., cash payment exceeding $10,000) or 5% of aggregate amount required to be reported for certain filers (e.g., brokers, exchanges .of partnership interests, dispositions of donated property).	Gross Negligence, Honest Belief
	b. Intentional Failure to File form 8300	6721 (c) (2) (C)	Greater of $25,000 or cash received but not to exceed $100,000.	Gross negligence, Honest Belief
46	**Failure to Furnish Correct and Timely information Return**	6722	$50 per payee document with $100,000 annual maximum.	Reasonable Cause and Not Willful Neglect
	a. Intentional Failure to include Correct Information	6722 (c)	Greater of $100 or 10% of aggregate amount required to be reported for certain payers (e.g., cash receipt exceeding $10,000) or 5% of aggregate amount required to be reported for other certain filers (e.g., brokers, exchanges of partnership interests, dispositions of donated property).	Gross Negligence, Honest Belief
47	**Failure to include Required information in Information Return**	6723	$500 per return with $100,000 annual maximum.	Reasonable Cause and Not Willful Neglect
48	**Failure to Tile Foreign-Business Entity Returns**			

Description	Code Section	Penalty	Defense
(corporation and partnership):			
a. Form 8938 statement of Specified Foreign Financial Assets - individuals holding interest in foreign financial asset(account, stock or financial instrument from non-U.S. person, interest in foreign entity) exceeding $50,000	6038D (d)	Failure to file form (tax years beginning after 3/18/10) $10,000 with additional $10,000 added for each month failure continues beginning 90 days after taxpayer notified of delinquency, maximum - $50,000 per return.	Reasonable Cause and No Willful Neglect
b. Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts. Transactions involving foreign trusts, including creation of a foreign trust by U.S. parson to foreign trust and receipt of dis-tributions from foreign trust. Report receipt of gifts from foreign sources greater than annual sun of100000	6677 (a) - reportable event 6039F (c) - foreign gifts	Failure to file return, or filing an incomplete return or reportable, event -greater of $10,000 or 35% of gross reportable amount; additional $10,000 each month failure continues beginning 90 days after taxpayer notified of delinquency. Return reporting gifts -penalty 5% of aggregate gifts per month, with maximum penalty of 25%.	Reasonable cause and No Willful Neglect
c. Form 3520-A, Information Return of Foreign Trust with a U.S. Owner. Ownership interests in foreign trust, by U.S. person with various interests and powers *over* those trusts	6677 (b)	Greater of $10,000 or 5% of gross value of trust assets owned by U.S. person; additional $10,000 each month failure continues beginning 90 days after taxpayer notified of delinquency.	Reasonable cause and No Willful Neglect
d. Form 5471, Information Return of U.S. Person with Respect to Certain Foreign Corporations . U.S. person, officers, directors or shareholders of foreign corporations (10% rule)	6038 (b) (1) [base penalty] 6038 (b) (2) [notification penalty]	Failure to file return $10,000, with additional $10,000. added for each month failure continues beginning 90 days after taxpayer notified of delinquency, maximum $50,000 per return.	Reasonable Cause
e. Form 5472, Information Return of 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Transactions between 25% foreign-owned domestic corporation engaged in a trade or business in the U.S. and related party	6038 (d) (1)][base penalty] 6038 (d) (2) [notification penalty]	Failure to file return or keep records regarding reportable transactions -$10,000; additional $10,000 each month failure continues beginning 90 days after taxpayer notified of delinquency.	Reasonable Cause

	Description	**Code Section**	**Penalty**	**Defense**
	f. Form 926, Return of a U.S. Transferor of Property to a Foreign Corporation. Transfers of property to foreign corporations and other information.	6038B (c)	Failure to furnish Information - 10% of value of property transferred, with maximum $100,000 per return; no limit if failure to report transfer intentional.	Reasonable Cause and No Willful Neglect
	g. Form 8865, Return of U.S. Person with Respect to Certain Foreign Partnerships. U.S. persons with interests in foreign partnerships report interests in transactions of foreign partnerships, transfers of property to foreign partnerships, and acquisitions, dispositions and changes in foreign partnership interests	6038 (b) (1) [base penalty] 6038 (b) (2) [notification penalty] 6038B (c) [transfer penalty]	Failure to file return - $10,000; additional $10,000 for each month failure continues beginning 90 days after taxpayer notified of delinquency, maximum - $50,000 per return; 10% of value of non-reported property transferred in excess of $100,000, with maximum $100,000 per return; no limit if failure to report transfer intentional.	Reasonable Cause
	h. Form 8B58, Information Return of U.S. Persons with Respect to Foreign Disregarded Entities. U.S. persons direct owners of foreign disregarded entity ("FDE"). U.S. persons Category 4 or 5 filers of Form 5471 if controlled foreign corporations owner of FDE. U.S. persons Category 1 or 2 filers of Form 8865 if foreign controlled, partnership owner of FDE	8858 Instructions	None but could give rise to Form 5471 and Form 8865 penalties.	Reasonable Cause
49	**Failure to File Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). Direct or indirect interest in, or signature authority (or other similar authority) of financial accounts in excess of $10,000 at any time during year.**	31 U.S.C. 5321 (a) (5)	October 22, 2004 - Negligent failure to file - Not greater than $10,000 per each account. Pre-October 22, 2004 Willful failure to file - Greater of $25,000 or balance in account but not to exceed $100,000. October 22, 2004 - Greater of $100,000 or 504 of highest amount in each account.	Reasonable Cause and Amount Reported None as of October 22, 2004
50	**Interest Suspension**	6604 (g)	IRS falls to notify individual of additional tax liability before 18 months following latex of date return filed or due date [36 months for written notice of adjustment after November 25, 2007].	Inapplicable for gross misstatement, Reportable Avoidance Transactions after 10/31/04 & fraud

Penalty Reference Chart[v]

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Limited Liability Company (LLC) Fee Estimate Penalty	None	17942(d)(2)	Underpayment of estimated fee.	10% of the underpayment.
			Exceptions - Safe harbor-100% of prior year.	
Tax on Joint Return Exceeds Tax on Separate Returns	6013(b)(5)	18530	Tax on a joint return exceeds tax shown on separate returns, due to negligence or intentional disregard of rules, or fraud. In lieu of penalties provided by Section 19164(a) and (b). 20% of total amount of excess if attributable	75% of excess if attributable to fraud.
			Exceptions - None.	
Information Return From Owner of Real Property	6045	18642	Owners and transferors failing to file information return relating to interest in real property by the due date.	Penalty under 19183 applies. If information return not filed within 60 days of due date, the deduction of certain property-related expenses are disallowed.
			Exceptions - Reasonable cause and not willful neglect.	
Withholding Penalties	3403, 1461	18668(a)	Any person required to withhold tax, but fails to do so.	The greater of: • The actual amount withheld or • Payee's total tax liability (before application of any payments and credits), not to exceed the required 7%
			Exceptions - Reasonable cause.	
Withholding Penalties – Real Estate	3403, 1461	18668(d)	Any person required to withhold tax from the sale of real property when properly notified, but fails to do so.	The greater of: • $500 or • 10% of the amount required to be withheld.
				Exceptions - Reasonable cause.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Withholding Penalties – Real Estate Escrow Person		18668(e)(1)	Any real estate escrow person failing to provide written notification of withholding requirement to a transferee/buyer of	The greater of: • $500 or • 10% of the amount required to be withheld.
			Exceptions - Reasonable cause.	
Withholding Penalties – Real Estate False Certificate		18668(e)(5)	Any transferor of California real property who knowingly files a false exemption certificate (Form 593-C, *Real Estate Withholding Certificate*) to	The greater of: • $1,000 or • 20% of the amount required to be withheld.
			Exceptions - Reasonable cause.	
Withholding Penalties	None	18669	Successor on a sale, transfer, or disposition of a business for failing to pay required amounts or failing to withhold or to pay	10% of amount not paid or personal liability for amounts not withheld or withheld amounts not paid.
			Exceptions - None.	
Electronic Funds Transfer (EFT) Penalty	6302	19011(c)	Any person required to remit payment by EFT, but who makes payment by other means	10% of the amount paid by non-EFT.
			Exceptions - Reasonable cause and not willful neglect.	
Electronic Payment Requirements for Individuals	None	19011.5	Failure by individuals, whose tax liability is greater than $80,000 or who make an estimated tax or extension payment that exceeds $20,000, to remit their tax	1% of the amount paid.
			Exceptions - Reasonable cause and not willful neglect.	

Failure to File a Return/Late Filing Penalty	6651	19131	Any taxpayer who is required to file a return, but fails to do so by the due date.	5% of the tax due, after allowing for timely payments, for every month that the return is late, up to a maximum of 25%. For fraud, substitute 15% and 75% for 5% and 25%, respectively. For individuals and fiduciaries, minimum penalty is the lesser of:
			Exceptions - Reasonable cause and not willful neglect.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure to Pay Tax/Late Payment Penalty	6651	19132	Taxpayer failing to pay tax by the due date. This penalty is not imposed if, for the same tax year, the sum of Sections 19131 and 19133 penalties are equal to or	5% of the total tax unpaid plus 1/2 of 1% for every month the payment of tax was late up to 40 months. Not to exceed 25% of the total unpaid tax.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to Provide Information Requested/ Failure to File a Return Upon Demand	None	19133	Any taxpayer for failing to provide requested information, or failing to file a return after notice and demand.	25% of total tax liability assessed without regard to any payments or credits.
			Exceptions - Reasonable cause and not willful neglect.	
Penalty for Failure to Make a Small Business Stock Report	6652(k)	19133.5	Taxpayer for failing to make a small business report.	$50 for each report. $100 per report if the failure is due to negligence or intentional disregard.
			Exceptions - Reasonable cause and not willful neglect.	
Dishonored Payments	6657	19134	Any taxpayer who makes a payment by check that is dishonored. Includes payments made by credit card or EFT.	For payments received after January 1, 2011: • An amount equal to 2% of the amount of the dishonored payment, or • If the amount of the check is less than $1,250, $25 or the amount
			Exceptions - Reasonable cause and good faith.	

Unqualified or Suspended Corporation Doing Business in this State	None	19135	Any foreign corporation which fails to qualify to do business, or whose powers have been forfeited, or any domestic corporation which has been suspended, and is doing business in this	$2,000 per taxable year.
			Exceptions - Reasonable cause and not willful neglect.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Underpayment of Estimated Tax (Addition to Tax)	6654	19136 et seq., 19142-19151	Any taxpayer who fails to pay estimated tax in the required installments.	An amount determined by applying the underpayment rate specified in Section 19521 to the amount of the underpayment for the period
			Exceptions - (1) Safe harbors under 6654 as modified. (2) Underpayment created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment (3) underpayment was created or increased by the disallowance of a credit under Section 17053.80(g) or	
Large Corporate Understatement of Tax	None	19138	When a corporation has an understatement of tax for: Tax years beginning January 1, 2003, through December 31, 2009, that exceeds $1 million. Tax years beginning January 1, 2010, that exceeds the greater of: • $1 million. • 20% of tax shown on original return or shown on amended return filed on or before original or	20% of the understatement of tax.

			Exceptions - Understatement is attributable to (1) a change in law after earlier of date return is filed or extended due date of return or (2) reasonable reliance on legal ruling by the Chief Counsel.	
Corporation Officer Statement Penalty	None	19141	Upon certification by the Secretary of State, penalty for taxpayer's failure to provide a Statement of Information.	$250 upon certification by the Secretary of State under Corporations Code Sections 2204 and 17653. $50 upon certification by the Secretary of State under
			Exceptions - None.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Information With Respect to Certain Foreign Corporations (IRS Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations)*	6038	19141.2	Failure to file and furnish certain information about certain foreign corporations.	$1,000 for each annual accounting period. $1,000 for each 30-day period up to a maximum of $24,000 when failure continues after 90-day of notification.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File and Furnish Information About Foreign-Owned Corporations (IRS Form 5472, *Information Return of a 25% Foreign-Owned U.S.*	6038A	19141.5	Failure to file and furnish information or to maintain required records about foreign-owned corporations, under IRC Section 6038A.	$10,000 for each taxable year for which the taxpayer fails to file required information or fails to maintain the required records. $10,000 for each 30-day period when failure continues after 90-day of notification.

Corporation or a Foreign Corporation			**Exceptions -** Reasonable cause.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure to File - Notice of Certain Transfers to Foreign Corporation (IRS Form 926, ***Return by a U.S. Transferor of Property to a Foreign***	6038B	19141.5	Failure to file/furnish information records about transfers or distributions to foreign-owned corporations, under IRC Section 6038B.	10% of fair market value at time of exchange, not to exceed $100,000 unless failure due to intentional disregard. Plus recognition of gain required as if property sold based on that value.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File or Furnish Information About Foreign Corporations Engaged in U.S. Business (IRS Form 5472)	6038C	19141.5	Failure to file and furnish information or to maintain required records about a foreign corporation engaged in a trade or business within the U.S., under IRC Section	$10,000 for each taxable year for which the taxpayer fails to provide the required information or fails to maintain the required records. $10,000 for each 30-day period, when failure continues after 90-day of notification.
			Exceptions - Reasonable cause.	
Failure to Retain Unitary Records Penalty	None	19141.6	Any taxpayer engaged in a unitary business that fails to maintain records relating to unitary combination, apportionment and allocation, and application of federal law.	$10,000 for each year that the taxpayer fails to maintain or causes another to fail to maintain the required records. If the failure continues beyond 90 days of notice from us, an additional penalty of $10,000 for each 30-day period is imposed up to a maximum of $50,000 if the taxpayer's conduct is not willful.

			Exceptions - None.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Accuracy Related Penalty	6662	19164	Any underpayment of tax required to be shown on a return, attributable primarily to negligence or disregard of rules and regulations or a substantial understatement of income tax.	20% of the underpayment of tax. 40% unless certain exceptions apply for amnesty eligible years, which are tax years prior to January 1, 2003.
			Exceptions - The defenses to an accuracy related penalty include (1) substantial authority, (2) adequate disclosure and reasonable basis or (3) reasonable cause and good faith, depending on the grounds for imposing the penalty. In addition, see underlying regulation regarding unitary and	
Accuracy Related Penalty – Substantial Valuation Misstatement	6662(e)(1)	19164	A substantial valuation misstatement exists when the value (or adjusted basis) of any property claimed on a return is 150% or more of the correct amount. Transactional Penalty – The price reported for any property or services claimed on a return is 200% or more (or 50% or less) of the correct figure. Net Adjustment Penalty – When the transfer price of	20% of the portion of the underpayment of tax attributable to the misstatement. No penalty imposed unless the portion of the underpayment exceeds $5,000 ($10,000 for corporations other than S corporations or personal holding companies).
			Exceptions - Reasonable cause and good faith. (See Treasury Regulation Section 1.6664-4 and 1.6662-6 for special rules.) There is no disclosure exception to this penalty. Treasury Regulation Section 1.6662-5(a). When there is an underpayment due to overstated charitable	

Accuracy Related Penalty - Increase in Penalty in Case of Gross Valuation Misstatements	6662(h)	19164	A gross valuation misstatement exists if: The value (or adjusted basis) of any property on a return is 200% or more of the correct amount, or The price for any property or service claimed on a return is 400% or more (or 25% or less) of the correct price, or The net Section 482 adjustment exceeds the	40% of the portion of the underpayment of tax attributable to the misstatement. No penalty imposed unless the amount of the underpayment exceeds $5,000 ($10,000 for corporations other than S corporations or personal holding companies).
			Exceptions - Reasonable cause and good faith. (See Treasury Regulation Section 1.6664-4 and 1.6662-6(d).) There is no disclosure exception to this penalty. Treasury Regulation Section 1.6662-5(a). When there is an underpayment due to overstated charitable deduction property, there are special rules for reasonable cause under	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Fraud Penalty	6663	19164	When there is clear and convincing evidence to prove that some part of the underpayment of tax was due to civil fraud. Such evidence must show the taxpayer's intent to evade tax	75% of the underpayment attributable to civil fraud.
			Exceptions - Reasonable cause and good faith.	
Reportable Transaction Accuracy Related Penalty - Disclosed Reportable Transaction	6662A	19164.5	Any disclosed reportable transaction understatement for tax years beginning on or after January 1, 2005.	20% of the understatement attributed to the reportable or listed transaction if the transaction is adequately disclosed on the return.
			Exceptions - Chief Counsel relief for reportable transactions other than listed transactions. The standards in R&TC Section 19772 apply.	
Reportable Transaction Accuracy Related Penalty - Undisclosed Reportable Transaction	6662A(c)	19164.5	Any undisclosed reportable transaction understatement for tax years beginning on or after January 1, 2005.	30% of the understatement attributed to the reportable or listed transaction if the transaction is not adequately disclosed on the return.
			Exceptions - Chief Counsel relief for reportable transactions other than listed transactions. The standards in R&TC Section 19772 apply.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Preparer Penalty	6694(a)(1)	19166(a)	When a preparer completes a return or claim for refund that results in the taxpayer's understatement based on an unreasonable position and the preparer knew or reasonably should have	Greater of: $250 or 50% of income derived (or to be derived) by the tax preparer with respect to each return or claim.
			Exceptions - The preparer can avoid the penalty (1) if the position is adequately disclosed and has a reasonable basis; (2) if the position is not disclosed and is not a tax shelter and there is substantial authority for the position; or (3) for a tax shelter position defined in IRC Section 6662(d) or a reportable transaction under IRC Section 6011, if the preparer reasonably believes that the position is more-likely-than-not correct. Also reasonable cause and good faith. If preparer pays at least 15% of the penalty within 30 days of the bill and files a claim for refund, the preparer may file an action in	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Preparer Penalty - Reportable Transactions, Listed Transactions or Gross Misstatements	6694	19166(b)(2)	When a preparer completes a return or claim for refund that results in the taxpayer's understatement based on an undisclosed reportable transaction, a listed transaction, or a	$1,000 or 50% of the income derived (or to be derived) with respect to each return or claim.
			Exceptions - Standard to avoid the penalty is more-likely-than-not. If preparer pays at least 15% of the penalty within 30 days of the bill and files a claim for refund, the preparer may file an action in court within 30 days of the claim denial	
Understatement of a Taxpayer's Liability by Tax Preparer - Willful or Reckless Conduct	6694(b)	19166(a)	If the understatement of the taxpayer's tax is due to the preparer's willful attempt to understate the liability or any reckless or intentional disregard of rules or	The greater of $5,000 or 50% of the income derived (or to be derived) with respect to each return or claim.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
			Exceptions - A preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position has a reasonable basis and is adequately disclosed. If a regulation is at issue, there must be a good faith challenge. If the position is contrary to a revenue ruling or notice, the substantial authority standard applies. The same rules of paying 15% and filing a claim and suit in court apply.	
Additional Penalties - Failure to Furnish Copy to Taxpayer	6695(a)	19167(a)	Failure to furnish a completed copy of return or claim.	$50 per failure, not to exceed $25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Additional Penalties - Failure to Furnish Identifying Number	6695(c)	19167(b)	Failure to include on a return or claim the identifying number of the preparer, employer or both.	$50 per failure, not to exceed $25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Additional Penalties - Failure to Retain Copy or List	6695(d)	19167(c)	Failure to retain a completed copy of a return or claim for 3 years or a list with the taxpayer's name and identifying number and make the return or list	$50 per failure, not to exceed $25,000 during any calendar year.
			Exceptions - Reasonable cause and not willful neglect.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Additional Penalties - Failure to Register as a Tax Preparer with California Tax Education Council (CTEC)	None	19167(d)(1) and (2)	Failure to register with the CTEC.	$2,500 for first failure to register. $5,000 for other than first failure.
			Exceptions - Reasonable cause and not willful neglect. The penalty may be waived if the preparer provides proof of registration to us within 90 days of mail date of notice. Certain persons are exempt from the requirement to register, such as licensed certified public accountants (CPA)	
Negotiation of Taxpayer's Check by Tax Preparer	6695(f)	19169, 20645.7	If the tax preparer endorses or otherwise negotiates a check for the refund of tax that is issued to a taxpayer, if the person was the preparer of the return or claim that gave rise to the	$250 for each endorsement or negotiation of a check.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
			Exceptions - The preparer will not be considered to have endorsed a check solely as a result of putting the taxpayer's name to a check for the purpose of depositing the check into the taxpayer's account, if authorized by the taxpayer.	
Failure to File Electronically	None	19170	If a preparer that is subject to R&TC Section 18621.9 fails to file returns electronically	$50 for each failure.
			Exceptions - Reasonable cause and not willful neglect. Reasonable cause can be established by the taxpayer electing not to file electronically.	
Failure of Partnership to Comply with Filing Requirements	6698	19172	If a partnership: Fails to file a timely return (FTB 565 *Partnership Return of Income*/ FTB 568, *Limited Liability Return of Income*), including any extensions, or Files a return (FTB 565/568) that fails to include information required under R&TC Section 18633 or 18633.5.	$18 multiplied by the number of persons who were partners/members during any part of that taxable year for each month during which that failure continues, not to exceed 12 months.
			Exceptions - Reasonable cause.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure of S Corporation to Comply with Filing Requirements	6699	19172.5	If an S Corporation: Fails to file a timely return, including extensions, or Files a return that fails to include information required under R&TC	$18 multiplied by the number of persons who were shareholders during any part of that taxable year for each month during which that failure continues, not to exceed 12 months.
			Exceptions - Reasonable cause.	
Failure to Comply With Request to Provide	6708	19173(a)	Failing to provide lists of advisees with respect to reportable transactions (other than a listed transaction) to FTB within 20 business days after FTB	$10,000 for each day of such failure after the 20th business day.

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Lists - Reportable			**Exceptions -** Chief Counsel relief for reportable transactions other than listed transactions.	
Failure to Comply With Request - Material Advisors With Respect to Listed Transactions	None	19173(b)	Material advisors who fail to meet the requirements of R&TC Section 18648(d)(1) with respect to a listed	$100,000 or 50% of gross income that the material advisor derived from that activity whichever is greater.
			Exceptions - The penalty does not apply if it is shown that the additional information required was not identified in our notice prior to the date the transaction/shelter was entered into. No Chief Counsel review for listed transactions	
Failure to Report Personal Service Remuneration	None	19175	Any person or entity who fails to report amounts paid as remuneration for personal services may be liable for a penalty.	The maximum personal income tax rate multiplied by the unreported amounts paid as remuneration for personal services. In addition, at our discretion, we may disallow the deduction for amounts paid as remuneration
			Exceptions - None.	
Statement That Results in Under-Withholding	6682	19176	Statement that results in a decrease in amounts deducted and withheld, if there was no reasonable basis for the statement.	$500 for the statement.
			Exceptions - Penalty may be waived if the tax paid by the individual for the taxable year is equal to or less than the sum of both certain credits allowed and payments of estimated tax.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Promotion of Abusive Tax Shelter	6700	19177	Any person who engages in the organization of, or sale of any interest in, a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, if the person makes, furnishes, or causes another person to make or furnish: A false or fraudulent tax benefits statement as to a material matter; or A gross valuation overstatement as to a	$1,000 or 100% of the gross income derived (or to be derived) by the person from the activity whichever is less. If the activity on which the penalty is imposed involves a false or fraudulent statement as to any matter pertaining to the tax shelter plan or arrangement, the penalty is 50% of the gross income the promoter derived (or was to derive) from promoting the activity.
			Exceptions - If a penalty is imposed with respect to a gross valuation overstatement, the penalty may be waived on a showing that there was a reasonable basis for the valuation and the valuation was made in good faith	
Aiding and Abetting Understatement of Tax Liability	6701	19178	Aiding and abetting understatement of tax.	$1,000. $10,000 if the tax liability relates to a corporation.
			Exceptions - None.	
Filing Frivolous Return	6702(a)	19179(a) and (b)	Filing a frivolous return.	$5,000 if the return does not contain sufficient information or is based on a frivolous position or reflects an attempt to delay or impede administration of the tax
			Exceptions - Chief Counsel relief.	
Frivolous Submissions	6702(b)	19179(d)	Filing a specified frivolous submission.	$5,000 for “specified frivolous submissions.”
			Exceptions - Chief Counsel relief.	
Failure to Comply With Original Issue Discount Reporting Requirements	6706	19181	Failing to comply with original issue discount reporting requirements.	$50 for each failure to show information on debt instrument. 1% of the aggregate issue price of each issue, up to a maximum of $50,000 for each issue for failure to furnish information to taxing agency.
			Exceptions - Reasonable cause and not willful neglect.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure to Furnish Information Regarding Reportable Transaction	6707	19182	A material advisor who fails to file a return with respect to any reportable transaction before the date prescribed or who files false or incomplete	$50,000; for listed transactions, equal to the greater of: $200,000 or 50% (or 75% if failure is intentional) of the gross income derived by such a person.
			Exceptions - Penalty will not apply if it is shown that the additional required information was not identified in our notice issued prior to the date of the transaction. Chief Counsel relief for reportable transactions other than listed transactions.	
Failure to Disclose Quid Pro Quo Contributions	6714	19182.5	For each contribution where the organization fails to make the required disclosure	$10 for each contribution, but the total penalty with respect to a particular fundraising event or mailing shall not exceed $5,000.
			Exceptions - Reasonable cause. No penalty imposed if requirements under IRC Section 6115 are met.	
Failure to File Correct Information Return	6652, 6721-6724	19183(a)	Failing to file information returns or failure to include all required information.	$50 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed $250,000 during any calendar year; $100,000 for persons with gross receipts of not more than $5 million. Higher penalties (without reduction for correction) apply in the case of intentional disregard, depending on type
			Exceptions - De minimis failure exception. Reasonable cause and not willful neglect.	
Failure to File Correct Information Return	6721(b)(1)	19183(a)	Reduction in failure to file correct information return penalty when corrected within 30 days.	$15 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed $75,000 during any calendar year. $25,000 for persons with gross receipts of
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information Return	6721(b)(2)	19183(a)	Reduction in failure to file correct information return penalty when corrected on or before August 1.	$30 for failure to file correct information returns, with respect to which such a failure occurs. Shall not exceed $150,000 during any calendar year. $50,000 for persons with gross receipts of not more than $5 million
			Exceptions - Reasonable cause and not willful neglect.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure to File Correct Information - Failure to Furnish Correct Payee Statements	6722(a)	19183(b)(1)	Failure to furnish correct payee statements.	$50 for each statement, up to a maximum of $100,000 for each calendar year. $100, or, if greater, 5% or 10% of the aggregate amount of the items required to be reported correctly, depending on the type of return required, with respect to each such failure for intentional disregard.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information - Failure to Comply With Other Information Reporting Requirements	6723	19183(c)	Failure to comply with other information reporting requirements.	$50 for each such failure, up to a maximum of $100,000 for each calendar year.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Correct Information - Failure to Provide Written Explanation to Recipients of Distributions Eligible for Rollover Treatment	None	19183(e)	Failure to provide written explanation to recipients of distributions eligible for rollover treatment pursuant to IRC Section 402(f).	$10 for each failure, up to a maximum of $5,000 for each calendar year after notice and demand.
			Exceptions - Reasonable cause and not willful neglect.	
Failure to File Report Regarding Tax Deferred Savings Accounts	6693	19184	Failure to file report regarding tax deferred savings accounts.	$50 for each failure.
			Exceptions - Reasonable cause.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure to File Report Regarding Tax Deferred Savings Accounts - Overstatement as to Amount Designated Nondeductible Contributions	6693	19184(b)(1)(B)	Overstating the amount designated as nondeductible contributions for any taxable year.	$100 for each overstatement.
			Exceptions - Reasonable cause.	
Failure to File Report Regarding Tax Deferred Savings Accounts - Failure to File a Form Required for Nondeductible Contributions to Individual Retirement Accounts (IRA)	6693	19184(b)(2)	Failure to file a form required for nondeductible contributions to IRAs.	$50 for each failure.
			Exceptions - Reasonable cause.	
Substantial and Gross Valuation Misstatements on Appraisal	6695A	19185	Knowingly preparing an appraisal to be used in connection with a return or claim and the claimed value results in a substantial valuation misstatement, or gross valuation misstatement.	For returns or submissions filed on or after January 1, 2011: 125% of gross income from the preparation of the appraisal. Or, if less: 10% of the amount of underpayment attributable to misstatement, but not less than $1,000.
			Exceptions - Established value in the appraisal was more likely than not the proper value.	
Fraudulent Identification of Exempt Use Property	6720B	19186	Knowingly misidentifying applicable property (charitable deduction property) as having exempt use.	$10,000.
			Exceptions - None.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Financial Institution Record Match (FIRM)	None	19266(g)	Any financial institution that willfully fails to comply with rules and regulations for the administration of delinquent tax collections.	$50 for each record not provided up to $100,000 per calendar year.
			Exceptions - Reasonable cause.	
Suspension or Disbarment From Practice Before FTB	None	19523.5	Failure to notify the Franchise Tax Board within 45 days of the issuance of a final order disbarring or suspending the person to practice.	$5,000.
			Exceptions - None.	
Failure to Provide Information Concerning State Licenses Penalty	None	19528	Licensees failing to provide identification numbers upon demand.	$100 after 30-day notice and demand.
			Exceptions - None.	
Frivolous Proceedings; Failure to Exhaust Administrative Remedies	6673	19714	Taxpayer's action at the State Board of Equalization (BOE) or in court that was instituted or maintained by the taxpayer for delay, or that the position was frivolous or groundless, or that administrative remedies were not	Not more than $5,000.
			Exceptions - None.	
Business Conducted After Suspension or Forfeiture of Corporate Rights	None	19719	Anyone who attempts or purports to exercise the powers, rights, and privileges of a corporation that has been suspended or forfeited.	Minimum $250 and not exceeding $1,000.
			Exceptions - Not applicable to any insurer or insurer's counsel.	
Failure to Include Information on Reportable Transactions	6707A	19772	Failure to include reportable transactions information with a return.	$15,000, $30,000 if listed transaction.
			Exceptions - Chief Counsel relief only for reportable transactions other than listed transactions.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Noneconomic Substance Transaction Understatement	6662(b)(6) and (i)	19774	Understatement of a noneconomic substance transaction.	40% of understatement. Reduced to 20% if relevant facts adequately disclosed in
			Exceptions - Chief Counsel relief.	
Interest-Based Penalty for Listed Transactions, et al.	None	19777	Taxpayer contacted by FTB concerning an abusive tax avoidance transaction	100% of the interest payable for the period beginning on the due date of the return and ending on the date the NPA is mailed.
			Exceptions - None.	
Amnesty Program Interest Penalties	None	19777.5	An addition to tax for each tax year that was eligible for amnesty, but amnesty was not requested, and there was an unpaid amount due on March 31, 2005, (i.e., 50% Interest-Based penalty). The penalty is also imposed where FTB mails a notice of proposed assessment or a notice of tax due or where a taxpayer self assesses additional tax for an amnesty eligible tax year after the end of the amnesty period (i.e., Post-Amnesty Penalty).	The 50% Interest-Based Penalty is calculated as an amount equal to fifty percent of the interest that accrued on the unpaid daily balance from the original due date of the tax to March 31, 2005. The Post-Amnesty Penalty is calculated as an amount equal to fifty percent of the interest computed on the additional amount from the original due date of the tax year to March 31, 2005.
			Exceptions - No claim for refund allowed except on the grounds that the penalty was not properly calculated.	
150% Interest Penalty	None	19778	Amended return filed after April 15, 2004, but before taxpayer is contacted by FTB regarding a potentially	Interest accrues at a rate of 150% of the adjusted annual rate.
			Exceptions - None.	
Relief From Contract Void-ability	None	23305.1	The period for which relief from voidability of the contract is granted.	$100 daily for each day of the period for which relief from voidability is granted, not to exceed a total penalty equal to the amount of the tax for the
			Exceptions - None.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure of Exempt Organizations and Trusts to Pay Filing Fee	6033, 6072(e)	23772(a)(3)	Failure to pay fee on or before due date (determined with regard to any extension of time for filing) for filing exempt organization or	Filing fee increased to $25.
			Exceptions - Reasonable cause.	

Penalty Name	IRC Section	R&TC Section	Penalty Reason	Computation
Failure of Exempt Organizations and Trusts to File Annual Information Return	6033, 6072(e)	23772(c)(1)	The period in which the exempt organization or trust fails to file a return after the due date.	On notice and demand $5 for each month or fraction thereof during which the failure to file a return continues, but the total amount imposed on any organization for the failure to file shall not exceed
			Exceptions - Reasonable cause.	
Failure of Private Foundation to File on Demand	6033, 6072(e)	23772(c)(2)	The period in which a private foundation fails to file a return after receiving a demand for a return from FTB.	$5 for each month or fraction thereof during which the failure to file a return continues, but the total amount imposed on any organization for the failure to file shall not exceed $25 in addition to penalty provided in 23772(c)(1).
			Exceptions - Reasonable cause.	
Real Estate Investment Trust (REIT) Failure to Comply With Ascertainment of Ownership Rules	857(f)	24872.7	Failure to comply with federal regulations to ascertain ownership rules.	Penalty imposed only, and in same amount, if penalty is imposed for federal purposes: $25,000. Intentional disregard is $50,000. Failure to comply after notice an additional penalty of either $25,000
			Exceptions – Reasonable cause and not willful neglect, as	
Failure to Supply Information Penalty	None	25112	Taxpayer engaged in a unitary business that fails to supply requested information.	$1,000 for each taxable year. Additional penalty of $1,000 for each 30-day period up to $24,000 if failure continues for more than 90 days after we notify the

Chapter 13

Innocent Spouse Relief

In 2013 the IRS issued Rev. Proc. 2013-34 providing guidance for a taxpayer seeking equitable relief from income tax liability under section 66(c) or section 6015(f) of the Internal Revenue Code (a "requesting spouse").

This revenue procedure supersedes Rev. Proc. 2003-61 and is effective for requests for relief filed on or after September 16, 2013. In addition, this revenue procedure is effective for requests for equitable relief pending on September 16, 2013 whether with the Service, the Office of Appeals, or in a case docketed with a Federal court.

This revenue procedure expands how the IRS will take into account abuse and financial control by the non-requesting spouse in determining whether equitable relief is warranted. It also broadens the availability of refunds in cases involving deficiencies.

IRS Form **8857,** *Request for Innocent Spouse Relief*, was revised in January 2014 to accommodate the terms of this new revenue procedure.

Generally, both the taxpayer and the taxpayer's spouse are responsible, jointly and individually, for paying any tax, interest, or penalties from their joint return. If a taxpayer believes his/her current or former spouse should be solely responsible for an erroneous item or an underpayment of tax from his/her joint tax return, he/she may be eligible for innocent spouse relief.

Innocent spouse relief may also be available if the taxpayer was a resident of a community property state (such as California) and did not file a joint federal income tax return and believes he/she should not be held responsible for the tax attributable to an item of community income.

When a taxpayer files a joint income tax return, the law makes both the taxpayer and his/her spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability shown on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to the income, deductions, or credits of the spouse or former spouse. The taxpayer remains jointly and severally liable for taxes, and the IRS can still collect them from him/her, even if he/she later divorces and the divorce decree states that the former spouse will be solely responsible for the tax.

If a taxpayer believes, taking into account all the facts and circumstances, only his/her spouse or former spouse should be held responsible for all or part of the tax, he/she should request relief from the tax liability, including related penalties and interest by filing Form 8857. The IRS will use the information provided on the form, and any attachments submitted, to determine who is eligible for relief.

Married people who did not file joint returns, but who lived in community property states may request relief from liability for tax attributable to an item of community income. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

A taxpayer should not file Form 8857 for any tax year to which the following situations apply:

- In a final decision a court considered whether to grant relief from the joint liability and decided not to do so;
- In a final decision a court did not consider whether to grant relief from the joint liability, but the taxpayer meaningfully participated in the proceeding and could have asked for relief;
- The taxpayer entered into an offer in compromise with the IRS; or
- The taxpayer entered into a closing agreement with the IRS that disposed of the same liability for which the taxpayer wants to seek relief.

Section 6013(d)(3) provides that married taxpayers who file a joint return under section 6013 will be jointly and severally liable for the income tax arising from that joint return.

Section 3201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 734 (RRA), enacted section 6015, which provides relief in certain circumstances from the joint and several liability imposed by section 6013(d)(3). Section 6015(b) and (c) specify two sets of circumstances under which relief from joint and several liability is available in cases involving understatements of tax. Section 6015(b) is modeled after former section 6013(e), the prior innocent spouse statute, and section 6015(c) provides for separation of liability for taxpayers who are no longer married to, are legally separated from, or not living together with the person with whom they filed a joint return. If relief is not available under section 6015(b) or (c), section 6015(f) authorizes the Secretary to grant equitable relief if, taking into account all the facts and circumstances, the Secretary determines that it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency (or any portion of either).

Section 66(c) provides relief from income tax liability resulting from the operation of community property law to taxpayers domiciled in a community property state who do not file a joint return. Section 3201(b) of the RRA amended section 66(c) to add an equitable relief provision similar to section 6015(f).

Section 6015 provides relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the election to file jointly is not valid and there is no valid return with respect to the requesting spouse. The individual is not jointly and severally liable for any income tax liabilities arising from that return. In that case, section 6015 does not apply and is not necessary for obtaining relief.

Under section 6015(b) and (c), relief is available only from an understatement or a deficiency. Section 6015(b) and (c) do not authorize relief from an underpayment of income tax reported on a joint return. Section 66(c) and section 6015(f) permit equitable relief from an underpayment of income tax or from a deficiency. The legislative history of section 6015 provides that Congress intended for the Secretary to exercise discretion in granting equitable relief from an underpayment of income tax if a requesting spouse "does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit." H.R. Conf. Rep. No. 105-599, at 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under section 6015(f) in other situations if, "taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return." *Id*.

This revenue procedure gives greater deference to the presence of abuse than Rev. Proc. 2003-61. The Service recognizes that the issue of abuse can be relevant with respect to the analysis of other factors and can negate the presence of certain factors. This change is intended to give greater weight to the presence of abuse when its presence impacts the analysis of other factors.

The timeliness threshold condition in section 4.01(3) of this revenue procedure provides that a request for equitable relief under section 6015(f) or section 66(c) must be filed before the expiration of the period of limitation for collection under section 6502 to the extent the taxpayer seeks relief from an outstanding liability, or before the expiration of the period of limitation for credit or refund under section 6511 to the extent the taxpayer seeks a refund of taxes paid. This is a significant change to the requirement in Rev. Proc. 2003-61, section 4.01(3), and Treas. Reg. § 1.6015-5(b)(1) (TD 9003), that the requesting spouse's claim for equitable relief must be filed no later than two years after the date of the Service's first collection activity.

The attribution threshold condition in section 4.01(7) of this revenue procedure adds a new exception in paragraph (e) to the requirement that the income tax liability must be attributable to an item of the non-requesting spouse. Under section 4.01(7)(e) of the revenue procedure, relief would not be precluded for an item attributable to the requesting spouse if the non-requesting spouse's fraud gave rise to the understatement of tax or deficiency.

Streamlined determinations under section 4.02 of this revenue procedure now apply to understatements of income tax instead of only underpayments as under Rev. Proc. 2003-61. Section 4.02 also now applies to claims for equitable relief under section 66(c).

Section 4.03(2) of this revenue procedure clarifies that no one factor or a majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the case, relief may still be appropriate if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief.

The economic hardship factor in section 4.03(2)(b) of this revenue procedure now provides minimum standards based on income, expenses, and assets, for determining whether the requesting spouse would suffer economic hardship if relief is not granted. Section 4.03(2)(b) also now provides that the lack of a finding of economic hardship does not weigh against relief, as it did under Rev. Proc. 2003-61, and instead will be neutral.

The knowledge factor for understatement cases in section 4.03(2)(c)(i) of this revenue procedure clarifies how the factor works in cases involving equitable relief under section 66(c), in addition to cases involving equitable relief under section 6015(f). Section 4.03(2)(c)(i)(A) provides that actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors, as it did under Rev. Proc. 2003-61. Further, section 4.03(2)(c)(i)(A) clarifies that, for purposes of this factor, if the non-requesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the non-requesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency.

The knowledge factor for underpayment cases in section 4.03(2)(c)(ii) of this revenue procedure now provides that, in determining whether the requesting spouse knew or had reason to know that the non-requesting spouse would not pay the tax reported as due on the return, the Service will consider whether the requesting spouse reasonably expected that the non-requesting spouse would pay the tax liability at the time the return was filed or within a reasonable period of time after the filing of the return. In response to comments received with respect to Notice 2012-8, section 4.03(2)(c)(ii) provides that a requesting spouse may be presumed to have reasonably expected that the non-requesting spouse would pay the liability if a request for an installment agreement to pay the tax was filed by the later of 90 days after the due date for payment of the tax, or 90 days after the return was filed. Further, section 4.03(2)(c)(ii) clarifies that for purposes of this factor, if the non-requesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to question the payment of the taxes reported as due on the return or challenge the non-requesting spouse's assurance regarding payment of the taxes for fear of the non-requesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse knew or had reason to know that the non-requesting spouse would not pay the tax liability. Finally, section 4.03(2)(c)(ii) provides that if the requesting spouse did not reasonably expect that the non-requesting spouse would pay the tax liability reported on an amended return

that was based on items not properly reported on the original return, the Service will also consider whether the requesting spouse knew or had reason to know of the understatement on the original return.

The legal obligation factor in section 4.03(2)(d) of this revenue procedure clarifies that a requesting spouse's legal obligation to pay outstanding tax liabilities is a factor to consider in determining whether equitable relief should be granted, in addition to whether the non-requesting spouse has a legal obligation to pay the tax liabilities.

The significant benefit factor in section 4.03(2)(e) of this revenue procedure provides that any significant benefit a requesting spouse may have received from the unpaid tax or understatement will not weigh against relief (will be neutral) if the non-requesting spouse abused the requesting spouse or maintained financial control and made the decisions regarding living a more lavish lifestyle. Further, section 4.03(2)(e) provides that if only the non-requesting spouse significantly benefitted from the unpaid tax or understatement, and the requesting spouse had little or no benefit, or the non-requesting spouse enjoyed the benefit to the requesting spouse's detriment, this factor will weigh in favor of relief. Section 4.03(2)(e) also provides that if the amount of unpaid tax or understatement of tax was small such that neither spouse received a significant benefit, then this factor is neutral. In response to comments received with respect to Notice 2012-8, section 4.03(2)(e) provides that the determination that the tax liability was small such that neither spouse received a significant benefit will vary depending on the facts and circumstances of each case.

The compliance with the income tax laws factor in section 4.03(2)(f) of this revenue procedure now provides that a requesting spouse's subsequent compliance with all Federal income tax laws is a factor that may weigh in favor of relief, instead of always being neutral under Rev. Proc. 2003-61.

Section 4.04 of this revenue procedure broadens the availability of refunds in cases involving deficiencies by eliminating the rule in section 4.04(1) of Rev. Proc. 2003-61 that limited refunds in cases involving deficiencies to payments made by the requesting spouse pursuant to an installment agreement.

A requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 6015(f). With the exception of conditions (1) and (2), a requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 66(c). The Service may relieve a requesting spouse who satisfies all the applicable threshold conditions set forth below of all or part of the income tax liability under section 66(c) or section 6015(f) if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for the income tax liability. The threshold conditions are as follows:

(1) The requesting spouse filed a joint return for the taxable year for which he or she seeks relief.
(2) Relief is not available to the requesting spouse under section 6015(b) or (c).
(3) The claim for relief is timely filed:
    (a) If the requesting spouse is applying for relief from a liability or a portion of a liability that remains unpaid, the request for relief must be made on or before the Collection Statute Expiration Date (CSED).
    (b) Claims for credit or refund of amounts paid must be made before the expiration of the period of limitation on credit or refund, as provided in section 6511.
(4) No assets were transferred between the spouses as part of a fraudulent scheme by the spouses.
(5) The non-requesting spouse did not transfer disqualified assets to the requesting spouse.
(6) The requesting spouse did not knowingly participate in the filing of a fraudulent joint return.
(7) The income tax liability from which the requesting spouse seeks relief is attributable (either in full or in part) to an item of the non-requesting spouse or an underpayment resulting from the non-requesting spouse's income. If the liability is partially attributable to the requesting spouse, then relief can only be considered for the portion of the liability attributable to the non-requesting spouse. Nonetheless, the Service will consider granting relief regardless of whether the understatement, deficiency, or underpayment is attributable (in full or in part) to the requesting spouse if any of the following exceptions applies:
    (a) Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law, then for purposes of this revenue procedure, that item (or portion thereof) will be considered to be attributable to the non-requesting spouse.
    (b) Nominal ownership. If the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse. This presumption is rebuttable.
    (c) Misappropriation of funds. If the requesting spouse did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by the non-requesting spouse for the non-requesting spouse's benefit, the Service will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the requesting spouse. The Service will consider granting relief in this case only to the extent that the funds intended for the payment of tax were taken by the non-requesting spouse.
    (d) Abuse. If the requesting spouse establishes that he or she was the victim of abuse prior to the time the return was filed, and that, as a result of the prior abuse, the requesting spouse was not able to challenge the treatment of any items on the return, or was not able to question the payment of any balance due reported on the return, for fear of the non-requesting spouse's retaliation, the Service will consider granting equitable relief even though the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.

(e) Fraud committed by non-requesting spouse. The Service will consider granting relief notwithstanding that the item giving rise to the understatement or deficiency is attributable to the requesting spouse, if the requesting spouse establishes that the non-requesting spouse's fraud is the reason for the erroneous item.

Circumstances under which the Service will make streamlined determinations granting equitable relief.

If a requesting spouse who filed a joint return, or a requesting spouse who did not file a joint return in a community property state, satisfies the threshold conditions, the Service will consider whether the requesting spouse is entitled to a streamlined determination of equitable relief. If a requesting spouse is not entitled to a streamlined determination because the requesting spouse does not satisfy all the elements, the requesting spouse is still entitled to be considered for relief under the equitable factors. The Service will make streamlined determinations granting equitable relief in cases in which the requesting spouse establishes that the requesting spouse:

(1) Marital status. Is no longer married to the non-requesting spouse;
(2) Economic hardship. Would suffer economic hardship if relief were not granted; and
(3) Knowledge or reason to know.
    (a) Section 6015(f) cases. Did not know or have reason to know that there was an understatement or deficiency on the joint income tax return, or did not know or have reason to know that the non-requesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return. If the non-requesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return, or to question the payment of the taxes reported as due on the joint return or challenge the non-requesting spouse's assurance regarding payment of the taxes, for fear of the non-requesting spouse's retaliation, then the abuse or financial control will result in this factor being satisfied even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency or knew or had reason to know that the non-requesting spouse would not pay the tax liability.
    (b) Section 66(c) cases. Did not know or have reason to know of an item of community income properly includible in gross income, which would be treated as the income of the non-requesting spouse.

IRS Topic 205 - Innocent Spouse Relief (Including Separation of Liability and Equitable Relief)

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. In filing jointly, both taxpayers are jointly and severally liable for the tax and any additions to tax, interest, or penalties that arise as a result of the joint return even if they later divorce. Joint and several liability means that each taxpayer is legally responsible for the entire liability. Thus, both spouses are generally held responsible for all the tax due even if one spouse earned all the income or claimed improper deductions or credits. This is also true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. In some cases, however, a spouse can get relief from joint and several liability.

There are three types of relief from joint and several liability for spouses who filed joint returns:

- **Innocent Spouse Relief** provides you relief from additional tax you owe if your spouse or former spouse failed to report income, reported income improperly or claimed improper deductions or credits.
- **Separation of Liability Relief** provides for the allocation of additional tax owed between you and your former spouse or your current spouse from whom you are separated because an item was not reported properly on a joint return. The tax allocated to you is the amount for which you are responsible.
- **Equitable Relief** may apply when you do not qualify for innocent spouse relief or separation of liability relief for something not reported properly on a joint return and generally attributable to your spouse. You may also qualify for equitable relief if the correct amount of tax was reported on your joint return but the tax was not paid with the return.

Note: You must request innocent spouse relief or separation of liability relief no later than 2 years after the date the IRS first attempted to collect the tax from you. For equitable relief, you must request relief during the time the IRS has to collect the tax from you. If you are looking for a refund of tax you paid, then your request must be made within the time period for seeking a refund, which is generally three years after the date the return is filed or two years following the payment of the tax, whichever is later. For additional restrictions on refunds available under innocent spouse relief, equitable relief, and relief based on community property laws, see Publication 971, *Innocent Spouse Relief*. Refunds are not available under separation of liability relief.

You must meet **all** of the following conditions to qualify for **"innocent spouse relief"**:

- You filed a joint return that has an understatement of tax (deficiency) that is solely attributable to your spouse's erroneous item. An "erroneous item" includes income received by your spouse but which was omitted from the joint return. Deductions, credits, and property basis are also erroneous items if they are incorrectly reported on the joint return
- You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax and

- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax

To qualify for **"separation of liability relief"** you must have filed a joint return and must meet **one** of the following requirements at the time you request relief:

- You are divorced or legally separated from the spouse with whom you filed the joint return
- You are widowed or
- You have not been a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you request relief
- If, at the time you signed the joint return, you had actual knowledge of the item that gave rise to the understatement of tax, you do not qualify for separation of liability relief.

If you do not qualify for "innocent spouse relief" or "separation of liability relief" you may still qualify for **"equitable relief."** To qualify for equitable relief you must establish that, under all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. In addition, you must meet other requirements listed in Publication 971, *Innocent Spouse Relief*.

To seek innocent spouse relief, separation of liability relief, or equitable relief, you should submit to the IRS a completed Form 8857 (PDF), *Request for Innocent Spouse Relief*, or a written statement containing the same information required on Form 8857, which is signed under penalties of perjury. You may also refer to Publication 971, *Innocent Spouse Relief*, for more information. If you request relief from joint and several liability, the IRS is required to notify the spouse with whom you filed the joint return of your request and allow him or her to provide information for consideration regarding your claim. To learn more about innocent spouse relief, go to Explore if you are an Eligible Innocent Spouse found under Tax Information for Innocent Spouses at the IRS.gov website.

If you lived in a community property state and did not file as "married filing jointly," you might qualify for relief from the operation of state community property law. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Refer to Publication 971 for more details.

Relief from joint and several liability should not be confused with an injured spouse claim. You are an "injured spouse" if you file a joint return and all or part **of your share of the refund** was, or will be, applied against the separate past-due federal tax, state tax, child support, or federal non-tax debt (such as a student loan) of your spouse with whom you filed the joint return. If you are an injured spouse, you may be entitled to recoup your share of the refund. For more information, see Form 8379 (PDF), *Injured Spouse Allocation*, or refer to Topic 203.

A person seeking **Innocent Spouse Relief** will typically do so under one of the following conditions*:*

Material Changes

(1) Editorial changes made throughout this IRM.
(2) Throughout reference to Notice 2012-8 updated to Rev. Proc. 2013-34.
(3) IRM 25.15.3.1(2) added information regarding same sex marriage.
(4) IRM 25.15.3.2(1) instead of listing the versions of Form 8857, updated to state "Beginning in June 2007" .
(5) IRM 25.15.3.3(2) updated to reflect Letter 3284C for CCISO and L 3284 for the field.
(6) IRM 25.15.3.3.1(1) changed the beginning of the sentence to, For claims originating in CCISO.
(7) IRM 25.15.3.4.2.2(1) added caution regarding joint name line without joint filing status under SFR.
(8) IRM 25.15.3.4.4(2) removed sentence stating that Publication 594 has improved. No longer relevant.
(9) IRM 25.15.3.4.4(2) second Note removed regarding claims filed prior to July 18, 2002. No longer relevant.
(10) IRM 25.15.3.5.1(1) moved note into a) and added b) for criminal proceedings.
(11) IRM 25.15.3.5.6(5) word "determined" changed to "evaluated" .
(12) 25.15.3.7.2.1(2) moved the steps to allocate into a table format.
(13) 25.15.3.7.2.1(2) step 5 added the word Percentage of, to Percentage of adjustments allocated to the spouse.
(14) IRM 25.15.3.7.2.2 added step 7 for the allocation of the EITC.
(15) IRM 25.15.3.7.2.1.1 added instructions on how to calculate the allocation of the EITC.
(16) IPU 13U1619 issued 11-05-2013 IRM 25.15.3.7.2.1(9) corrected IRM reference for Special Rules and Exceptions.
(17) IRM 25.15.7.2.2(1) changed (7) to (8).
(18) IRM 25.15.7.2.2.1(4) added reference to IRM 25.15.3.5.6, Understatements Resulting From an Increase to Adjusted Gross Income.
(19) IRM 25.15.3.7.2.2.3 added information to help determine a fraudulent scheme.
(20) IRM 25.15.3.7.2.2.8 example changed "H" to "NRS" .
(21) IRM 25.15.3.7.2.2.12(1) updated title of Form 8615.
(22) IRM 25.15.3.7.3 b) with information for area office employees.
(23) IRM 25.15.3.8 updated to include the release of Rev. Proc 2013-34.
(24) IRM 25.15.3.8.2.1(6) added reference to the fraud indicators.
(25) IPU 13U1619 issued 11-05-2013 IRM 25.15.3.8.4(1) corrected title of IRM reference.
(26) IRM 25.15.3.8.4.1 added (1) stating that the factors listed are not an all inclusive list.
(27) IRM 25.15.3.8.4.1(2) note: added financial control and other family members living in the household to abuse.
(28) IRM 25.15.3.8.4.1.1 changed 12 month period to end on the date the service makes a determination.
(29) IRM 25.15.3.8.4.1.2(3)(a) added, and the RS does not have assets out of which payments towards the liability can be made.
(30) IRM 25.15.3.8.4.1.3 changed reasonably prompt time to reasonable period of time.

(31) IRM 25.15.3.8.4.1.3.2 clarified instructions for determining knowledge on an underpayment.
(32) IRM 25.15.3.8.4.1.5 additional information on if the amount of unpaid tax or understated tax was small.
(33) IPU 13U1379 issued 08-22-2013 IRM 25.15.3.9.1 made the Letter 3660C and Letter 3661C obsolete. Added letters used in the field.
(34) IPU 13U1379 issued 08-22-2013 IRM 25.15.3.9.2 added letters used in the field.
(35) IPU 13U0633 issued 03-28-2013 IRM 25.15.3.9.2(6) added the Letter 3323C. [This change was superseded by IPU 13U1379 issued 08–22–2013.]
(36) IPU 13U1379 issued 08-22-2013 IRM 25.15.3.9.3 removed the Letter 3323C and the Letter 3388C. Added letters used in the field. Letter 4581C made obsolete.
(37) IRM 25.15.3.9.3 added L 3657-A for use by area office employees.
(38) IRM 25.15.3.10(5) table, Letters added for field employees use.

Effect on Other Documents

IRM 25.15.3, Technical Provisions of IRC 6015, dated March 8, 2013 is superseded. The following IRM Procedural Updates (IPUs) issued from March 28 2013, through November 5, 2013 have been incorporated into this IRM: 13U0633, 13U1379, and 13U1619.

Audience

Employees in all business operating divisions who have contact with taxpayers addressing an innocent spouse issue

Effective Date
(07-29-2014)

Steve C. Klingel
Director, Reporting Compliance
Wage and Investment Division

25.15.3.1 (07-29-2014)
Introduction IRC 6015

This section discusses the innocent spouse provisions of IRC 6015 which provide three avenues for relief from joint and several liability:

- IRC 6015(b), **Innocent Spouse Relief**, provides an election for relief from a **deficiency/understatement** of tax liability.
- IRC 6015(c), **Separation of Liability**, provides an election to allocate a **deficiency/understatement.**

- IRC 6015(f), **Equitable Relief**, provides IRS with discretion to grant equitable relief from **deficiencies and underpayments** if the relief provisions under IRC 6015(b) or IRC 6015(c) do not apply.

Pursuant to *United States v. Windsor*, 570 U.S., 133 S. Ct. 2675 (2013), and Rev. Rul. 2013–17, same-sex spouses who are lawfully married under state law are considered to be married for federal tax purposes, and the terms “spouse,” “husband and wife,” “husband,” and “wife” refer to such spouses. Accordingly, same-sex spouses who file joint returns are jointly and severally liable for any tax liability and may be entitled to innocent spouse relief so long as the conditions of IRC section 6015 are met.

Note:

Same-sex spouses who are lawfully married under state law are considered married for federal tax purposes even if they live in a state that does not recognize the validity of same-sex marriages. The term “marriage” does not include registered domestic partnerships, civil unions, or other similar formal relationships that are not recognized as marriage under state law.

25.15.3.2 (07-29-2014)
Election for Relief under IRC 6015

IRC 6015(e) was amended by the Tax Relief and Health Care Act of 2006 on December 20, 2006, so that most claims for relief made solely under IRC 6015(f) result in a prohibition on collection and a suspension of the collection statute just as elections under IRC 6015(b) and IRC 6015(c) always had, see IRM 25.15.1.8, *Statute of Limitations on Collection*, for a more detailed discussion of the suspension of the collection statute. Beginning with the June 2007 revision of Form 8857, *Request for Innocent Spouse Relief*, IRS no longer asks a requesting spouse (RS) to specifically request under which subsections of IRC 6015 the RS is seeking relief. Instead, the Service will consider relief under subsections (b), (c), and (f).

Because of the amendment to IRC 6015(e) and the revision to Form 8857, consider a RS’s claim for relief under all subsections of IRC 6015 no matter which revision of Form 8857 is used by the RS, even if the RS used a prior version of Form 8857 and only checked the box indicating equitable relief under IRC 6015(f).

A RS may only withdraw a request for relief prior to the issuance of a preliminary determination letter.

25.15.3.3 (07-29-2014)
Notification to Non-requesting Spouse (NRS) per IRC 6015(h)(2)

The non-requesting spouse (NRS) must receive notice of, and an opportunity to participate in, any proceeding with respect to an election of relief from joint and several liability under IRC 6015.

Note:

Always protect the privacy and return information of the RS, per IRC 6103, disclosure statute.
Examiners shall issue an administrative proceeding notice (Letter 3284C for CCISO and L 3284 for the field) to the NRS giving a 30 day response time.
Notice to the NRS is not required to be sent certified mail but must be sent to the NRS's last known address.

Examiners shall notify the NRS of the preliminary determination made, and the right to an administrative appeal when relief is fully or partially allowed to the RS. The NRS may file a protest and request an Appeals conference, see Rev. Proc. 2003–19.
Exception:
Do not provide appeals rights to the NRS if the NRS is no longer liable for the tax liabilities at issue, e.g., tax liabilities were discharged in the NRS's bankruptcy proceedings and/or offer-in-compromise, or the NRS's collection statute expiration date (CSED) has expired.

If relief is denied in full, inform the NRS that he/she will be contacted if the RS protests the determination and Appeals proposes to increase the amount of relief granted in the preliminary determination. Do not provide appeal rights to the NRS when the account is full paid and the RS has been granted full relief under IRC 6015(c). This is because no refunds may be made under IRC 6015(c) and the NRS will not be held liable for additional amounts.

25.15.3.3.1 (07-29-2014)
Notification to NRS in Cases of Alleged Abuse

For claims originating in the Cincinnati Centralized Innocent Spouse Operation (CCISO), the RS will be sent a notification letter informing them the NRS will be notified and given an opportunity to participate. This is not necessary for claims filed on Form 8857, revised June 2007 or later because the instructions include this information. If it is necessary, CCISO will hold the claim; pending a response from the RS. The letter informs the RS of the following options:

Should they want to proceed, the notification letter to the NRS will be sent from CCISO as an added precaution to conceal the RS's geographic location. The RS’s new name, address, telephone number, or employer will not be used in correspondence to the NRS. CCISO will delay sending the notification letter to the NRS, pending a response from the RS. The RS will forward any response to the unit or area working the claim. The preliminary determination letter to the NRS will also be issued by CCISO.

If the RS does not want CCISO to contact the NRS, the RS needs to withdraw their claim as indicated in the letter. If the RS does not withdraw, continue processing.

For claims originating in an area office, the examiner will contact the RS to determine if there is a need to take additional precautions to conceal the RS’s location. The instructions for claims filed on Form 8857, revised June 2007 or later, include this information, making it unnecessary to send

a notification letter to an RS who uses the revised form. If so, the area examiner will send a cover letter with Letter 3284 to the NRS stating the examiner has been notified of the innocent spouse claim and will be working the issue along with the other exam issues. The RS's new name, address, telephone number, or employer must not be used in correspondence to the NRS. The NRS should be given 30 days to respond.

25.15.3.4 (05-01-2005)
Terms and Definitions

The following are definitions of terms used throughout this IRM section.

25.15.3.4.1 (07-20-2009)
Deficiency/Understatement

The term **understatement** is defined as:

- the excess of the amount of the tax required to be shown on the return for the taxable year, over
- the amount of tax imposed which is shown on the return, reduced by any rebate (within the meaning of IRC 6015(b)(3) and IRC 6211(b)(2)). See IRC 6662(d)(2)(A).

For IRC 6015 purposes, a deficiency and understatement are treated the same. A RS can be considered for relief under IRC 6015(b), IRC 6015(c), and IRC 6015(f) for a deficiency/understatement.

If the RS signed a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*, Form 4549, *Income Tax Examination Changes*, or other report agreeing to additional joint liability, then the liability should be treated as an understatement/deficiency and the RS may be considered for relief under IRC 6015(b), IRC 6015(c), and IRC 6015(f).

25.15.3.4.1.1 (03-08-2013)
Item

An **item** is that which is required to be separately listed on an individual income tax return or any required attachments. Interest and dividends from the same source are considered separate items. Items include, but are not limited to, gross income, deductions, credits, and cost basis.

Penalties and interest are not erroneous items and relief from penalties and interest follows relief granted on the underlying item(s).

Note:

Although no relief is available separately for penalties and interest under IRC 6015, under the right circumstances, penalties (not interest) may be abated for reasonable cause or other penalty relief provisions.

IF	THEN
RS would qualify for relief of tax under any section of IRC 6015	Grant relief for the corresponding penalties and interest
RS is eligible for relief from an underpayment under IRC 6015	Grant relief of the penalties and interest corresponding to the underpayment
RS is not eligible for relief from the tax	RS remains liable for the penalties and interest
RS only requests an abatement of penalties	Follow procedures in IRM 25.15.7.5.8(4), *Account Problems*

25.15.3.4.1.1.1 (03-08-2013)
Erroneous Item

An **erroneous item** is any item resulting in an understatement or deficiency in tax to the extent such item is omitted from, or improperly reported (or improperly characterized) on, an individual income tax return. Some examples would be:

- Unreported income from an investment asset resulting in an understatement or deficiency in tax
- Ordinary income improperly reported as capital gain resulting in an understatement or deficiency in tax
- A deduction for an expense that is personal in nature that results in an understatement or deficiency in tax
- An improperly reported item that affects the liability on other returns

25.15.3.4.2 (03-01-2011)
Underpayment

An **underpayment** is an unpaid amount due from self-assessed taxes on either an original or amended joint return if a statutory notice of deficiency was not issued. A RS can only be considered for relief under IRC 6015(f) for an underpayment.

25.15.3.4.2.1 (03-08-2013)
Overstated Withholding

Overstated withholding is considered an underpayment of tax and qualifies for consideration only under IRC 6015(f). Consider it jointly attributable unless the RS establishes he/she did not receive or benefit from the overstated withholding.

It does not matter whether the overstated withholding was refunded or not.

Example:

Tax on original return $6,000
Withholding claimed $10,000 (actual withholding = $0)
Refund $4,000

Automated Underreporter (AUR) operations issued a CP 2000 notice to reverse the withholding, resulting in $10,000 owed. The $10,000 owed is an underpayment. Relief will be considered under IRC 6015(f) only. The examiner should consider who received and benefited from the $4,000 refund when making a determination as to relief.

IRC 6201(a)(3) allows the Service to immediately assess the liability resulting from overstated withholding. Thus, if the overstated withholding was refunded, there should be a transaction code (TC) 290 containing a TC 807 in the amount of the overstated withholding on the taxpayer's module. The existence of the TC 290 should be verified as soon as the claim is accepted for processing. If the TC 290 is not there and the assessment statute expiration date (ASED) has not expired (which is generally three years from the filing date of the return), then action should be taken to have the assessment made before the ASED expires. If the ASED has expired, then the Service's collection alternatives are limited. An erroneous refund suit can be considered if conditions for such a suit are met. Any questions should be immediately referred to Area Counsel.

25.15.3.4.2.2 (07-29-2014)
Substitute for Return (SFR)

A taxpayer's filing status on a Substitute For Return (SFR) will be either single or married filing separately. The Service cannot elect joint filing status for married taxpayers; thus, there will not be a joint liability, and there can be no relief under IRC 6015 from a liability due to an SFR. The taxpayer may later file a joint return with his/her spouse. It is not until this joint return is filed that relief under IRC 6015 can even be considered. The important thing to remember when determining whether relief under IRC 6015(b), IRC 6015(c), or IRC 6015(f) is available is the type of liability (underpayment versus understatement) generated by the joint return.

Caution:

Some prior processing issues have caused some SFR assessments to pick up the previous joint name line in the entity area. These accounts do not have a joint filing status only a joint name line. In this situation, SFR should be contacted to correct the account.

If the Service filed an SFR for a nonfiler spouse (and took no action against the other spouse) and the spouses later file a joint tax return before the issuance of a Statutory Notice of Deficiency, this joint return should be considered the spouse's original return for purposes of relief under IRC 6015. If the joint return properly reported all income but was not accompanied by full payment of

the tax liability, the liability is an underpayment (self-assessed tax). Thus, if either the nonfiler spouse or the other spouse requests relief under IRC 6015 for this joint liability, only relief under IRC 6015(f) can be considered. If the joint return underreports income, and the Service determined a deficiency, then IRC 6015(b), IRC 6015(c), and IRC 6015(f) can be considered for either spouse for the portion that is a deficiency.

If the Service filed an SFR for a nonfiler spouse (and took no action against the other spouse) and an assessment was made following a Statutory Notice of Deficiency, the resulting amount owed by the nonfiler spouse is a liability due to a deficiency assessment. However, because no joint election was made, the taxpayer's liability is not eligible for relief under IRC 6015. If the nonfiler spouse and the other spouse later file a joint return that properly reported all income but was not accompanied by full payment of the tax liability, the liability should be considered an underpayment. Thus, if either the nonfiler spouse or the other spouse requests relief under IRC 6015 for this joint liability, only relief under IRC 6015(f) can be considered. If the joint return underreports income, and the Service determines a deficiency, then IRC 6015(b), IRC 6015(c), and IRC 6015(f) can be considered for either spouse for the portion that is a deficiency.
If the Service filed an SFR for a nonfiler, the taxpayer may file a joint return in response. In some circumstances the service will process the return but keep the exam open because there are items still under review. See IRM 4.19.17.7.2.2, *Agreed – Partially Accepted*. In this circumstance the taxpayer and the taxpayer's spouse may sign an examination report or similar waiver agreeing to the tax prior to the issuance of a Statutory Notice of Deficiency. If this occurs the tax liability is considered an understatement. This is because signing a report or waiver is not the equivalent of signing and filing a joint return.

25.15.3.4.3 (03-08-2013)
Math Error

See IRM 25.15.7.5.15, *Math Error*, for instructions.

25.15.3.4.4 (03-08-2013)
Collection Activity

The RS must file a claim for relief under IRC 6015(b) and IRC 6015(c) with the Service no later than two years from the date of the first collection activity against the RS after July 22, 1998, with respect to the joint tax liability. Claims for equitable relief under IRC 6015 (f) are no longer subject to a two-year deadline. Collection activity against the RS means collection against property in which the RS has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the NRS. Because not all events that involve the Service's attempt to collect the liability will trigger the two year period, examiners should exercise caution when determining if an IRC 6015(b) or IRC 6015(c) claim is time barred. Collection activity for this purpose should not be confused with "prohibited collection actions." *IRM 25.15.3.4.5*, *Prohibited Collection Actions*.

Note:
Notice 2011–70 lifted the two-year rule deadline for claims filed under IRC 6015(f). A claim will be timely filed under IRC 6015(f) as long as it is filed within the time period the collection statute or refund statute remains open.

Note:

Per IRC 7502, timely mailing is treated as timely filing, so when the claim received date is past the two-year deadline for filing a claim, look at the *postmark date*. If the postmark date is prior to the two-year deadline, consider the claim timely.
The following actions by the Service constitute collection activity:
Refund offsets: The offset of an overpayment of the RS against the joint liability under IRC 6402 constitutes collection activity. See *Campbell v. Commissioner*, 121 T.C. 290 (2003), see also Treas. Reg. 1.6015–5(b).

Note:

In *McGee v. Commissioner*, 123 T.C. 314 (2004), the Tax Court held that an IRC 6402 offset alone will not trigger the two year period for filing a claim unless the Service at the time of the offset notifies the RS of his or her right to file a claim for relief under IRC 6015. Prior to this court decision, the Service did not routinely notify taxpayers of their right to file an IRC 6015 claim at the time of the offset. On or about March 7, 2005, the Service began to provide this notice by including Publication 1 as a stuffer with all refund offset notices, and in August 2005, the offset notices themselves included language explaining the taxpayers' right to file an IRC 6015 claim. Thus, if the offset occurred prior to March 7, 2005, you should consider the claim to be timely unless there is evidence that the Service notified the RS, or the RS was otherwise aware, of his or her right to file an IRC 6015 claim at the time of the offset.

Note:

Now that more than two years have elapsed since Publication 1, *Your Rights as a Taxpayer* started being a stuffer with the refund offset notice and/or the refund offset notice itself started containing language explaining the taxpayers' right to file an IRC 6015, careful attention should be made to cases in which the Service offset a refund in April 2005 or later, especially those refunds offset after August 2005. If the Form 8857 was filed more than two years after such offset, the claim should be denied under IRC 6015(b) and IRC 6015(c).

IRC 6330 notices: For claims filed on or after July 18, 2002, the sending of an IRC 6330 notice to the taxpayer will trigger the two year period for filing a claim under IRC 6015(b) and IRC 6015(c). An IRC 6330 notice is the notice sent pursuant to IRC 6330 which provides the taxpayer with notice of the Service's intent to levy and of their right to a Collection Due Process (CDP) hearing. A CDP notice will not start the two year period for filing a claim under IRC 6015(b) and IRC 6015(c) unless the CDP notice informs the taxpayer of the taxpayer's right to file a claim under IRC 6015. The Service has been informing taxpayers of the innocent spouse claim process

through the inclusion of Publication 594, *The IRS Collection Process* as a stuffer with the CDP notice (either LT11 or Letter 1058). Based on the language discussing innocent spouse relief in versions of Publication 594, prior to May 2002 in cases where the Form 8857 was filed more than two years after a CDP Notice issued prior to May 2002, the Service should treat the claim for relief as being timely filed unless another collection activity occurred more than two years prior to the filing of the innocent spouse claim filed under IRC 6015(b) or IRC 6015(c) or if filed after the collection statute has expired under IRC 6015(f).

Example:

The claim for relief under IRC 6015(b) was filed on September 1, 2005, and the IRC 6330 notice was issued January 3, 2002. Although the claim for relief was filed more than two years after the issuance of the CDP Notice, this claim should be treated as timely filed because the notification of the taxpayer's right to file an innocent spouse claim that was included with the CDP notice was not sufficient. If, however, the CDP Notice was issued on January 3, 2003, then the discussion of the innocent spouse claim process in Publication 594 would have been sufficient to start the two year period. Thus, the election or request for relief must have been made by January 3, 2005. As the Form 8857 was not received until September 1, 2005, the claim is not timely filed.

Note:

For claims for relief filed on or after July 18, 2002, a TC 971 action code (AC) 069 on TXMOD, which represents the issuance of an IRC 6330 CDP notice, dated May 2002 or later will be considered the date from which the two year period runs. When an IRC 6330 notice starts the collection activity against the RS, there must be a TC 971 AC 069 present on the account for the RS. If the RS is the secondary taxpayer, the TC 971 AC 069 must contain a cross-reference (XREF) taxpayer identification number (TIN). If the RS's TC 971 AC 069 is followed by a TC 971 AC 068, the notice was returned as undeliverable, and the TC 971 AC 069 is not considered the start of collection activity against the RS. A TC 971 AC 469 indicates the IRS received no response from the Post Office; so, the TC 971 AC 069 does not start the collection activity against the RS.

The filing of a suit by the United States against the RS for the collection of a joint tax liability: Triggers the two year period for claims filed under IRC 6015(b) and IRC 6015(c). If a collection suit was filed, the two year period will begin to run from date the suit is filed. See Treas. Reg. 1.6015-5(b)(4), example 4. The transcript will not state that a collection suit has been commenced by the Department of Justice (DOJ). When an examiner sees a general litigation code (TC 520 with closing code 70 ,75, 78-81, or 84) with a date more than two years before the claim is filed on a transcript, the examiner should investigate to determine if the DOJ commenced a collection suit against the RS (or filed a claim in a court proceeding to collect the RS's property more than two years before the claim was filed). A collection suit cannot be commenced in Tax Court. Thus, if the examiner sees a Tax Court litigation code (TC 520 with a 72 or 74 closing code), the examiner does not need to investigate any further (although that could be an indication

that this matter was tried before, which could mean that the claim is barred by res judicata). *IRM 25.15.3.5.2*, *Collateral Estoppel.*

Note:

The two year period begins to run when the RS is named as a defendant in a complaint filed in a suit to reduce tax assessments to judgement or to foreclose even though the tax lien may not list specific assets the Service wishes to collect from.

Claims in judicial proceedings: The filing of a claim by the Service in a court proceeding in which the RS is a party, or which involves the property of the RS, including claims in bankruptcy and claims in interpleader (a legal proceeding brought by a disinterested third party to determine the rightful claim to property of competing claimants) actions involving property of the RS also triggers the two year period.

Example:
Proof of claims (POC) filed in bankruptcy. The examiner should look at the transcripts to see if a bankruptcy litigation code is present more than two years before the IRC 6015(b) and IRC 6015(c) claim was filed. If this situation is present, the examiner should investigate to determine if the government filed a POC. First, the examiner should contact the bankruptcy unit that handled the bankruptcy case. This office should be able to obtain information regarding whether a POC was filed. If a POC was filed, the examiner should try and obtain from the Insolvency unit a filed stamped copy of the POC, along with any documentation that would establish who was served with a copy of the POC, and at what address.

Example:

Claims in other proceedings. Again, a general litigation code on the transcript indicates a possible claim in a judicial proceeding. If the general litigation code appears on the transcript, the examiner should contact the Chief Counsel attorney who handled the case to discuss whether a collection suit, discussed above, or claim in another proceeding was filed. The Chief Counsel attorney should be able to ascertain whether a claim was ever filed, and if so, the date the claim was filed. The two year period will begin on the date the claim was filed. In these situations, the examiner should request that the field attorney provide the examiner with copies of any documentation which establishes the date that the RS was served with a copy of the claim.

"Collection activity" does not include the following IRS actions:

- Notices of deficiency
- Demands for payment of tax
- Notices of federal tax lien

There may be cases in which there has been no collection activity as described above, even though the RS may have received numerous demands for payment or other generic notices. Thus, the two year period for filing a claim for relief under IRC 6015(b) and IRC 6015(c) may not have expired on certain old and inactive balance due cases.

25.15.3.4.5 (03-08-2013)
Prohibited Collection Actions

IRC 6015(e)(1)(B) generally prohibits levies and judicial proceedings while an innocent spouse claim is pending. Refund offsets are not prohibited by statute. However, the Service has made a business decision not to offset refunds while a claim is pending.
If a prohibited collection action or a refund offset has occurred in violation of paragraph 1 above, corrective measures must be taken to refund the money to the RS.

25.15.3.5 (03-01-2011)
Special Considerations

Prior court decisions on a given tax year may affect whether a request for relief from joint and several liability can be considered. These are not limited to Tax Court decisions. These doctrines also apply to other court decisions. These actions are defined below:

- Res Judicata - *IRM 25.15.3.5.1*, *Res Judicata*, discusses the principles of res judicata.
- Collateral Estoppel - *IRM 25.15.3.5.2*, *Collateral Estoppel*, discusses collateral estoppel.

If the only basis for not considering or initially denying a claim under IRC 6015(c) was that the RS was still married when the original claim was made, and RS files a new claim, then res judicata does not apply to bar the new claim under IRC 6015(c) only.

25.15.3.5.1 (07-29-2014)
Res Judicata

Res Judicata - Res judicata generally precludes **any kind of claim** for a tax year previously litigated. In the case of any claim for relief under IRC 6015, if any court has rendered a final decision on the RS's tax liability for a tax year, such decision shall be conclusive if relief under IRC 6015 was at issue in the prior case or if the RS meaningfully participated in the proceeding and the RS could have raised relief under IRC 6015 in that proceeding. See IRC 6015(g)(2).
A RS has not meaningfully participated in a proceeding prior to July 22, 1998 since, due to the effective date of IRC 6015, relief under IRC 6015 was not available in that proceeding.
Res Judicata does not apply to criminal tax cases if the civil income tax liabilities were not, and could not have been, at issue.

Final Tax Court Decision Prior to July 22, 1998 - A taxpayer who has unsuccessfully litigated his/her entitlement to innocent spouse relief under the prior law of IRC 6013(e) may elect relief under the new provision of IRC 6015 for the same year if a portion of the tax liability remains unpaid as of July 22, 1998. See Treas. Reg. 1.6015-1(e).

Final Tax Court Decision on or after July 22, 1998 — If the issues creating the deficiency were the subject of a prior Tax Court decision entered on or after July 22, 1998, and the spouse seeking relief did not raise the issue of his/her eligibility for relief under IRC 6015 in that proceeding, the spouse may not raise it subsequently if the court determines the RS "participated meaningfully" (actively participated) in the prior proceeding. See Treas. Reg. 1.6015–1(e).

Res Judicata and Bankruptcy - Not all bankruptcy proceedings determine the merits of the tax liability; some bankruptcy proceedings merely determine the collectability of the tax liability. If the merits of the tax liability were at issue in the bankruptcy proceeding, the RS meaningfully participated in the proceeding, and relief under IRC 6015 was raised or could have been raised, then res judicata applies and the RS is precluded from raising a subsequent request for relief under IRC 6015. If the merits of the tax liability were not at issue during the bankruptcy proceeding, res judicata will not apply and the RS will not be barred from making a subsequent request for relief under IRC 6015.

If the only basis for not considering or initially denying a claim under **IRC 6015(c)** was that the RS was still married when the original claim was made, and RS files a new claim, then res judicata does not apply to bar the new claim under IRC 6015(c) only.

Criminal Tax Court- Res Judicata does not apply to criminal tax cases if the civil income tax liabilities are not at issue.

25.15.3.5.2 (03-08-2013)
Collateral Estoppel

Collateral Estoppel, also known as issue preclusion, is a legal doctrine, which holds the findings of fact or law of a prior judicial decision are binding in a subsequent proceeding between the same parties. When collateral estoppel applies, the taxpayer is prohibited from litigating an issue that was identical to an issue previously litigated, which was part of a valid final judgment.

Example:

In tax year 1, the Tax Court determines that the requesting spouse was not entitled to relief under section IRC 6015(b) because he or she had knowledge of income from an illegal business operated by the non-requesting spouse. Under the doctrine of **res judicata** (see *IRM 25.15.3.5.1*), the requesting spouse could not subsequently request relief under section 6015(f) for tax year 1. The innocent spouse determination made by the Tax Court is **res judicata** for tax year 1 because the decision is final and the requesting spouse could have raised relief under (f) in that prior proceeding. However, for tax year 2, even if the requesting spouse was determined to have actual

knowledge of the same illegal business in tax year 1, the requesting spouse would not be precluded from requesting relief under section 6015(f) as knowledge is only one factor to be determined under section 6015(f).

Under the doctrine of **collateral estoppel**, the requesting spouse would be precluded from arguing that he or she did not have knowledge of the illegal business in a subsequent proceeding because the identical issue was litigated and determined by the Tax Court in its determination of tax year 1. But, collateral estoppel will not preclude the requesting spouse from raising the additional factors to be considered for relief under section 6015(f) as those factors had not been litigated and determined in the prior Tax Court proceeding.

25.15.3.5.3 (02-25-2010)
Issuance of a Second Final Determination Letter Under IRC 6015

Refer to IRM 25.15.17, *Reconsiderations*, for information on circumstances that allow for issuance of a second final determination letter.

25.15.3.5.4 (05-01-2005)
Prior Accepted Offer in Compromise (OIC)

Refer to IRM 25.15.1.2.7, *Offer in Compromise (OIC)*, for information on an OIC accepted prior to the filing of the Form 8857, *Request for Innocent Spouse Relief*.

25.15.3.5.4.1 (05-01-2005)
Pending Offer in Compromise

Refer to IRM 25.15.1.2.7, *Offer in Compromise (OIC)*, for information on a pending OIC.

25.15.3.5.5 (03-01-2011)
Closing Agreements

A closing agreement, Form 866, *Agreement as to Final Determination of Tax Liability*, closes with finality the tax year and the type of tax to which it relates. See Treas. Reg. 301.7121-1(c). If a taxpayer signed a Form 866, he or she is precluded from consideration for relief from joint and several liability.

A closing agreement, Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, will generally relate to a specific matter or matters for a tax period, rather than to the entire liability. Only those matters covered in the closing agreement are conclusively closed. A taxpayer may request innocent spouse relief for adjustments not specifically covered in the closing agreement.

If the RS was not a party to the closing agreement, using either Form 866 or Form 906, then the RS may file an innocent spouse claim for that year if the RS is otherwise eligible.
Execution of a Form 870-AD, *Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment*, by the RS is not considered a closing agreement and does not preclude consideration for relief.

Tax Equity and Fiscal Responsibility Act (TEFRA) Settlement Agreements are addressed in IRM 25.15.1.2.8, *Tax Equity and Fiscal Responsibility Act (TEFRA) Settlement Agreements*.

25.15.3.5.6 (07-29-2014)
Understatements Resulting From an Increase to Adjusted Gross Income

If an erroneous item (as defined in *IRM 25.15.3.4.1.1.1*) that is attributable to the NRS increases the adjusted gross income (AGI) and results in disallowance of another item on the return because of the increase to AGI, then any understatement caused by the disallowance of the other item will also be attributable to the NRS. This rule is applicable whether or not the RS received a refund (or a portion of a refund) due to the item.

Example:

A joint return shows a tax liability of $500 and an earned income tax credit (EITC) in the amount of $1500 which results in a refund of $1000. Upon examination NRS had additional unreported income that increased the tax liability on the return to $1000. In addition, the increase to the AGI from the unreported income resulted in the EITC being disallowed in full because the AGI now exceeded the maximum amount. The IRS determines a deficiency in the amount of $2000 ($500 from the unreported income and $1500 from the disallowed EITC). If RS requests relief under IRC 6015, the entire $2000 deficiency will be attributable to NRS because the EITC was disallowed solely due to the increase to adjusted gross income (AGI) of NRS's unreported income. Thus, RS will satisfy the attribution factors of IRC 6015(b) and IRC 6015(f). For purposes of IRC 6015(c) the deficiency related to the EITC will be initially allocated to NRS.

Exception:

This does not apply to the RS's social security benefits. The social security benefits will be attributable to the RS.

When credits are reduced or eliminated due to the increase in AGI, the changes are attributable to what caused the increase to AGI.

Example:

If the NRS's income caused the increase to AGI, the reduced or eliminated credits are attributable to the NRS.

When the education credits are reduced or eliminated due to lack of verification, then it will be attributable to the party actually having the education expenses. If the credit is due to a child having the expenses, then allocate by percentage. It is important to know why the education credit was reduced.

For purposes of determining whether a RS knew or had reason to know of the item that was disallowed due to the increase in AGI, the RS's knowledge or reason to know regarding the erroneous item that resulted in the increase in AGI will control.

Example:

Thus, in the example (1) above, if RS knew or had reason to know of NRS's unreported income, then RS will have knowledge or reason to know of the deficiency related to the EITC. On the other hand, if RS did not know or have reason to know of NRS's unreported income, then RS will not have knowledge of reason to know of the deficiency related to the EITC.

If the item is attributable to the NRS and the RS is determined to not have knowledge or reason to know of the item, other factors still need to be evaluated.

For purposes of IRC 6015(b), the claim would still need to be timely and it would have to be inequitable to hold the RS liable (see *IRM 25.15.3.6.4*(1) *Inequitable to Hold Requesting Spouse Liable).*

Other examples of items that might result in an understatement due to an increase to AGI include, but are not limited to, itemized deductions, alternative minimum tax, student loan interest adjustment, and other credits.

These rules do not apply if there is another reason for disallowing the item, such as not having a qualifying child for the EITC or lacking substantiation for a claimed deduction. In that situation, the normal attribution and knowledge rules apply.

25.15.3.6 (09-01-2006)
IRC 6015(b) — Innocent Spouse Relief Qualifications

To qualify for innocent spouse relief under IRC 6015(b), the RS must establish each of the following elements:

- A joint return was filed for the year in which relief is requested;
- There is an understatement of tax, see *IRM 25.15.3.4.1*, *Deficiency/Understatement*, attributable to erroneous items of the NRS;
- The RS did not know and had no reason to know of the understatement at the time the return was signed;

Taking into account all the facts and circumstances, it would be inequitable to hold the RS liable for the deficiency attributable to the understatement; and

The request for relief is made within two years from the date of the first collection activity (with respect to the RS) after July 22, 1998.

25.15.3.6.1 (03-08-2013)
Joint Return

The **first** requirement is that there **must** be a joint return filed for the year for which relief is requested. If a joint return was not filed, relief under IRC 6015(b) is not available. If the RS is domiciled in a community property state, IRC 66 treatment may be available. See IRM 25.15.5*Relief from Community Property Laws/Community Property States.*

25.15.3.6.2 (03-08-2013)
Understatement Attributable to Erroneous Item of the Other Spouse

The **second** requirement provides there must be an understatement of tax attributable to erroneous items of the NRS. Attribution is a critical factor. Items attributable to the RS do not qualify for relief. You cannot be relieved of tax on your own items including joint items. In most cases, examiners should first consider attribution before other factors.
Math errors under IRC 6213(g)(2) are generally considered to be deficiencies for innocent spouse purposes of determining relief under IRC 6015. However, math error adjustments to withholding and estimated tax are not considered deficiency assessments. See IRC 6211(b)(1) and IRM 25.15.7.5.15, *Math Error*.

See *IRM 25.15.3.4.1*, *Deficiency/Understatement*, for a definition of an **understatement** of tax.

See *IRM 25.15.3.4.1.1.1*, *Erroneous Item*, for a definition of an **erroneous item**.

25.15.3.6.3 (03-08-2013)
Actual and Constructive Knowledge

The **third** requirement under IRC 6015(b) is that the RS did not know and had no reason to know of the understatement at the time the tax return was signed.

There are 2 standards that must be considered under this requirement:

- Lack of **actual** knowledge ("did not know"); **and,**
- Lack of **constructive** knowledge ("had no reason to know").

Note:

If a RS establishes he or she was the victim of domestic abuse prior to the time the return was signed, but did not sign the return under duress (which might invalidate the joint election), and as a result of the prior abuse, did not challenge any of the items on the return for fear of retaliation, the actual knowledge or reason to know, of IRC 6015(b) will not apply.

- The examiner should consider the following factors (but, not limited to):
- Nature of the erroneous item and the amount of the erroneous item relative to other items
- The couple's financial situation
- The RS's educational background and business experience
- The extent of the RS's participation in the activity that resulted in the erroneous item
- Whether the RS failed to inquire, at or before the time the return was filed, about items on the return or omitted from the return that a reasonable person would question
- Whether the erroneous item represented a departure from a recurring pattern reflected in prior year's returns

See Treas. Reg. 1.6015-2(c).

25.15.3.6.4 (03-08-2013)
Inequitable to Hold Requesting Spouse Liable

The **fourth** requirement under IRC 6015(b) provides that, considering all the facts and circumstances, it is inequitable to hold the RS liable for the deficiency.
A determination of whether it is inequitable to hold the spouse liable is based on factors in IRC 6015(f). see *IRM 25.15.3.8*, *IRC 6015(f) Equitable Relief*, for a further discussion of equitable relief under IRC 6015(f).

These guidelines should be applied in a consistent and nondiscriminatory manner. Decisions to grant relief should not be based on the subjective personal and social beliefs of the IRS employee or any other inappropriate grounds.

25.15.3.6.5 (09-01-2006)
Time Period for Making Election

The **fifth** requirement under IRC 6015(b) is that the RS must make an election under IRC 6015(b) within two years from the first collection activity against the RS that occurred after July 22, 1998. See *IRM 25.15.3.4.4*, *Collection Activity*, for the definition of collection activity.

25.15.3.6.6 (03-01-2011)
Partial Relief Available

Partial relief may be granted when a spouse meets all of the other conditions for innocent spouse, except he or she had knowledge of, or reason to know of, some part of the understatement. IRC 6015(b) specifically allows partial relief from liability (including penalties, interest and other amounts) to the extent of the lack of knowledge and reason to know of the understatement. See Treas. Reg. 1.6015–2(e).

Note:
The knowledge requirement applies to each item of adjustment and to the extent of the knowledge of each erroneous item.

25.15.3.7 (03-08-2013)
IRC 6015(c) – Election to Allocate a Deficiency

An individual may request to allocate a deficiency under IRC 6015(c).
Both parties to a joint return may elect to allocate a deficiency. If only one spouse elects to allocate the deficiency, the liability of the NRS is not affected. The NRS would still be liable for the entire deficiency.

The election to allocate applies only to deficiencies.

If granted, the RS is relieved in whole or in part of the joint and several liability for the deficiency. The items giving rise to the deficiency are allocated in the same manner as they would have been if the spouses had filed separate returns. The analogy to separate returns goes to the allocation of items adjusted, not to the computation of allocable tax due to a separate return.

Note:

Refunds are not allowed under IRC 6015(c). Treat as a full allowance when granting relief under IRC 6015(c) for the balance due but not refunding any money.
The allocation is made without regard to community property law.

25.15.3.7.1 (03-08-2013)
Qualifications

To qualify for relief under IRC 6015(c), the RS must establish:

A joint return was filed for the year in which relief was requested.

There is a deficiency of tax attributable to erroneous items of the NRS. A spouse may be relieved for a portion of the tax liability arising from a joint item.

He or she is either divorced, widowed, legally separated, or living apart for the 12 month period prior to the date the request was filed. Living apart for the 12 month period prior to the date the request was filed does not include a spouse who is temporarily absent from the household. A temporary absence exists if it is reasonable to assume the absent spouse will return to the household, or a substantially equivalent household is maintained in anticipation of such a return. Some examples may include absence due to incarceration, illness, business, vacation, military service, or education. Treas. Reg. section 1.6015-3 provides that the marital status of a deceased RS will be determined on the earlier of the date of election or the date of death in accordance with IRC 7703(a)(1). The regulations also clarify a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged, or one spouse is temporarily absent.

The request for relief is made within two years from the date of the first collection activity (with respect to the RS) after July 22, 1998. The two year time period for making the election is the same as required under IRC 6015(b). See *IRM 25.15.3.6.5*, *Time Period for Making Election*.

25.15.3.7.1.1 (03-01-2011)
Actual Knowledge Invalidates Allocation

The **Service has the burden** of proving by a preponderance of the evidence that the RS had **actual knowledge** of the items giving rise to the deficiency **at the time the return was signed**.

See IRC 6015(c)(3)(c).

This differs from the standard for relief under IRC 6015(b) which places the burden on the RS to establish he or she did not know and had no reason to know of the understatement. "Did not know" and "had no reason to know" are sometimes referred to as actual and constructive knowledge, respectively. A spouse who was disqualified for innocent spouse relief due to constructive knowledge under IRC 6015(b) may qualify for relief under IRC 6015(c) if he or she did not have actual knowledge.

In an omitted income case, actual knowledge includes knowledge of the receipt of the income. Knowledge of **only** the source of the income is not sufficient. Actual knowledge in an erroneous deduction or credit case means knowledge of the facts that made the item not allowable as a credit or a deduction. For example, in an erroneous deduction case involving disallowed deductions generated by a partnership, the Service must establish that the RS had actual knowledge of the factual circumstances which made the partnership items erroneous deductions. See Treas. Reg. 1.6015–3(c)(2).

Actual knowledge of a portion of the deficiency does not make the spouse ineligible for IRC 6015(c) relief for the entire deficiency. It **merely invalidates the allocation with respect to the specific items** for which the spouse had actual knowledge.

25.15.3.7.2 (05-01-2005)
Allocating a Deficiency Under IRC 6015(d)

The allocation must be made according to the procedures contained in IRC 6015(d). The allocation takes into consideration limitations in IRC 6015(c).

25.15.3.7.2.1 (07-29-2014)
Steps to Allocate

The following is an eight step approach to allocating understatements between the joint and several liability and each spouse individually. **In general, items for which the RS is granted relief are re-allocated from the joint liability to the NRS individually. Items for which relief is not granted remain part of the joint and several liability**.

The seven steps are summarized in the following table.

Step #	Action
1	**Determine the total deficiency** for the joint return with all adjustments.
2	**Identify and allocate separate treatment items** (credits and taxes other than tax imposed by IRC 1 or IRC 55). See *IRM 25.15.3.7.2.2.1*, *Separate Treatment Items*.
3	**Compute the total allocable deficiency.** This is done in order to allocate income tax before credits and other taxes. Therefore, disallowed credit items are subtracted from the total deficiency. Other taxes increased are also subtracted from the total deficiency. When applicable, credit `items increased and other taxes decreased are added back to the total deficiency. **Joint deficiency (Step 1) -/+ Separate treatment items (Step 2) = Total Allocable Deficiency (Step 3)**
4	**Allocate all adjustment items between the spouses.** The allocation takes into account the following considerations, discussed in further detail below: Actual knowledge bars relief for the item. Fraudulent transfers invalidate election. RS bears burden of proof for establishing the portion of deficiency allocable to them. Allocate as if the spouses filed separate returns. Ignoring separate return limitations. Tax benefit limitation.

Step #	Action
	When an understatement is due to fraud. There is no relief for items attributable to RS. **Note:** A RS can obtain relief from his or her own item to the extent that the RS does not receive a tax benefit from the item and the item offsets the NRS's income. See *Hopkins v. Commissioner* 121 TC 73 (2003). In these instances, the Service must establish that the RS had actual knowledge to invalidate the allocation to the NRS, or the RS will be able to obtain relief.
5	**Compute the allocable deficiency for each spouse.** This is the portion of the total allocable deficiency (Step 3) allocated to each spouse using the ratio of the adjustment items allocable to the spouse (Step 4) over the total of all allocable adjustment items. Percentage of adjustments allocated to the spouse (Step 4) x Total allocable deficiency (Step 3) **= Deficiency Allocable to a spouse (Step 6)**
6	**Compute the total deficiency** allocable to each spouse. This is a two-step process: The allocable deficiency is adjusted for Separate Treatment Items (See *IRM 25.15.3.7.2.2.1*, *Separate Treatment Items*. Essentially they are removed from the total deficiency in Step 2 and put back in at Step 7. The result is the Tentative Total Deficiency Allocable to Spouse. Deficiency allocable to Spouse (Step 5) +/- Separate treatment tax items (Step 2) = **Tentative total deficiency allocable to spouse** **Note:** The total of the joint liability plus each spouse's allocated individual liability should equal the total deficiency before any allocation.
7	**Compute and adjust for any change to the EITC.** Compute the allocation of the EITC per *IRM 25.15.3.7.2.1.1Allocation of Earned Income Tax Credit (EITC)*. Take the **Tentative total deficiency allocable to Spouse** + The **decrease** in EITC - The **increase** in EITC **= Total Deficiency Allocated to each spouse**
8	**Consider Exceptions and Special Rules** (see *IRM 25.15.3.7.2.2Special Rules and Exceptions*). Adjustment is made for items that affect the deficiency such as: Tax Benefit Disqualified Assets Household Employment Taxes Child's Liability

The TC 240 penalty should be allocated based on how it was originally assessed and what the RS is being relieved of. To do this:

Determine what the original TC 240 was assessed on. The type of TC 240 penalty can be determined by the reference number; e.g., ref. number 680 means that it is an accuracy related penalty.

If the amount of tax you are relieving the RS of had the TC 240 assessed, abate the TC 240 for that portion, using the applicable reference number.

25.15.3.7.2.1.1 (07-29-2014)
Allocation of Earned Income Tax Credit (EITC)

Rev. Rul. 87-52 allows for allocation of the Earned Income Tax Credit (EITC) shown on the joint return. If EITC is not shown on the joint return, do not figure EITC on the allocation.

Use the appropriate EITC table and worksheet, or CC EICMP with definer R for the tax year for which the form is being worked.

Determine a new, separate EITC that would be available for each spouse if that spouse had filed a separate return and if EITC were available on a married filing separately return. This is a theoretical situation used for computation only.

Compute each spouse's separate EITC, based on each individual's **earned income**, using the same number of qualifying dependents used to compute the EITC on the joint return.
Do not split the qualifying dependents between the spouses.

Use the same column in the EITC table as used to determine the EITC on the original joint return.
Figure the RS percentage of EITC by dividing the RS's new separate EITC by the sum of the EITC for both spouses and multiply the percentage by the amount allowed on the joint return. See below for an example.

Example:

2012 Joint tax return with income from wages totaling 35,000. There are two qualifying children.
NRS wages = $25,000 and the RS wages = $10,000. The EITC on this return is $2,550.

Calculate EITC for each spouse based on a single filing status with 2 qualifying children.
NRS income consists of $25,000 in wages. EITC is $3,560.00.
RS income consists of $10,000 in wages. EITC is $4,010.00.

Calculate percentages.
Add the EITC amounts together 3,560 + 4,010 = 7,570
NRS 3,560 divided by 7,570 = 47%

RS 4,010 divided by 7,570 = 53%

Calculate EITC allocation of the $2,550 on the joint return.

NRS 2,550 X .47 = $1,198.50

RS 2,550 X .53 = $1,351.50

Note:

If the allocation using the above formula results in no EITC for both spouses due to a loss claimed on the joint return, the EITC is allocated to the spouse claiming the loss, since it is that loss that qualified the joint account for the EITC.

See *IRM 25.15.3.7.2.1.1.1Use of Heartland Disaster Tax Relief Act of 2008 Provisions When Allocating EITC*, if taxpayers are using their 2007 earned income to figure their EITC for 2008.

25.15.3.7.2.1.1.1 (07-29-2014)
Use of Heartland Disaster Tax Relief Act of 2008 Provisions When Allocating EITC

Provisions of the Heartland Disaster Tax Relief Act of 2008 allow impacted taxpayers to use their 2007 earned income for purposes of figuring any EITC for 2008 if the 2008 earned income is less than the 2007 earned income and:

the main home on the applicable disaster date was in a Midwestern disaster area listed in Table 1 of Publication 4492-B, Information for Affected Taxpayers in the Midwestern Disaster Areas; or
the main home on the applicable disaster date was in a Midwestern disaster area as shown in Table 2 and the taxpayer was displaced from that home because of the severe storms, tornadoes, or flooding.

If the taxpayer qualifies to use their 2007 earned income, you will determine the EITC allocation based on the 2007 income not the 2008 income.

25.15.3 Technical Provisions of IRC 6015 (Cont. 1)

25.15.3.7

IRC 6015(c) – Election to Allocate a Deficiency
25.15.3.7.2

Allocating a Deficiency Under IRC 6015(d)

25.15.3.7.2.2 (07-29-2014)
Special Rules and Exceptions

The following is a discussion of the special rules and exceptions indicated in allocation Steps 2, 4, 6 and 8 in *IRM 25.15.3.7.2.1*(2).

25.15.3.7.2.2.1 (03-08-2013)
Separate Treatment Items

Separate treatment items are **(nonrefundable) credits and taxes only.** They affect the deficiency dollar for dollar in the allocation computation. Examples include:

- Child and Dependent Care Credit,
- Child Tax Credit,
- Education Credits, and
- Self-employment (SE) Tax and the 10 percent penalty for early withdrawal of an Individual Retirement Account (IRA) Tax. This does not include income tax or alternative minimum tax under IRC 1 and IRC 55.

Because separate treatment items affect the deficiency dollar for dollar, they are allocated separately from the other adjustment items. The separate treatment items that were adjusted should be totaled and subtracted from the total deficiency to arrive at a figure that represents only income tax. After the proportionate deficiency (the "only" income tax figure) is allocated between the spouse, then the separate treatment items are allocated between the spouses based on who they belong to and added to their share of the proportionate deficiency.

Underpayment - Separate treatment items creating a balance due are allocated based on who they belong to.

Note:

When allocating the non-refundable credits, allocate 50/50 unless the RS's tax is less than the amount of the credit. If that is the case apply that amount to the RS and the remainder on the NRS.

Note:

Refundable credits, other than the EITC, are allocated based on the percentage of income.
Understatement - When the credit is reduced or eliminated due to the increase in AGI, the changes are attributable based on where the increase is in the AGI See *IRM 25.15.3.5.6*, *Understatements Resulting From an Increase to Adjusted Gross Income*.

Example:

If it is the NRS's income that caused the increase to AGI, it would be attributable to the NRS, much like EITC and Additional Child Tax Credit (ACTC).

If the education credit is reduced due to lack of verification, then it is attributable to the party actually claiming the education expenses.

If the education credit is due to a child having the expenses, it is allocated by percentage.

Note:

It is important to read the CP 2000 or Exam workpapers to identify why AUR reduced the education credit.

25.15.3.7.2.2.2 (03-08-2013)
Actual Knowledge

No relief is available under IRC 6015(c) for any item(s) (or portion of an item) for which the Service establishes that the RS had actual knowledge. Therefore, such item(s) remain a joint and several liability and should not be allocated to either spouse individually. See *IRM 25.15.3.7.1*, *Qualifications*, for additional information.

If a RS establishes he or she was the victim of domestic abuse prior to the time the return was signed, but did not sign the return under duress (which might invalidate the joint election), and as a result of the prior abuse, did not challenge any of the items on the return for fear of retaliation, the actual knowledge limitation of IRC 6015(c) will not apply. This exception only applies if the Service first establishes actual knowledge of the item giving rise to the deficiency. See *IRM 25.15.3.7.1*, *Qualifications*, regarding the Service's burden to establish actual knowledge. See Treas. Reg. 1.6015–3(c)(2)(v).

25.15.3.7.2.2.3 (07-29-2014)
Fraudulent Transfers

Taxpayers are not eligible for relief under IRC 6015(c) or IRC 6015(f) if assets were transferred between spouses as part of a fraudulent scheme.

A fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to, creditors, ex-spouses, and business partners. See Treas. Reg. § 1.6015–1(d).
IRS bears the burden of showing assets were transferred as part of a fraudulent scheme. If the Service is unable to prove fraud, fraud indicators will still be taken into account when considering

relief under the equitable factors under section 4.03 of Rev. Proc. 2013–34. For more information see IRM 25.1, *Fraud Handbook*.

25.15.3.7.2.2.4 (03-08-2013)
Taxpayer Burden of Proof to Establish Their Allocated Portion of the Liability

The RS bears the burden of proof in establishing his or her allocated portion of the liability per IRC 6015(c)(2). The spouse must prove that the items giving rise to an understatement are attributable to the NRS. If efforts to retrieve the administrative file are unsuccessful, and no other corroborating evidence is available to determine attribution of the erroneous items, examiners should base their determination on the credibility of the RS. IRC 6015(c) requires the Service prove actual knowledge of each item giving rise to a deficiency in order to invalidate an allocation to the NRS. In addition, the Service must prove the extent of actual knowledge for each item. See *IRM 25.15.3.7.1.1*, *Actual Knowledge Invalidates Allocation*, for additional information.

25.15.3.7.2.2.5 (05-01-2005)
Allocate as if Spouses Filed Separate Returns

In the allocation computation, adjustment items are allocated to each spouse in the same manner as they would have been had the spouses filed separate returns ignoring separate return limitations. See *IRM 25.15.3.7.2.2.6*, *Ignore Separate Return Limitations*, for additional information.

25.15.3.7.2.2.6 (03-08-2013)
Ignore Separate Return Limitations

Under IRC 6015(d)(4) if a deduction or credit would be disallowed because the taxpayer filed a separate return, the deduction should be computed as it would for a joint return and then allocated between spouses.

If a credit would not be allowed on a separate return, the credit should be computed as it would for a joint return and then allocated between spouses. Examples of credits generally not allowed on separate returns are the child and dependent care credit, the Hope and Lifetime Learning credits, and the EITC.

A similar rule applies to income and deductions (such as taxable social security and railroad retirement benefits and the IRA deduction) subject to special limitations on a joint return. The items should be computed based on a joint return and then allocated between spouses.

25.15.3.7.2.2.7 (09-01-2006)
Rules Regarding Relief for Items Attributable to RS

Generally, the RS may not be relieved of any part of the deficiency which relates to an item attributable to the RS. A RS can obtain relief from his or her own item to the extent that the RS

does not receive a tax benefit from the item and the item offsets the NRS's income. In these instances, the Service must establish that the RS had actual knowledge to invalidate the allocation to the NRS, or the RS will be able to obtain relief.

25.15.3.7.2.2.8 (07-29-2014)
Tax Benefit Limitation

An erroneous item that would otherwise qualify for relief does not qualify to the extent the RS received a tax benefit from that item on the original return. Likewise, to the extent the RS did not receive a tax benefit from the item and the NRS does (offset of NRS's income), then the amount that the RS does not receive a benefit from is allocated to the NRS. Examples of items that could result in such a benefit include deductions, losses, and credits attributable to the NRS (or joint items allocated 50–50) that reduce taxable income of the RS or vice-versa.

The RS received a tax benefit on the return to the extent the NRS's erroneous items (or joint items allocated 50–50) offset the RS's income or vice-versa.

For separate treatment items of nonrefundable credits and refundable credits, benefit is derived from the lesser of:

- The total of such credits per return, or
- The excess of such credits over the NRS's share of the original return liability including other taxes.

Example:

A joint return shows $50,000 of wages from RS. The return reflects a Schedule C attributable to NRS with gross receipts of $15,000 and one deduction of $20,000 for a net loss of $5,000. The return also reflects $1,000 of Lifetime Learning Credit attributable to NRS. Personal exemptions of $2,500 each were claimed along with the standard deduction of $7,000. Upon examination the $20,000 deduction and $1,000 credit are disallowed. In this case NRS has unused deductions that offset RS's income of $11,000 computed as follows:

Gross receipts $15,000
Personal exemptions ($2,500)
Standard Deduction ($3,500)
Taxable Income before erroneous item $9,000
Erroneous item ($20,000)
Taxable income ($11,000)
The unused deductions of NRS equals the tax benefit to RS. Since NRS only used $9,000 of the erroneous item to reduce his taxable income to $-0- the balance of $11,000 benefitted RS. RS's potential relief of the $20,000 item would be reduced by $11,000 to $9,000. In addition, because RS received the benefit of the $1,000 credit reported on the return, relief is not available for that item.

25.15.3.7.2.2.9 (05-01-2005)
Fraud

IRC 6015(d)(3)(C) provides an exception to the allocation method if the IRS establishes fraud by one or both spouses. The IRS may use an alternative allocation it deems appropriate based on the facts and circumstances.

25.15.3.7.2.2.10 (03-08-2013)
Disqualified Assets

A disqualified asset is any property or right to property transferred to the RS by the NRS, if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties and interest) IRC 6015(c)(4)(B)(i).

All assets transferred from the NRS to the RS during the 12 month period before, or any time after, the mailing date of the first letter of proposed deficiency (the 30 day letter), are presumed to be disqualified assets. See IRC 6015(c)(4)(B)(ii)(l) and Treas. Reg. 1.6015-3(c)(3)(iii).

The presumption does not apply if the RS establishes that the transfer was pursuant to a divorce decree or separate maintenance agreement or a written instrument incident to such a decree or agreement.

If the presumption does not apply because the transfer was pursuant to a decree or agreement, the Service can still treat the asset as disqualified, if the Service can establish that the purpose of the transfer was the avoidance of tax or payment of tax.

Under IRC 6015(c)(4)(B)(ii)(ll), if the presumption that a transfer within 1 year of the first letter or proposed deficiency (30 day letter) is a disqualified asset applies, the RS may rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

25.15.3.7.2.2.11 (03-08-2013)
Household Employment Taxes

Because household employment taxes (reported on Form 1040, Schedule H) are employment taxes, not income taxes under Subtitle A, they do not qualify for relief. Only Subtitle A taxes are subject to relief.

25.15.3.7.2.2.12 (07-29-2014)
Child’s Liability

The liability of a child, included on a joint return, is disregarded in computing the separate liability of either spouse. See IRC 6015(d)(5). The child's liability should be allocated equally between the

spouses. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse. See Treas. Reg. 1.6015–3(d)(4)(iii). See Form 8615, *Tax for Certain Children Who Have Unearned Income* and Form 8814, *Parents' Election to Report Child's Interest and Dividends*.

25.15.3.7.3 (07-29-2014)
Worksheet

CCISO will refer to the worksheets and instructions on the

http://win.web.irs.gov/innocentspouse/innocent_jobaids.htm,

Innocent Spouse Job Aids website.

Area Office employees will refer to

http://mysbse.web.irs.gov/exam/tip/innocentspouse/default.aspx

for more information and find an expert to assist at

http://mysbse.web.irs.gov/exam/tip/innocentspouse/contacts/11883.aspx

for assistance in completing the computations.

25.15.3.8 (07-29-2014)
IRC 6015(f) Equitable Relief

IRC 6015(f) was enacted to provide relief from joint and several liability where, taking into consideration all the facts and circumstances, it is inequitable to hold the spouse liable for an understatement or underpayment when other relief provisions do not apply.

Notice 2011–70 eliminated the two-year time limit for filing a claim for equitable relief under IRC 6015(f). Notice 2012-8 proposed a new revenue procedure providing guidelines for equitable relief under IRC 6015(f), that superseded Rev. Proc. 2003-61, and gave the Service the authority to apply the provisions in the proposed revenue procedure instead of Rev. Proc. 2003-61. The final revenue procedure, Rev. Proc. 2013-34, was released in September 2013.

Rev. Proc. 2013-34 takes abuse and financial control into consideration more thoroughly in connection with the equitable factors rather than as a separate factor.

The guidelines should be applied in a consistent and nondiscriminatory manner. Decisions to grant relief should not be based on the subjective personal and social beliefs of the IRS employee or any other inappropriate grounds.

25.15.3.8.1 (03-08-2013)
Understatements and Underpayments

IRC 6015(f) applies to **understatements** (liabilities from deficiency assessments) and **underpayments** (unpaid self-assessed taxes on original or amended returns).

This is the only provision under IRC 6015 that provides relief for underpayments. See *IRM 25.15.3.4.2*, *Underpayment*, for a further explanation of underpayment.

Cases meeting the basic qualifying factors, see *IRM 25.15.3.8.2*, *Eligibility Threshold Requirements under Rev. Proc. 2013-34*, will first be evaluated using the factors discussed in Section 4.02 of Rev. Proc. 2013-34. See *IRM 25.15.3.8.3*, *Streamlined Determinations - Rev. Proc. 2013-34 Section 4.02*.

Cases that do not meet all the factors discussed in Section 4.02 of Rev. Proc. 2013-34 will be evaluated using the Equitable Relief factors discussed in Section 4.03 of Rev. Proc. 2013-34. See *IRM 25.15.3.8.4*, *Relief for Underpayment and Understatement Cases per Rev. Proc. 2013-34*.
This provision also applies to **penalties, additions to tax, and interest** where relief is granted for the underlying tax. The analysis of the factors should focus on the underlying tax. If relief would have been appropriate for the underlying tax, then relief is appropriate for the penalties and interest. This includes situations where there was an underpayment of tax on the return but subsequent payments have paid all the tax leaving only penalty and/or interest unpaid or partially unpaid. If the RS would be entitled to relief, then the RS may be considered for a refund (including a refund of any paid penalties and interest) and would be entitled to relief from the unpaid penalties and interest. This may also apply to situations where there was an understatement that has subsequently been satisfied leaving only penalties and interest on the account.

Note:

If the original return was full paid when filed, then there is no underpayment of tax, therefore, no relief is available under IRC 6015.

Example:

Taxpayers filed a joint return late, paid the tax with the return, but still owed penalties and interest for filing late, relief is not available under IRC 6015. Reasonable cause or other penalty relief provisions, outside of the innocent spouse process, may be considered. See IRM 25.15.7.5.8(4), *Account Problems* regarding requests for abatement of penalties and interest.
See *IRM 25.15.3.8.2.2*, *Availability of Refunds under IRC 6015(f)*, for refund provisions.

25.15.3.8.2 (03-08-2013)
Eligibility Threshold Requirements under Rev. Proc. 2013-34

For a list of requirements that must be met for the Service to **consider** relief under IRC 6015(f), see *IRM 25.15.3.8.2.1*, *Eligibility Threshold Conditions - Defined*.

Note:

IRM 25.15.3.8.2.1(1) and (2) are not relevant for requests for relief under IRC 66(c) relating to taxpayers who file separate returns in community property states. For more information about relief under IRC 66, see IRM 25.15.5.9, *IRC 66(c) - Innocent Spouse Relief*.

25.15.3.8.2.1 (07-29-2014)
Eligibility Threshold Conditions - Defined

Joint Return Filed — The individual filed a joint return for the year in which relief is requested.

Unavailability of IRC 6015(b) and IRC 6015(c) — Relief is not available under IRC 6015(b) or IRC 6015(c).

Time Limitation — The individual requested relief within any time period that the collection statute or refund statute remains open.

No Fraudulent Transfers — Equitable relief will not be considered if assets were transferred between spouses as part of a fraudulent scheme to avoid tax or payment of tax. Acts which would disqualify the RS from requesting allocation under IRC 6015(c)(3)(A)(ii) also disqualify the RS from equitable relief. See *IRM 25.15.3.7.2.2.3*, *Fraudulent Transfers*, for a further explanation of fraudulent transfers.

No Transfers of Disqualified Assets — Equitable relief will not be considered to the extent of the value of disqualified assets which were transferred to the RS, similar to IRC 6015(c)(4)(B). See *IRM 25.15.3.7.2.2.10*, *Disqualified Assets*, for a further explanation of disqualified assets. This condition will not result in the RS being ineligible for relief if the NRS abused the RS or maintained control over the household finances by restricting the RS's access to financial information, or the RS did not have actual knowledge that assets were transferred.

No Fraudulent Return — The RS did not knowingly participate in the filing of a fraudulent joint return. Additional information can be found in IRM 25.1.2.3*Indicators of Fraud*.

Attributable to the NRS — Equitable relief will not be considered if the liability is solely attributable to the RS unless one of the following exceptions applies. If liability is attributable to both the RS and NRS, equitable relief will only be considered for the portion attributable to the NRS.

Note:

Generally erroneous items of income or erroneous deductions are allocable consistent with the rules under IRC 6015(c), see Treas. Reg. 1.6015–3(d). Joint items are generally allocable 50% to each spouse. Underpayments of tax are allocable based on each spouse's pro rata share of the joint taxable income determined as if the spouses had filed separate returns.

Note:

For purposes of determining how much of an underpayment is attributable to each spouse, the EITC and ACTC is allocated to each spouse in proportion to the spouse's share of the adjusted gross income.

Note:

When determining allocation, if you don't know who the income or deductions are attributable to, leave it on the joint account. The RS has the burden to establish who the income or deduction is attributable to.

Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the RS solely due to the operation of community property law, then that item (or portion thereof) will be considered to be attributable to the NRS.

Nominal ownership. If the item is titled in the name of the RS, the item is presumptively attributable to the RS. This presumption is rebuttable.

Example:

For example, NRS opens an Individual Retirement Account (IRA) in RS's name and forges RS's signature on the IRA in 2006. Thereafter, NRS makes contributions to the IRA and in 2008 takes a taxable distribution from the IRA. NRS and RS file a joint return for the 2008 taxable year, but do not report the taxable distribution on their joint return. The Service later proposes a deficiency relating to the taxable IRA distribution. RS requests relief from joint and several liability under IRC 6015. RS establishes that RS did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if RS were the owner of the IRA. RS thereby rebutted the presumption the IRA is attributable to RS.

Misappropriation of funds. If the RS did not know and had no reason to know, that funds intended for the payment of tax were misappropriated by the NRS for the NRS's benefit, the Service will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the RS. The Service will consider granting relief in this case only to the extent that the funds intended for the payment of tax were taken by the NRS.

Abuse not amounting to duress. If the RS establishes that he or she was the victim of abuse prior to the time the return was signed, and that, as a result of the prior abuse, the RS did not challenge the treatment of any items on the return, or question the payment of any balance due reported on the return, for fear of the NRS's retaliation, the Service will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the RS.

Fraud committed by NRS. If the RS establishes that the NRS's fraud is the reason for the erroneous item, the Service will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the RS.

Example:

NRS fraudulently accesses RS’s brokerage account to sell stock that RS had separately received from an inheritance. NRS deposits the funds from the sale in a separate bank account to which RS does not have access. RS and NRS file a joint federal income tax return for the year, which does not report the income from the sale of the stock. The Service determines a deficiency based on the omission of the income from the sale of the stock. RS requests relief from the deficiency under IRC 6015(f). The income from the sale of the stock normally would be attributable to RS. Because NRS committed fraud with respect to RS, however, and because this fraud was the reason for the erroneous item, the liability is properly attributable to NRS.

25.15.3.8.2.2 (03-08-2013)
Availability of Refunds under IRC 6015(f)

Deficiency and underpayment cases— The RS is eligible for a refund of separate payments that he or she made after July 22, 1998, if the RS establishes that he or she provided the funds used to make the payment for which he or she seeks a refund.

RS is not eligible for refunds of payments made with the joint returns (including withholding, estimated tax payments, payments made with the return, a Form 1040-V voucher, or a request for an extension of time to file and includes payments made after the joint return was filed but on or before the due date for payment), joint payments, or payments made solely by the NRS.

Exception:

The RS may be eligible for a refund of the RS's portion of the joint overpayment from another tax year applied to the joint income tax liability; to the extent that the RS can establish that the RS provided the funds for the RS's portion of the overpayment.
The RS is entitled to his/her portion of the stimulus payments.

Note:

If the stimulus payment was attributable to children, the portion is 50% to each spouse unless there is a good reason to allocate the payment differently, i.e., there was a remarriage and the children were the children of only one spouse.
Allocate the Making Work Pay Credit equally between the RS and NRS, even if one spouse did not work.

The RS is entitled to his/her portion of the First Time Homebuyers Credit (FTHBC).

Note:

The maximum amount allowed is 50% of the allowed credit. This is because if they had filed a separate return the maximum allowable for married filing separate returns is $4,000 for each spouse.

Other limitations— The availability of refunds is subject to IRC 6511. Generally the Form 8857 is treated as a claim for refund.

25.15.3.8.3 (03-08-2013)
Streamlined Determinations - Rev. Proc. 2013-34 Section 4.02

If **all the threshold conditions** discussed in *IRM 25.15.3.8.2*, *Eligibility Threshold Requirements under Rev. Proc. 2013-34* are met and the RS **meets all of the following conditions, relief will be granted:**

The RS is no longer married to the NRS. See *IRM 25.15.3.8.4.1.1*, *Marital Status*.

Economic hardship will result if relief is not granted. See *IRM 25.15.3.8.4.1.2*, *Economic Hardship*.
The RS did not know or have reason to know of the understatement, or that the NRS would not or could not pay the underpayment of tax. See *IRM 25.15.3.8.4.1.3*, *Knowledge or Reason to Know* for additional information.

If relief is not granted due to failure to meet one of the factors above then the examiner must consider the equitable relief factors in Section 4.03 of Rev. Proc. 2013-34. See *IRM 25.15.3.8.4.1Equitable Relief Factors (Section 4.03)*.

25.15.3.8.4 (07-29-2014)
Relief for Underpayment and Understatement Cases per Rev. Proc. 2013-34

In some instances, a RS with an underpayment liability or understatement who meets the threshold requirements, (see *IRM 25.15.3.8.2*, *Eligibility Threshold Requirements under Rev. Proc. 2013-34*), may not meet all of the Section 4.02 conditions (see *IRM 25.15.3.8.3*, *Streamlined Determinations - Rev. Proc. 2013 - 34 Section 4.02*), to qualify for relief. The RS may still qualify for equitable relief from a tax liability, if taking into account all the facts and circumstances, it is clearly inequitable to hold the RS liable for the **underpayment**, or for a liability arising from an **understatement** adjustment.

Various factors, listed in *IRM 25.15.3.8.4.1*, *Equitable Relief Factors (Section 4.03)*, below, should be taken into consideration for all cases. All the facts and circumstances of the case are to be taken into account. The degree of importance of each factor varies depending on the circumstances of the RS and the factual context surrounding the marriage. The factors are designed as guides. It is not intended that only the factors described below in *IRM 25.15.3.8.4.1*, *Equitable Relief Factors (Section 4.03)*, are to be taken into account in making the determination.
No one factor or majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the case, relief may be granted even if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may be appropriate even if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief. The weight given to any one factor depends on the facts and circumstances of the case.

25.15.3.8.4.1 (07-29-2014)
Equitable Relief Factors (Section 4.03)

In determining whether it is inequitable to hold the requesting spouse liable for all or part of the unpaid tax liability or deficiency, and whether full or partial relief should be granted, all the facts and circumstances of the case are to be taken into account. The factors listed below are designed as guides and not intended to comprise an exclusive list. Other factors relevant to a specific claim for relief may also be taken into account in making a determination.
Factors to consider to determine if RS should be granted relief under Rev. Proc. 2013–34 are:

- Marital Status, *IRM 25.15.3.8.4.1.1*
- Economic Hardship, *IRM 25.15.3.8.4.1.2*
- Knowledge or Reason to Know, *IRM 25.15.3.8.4.1.3*
- Legal Obligation, *IRM 25.15.3.8.4.1.4*
- Significant Benefit, *IRM 25.15.3.8.4.1.5*
- Compliance with Income Tax Laws, *IRM 25.15.3.8.4.1.6*
- Mental or Physical Health, *IRM 25.15.3.8.4.1.7*

Note:

Although abuse or the exercise of financial control is not a stand alone factor, the impact of abuse or financial control is considered under the applicable factors. Depending on the facts and circumstances, abuse of the RS's child or other family member living in the household can constitute abuse of the RS.

25.15.3.8.4.1.1 (07-29-2014)
Marital Status

Marital Status — Whether the RS is no longer married to the NRS as of the date the Service makes its determination.

This factor will **weigh in favor of relief** if the RS is no longer married to the NRS. The RS will be treated as being no longer married to the NRS only in the following situations, if the RS:

- is divorced from the NRS,
- is legally separated from the NRS under applicable state law,
- is a widow or widower and is not an heir to the NRS's estate, which would have sufficient assets to pay the tax liability; or
- has not been a member of the same household as the NRS at any time during the 12-month period ending on the date the service makes its determination. A temporary absence such as an absence due to incarceration, illness, business, military service, or education, shall not be considered separation for this purpose if it is reasonably expected that the absent spouse will return to the household.

Reminder:

A RS is a member of the same household as the NRS for any period in which the spouses maintain the same residence.

This **factor is neutral** if the RS is:

- still married to the NRS, or
- a widow or widower and an heir to the NRS's estate and there are sufficient assets in the estate to pay the tax liability.

25.15.3.8.4.1.2 (07-29-2014)
Economic Hardship

Economic Hardship - Whether the RS will suffer economic hardship if relief is not granted. An economic hardship exists if paying the tax liability in whole or part will cause the RS to be unable to pay reasonable basic living expenses.

If denying relief will cause the RS to suffer economic hardship, this factor will **weigh in favor of relief**.

If denying relief will not cause the RS to suffer economic hardship, this **factor will be neutral**.
If the RS is deceased, this **factor will be neutral**.

Consider the RS's current income, expenses and assets to determine if an economic hardship exists. In the event the information is missing from the Form 8857, you **must attempt to contact the RS**. It is not sufficient to rely on IRPTR data to determine current income. Instead, information should be solicited if omitted from the Form 8857. Also, consider whether the RS shares expenses or has expenses paid by another individual, such as a new spouse, a family member or significant other with whom the RS is living with and is paying for some or all of the household expenses.

An **economic hardship exists** if either situation below is present; unless the situation in the "CAUTION" below is present.

Gross income is at 250% (for the RS's family size) or less of the poverty level and the RS does not have assets out of which payments towards the liability can be made.

Note:

No need to look at the expenses in this case.
Gross income is more than 250% of the poverty level but the income minus expenses is $300 or less.

Note:

The expenses must be for reasonable basic living expenses, not for the maintenance of an affluent or luxurious standard of living. To determine basic living expenses, consult the national and local collection financial standards.
The federal poverty level chart can be found at,

http://coverageforall.org/pdf/FHCE_FedPovertyLevel.pdf.

Caution:

When the RS meets the above criteria but has assets such that the RS can make payments and still pay reasonable living expenses, consider this factor as neutral. Review the facts and circumstances. If neither (a) or (b) above applies, evaluate on a case-by-case basis; and if it would be an economic hardship, consider this factor in favor of relief. When evaluating the hardship, the size of the liability must be considered with the financial situation.

When the financial information is missing, incomplete, or appears questionable, **you must attempt telephone contact** with the RS for clarification. These calls must be documented. At least two attempts must be made. Those calls cannot be made within 48 hours of each other. The RS, if spoken with, should be given 30 days to provide additional documentation. If unable to reach the RS, issue Letter 3659C for CCISO and Letter L3659 for the field, requesting the specific information needed and informing the RS they have 30 days to respond. If no response, use the information available to determine if this factor will weigh in favor of relief or be neutral.

25.15.3.8.4.1.3 (07-29-2014)
Knowledge or Reason to Know

Actual knowledge or reason to know of the item giving rise to the understatement or deficiency **will not be weighed more heavily** than other factors.

This factor will **weigh in favor of relief** if the RS:

- did not know and had no reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return), or
- had a reasonable expectation at the time the joint return was filed that the NRS would pay the tax liability at the time the joint return was filed or within a reasonable period of time after the filing of the joint return.

Note:

If the **NRS abused the RS or maintained control over the household finances by restricting the RS's access to financial information**, and, therefore, because of the abuse or financial control, the RS was not able to challenge the treatment of any items on the joint return, or to question the payment of taxes reported as due on the joint return, or challenge the NRS's assurances regarding payment of the taxes, for fear of the NRS's retaliation, then the abuse or financial control will mitigate the RS's knowledge or reason to know. Under these circumstances, this factor **will weigh in favor of relief** because the abuse or financial control would mitigate the RS's knowledge or reason to know of the understatement.

- This factor will **weigh against relief** if the RS:
- knew or had reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return), or
- could not reasonably expect that the NRS would or could pay the tax liability shown on the joint return within a reasonable period of time after filing of the return.

Example:

Prior to signing the return, the RS knew of the NRS's prior bankruptcies, financial difficulties, or other issues with the IRS or other creditors, or was otherwise aware of difficulties in timely paying bills.

When the information necessary for making a determination on the factor is missing, incomplete, or appears questionable, **you must attempt telephone contact** with the RS for clarification. These calls must be documented. At least two attempts must be made. Those calls cannot be made within 48 hours of each other. The RS, if spoken with, should be given 30 days to provide additional documentation. If unable to reach the RS, issue Letter 3659C for CCISO and Letter L3659 for the field, requesting the specific information needed and inform the RS they have 30 days to respond. If no response, use the information in the case to determine whether this factor should weigh in favor or against relief.

25.15.3.8.4.1.3.1 (03-08-2013)
Understatement or Deficiency

Determine whether the RS did not know and had no reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return).

For purposes of determining reason to know, consider:

- the RS's level of education,
- any deceit or evasiveness of the NRS,
- the RS's degree of involvement in the activity and household financial matters,
- the RS's business or financial expertise; and
- any lavish or unusual expenditures compared with past spending levels.

Reminder:

Abuse and NRS's control of finances could mitigate knowledge. See *IRM 25.15.3.8.4.1.3*, *Knowledge or Reason to Know*.

25.15.3.8.4.1.3.2 (07-29-2014)
Underpayment

Determine whether the RS knew or had reason to know at the time the RS filed the joint return that the NRS would not or could not pay the tax liability at the time the joint return was filed or within a reasonable period of time after the return was filed. When making this determination, consider whether the RS reasonably expected that the NRS would pay the tax liability at the time the return was filed or within a reasonable period of time after filing of the return.

Note:

A reasonable expectation of payment will be presumed if the spouses submitted a request for an installment agreement within 90 days of the due date for payment of the tax or within 90 days of the return being filed, whichever is later. The request must detail the plan for paying the liability, satisfy the liability within a reasonable amount of time, and it must not be unreasonable for the RS to believe that the NRS will be able to make the payments contemplated in the request.

Reminder:

Abuse and NRS's control of finances could mitigate reasonable expectation. See *IRM 25.15.3.8.4.1.3*, *Knowledge or Reason to Know*.
If there was a reasonable expectation some of the liability would be paid, but not all of it, then relief may be available to the extent there was a reasonable expectation the liability would be paid. The examiner making the determination must be satisfied the RS had a bona fide reasonable expectation the tax would be paid by the NRS.

Note:

An expectation the tax would be paid is not reasonable if the RS knew or had reason to know the NRS was not in an economic position, and was not expected to be in an economic position within the foreseeable future, to pay those taxes. A similar position is taken where the RS knew the NRS had a history of not paying the IRS or other creditors.

If there is an underpayment of tax on an amended return which is reporting a liability based on items not properly reported on the original return, consideration should be given to whether the RS had knowledge or reason to know of the original understatement.

For purposes of determining reason to know, consider:

- the RS's level of education,
- any deceit or evasiveness of the NRS,
- the RS's degree of involvement in the activity and household financial matters,
- the RS's business or financial expertise; and
- any lavish or unusual expenditures compared with past spending levels.
- The examiner should also look to prior years to determine payment history. A consistent history of underpayments that the RS was aware of may show that there was not a reasonable expectation the tax would be paid. On the other hand, a consistent history of returns showing tax due and the NRS timely paying those taxes could give a RS a reasonable expectation that the NRS would pay the tax due on the year(s) at issue. The examiner should also look at whether there were multiple returns filed (some of which would be late filed) with balances due that may make paying all of the taxes more difficult and might show that there was not a reasonable expectation that the tax would be paid.

25.15.3.8.4.1.4 (03-08-2013)
Legal Obligation

This factor **will weigh in favor of relief** if the NRS has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement.

Note:

It **will be neutral** if the RS knew or had reason to know, when entering into the divorce decree or agreement, that the NRS would not pay the income tax liability.

This factor **will weigh against relief** if the RS has the sole legal obligation.

Note:

The fact that the NRS has been relieved of liability for the taxes at issue as a result of a discharge in bankruptcy is disregarded in determining whether the RS has the sole legal obligation.

This factor **will be neutral** if any of the following:

- both spouses have a legal obligation to pay the tax liability,
- the spouses are not separated or divorced, or
- the divorce decree or agreement is silent as to any obligation to pay the tax liability.

25.15.3.8.4.1.5 (07-29-2014)
Significant Benefit

Defined as, whether the RS received significant benefit (beyond normal support) from the unpaid income tax liability or item giving rise to the deficiency. See Treas. Reg. § 1.6015-2(d).
This factor **will weigh against relief** if the RS enjoyed significant benefits, for example, living a lavish lifestyle by owning luxury assets and taking expensive vacations.

Note:

If the NRS controlled the household and business finances or there was abuse such that the NRS made the decision on spending funds, then this mitigates this factor so that it **will be neutral**.
This factor **will weigh in favor of relief** if only the NRS significantly benefitted from the unpaid tax or item giving rise to an understatement or deficiency, and the RS had little or no benefit, or the NRS enjoyed the benefit to the RS's detriment.

This factor **is neutral** if the amount of unpaid tax or understated tax was small such that neither spouse received a significant benefit. Whether the amount of unpaid tax or understatement is small will vary depending on the facts and circumstances of each case.

25.15.3.8.4.1.6 (03-08-2013)
Compliance with Income Tax Laws

Defined as, whether the RS has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates.

This factor will **weigh in favor of relief** if the RS:

- is compliant for taxable years after being divorced from the NRS, or
- remains married to the NRS but files separate returns, and is compliant with the tax laws.

This factor will **weigh against relief** if the RS:

- is not compliant for taxable years after being divorced from the NRS,
- remains married to the NRS, whether or not legally separated or living apart, and continues to file joint returns with the NRS after requesting relief and the returns are not compliant,
- remains married to the NRS and files separate returns, and is noncompliant with the tax laws.

Exception:

If the RS's noncompliance is due to the RS's poor financial or economic situation after the divorce, despite good faith efforts to comply, then this factor **will be neutral**.

This factor **will be neutral** if the RS:

- made a good faith effort to comply with the tax laws but was unable to fully comply,
- remains married to the NRS, whether or not legally separated or living apart, and continues to file joint returns with the NRS after requesting relief, even if they are compliant, or
- is not compliant because of the RS's poor financial or economic situation as a result of being separated or living apart from the NRS, despite good faith efforts to comply.

25.15.3.8.4.1.7 (03-08-2013)
Mental or Physical Health

Whether the RS was in poor physical or mental health will influence how this factor is weighed.
This factor will **weigh in favor of relief** if the RS was in poor mental or physical health at the time the RS filed the return or returns for which the request for relief relates or at the time the RS requested relief. The Service will consider the nature, extent, and duration of the condition.
This factor **will be neutral** if the RS was in neither poor physical nor poor mental health at the time the RS filed the return or returns for which the request for relief relates or at the time the RS requested relief.

25.15.3.8.4.2 (03-08-2013)
Other Factors (Section 4.03)

Other factors bearing (not only to justify relief, but perhaps to deny relief) on relief shall be considered.

25.15.3.9 (03-01-2011)
Commonly Used Letters

The following is a list of letters to be issued to the RS and NRS. Integrated Data Retrieval System (IDRS) letters are known as "C" letters and are to be used by CCISO. All other letters are to be used by field personnel.
Appeals letters are described in IRM 25.15.12.7, *Appeals Innocent Spouse Letters and Forms.*

25.15.3.9.1 (07-29-2014)
Preliminary Determination Letters

Letter 3660C — Obsolete 7/16/2013.
L 3660 - Advises the **NRS** of the determination and gives the opportunity to appeal the decision.

Letter 3661C — Obsolete 7/16/2013.
L 3661 - Advises the **RS** of the determination and gives them the opportunity to appeal the decision.

Letter 4983C/ Letter 4983 — Advises the **NRS** of the determination made to allow full relief and allows 30 days to appeal. It will also be issued to advise the NRS of the determination to allow full relief based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal.

Letter 4984C/ Letter 4984 — Advises the **NRS** of the determination made to allow partial relief and allows 30 days to appeal. It will also be issued to advise the NRS of the determination to allow partial relief based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal.

Letter 4985C/ Letter 4985 — Advises the **NRS** of the determination made to disallow relief. The NRS does not get appeal rights. It will also be issued to advise the NRS of the determination to disallow relief based on additional information submitted by the RS and/or NRS.

Letter 4986C/ Letter 4986 — Advises the **RS** of the determination made to allow full relief and allows 30 days to appeal when the refund is barred. It will also be issued to advise the RS of the determination to allow full relief based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal, if necessary.

Letter 4987C/ Letter 4987 — Advises the **RS** of the determination made to allow partial relief and allows 30 days to appeal. It will also be issued to advise the RS of our determination to allow partial relief based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal.

Letter 4988C/ Letter 4988 — Advises the **RS** of the determination made to disallow relief and allows 30 days to appeal. It will also be issued to advise the RS of the determination to disallow relief based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal.

25.15.3.9.2 (07-29-2014)
Final Determination Letters

L 3279 - Advises the **RS** of our final determination. Informs RS of their Tax Court rights when applicable.
L 3323 - Advises the **NRS** of the final determination.

Letter 5086C/ Letter 5086 — Advises the **RS** of the determination to allow relief. Informs RS of their Tax Court rights when applicable.

Letter 5087C/ Letter 5087 — Advises the **RS** of the determination to allow partial relief. Informs RS of their Tax Court rights.

Letter 5088C/ Letter 5088 — Advises the **RS** of the final determination to disallow relief. Informs RS of their Tax Court rights.

Letter 3323C/ Letter 3323— Advises the **NRS** of the final determination.

25.15.3.9.3 (07-29-2014)
Other Letters

Letter 3284C/ Letter 3284 — Advises the **NRS** of their opportunity to participate in administrative proceedings.

Letter 3657C/ Letter 3657 — Advises the **RS** that their claim is not necessary because he/she does not meet the basic eligibility requirements for requesting relief. It informs the RS that the claim is being closed.

Letter 3658C/ Letter 3658 — Advises the **RS** that their claim is unprocessable.

Letter 3659C / **Letter 3659**— Advises the **RS** of receipt of their claim and provide information on the claim process (initial contact letter); also used to request additional information for making a determination on a factor if the necessary information is missing, incomplete, or appears questionable.

Letter 4144C/ Letter 4144 — Advises the **RS** and **NRS** the case has been transferred to Appeals. It also advises the RS that Form 870–IS was received late and could not be accepted, when applicable.

Note:

CCISO will use Return Address (RA) 52 on all letters. This will ensure the correct return address is printed on each letter. All letters issued through Accounts Management Services (AMS) automatically select RA 52.

Letter 4284C/ Letter 4284 — Advises the **NRS** of our determination on a reconsideration claim.

Letter 4581C *Proposed Determination on Untimely Request for Innocent Spouse Relief*— Obsolete 7/16/2013.

Letter 5186C/Letter 5186 — Advises the **RS** of the determination on a reconsideration claim to allow relief.

Letter 5187C/Letter 5187 — Advises the **RS** of the determination on a reconsideration claim to allow partial relief.

Letter 5188C/Letter 5188 — Advises the **RS** of the determination on a reconsideration claim to disallow relief.

Letter 3657-A— Used by area office employees to inform the **RS** that their claim is not necessary because he/she does not meet the basic eligibility requirements for requesting relief. It informs the RS that the claim is being closed.

25.15.3.10 (07-29-2014)
Waivers

IRC 6015(e)(5) allows a RS who agrees with the Service's determination under IRC 6015(b), IRC 6015(c), or IRC 6015(f) (for claims filed after December 19, 2006) to waive, in writing, the collection restrictions imposed by IRC 6015(e)(1)(B). These waivers are only applicable in post-assessment cases, because in pre-assessment proposed deficiency cases there is no collection, and thus, no need for restrictions on collection, nor any need to waive those restrictions. When the RS signs Form 870-IS, Waiver of Collection Restrictions in Innocent Spouse Cases, it is anticipated that the RS will not petition the Tax Court. It should be noted; however, that Form 870–IS is not a final determination letter. Thus, even if the RS signs the Form 870-IS, the RS may petition the Tax Court at any time after six months from filing the claim or within 90 days from the date the Service issues a final determination letter. Nonetheless, once the IRS receives the signed Form 870-IS, the Service may resume collection against the RS. It should also be noted that the suspension of the collection statute expiration date (CSED) stops 60 days after the IRS receives the signed Form 870-IS and it is signed on behalf of the Commissioner.

Form 870-IS can be found at http://publish.no.irs.gov/catlg.html, *Electronic Publishing*. The catalog number is 35518X.

The waiver is available for fully and partially disallowed preliminary determination letters upon request by the RS.

A faxed signature can be accepted.

When a signed Form 870-IS is received from the RS, ensure there has been no alteration of the original and then make a copy.

IF Signed Form 870-IS is received	AND	THEN
Partially Allowed Claim	NRS's time to appeal has not expired	Hold Form 870-IS until the time to appeal has expired or the NRS does appeal. At that time, follow the applicable instructions below.
Partially Allowed Claim	NRS's time to appeal has expired	A. Have manager sign the original and copy of Form 870-IS B. Mail copy to RS with Letter 4144C/Letter 4144. C. Prepare case for the Processing Team D. Send Letter 3323C/Letter 3323 to NRS E. Update ISTSR Input Record F. Process the claim per campus directions
Partially Allowed Claim	NRS appeals	G. Forward the case to Appeals H. Do not sign the Form 870-IS I. Do not send Form 870-IS back to RS. J. Send Letter 4144C/Letter 4144 to the RS.
Fully Disallowed Claim		K. Have manager sign original and copy of Form 870-IS L. Mail signed copy of Form 870–IS to RS with Letter 4144C/Letter 4144. M. Send Letter 3323C/Letter 3323 to NRS N. Update ISTSR Input Record O. Input TC 290.00 P. Input TC 972 AC 065 (use 60 days from the IRS received date of Form 870–IS) Q. Reverse TC 130 as appropriate. See IRM 25.15.9.1.5.1 (1)(c), *Denied under IRC 6015(b), (c), or (f)*. R. Process the claim per campus directions. S.

2. Sometimes the Form 870-IS is received after the final determination letter is issued or received prior to the issuance of the final determination letter, but not associated before the final determination letter is issued. In these situations, take the following actions:

    A. Advise the RS that because the final determination letter was issued before the Form 870-IS was received, the terms of the final determination letter apply.

    B. Upon receipt of an acceptable signed Form 870-IS, write on the Form 870–IS, "870-IS received after final determination issued." Purge and close the case. If the RS does petition the Tax Court, order the case back from Files.

Note:
Provided the terms of the Form 870-IS match the terms of the final determination letter, it is unlikely a RS who signed Form 870-IS will file a petition with Tax Court. Purge and close the case. If the RS does petition the Tax Court, order the case back from Files.

IF	THEN
Terms on the Form 870–IS match the terms of the final determination letter	A. Do not return Form 870-IS back to the IRS B. Purge and close the case
Terms of the Form 870–IS do not match the terms of the final determination letter	A. Do not purge and close the case B. Hold the case in suspense until either the RS petitions the Tax Court or the final determination defaults
Form 870–IS is requested more than 30 days from the date of the preliminary determination letter or after the final determination letter was issued	Send Form 870–IS to the RS and advise them that the terms of the final determination letter apply
Form 870–IS is requested within 30 days from the date of the preliminary determination letter and there is not enough time for the RS to respond	Send Form 870–IS to the RS and update the purge date by 10 days

Note:
It is not necessary to issue a final determination letter when Form 870–IS is processed as acceptable.

Three Types of Relief at a Glance

Factors	Innocent Spouse Relief §6015(b)	Allocation of Liability §6015(c)	Equitable Relief §6015(f)	Equitable Relief Community Property States §66(c)
Type of Returns	Joint	Joint	Joint	Married filing separate
Type of Liability	Deficiency	Deficiency	Deficiency or underpayment	Deficiency or underpayment
Special Requirements			Relief under § 6015(b) and §6015(c) not available	
Refunds Subject to Internal Revenue Code 6511	Refunds available	No refunds	Refunds available for: **Underpayment** - if payments are made solely by the RS. **Deficiency** - payments made solely by the RS after claim filed and pursuant to installment agreement (not defaulted).	
Marital Status	Marital status considered as an equitable factor	Must be divorced, widowed; legally separated; OR not living together for at least 12 months prior to the election	Marital status considered as an equitable factor	
Knowledge	**TP must establish** had **no knowledge OR reason to know**	**IRS must establish TP** had ***actual*** knowledge of **deficiency items**	Knowledge considered as an equitable factor	
Equity	Inequitable to hold TP liable: consider all facts & circumstances		Inequitable to hold TP liable: consider all facts & circumstances	
Required Factors Tier I			Tier I Cases (Relief ordinarily granted if all 4 factors met) 1. **Underpayment** 2. No longer married, legally separated, OR living together for 12 months prior to request 3. No knowledge or reason to know when return signed 4. TP will suffer economic hardship if relief not granted	
List of Partial Factors Tier II			Tier II Cases - **Underpayment and Deficiency** Equitable Relief Factors 1. Marital status (same as 6015(c)) 2. Economic Hardship (defined in Regs. §301.6343-1(b)(4)) 3. Non requesting spouse's legal requirment to pay the liability 4. No knowledge or reason to know (that liability would not be paid (for underpayment) or of item (for deficiency) 5. Significant Benefit 6. Compliance with Income Tax Laws 7. Abuse (but not duress) 8. Mental or physical health	
Fraud	Fraud is a consideration in equity determination	Election invalid if IRS shows TP transferred assets as part of a fraudulent scheme	Relief not available if 1. Fraudulent return or 2. Assets transferred as part of fraudulent scheme	
Disqualified Assets Transferred for Avoidance of Tax or Payment of Tax	Transfer of disqualified assts is a consideration in equity determination	Amount of allocation is increased by value of disqualified assets	Relief not available to extent of value of any disqualified assets	
Time for Filing	2 years from 1st collection activity against the RS after 7/22/98	2 years from 1st collection activity against the RS after 7/22/98	Exception for equitable relief.	
Consideration in Courts	Tax Court; if full-paid, District court or Court of Federal Claims	Tax Court	Tax Court review of IRS's possible abuse of discretion	Tax Court review if part of deficiency proceedings or under Collection Due Process proceedings

State Related Innocent Spouse Relief

Some States have specific Innocent Spouse Relief codes. For example, The Franchise Tax Board ("FTB") in California will in many circumstances allow aid to a taxpayer that has been granted innocent spouse relief by the IRS, provided the taxpayer files the proper paperwork. You should refer to local tax codes as they exist in the state you are practicing,

Procedures for the Corresponding Spouse to the Spouse Seeking Innocent Relief

There are procedures that allow the non-relief seeking spouse to argue their case. The IRS must advise the non-seeking spouse once the seeking spouse has filed paperwork. Here the non-seeking spouse may defend him or herself against the seeking spouse's allegations and if warranted, may file an appeal under Revenue Procedure 2003-19. Another form of appeal may occur by the non-seeking spouse if the seeking spouse is denied relief and has their case moved to Tax Court, the non-seeking spouse may intervene and become a party to the case. In this circumstance both spouses might respectively argue why they are not responsible for paying the liability.

Exception for Equitable Relief[vi]

On July 25, 2011, the IRS issued Notice 2011-70 expanding the amount of time to request equitable relief. The amount of time to request equitable relief depends on whether you are seeking relief from a balance due, seeking a credit or refund, or both:

Balance Due - Generally, you must file your request within the time period the IRS has to collect the tax. Generally, the IRS has 10 years from the date the tax liability was assessed to collect the tax. In certain cases, the 10-year period is suspended.

Credit or Refund - Generally, you must file your request within 3 years after the date the original return was filed or within 2 years after the date the tax was paid, whichever is later. But you may have more time to file if you live in a federally declared disaster area or you are physically or mentally unable to manage your financial affairs. See Pub. 556, for details.

Both a Balance Due and a Credit or Refund - If you are seeking a refund of amounts you paid and relief from a balance due over and above what you have paid, the time period for credit or refund will apply to any payments you have made, and the time period for collection of a balance due amount will apply to any unpaid liability.

Exception for relief based on community property laws.

If you are requesting relief based on community property laws, you must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse or former spouse for the tax year for which you are requesting relief. However, if the IRS begins an examination of your return during the 6-month period the latest time for requesting relief is 30 days after the date of the IRS' initial contact letter to you. The period of limitations on assessment is the amount of time, generally 3 years, that the IRS has from the date you filed the return to assess taxes that you owe. If you do not qualify for the relief described above and are now liable for an unpaid or understated tax you believe you should be paid only by your spouse or former spouse, you may request equitable relief. See the Exception for equitable relief above.

Request for Innocent Spouse Relief Instructions (Form 8857)[vii]

InstructionsforForm8857
(Rev. January 2014)
Request for Innocent Spouse Relief

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Note. In these instructions, the term “your spouse or former spouse” means the person who was your spouse for the year(s) you want relief. This is the person whose name you enter on line 5.

Future Developments
For the latest information about developments related to Form 8857 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8857.

What's New

The Internal Revenue Service has issued Revenue Procedure 2013-34, available at www.irs.gov/irb/2013-43_IRB/ar07.html. This revenue procedure expands how the IRS will take into account abuse and financial control by the nonrequesting spouse in determining whether equitable relief is warranted. It also broadens the availability of refunds in cases involving deficiencies. See the instructions for Line 31, later.

Purpose of Form

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to the income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for taxes, and the IRS can still collect them from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

If you believe, taking into account all the facts and circumstances, only your spouse or former spouse should be held responsible for all or part of the tax, you should request relief from the tax liability, including related penalties and interest. To request relief, you must file Form 8857. The IRS will use the information you provide on the form, and any attachments you submit, to determine if you are eligible for relief. The IRS will contact you if additional information is needed.

Married people who did not file joint returns, but who lived in community property states may request relief from liability for tax attributable to an item of community income. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. See *Community Property Laws*, later.

Note. We recognize that some of the questions on the form involve sensitive subjects. However, we need this information to evaluate the circumstances of your case and properly determine whether you qualify for relief.

Situations in Which You Should Not File Form 8857

Do not file Form 8857 for any tax year to which the following situations apply, even if you checked "Yes" on line 1. In a final decision a court considered whether to grant you relief from the joint liability and decided not to do so.

In a final decision a court did not consider whether to grant you relief from the joint liability, but you meaningfully participated in the proceeding and could have asked for relief.

- You entered into an offer in compromise with the IRS.
- You entered into a closing agreement with the IRS that disposed of the same liability for which you want to seek relief. However, see Pub. 971, Innocent Spouse Relief, for an exception that applies to TEFRA partnership proceedings.
- You answered "No" to question 1.

When To File

You should file Form 8857 as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held responsible. The following are some of the ways you may become aware of such a liability.

The IRS is examining your tax return and proposing to increase your tax liability.
The IRS sends you a notice.

However, you generally must file Form 8857 no later than 2 years after the first IRS attempt to collect the tax from you. (But see the exceptions below for different filing deadlines that apply.) For this reason, do not delay filing because you do not have all the required documentation.
Collection activities that may start the 2-year period are:

The IRS offset your income tax refund against an amount you owed on a joint return for another year and the IRS informed you about your right to file Form 8857.

The filing of a claim by the IRS in a court proceeding in which you were a party or the filing of a claim in a proceeding that involves your property. This includes the filing of a proof of claim in a bankruptcy proceeding.

The filing of a suit by the United States against you to collect the joint liability.
The issuance of a section 6330 notice, which notifies you of the IRS' intent to levy and your right to a collection due process (CDP) hearing. The IRS usually sends a section 6330 notice by issuing a Letter 11 or Letter 1058.

Exception for equitable relief. The amount of time to request equitable relief depends on whether you are seeking relief from a balance due, seeking a credit or refund, or both:

Balance Due – Generally, you must file your request within the time period the IRS has to collect the tax. Generally, the IRS has 10 years from the date the tax liability was assessed to collect the tax. In certain cases, the 10-year period is suspended. The amount of time the suspension is in effect will extend the time the IRS has to collect the tax. See Pub. 594, The IRS Collection Process, for details.

Credit or Refund – Generally, you must file your request within 3 years after the date the original return was filed or within 2 years after the date the tax was paid, whichever is later. But you may have more time to file if you live in a federally declared disaster area or you are physically or mentally unable to manage your financial affairs. See Pub. 556, Examination of Returns, Appeal Rights, and Claims for Refund, for details.

Both a Balance Due and a Credit or Refund – If you are seeking a refund of amounts you paid and relief from a balance due over and above what you have paid, the time period for credit or refund will apply to any payments you have made, and the time period for collection of a balance due amount will apply to any unpaid liability.

Exception for relief from liability for tax attributable to an item of community income. If you are requesting relief from liability for tax attributable to an item of community income (other than equitable relief), a different filing deadline applies. See *Relief from liability for tax attributable to an item of community income*, discussed later under *Community Property Laws*. The time in which to request equitable relief from liability for tax attributable to an item of community income follows the rules for equitable relief, earlier.

Where To File

Do not file Form 8857 with your tax return or the Tax Court. Instead, mail it to one of the following addresses.

If using the U.S. Postal Service:

Internal Revenue Service
P.O. Box 120053 Covington, KY 41012

If using a private delivery service:

Internal Revenue Service
201 W. Rivercenter Blvd., Stop 840F Covington, KY 41011

Alternatively, you can fax the form and attachments to the IRS at 855-233-8558.
For a list of private delivery services you can use to meet the “timely mailing as timely filing” rule for filing Form 8857 by the deadline, go to IRS.gov and enter “Private Delivery Services” in the search box.

Write your name and social security number on any attachments.

Send it to one of the above addresses or fax it to the above number even if you are communicating with an IRS employee because of an examination, examination appeal, or collection.

If you received an IRS notice of deficiency, you also should file a petition with the Tax Court before the end of the 90-day period, as explained in the notice. In your petition, you should raise innocent spouse relief as a defense to the deficiency. By doing so, you preserve your rights if the IRS is unable to properly consider your request before the end of the 90-day period.

Include the information that supports your position, including when and why you filed Form 8857 with the IRS, in your petition to the Tax Court. The time for filing with the Tax Court is not extended while the IRS is considering your request.

The IRS Must Contact Your Spouse or Former Spouse

By law, the IRS must contact your spouse or former spouse. There are no exceptions, even for victims of spousal abuse or domestic violence.

We will inform your spouse or former spouse that you filed Form 8857 and will allow him or her to participate in the process. If you are requesting relief from joint and several liability on a joint return, the IRS must also inform him or her of its preliminary and final determinations regarding your requested relief.

To protect your privacy, the IRS will not disclose your personal information (such as your current name, address, phone number(s), or information about your employer, your income, or your assets). Any other information you provide that the IRS uses to make a determination about your request for relief from liability could be disclosed to the person you list on line 5. If you have concerns about your privacy or the privacy of others, you should redact or black out personal information in the material you submit.

If you petition the Tax Court (explained later under What Happens After You File Form 8857*), your spouse or former spouse may see your personal information, unless you ask the Tax Court to withhold it.*

Types of Relief

Four types of relief are available. They are:

- Innocent spouse relief.
- Separation of liability relief.
- Equitable relief.
- Relief from liability for tax attributable to an item of community income. (See *Community Property Laws*, later).

Innocent Spouse Relief

You may be allowed innocent spouse relief only if all of the following apply.

- You filed a joint return for the year(s) entered on line 3.

- There is an understated tax on the return(s) that is due to erroneous items (defined below) of the person with whom you filed the joint return.

- You can show that when you signed the return(s) you did not know and had no reason to know that the understated tax existed (or the extent to which the understated tax existed).

- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated tax.

Understated tax. You have an understated tax if the IRS determined that your total tax should be more than the amount actually shown on the return.

Example. You and your former spouse filed a joint return showing $5,000 of tax, which was fully paid. The IRS later examines the return and finds $10,000 of income that your former spouse earned but did not report. With the additional income, the total tax becomes $6,500. The understated tax is $1,500, for which you and your former spouse are both liable.

Erroneous items. Any income, deduction, credit, or basis is an erroneous item if it is omitted from or incorrectly reported on the joint return.

Partial innocent spouse relief. If you knew about any of the erroneous items, but not the full extent of the item(s), you may be allowed relief for the part of the understatement you did not know about.

Additional information. For additional information on innocent spouse relief, see Pub. 971.
Separation of Liability Relief

You may be allowed separation of liability relief for any understated tax (defined above) shown on the joint return(s) if the person with whom you filed the joint return is deceased or you and that person:

- Are now divorced,
- Are now legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file Form 8857.

See Pub. 504, Divorced or Separated Individuals, for details on divorce and separation.
Exception. If, at the time you signed the joint return, you knew about any item that resulted in part or all of the understated tax, then your request will not apply to that part of the understated tax.

Additional information. For additional information on separation of liability relief, see Pub. 971.
Equitable Relief

You may be allowed equitable relief if both of the following conditions are met.

- You have an understated tax (defined earlier) or unpaid tax (defined next), and
- Taking into account all the facts and circumstances, the IRS determines it would be unfair to hold you liable for the understated or unpaid tax.

Equitable relief is the only type of relief available for an unpaid tax.

Unpaid tax. An unpaid tax is tax that is properly shown on your return but has not been paid.

Example. You and your former spouse filed a joint return that properly reflects your income and deductions but showed an unpaid balance due of $5,000. The unpaid tax is $5,000. You gave your former spouse $2,500 and he or she promised to pay the full $5,000, but paid nothing. There is still an unpaid tax of $5,000, for which you and your former spouse are both liable.

Additional information. For additional information on equitable relief, see Pub. 971 and Rev. Proc. 2013-34.

Community Property Laws

Generally, you must follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws provide that you and your spouse are both entitled to one-half of your total community income and expenses. If you and your spouse filed a joint return in a community property state, you are both jointly and severally liable for the total liability on the return. If you request relief from joint and several liability, state community property laws are not taken into account in determining whether an item belongs to you or your spouse or former spouse.

If you were a married resident of a community property state, but did not file a joint return and are now liable for an unpaid or understated tax, check “Yes” on line 1. You have the following two ways to get relief.

Relief from liability for tax attributable to an item of community income. You are not responsible for the tax related to an item of community income if **all** of the following conditions exist.

- You did not file a joint return for the tax year.
- You did not include the item in gross income on your separate return.
- Under section 879(a), the item was income that belonged to your spouse or former spouse. For details, see *Community Property Laws*, in Pub. 971.
- You establish that you did not know of, and had no reason to know of, that item.
- Under all facts and circumstances, it would not be fair to include the item in your gross income.

If you meet the above conditions, complete this form.

You must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse or former spouse for the tax year for which you are requesting relief. However, if the IRS begins an examination of your return during that 6-month period, the latest time for requesting relief is 30 days after the date of the IRS' initial contact letter to you. The period of limitations on assessment is the amount of time, generally 3 years that the IRS has from the date you filed the return to assess taxes that you owe.

Equitable relief. If you do not qualify for the relief described in (1) above and are now liable for an unpaid or understated tax you believe should be paid only by your spouse or former spouse, you may request equitable relief. See *Equitable Relief*, earlier.

What Happens After You File Form 8857

We will review your form for completeness and contact your spouse or former spouse to ask if he or she wants to participate in the process. Generally, once we have all of the necessary information to make a decision, we will send a preliminary determination letter to you and your spouse or former spouse. If neither of you appeals the decision, we will issue a final determination letter to both of you. If either or both of you appeal to the IRS Office of Appeals, Appeals will issue a final determination letter to both of you after consideration of your appeal.

Note. If you did not file a joint return for the year you are requesting relief, we will send the determination letters only to you.

Tax Court review of request. You may be able to petition (ask) the Tax Court to review your request for relief (other than a request for relief from liability for tax attributable to an item of community income) if:

- The IRS sends you a final determination letter regarding your request for relief, or
- You do not receive a final determination letter from the IRS within 6 months from the date you filed Form 8857.

The petition must be filed **no later than the 90th day after** the date the IRS mails you a final determination letter. If you do not file a petition, or if you file it late, the Tax Court cannot review your request for relief. See Pub. 971 for details on petitioning the Tax Court.

Collection Statute of Limitations

Generally, the IRS has 10 years to collect an amount you owe. This is the collection statute of limitations. By law, the IRS is not allowed to collect from you after the 10-year period ends.

If you request relief for any tax year, the IRS cannot collect from you for that year while your request is pending. But interest and penalties continue to accrue. Your request is generally considered pending from the date the IRS receives your Form 8857 until the date your request is resolved. This includes the time the Tax Court is considering your request.

After your case is resolved, the IRS can begin or resume collecting from you any tax for which you are determined to remain responsible. The 10-year period will be increased by the amount of time your request for relief was pending plus 60 days.

How To Get Help

See Pub. 971, Innocent Spouse Relief. To get Pub. 971 and other IRS forms and publications, go to IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).

The IRS can help you with your request. If you are working with an IRS employee, you can ask that employee, or you can call 1-855-851-2009.

You can use the Innocent Spouse Tax Relief Eligibility Explorer by going to IRS.gov and entering "Innocent Spouse" in the search box.

The Taxpayer Advocate Service Is Here To Help You

The Taxpayer Advocate Service (TAS) is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly and that you know and understand your rights.

What can TAS do for you? We can offer you free help with IRS problems that you can't resolve on your own. We know this process can be confusing, but the worst thing you can do is nothing at all! TAS can help if you can't resolve your problems with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.
- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for our help, you'll be assigned to one advocate who'll be with you at every turn and will do everything possible to resolve your problem. Here's why we can help:

- TAS is an independent organization within the IRS. Our advocates know how to work with the IRS.
- Our services are free and tailored to meet your needs.
- We have offices in every state, the District of Columbia, and Puerto Rico.

How can you reach us? If you think TAS can help you, call your local advocate, whose number is in your local directory and at www.irs.gov/advocate, or call us toll-free at 1-877-777-4778.

How else does TAS help taxpayers?

TAS also handles large-scale, systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it through the Systemic Advocacy Management System at www.irs.gov/sams.

For additional information about TAS, visit www.taxpayeradvocate.irs.gov or see Pub. 1546, The Taxpayer Advocate Service of the IRS – How to Get Help With Unresolved Tax Problems.

Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) serve individuals whose income is below a certain level and need to resolve tax problems such as audits, appeals and tax collection disputes. Some clinics can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Visit www.irs.gov/litc or see IRS Publication 4134, Low Income Taxpayer Clinic List.

Representation

You may either represent yourself or, with proper written authorization, have someone else represent you. Your representative must be someone who is allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent (a person enrolled to practice before the IRS). Use Form 2848, Power of Attorney and Declaration of Representative, to authorize someone else to represent you before the IRS.

Specific Instructions

Note. If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach. Also write your name and social security number on the top of any other documents and statements you attach.

Line 1

Complete line 1 to determine if you should file Form 8857.

Whether you check “Yes” or “No,” you should go to line 2 (discussed next) to find out if you should file another form (Form 8379) to request *injured spouse relief*. Injured spouse relief is different from innocent spouse relief and you cannot request it by filing Form 8857. You must file Form 8379. For example, if you check “Yes” on line 1 and “Yes” on line 2, you will have to file both Forms 8857 and 8379.

Line 2

Complete line 2 to determine if you should file Form 8379.

Check “Yes” for any tax year to which all of the following apply.

- You filed a joint return.
- At the time you filed the joint return, your spouse owed past-due federal tax, state income tax, state unemployment compensation debts, child support, spousal support, or federal nontax debt, such as a student loan.
- The IRS used (offset) the refund to pay your spouse's past-due amount.

If all three of the above apply, you may be able to get back your share of the refund for that tax year if you file Form 8379, Injured Spouse Allocation.

If you checked “Yes” on line 1, and all three of the above do not apply, check “No” and go to line 3.

Example 1. You and your spouse filed your joint tax return showing a refund of $3,200. At the time you filed the return, your spouse owed $2,400 in back child support. The IRS used $2,400 of your refund to pay your spouse's back child support and refunded the remaining $800 to you and your spouse. You check “Yes” on line 2 because you meet all of the conditions listed above. If you want to get back your share of the $2,400 refund that the IRS used to pay your spouse's back child support, you must file Form 8379.

Example 2. The facts are the same as in Example 1, but the IRS audited your return and disallowed a $5,000 alimony deduction, which was actually child support paid by your spouse. Child support is not deductible. The disallowance resulted in additional tax, interest, and penalties. As explained earlier under *Innocent Spouse Relief*, this deduction is an erroneous item attributable to your spouse. You believe you meet the other requirements in that discussion for getting innocent spouse relief. You check “Yes” on line 1. In addition to Form 8379, you also should file Form 8857.

Line 4

Enter your current name, social security number, current mailing address (including county), and best or safest daytime phone number (between 6 a.m. and 5 p.m. Eastern Time) to call you if we need more information.

If your current name is different from your name as shown on your tax return for any year for which you are requesting relief, enter your former name in parentheses after your current name. For example, enter “Jane Maple (formerly Jane Oak).”

Foreign address. Enter the information in the following order: City, province, county, or state, and country. Follow the country's practice for entering the postal code. **Do not** abbreviate the country name.

Change of address. The IRS will send the initial correspondence about Form 8857 to the address you enter on line 4. However, the IRS is required to send all other correspondence to the most recent address it has for you in its records. This is usually the address shown on your most recently filed tax return or amended return. If you want us to update our records to use the address you entered on line 4 for all correspondence, you will have to file Form 8822, Change of Address. Send Form 8822 to the address shown in the instructions for that form. Do **not** send it to either of the addresses shown in these Form 8857 instructions. Generally, it takes 4 to 6 weeks to process your change of address.

If the address on line 4 matches the address in our records, you do not need to file Form 8822 unless you move. If you move after you file Form 8857, please use Form 8822 to notify the IRS of your new address.

Line 5

Enter the current name and SSN (if known) of the person to whom you were married at the end of the year(s) listed on line 3.

P.O. box. Enter the box number **only** if:

- You do not know the street address, or
- The post office does not deliver mail to the street address.

Foreign address. See the instructions for line 4, earlier.

Line 8

If you wish to have the note removed from your account, call us at 1-855-851-2009 or write us at either of the addresses or the fax number listed earlier under **Where To File**. Please include your social security number on your written request.

Line 12

By law, if a person's name is signed to a return, it is presumed to be signed by that person, unless that person proves otherwise. If you believe your signature was forged or you signed under duress, explain in the space provided.

If you sign a joint return under duress or your signature was forged, the election to file jointly is not valid and you have no valid return. You are not jointly and severally liable for any income tax liabilities arising from that return. In that case, innocent spouse relief does not apply and is not necessary for obtaining relief. If you file Form 8857, but also maintain that there is no valid joint return due to duress or forgery, the IRS will first make a determination as to the validity of the joint return and may accordingly deny the request for innocent spouse relief based on the fact that no joint return was filed (and thus, relief is not necessary). If it is ultimately determined that a valid joint return was filed, the IRS will then consider whether you would be entitled to innocent spouse relief on the merits.

Forged signature. Your signature on the joint return is considered to be forged if it was not signed by you and you did not authorize (give tacit consent) the signing of your name to the return.

Tacit consent. Tacit consent means that, based on your actions at the time the joint return was filed, you agreed to the filing of the joint return even if you now claim the signature on the return is not yours. Whether you have tacitly consented to the filing of the joint return is based on an examination of all the facts of your case. Factors that may support a finding that you consented to the filing of the joint return include the following.

- You gave tax information (such as Forms W-2 and 1099) to your spouse.
- You did not object to the filing. There was an apparent advantage to you in filing a joint return.
- You filed joint returns with your spouse or former spouse in prior years.
- You failed to file a married filing separate return and you had a filing requirement.

Signed under duress. You are considered to have signed under duress (threat of harm or other form of coercion) if you were unable to resist demands to sign the return and you would not have signed the return except for the constraint applied by your spouse or former spouse. The duress must be directly connected with the signing of the joint return.

Line 20

You may not be entitled to relief if either of the following applies.

Your spouse (or former spouse) transferred property (or the right to property) to you for the main purpose of avoiding tax or payment of tax. A transfer will be presumed to meet this condition if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency.

The IRS proves that you and your spouse (or former spouse) transferred property to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party such as a creditor, former spouse, or business partner.

For more information about transfers of property, see Pub. 971.

Fair market value. Fair market value (FMV) is the price at which property would change hands between a willing buyer and a willing seller when both have reasonable knowledge of the relevant facts and neither has to buy or sell. FMV is not necessarily the cost of replacing the item.

Line 21

See the instructions for line 20 for the definition of fair market value.

Line 31

You must indicate that you want a refund of any payments you made in order for the IRS to consider whether you are entitled to it. Payments include refunds from another tax year applied to this tax liability. If you are granted relief, refunds are:

- Permitted under innocent spouse relief and equitable relief as explained below under *Limit on Amount of Refund*.
- Not permitted under separation of liability relief.

Proof Required

The IRS will only refund payments you made with your own money. However, you must provide proof that you made the payments with your own money. Examples of proof are a copy of your bank statement or a canceled check. No proof is required if your individual refund was used by the IRS to pay a tax you owed on a joint tax return for another year.

Limit on Amount of Refund

You are not eligible for refunds of payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made. For example, withholding tax and estimated tax payments cannot be refunded because they are considered made with the joint return. However, you may be entitled to a refund of your portion of a joint overpayment from another year that was applied to the joint tax for a different year. You will need to show your portion of the joint overpayment.

The amount of your refund is limited. Read the chart at the top of the next page to find out the limit.

IF you file Form 8857 . . .	THEN the refund cannot be more than . . .
Within 3 years after filing your return	The part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed Form 8857.
After the 3-year period, but within 2 years from the time you paid the tax	The tax you paid within the 2 years immediately before you filed Form 8857.

Sign Form 8857

If you do not sign Form 8857, the IRS cannot consider your request and will return it to you. Also be sure to date it.

Keep a copy of the completed form for your records.

Paid Preparer Must Sign

Generally, anyone you pay to prepare Form 8857 must sign it and include their Preparer Tax Identification Number (PTIN) in the space provided. The preparer must give you a copy of Form 8857 for your records. Someone who prepares Form 8857 but does not charge you should not sign it.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine the amount of liability, if any, of which you may be relieved. Internal Revenue Code sections 66(c) and 6015 allow relief from liability.

Requesting relief from liability is voluntary. If you request relief from liability, you must give us the information requested on this form. Code section 6109 requires you to provide your social security number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering 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. If you do not provide all the information in a timely manner, we may not be able to process your request.

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.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

- **Learning about the law or the form**…1 hr., 9 min.
- **Preparing the form** …2 hr., 36 min.
- **Copying, assembling, and sending the form to the IRS**…1 hr., 3 min.

If you have 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 send your comments from www.irs.gov/formspubs. Click on “More Information” and then on “Give us feedback.” Or you can send your comments to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see Where To File, earlier.

Request for Innocent Spouse Relief Form

To find this and many other forms visit our online library at:

https://www.taxresolutioninstitute.org/forms-library/

Chapter 14
Appeals

In this section, you will learn about the different types of appeal processes as well as how to submit the various appeals.

Here is a list of appeal processes covered in this section:

- Collection Due Process Hearing (CDP) - IRS Form 12153
- Collection Appeals Process Hearing (CAP) - IRS Form 9423
- Offers in Compromise – IRS Form 13711
- Fast Track Settlement – IRS Form 14017
- Fast Track Mediation – IRS Form 13369
- Innocent Spouse – IRS Form 12509
- Taxpayer Advocate – IRS Form 911

Note that the form numbers are listed next to each type of appeal. You may access these and several other forms at:

https://www.taxresolutioninstitute.org/forms-library

Collection Due Process

This appeal process was created in the 1998 Tax Reform Act. Its primary purpose is to allow taxpayers to exercise their rights with regard to an IRS lien and levy action.

In a CDP hearing, individuals may represent themselves or have a family member, CPA, attorney or enrolled agent be their representative. Businesses may also be represented by employees, partners or officers.

A CDP hearing is conducted by the IRS Office of Appeals. The appeals officer is supposed to be impartial having no prior ties to anyone involved in the case being heard. These hearings are informal and no written record of the hearing is taken.

In the hearing, the officer will consider the following

- The validity, sufficiency, and timeliness of the CDP Notice and the request of the CDP hearing
- Any relevant issue relating to the unpaid tax raised by the taxpayer at the hearing
- Any appropriate spousal defenses raised by the taxpayer at the hearing
- Any challenges by the taxpayer to the appropriateness of the collection action
- Any offers for collection alternatives made by the taxpayer and
- Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that the collection action be no more intrusive than necessary

Once the case is heard, the Appeals Office will issue a Notice of Determination. In this notice the IRS must include the following:

- State whether the IRS met the requirements of any applicable law or administrative procedure;
- Decide any allowable issue raised by the taxpayer at the hearing (for example, challenges to the liability, spousal defenses, the appropriateness of the collection action);
- Decide whether the levy is required for the efficient collection of taxes in light of a taxpayer's concern that the collection action be no more intrusive than necessary;
- Set forth any agreements reached with the taxpayer, any relief given to the taxpayer, and any actions that the taxpayer or IRS are required to take; and
- Advise the taxpayer that the judicial review to the Tax Court or a U.S. District Court must be sought within 30 days of the date of the Notice of Determination (Temporary Reg. §301.6330-1T(e)(3), Q&A -E7)

It is important to note that the Notice of Determination is dated. If you disagree with the findings, you have 30 days from the date on the notice to file a petition with the U.S. Tax Court.

Collection Appeals Procedure

Like the CDP the Collection Appeals Procedure was created to allow taxpayers to exercise their rights with regard to an IRS lien and levy action. This procedure is more streamlined that the CDP process and results usually come sooner.

In addition to the taxpayer, the same representatives listed above for a CDP, may act a taxpayer representative. Unlike a CDP, you cannot appeal a CAP decision in U.S. Tax Court.

CAP – CDP Comparison

CAP (Form 9423)	CDP (Form 12153)
Levy or seizure action that has been or will be taken	Notice of Intent to Levy and Notice of Your Right to Hearing
A Notice of Federal Tax Lien (NFTL) that has been or will be filed	Notice of Federal Tax Lien Filing and Your Right to Hearing under IRC 6320
The filing of a notice of lien against an alter-ego or nominee's property	Notice of Jeopardy Levy and Right to Appeal
Denials of requests to issue lien certificates, such as subordination, withdrawal, discharge or non-attachment	Notice of Levy on Your State Tax Refund
Rejected, proposed for modification or modified, or proposed for termination or terminated installment agreements	Notice of Levy and Notice of Your Right to a Hearing
Disallowance of taxpayer's request to return levied property under IRC 6343(d)	You may petition the Tax Court post findings
Disallowance of property owner's claim for return of property under IRC 6343(b)	Process takes significantly more time to reach a result than filing a CAP

Offer in Compromise Appeal

Typically, an offer in compromise is rejected because the IRS believes the taxpayer can full-pay their liability over the remaining collection statute based upon future income using the IRS Income/Expense Table (IET) or equity in the taxpayer's assets using the IRS Asset/Equity Table (AET).

If the taxpayer disagrees with the offer specialist's determination, and less than 30 days has passed since an offer in compromise was rejected, they can appeal the decision to the offer specialist's supervisor.

Assuming the former option is not available or did not yield desired results, a formal appeal may be requested.

By requesting an Appeals conference by filing a written protest, the taxpayer may dispute the IRS's offer determination. In order to create a viable defense, the taxpayer must provide substantiation to support their position that shows the IRS made an incorrect decision based on a misinterpretation of the law or misinterpreted the facts.

To appeal an offer a taxpayer or their representative must either submit a

a formal written protest to request an Appeals conference, or submit a **Small Case Request** procedure assuming the taxpayer qualifies.

To file a Formal Written Protest, the taxpayer must include the following:

- Name, address, and a daytime telephone number
- Statement that T/P wants to appeal the IRS findings to the Office of Appeals
- A copy of the letter taxpayer received showing the proposed change(s)
- The tax period(s) or year(s) involved
- A list of each proposed item with which you disagree
- The reason(s) taxpayer disagrees with each item
- The facts that support taxpayer's position on each item
- The law or authority, if any, that supports taxpayer's position on each item
- The penalties of perjury statement as follows: "Under the penalties of perjury, I declare that the facts stated in this protest and any accompanying documents are true, correct, and complete to the best of my knowledge and belief"
- Taxpayer signature under the penalties of perjury statement

If the taxpayer's representative prepares and signs the protest for them, he or she must substitute a declaration for the penalties of perjury statement that includes:

That he or she submitted the protest and any accompanying documents, and whether he or she knows personally that the facts stated in the protest and any accompanying documents are true and correct.

You must send your formal written protest within the time limit specified in the letter that offers you the right to appeal the proposed changes. Generally, the time limit is 30 days from the date of the letter.

How to file a Small Case Request

A taxpayer may submit a Small Case Request if the entire amount of additional tax and penalty proposed for each tax period is $25,000 or less. For an offer in compromise, the entire amount for each tax period includes total unpaid tax, penalty and interest due.

Employee plan, exempt organizations, S corporations and partnerships are not eligible for Small Case Requests.

Fast Track Settlement

In order to streamline the appeals process, the IRS created the Appeals Mediation Program. As part of this program, the IRS created Fast Track Settlement (FTS) to resolve Large Business and International issues, Small Business/Self-Employed issues and Tax Exempt/Government Entity issues at the examination level.

The goal of this program is to provide resolution within 60 days. The IRS provides a mediator that makes a decision that may be rejected by either the IRS or the taxpayer. Either the IRS or the taxpayer may request FTS. To quote the IRS, FTS provides "an independent Appeals review of the dispute in an environment where all parties to the dispute have a "voice" in the dispute resolution process, utilize the mediation skills and delegated settlement authority of appeals, and reduce the length of a taxpayer's overall IRS experience."

FTS may be initiated at the appeals level. In order to request FTS, the taxpayer must first try to resolve all issues directly with the IRS. It is important to note that FTS does not eliminate or replace other dispute resolution options. This affords the taxpayer a quick alternative to possibly reaching an agreement with the IRS. It also provides an independent person to look at the case that will consider the hazards of litigation.

Applying for Fast Track Settlement is relatively simple. The requestor completes a one-page application. A formal written protest is not required. Once the case is accepted into the FTS program, an Appeals official will serve as a facilitator to arrive at and execute a resolution or settlement that is mutually agreeable to all parties.

The following cases/issues are ***not*** eligible for FTS:

- Collection cases
- Form 1040 taxpayers who have no specific IRS person assigned to their case, such as with a correspondence examination case considered solely by an IRS Campus/Service Center site
- Frivolous issues, such as those listed in Notice 2010-33 or successor guidance
- Other issues listed in Announcement 2011-5

Fast Track Mediation

Like FTS, Fast Track Mediation (FTM) is part of the IRS Appeals Mediation Program. This particular program is used for Small Business/Self-Employed with regard to collection matters.

The goal of FTM is to provide resolution within 40 days. The IRS provides a mediator that makes a decision that may be rejected by either the IRS or the taxpayer. Either the IRS or the taxpayer may request FTM.

The following cases/issues are not allowed to request FTM:

- Collection Appeal Program cases.
- Cases considered by an IRS campus site
- Frivolous issues, such as those identified in Notice 2010-33, or any subsequent notice or revenue procedure
- Other issues listed in Revenue Procedure 2003-41

Innocent Spouse

Either the requesting spouse or the non-requesting spouse can appeal the IRS determination as it relates to request for innocent spouse relief. As you may guess, each side will appeal, pending opposite determinations.

To file an appeal, either spouse should use IRS Form 12509. In the case of the requesting spouse, there must be proof that the income being assessed should not be theirs.

In some cases, the IRS will consider the requesting spouse's ability to pay the liability. Even if circumstances otherwise indicate they should not be liable. The IRS suggests that the requesting spouse provide their support in chronological order. This support may include if or when the spouses were separated, who handled the finances during your marriage, the requesting spouses level of education completed and the requesting spouse's occupation. Of course, they must also include both spouse's names, addresses and social security numbers.

These cases may be appealed in U.S. Tax Court as well.

Taxpayer Advocate

The Taxpayer Advocate Service (TAS) is used by both taxpayers and their representatives. Using IRS Form 911, this service assists taxpayers when they are facing financial difficulty or are not receiving equitable treatment from the IRS.

The TAS is an independent organization within the IRS. They assist both businesses and individuals. They come into play when a taxpayer is unable to reach a resolution using normal IRS channels.

The TAS ensures that the IRS adheres to the Taxpayer Bill of Rights which goes as follows:

- The Right to Be Informed
- The Right to Quality Service
- The Right to Pay No More than the Correct Amount of Tax
- The Right to Challenge the IRS's Position and Be Heard.
- The Right to Appeal an IRS Decision in an Independent Forum.
- The Right to Finality.
- The Right to Privacy
- The Right to Confidentiality
- The Right to Retain Representation.
- The Right to a Fair and Just Tax System

If the taxpayer qualifies, they are assigned a person to act as their advocate. This service is provided at no cost. Each State in the U.S. has at least one advocate. In larger States there may be a significant wait time to be assigned to an advocate.

Chapter 15

Tax Liens

Introduction

In order to protect their interest, the IRS often records a tax lien against a delinquent taxpayer within the county that they own real property. Unlike a bank levy or a wage garnishment, a tax lien is typically not a "call to action" That is, a tax lien with usually not prohibit a delinquent taxpayer from continuing with their everyday living unless of course a taxpayer is in the process of (1) selling their real property or (2) looking to borrow money or conduct some other type of transaction in which their credit will be a factor

Although the IRS may file a lien against one's real or personal property, it is unsual for the IRS to attach a lien to personal property unless the delinquent taxpayer has a valuable asset such as a classic car, art collection or a coin collection.

Once a lien has been filed by the IRS, the taxpayer will receive a notice indicating that the lien has been filed. Many delinquent taxpayers assume that the notice they receive is an indication that the IRS is about to performing active collection against them. While active collection will most likely occur in the near future, a filing of a lien is not directly related.

There are ways a delinquent taxpayer may avoid a lien from being filed. The most obvious way is of course to fully pay their liablity. This rarely occurs as most delinquent taxpayers cannot afford to full pay their liablilty. Another way to avoid a lien from being filed is to enter into an installment agreement over an extended period of time. In order to qualify, the taxpayer must (1) owe less than $25,000, (2) be able to fully pay the liability within 72 months and (3) have not defaulted on a previous agreement with the IRS.

There are four ways in which a lien may affects a delinquent taxpayer. They are as follows:

- **They affect one's assets** - a lien attaches to one's current assets as well as one's future assets acquired over the duration that the lien remains in effect.
- **They affect one's credit** - once a Notice of Federal Tax Lien has been sent, a taxpayer's credit score generally is reduced greatly affected their ability to borrow.
- **They affect businesses** – a Federal tax lien attaches to all business property and to all rights to business property, including accounts receivable over the duration of the lien. This not only prohibits businesses from seeking financing but usually ends existing borrowing relationships.
- **They may affect one's ability to discharge debt in bankruptcy** — if a taxpayer files for bankruptcy, their tax debt, lien, and Notice of Federal Tax Lien may continue to exist after the bankruptcy is complete.

If a tax lien exists, there are options allowing a delinquent taxpayer to withdrawl a Federal tax lien.

IRS Lien/Seizure Data

Year	Liens Filed	Seizures
2016	470,000	446,378
2017	436,000	323,000
2018	410,220	275,000
2019	543,604	228,000
2020	291,081	77,000

Withdrawal[viii]

A "withdrawal" removes the public Notice of Federal Tax Lien and assures that the IRS is not competing with other creditors for your property; however, you are still liable for the amount due. For eligibility, refer to Form 12277, Application for the Withdrawal of Filed Form 668(Y), Notice of Federal Tax Lien (Internal Revenue Code Section 6323(j)) (PDF) and the video Lien Notice Withdrawal.

Two additional Withdrawal options resulted from the Commissioner’s 2011 Fresh Start initiative.

One option may allow withdrawal of your Notice of Federal Tax Lien after the lien’s release. General eligibility includes:

Your tax liability has been satisfied and your lien has been released; and also:

- You are in compliance for the past three years in filing - all individual returns, business returns, and information returns;
- You are current on your estimated tax payments and federal tax deposits, as applicable.

The other option may allow withdrawal of your Notice of Federal Tax Lien if you have entered in or converted your regular installment agreement to a Direct Debit installment agreement. General eligibility includes:

- You are a qualifying taxpayer (i.e. individuals, businesses with income tax liability only, and out of business entities with any type of tax debt)
- You owe $25,000 or less (If you owe more than $25,000, you may pay down the balance to $25,000 prior to requesting withdrawal of the Notice of Federal Tax Lien)
- Your Direct Debit Installment Agreement must full pay the amount you owe within 60 months or before the Collection Statute expires, whichever is earlier
- You are in full compliance with other filing and payment requirements
- You have made three consecutive direct debit payments
- You can't have defaulted on your current, or any previous, Direct Debit Installment agreement.

PROTIP 8

Discharge of Federal Tax Lien

To request discharge of a Federal tax lien you need to complete form 14135. To subordinate a Federal tax lien use IRS Form 14134.

To find these forms and many others visit:

https://www.taxresolutioninstitute.org/forms-library

APPLICATION FOR CERTIFICATE OF SUBORDINATION OF FEDERAL TAX LIEN

Since there is no standard form available for an application for certificate of subordination of Federal Tax lien, you should consider our typewritten request as an application. All accompanying documents will be submitted in duplicate to:

Send to: District Director of Internal Revenue Service
Address to District where the property is located

Attention: Chief, Special Procedures Staff

Date of application

Please give the name and address of the person applying, under Section 6325 (d)(1) or Section 6325 (d)(2) of the Internal Revenue Code, for a certificate of subordination. See the reverse of this publication for applicable Internal Revenue Code sections. Give name and address of the taxpayer, and describe property as follows:

Give a detailed description, including the location of the property for which you are requesting the certificate of subordination. If real property is involved give the description contained in the title or deed to the property, and the complete address (street, city, state).

Attach a copy of each notice of Federal tax lien or furnish the following information as it appears on each filed notice of Federal tax lien.

- The name of the Internal Revenue District;
- The name and address of the taxpayer against whom the notice was filed;
- The date and place the notice was filed.
- Describe the encumbrance to which the Federal tax lien is to be subordinated, including:
- The present amount of the encumbrance;
- The nature of the encumbrance (such as mortgage, assignment, etc.)
- The date the transaction if to be completed.

List the encumbrances (or attach a copy of the instrument that created each encumbrance) on the property which you believe have priority over the Federal tax lien. For each encumbrance show:

- The name and address of the holder;
- A description of the encumbrance;
- The date of the agreement;
- The original principal amount and the interest rate;
- The amount due as of the date of the application for certificate of subordination, if known (show costs and accrued interest separately);
- Your family relationship, if any, to the taxpayer and to the holders of any other encumbrances on the property.

Furnish an estimate of the fair market value of the property for which you would like a certificate of subordination.

If you are submitting the application under the provisions of section 6325(d)(1), show the amount to be paid to the United States.

If you are submitting the application under the provisions of section 6325(d)(2), attach a complete statement showing how the amount the United States may realize will ultimately increase and how collection of the tax liability will be made easier.

Furnish any other information that might help the district Director decide whether to issue a certificate of subordination.

The District Director may request you to furnish additional information.

Give a daytime telephone number where you may be reached.

Give the name, address and telephone number of your attorney or other representative, if any.

Make the following declaration over your signature and title:

"Under penalties of perjury, I declare that I have examined this application (including any accompanying schedules, exhibits, affidavits, and statements) and to the best of my knowledge and belief it is true, correct, and complete."

Please follow the instructions in this publication when applying for a Certificate of Discharge of Property From Federal Tax Lien.

The District Director has the authority to issue a certificate of discharge of a lien that is filed on any part of a taxpayer's property subject to the lien. The following sections and provisions of the Internal Revenue Code apply:

Section 6325(b)(1), a specific property may be discharged; if the taxpayer's property remaining subject to the lien has a Fair Market Value (FMV) which is double the sum of the balance due

All other liens (FMV=(a+b) x 2).

Section 6325(b)(2)(A), if there is paid in partial satisfaction of the liability secured by the lien an amount determined to be not less than the value of the interest of the United States in the property to be discharged.

Section 6325(b)(2)(B), if it is determined that the interest of the United States in the property to be discharged has no value.

Section 6325(b)(3), if the property subject to the lien is sold and, under an agreement with the Internal Revenue Service, the proceeds from the sale are to be held as a fund subject to the liens and claims of the United Sates in the same manner, and with the same priority, as the liens and claims on the discharged property.

Also see, Application Requesting the United States to Release its Right to redeem Property Secured by a Federal Tax Lien, Publication 487.

If application is made under the provisions of section 6325(b)(3), the District Director has the authority to approve an escrow agent selected by the applicant. Any reasonable expenses incurred in connection with the sale of the property, the holding of the fund, or the distribution of the fund shall be paid by the applicant or from the proceeds of the sale before satisfaction of any claims and liens. Submit a copy of the proposed escrow agreement as part of the application.

Sample letter used to apply for subordination

May 25, 2016

Internal Revenue Service
Attn: Revenue Officer
6230 Van Nuys Blvd.
Van Nuys, CA 91401

Re: Client Name, Client Federal ID#
Application for Subordination Agreement

To Whom it May Concern:

Please consider the following application for subordination agreement under IRC section 6325(d)(2) for the above referenced taxpayer. [Your Clients Name] would like the Internal Revenue Service subordinate to current (and future) lenders all accounts receivable, inventory & fixed assets owned by [Your Clients Name].

AB Factors, Inc. dba AB Bancorp the company's current lender is now in 1st position with respect to the above referenced collateral, including but not limited to all accounts receivable, inventory and fixed assets owned or hereafter acquired by the company. AB Factors, Inc. dba AB Bancorp will agree to continue the 45 day rule AB Factors, Inc. dba AB Bancorp will be forced to discontinue lending resulting in the possible bankruptcy of the taxpayer.

[Lessor Name] is the current lessor of equipment to [Your Client's Name] (See payment proposal below).

We estimate the fair market value of the referenced assets at approximately $1,500,000. we propose to pay the appropriate amount owing of $560,000 as follows:

- *$80,000 down payment*
- *$10,000 per month until August 2009*
- *$25,000 per month beginning August 2009 until paid.*

The payment of approximately $70,000 per month to Lessor end in July 2009 which would give the company sufficient cash flow to facilitate this large increase in payment.

Background: The Company has been in business since 1978 and has no prior history of tax delinquency. From late 2003 until early 2005 the taxpayer's contact manufacturing industry suffered from a number of significant negative factors as follows:

A stagnant economy, both domestically and abroad, which is our customer base;

The Administration's failed steel tariff policy leading to record high steel prices (50% increase in 6 months), which represents about 30% of our total operating expense;

Skyrocketing health and worker's compensation insurance costs in California;

Dramatic rises in utilities and transportation costs.

These factors lead to over $1 million of losses in 2004 and the first half of 2004, during which time the company fell behind in its payment of these taxes. Since then, however, things have turned around by controlling costs while all of the above factors have begun to improve. Since the 3rd quarter of 2005 customers have become less resistant to rising prices which has also helped offset most of these rising costs. The company is currently profitable.

We believe that this course of action is in the best interest of the United States in that the only source of repayment is the continuing operation of the business which would be impossible without continued funding by AB Factors, Inc. dba AB Bancorp and subordination by the Internal Revenue Service.

I am the Taxpayer's legal representative and I am submitting the protest and accompanying documents, which have been provided to me by the Taxpayer. Please feel free to contact me at the above referenced telephone number if you have any questions or need clarification of the foregoing.

Sincerely,

Your Name

Chapter 16

45-Day Rule

(Requirement - 6323 n 43)

The United States Congress instituted the 45-Day Rule in 1966 to correct a problem experienced by commercial lenders who suddenly found themselves losing their loan collateral when being set against a federal tax lien. The most basic principle employed in the adjudication of the priority of liens is "first in time is the first in right." When the IRS makes an assessment for unpaid payroll taxes against a business, a statutory lien arises in favor of the federal government. The lien attaches to all property or rights to property belonging to the business. This lien is called a "silent" lien because it comes into existence without notice to the world. The lien, however, does not necessarily entitle the IRS to priority against most other secured parties unless the IRS files a notice of a federal tax lien.

Once the IRS has filed an official notice of a federal tax lien against a business, both the business and the creditors of the business are placed in financial jeopardy. If you find your company in such a situation and the 45 days are passing, your future viability is being placed in serious crisis. If such a tax lien has been placed on your business and you are in a revolving loan agreement with an asset based lender such as a bank or a factor based on your assets or accounts receivable, please contact Peter Stephan and the Tax Resolution Institute before your cash flow evaporates and your business is closed down.

The 45-day rule gives the IRS special rights against lenders that secured themselves with their customers' collateral. The rule, which appears in Section 6323(d) of the Internal Revenue Code, (26 U.S.C.) states as follows:

Even though notice of a lien imposed by section 6321 has been filed, such liens shall not be valid with respect to a security interest which came into existence after the tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest (1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and (2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

Translated, the 45-day rule states that a lender, whose collateral can be identified only after the federal tax lien filing, receives a priority of first position subject to the following five restrictions:

- The security agreement must predate the tax lien filing.
- The holder of the interest may make disbursements no more than 45 days after the tax lien filing.
- The collateral securing those disbursements must be acquired within those 45 days.

At the time of the disbursement, the holder cannot have "actual knowledge or notice" of the tax lien filing (this term is discussed later).

Despite the basic principle of the 45-Day Rule, a federal tax lien by the IRS has always enjoyed certain advantages when it comes to deciding first position. For instance, courts have long held that to be first in time, the nonfederal lien must first be "choate," that is, the identity of the lien and the property subject to the lien are reasonably determinable.

The first-in-time rule created a hardship for commercial lenders and factors in particular. After all, commercial lenders have loans and collateral that change daily. For this reason, in the Federal Tax Lien Act of 1966, Congress changed the law to give commercial lenders a limited priority in certain contests involving federal tax liens. However, the priority Congress granted to commercial lenders in the form of the 45-Day Rule is far from absolute.

If we take a closer look at the key provisions of the 45-Day Rule, there are a number of requirements that must be met. To prevail against the IRS, the lender must confirm beyond any question and the bar is set quite high in these cases:

The date that the notice of the federal tax lien was filed.

- A written security agreement was entered into before that date.
- The collateral at issue relates to the subject agreement and to loans made under the agreement.
- The bank disbursed the loan no more than 45 days after the tax lien filing.
- The customer has acquired the collateral and can identify the collateral inside the 45-day window.
- The lender did not have actual notice or knowledge of the tax lien filing when it made the disbursements.

Under local law, the security interest would trump a hypothetical unsecured judgment lien arising as of the tax lien filing date.

Let us take a step back from the direct examination of the 45-Day Rule and the Internal revenue Code in regards to Payroll Taxes. To begin with, let us explain why a business would choose to enter into a Factoring relationship. For many companies, there are periods in the business cycle where cash flow becomes hard to manage and you look for alternatives. A workable alternative that many consider is an Accounts Receivable Financing Program or an Asset Based Financing program, commonly referred to as Asset-Based Lending or Factoring.

If your company is in financial difficulty, these types of revolving loans can sometimes accelerate the problem, but they can often help a company out of a bad situation. If you have identified the problem and have a plan in place to fix the problem within a specified period of time, accelerating cash flow can be a direct benefit that ends the crisis. It is essential to realize that such a loan agreement places your company in direct jeopardy if you fail to properly cover your payroll taxes or pay them on time.

Overall, the asset based lending industry has acquired an image that is far from ideal. Business owners assume that asset based loans are not as good as unsecured loans. In truth, asset based lending is used with all size companies and can allow an asset-rich corporation to receive financing when you have not met standard credit requirements. You do not always pay a higher rate of interest.

True asset based or "Equity based" lending is easier to obtain for borrowers who do not conform to typical lending standards. You may have no, little or terrible credit. You may have little income to support the payments, and may need to rely on the loan itself to pay back the lender until the property is either sold, refinanced, or your income resumes.

An important part of the decision to take such a loan is to compare the cost of the program to the benefit that the business will receive. It may help our business in the short-term, but if it costs more than increases profit, it is a bad solution. It is best to have a fixed, up-front cost structure that you can budget into your pricing and to know that no additional fees can be added to your cost.

In reality, with the pressure on and payroll taxes around the corner, how much time does a program like this save you and your company. If you spend large amounts of time tracking everything to manage the program and to comply with regulations, you may find yourself again losing money.

Asset based lenders typically limit the loans to a 50 or 65 loan to value ratio or "LTV". For example: If the appraisal is valued at $1,000,000.00 a lender might lend between $500,000.00 and $650,000.00. In the event of a default resulting in a foreclosure, the first lien position lender is entitled to repayment first, out of the proceeds of the sale.

You generate accounts receivable by selling goods or services to your customers on credit. If a cash squeeze develops, you may extend credit to your customers and sell your accounts receivable to a factor. A factor is a specialized financial intermediary who purchases accounts receivable at a discount. Factoring is a technique used to manage your accounts receivable and provide financing.

Under the lending (often called “factoring”) agreement, you sell or assign your accounts receivable to the factor in exchange for a cash advance. The factor typically charges interest on the advance plus a commission, not mention several service fees along the way. If you are a lender in the position of the factor and your borrower has failed to pay their payroll taxes, your collateral could be in real jeopardy. When it comes to the Trust Fund Recovery Penalty and the enforcing the strictures of the 45-Day Rule, the IRS Collection Officers are orthodox and inflexible.

According to the IRS Code, IRS Collection Officers only invalidate a tax lien against the security interests of a lender that satisfy traditional choateness doctrine within 45 days after the filing of a tax lien. This 45-Day Rule is not a parity rule as it provides for “sudden death” of a security interest that is not acquired within stated period. This “sudden death” potential is essential for lenders to understand in light of a borrower failing to pay their payroll taxes and a tax lien against the company being filed by the IRS.

To avoid the “sudden death” outcome, a factor’s (or lender’s) security interest in the business owner’s (or taxpayer’s) “accounts receivable” must meet federal standards of choateness within 45 days after the filing of the tax lien to have priority over the tax lien. In other words, the security interest must have been “acquired” by the factor (or lender) within that period. In contrast, a security interest in account receivables cannot be acquired until the accounts receivable comes into existence. As a result, the IRS deems such a security interest incomplete.

Security interest arising within 45 days after a federal tax lien is filed takes priority under three specific conditions:

- If your security interest stems from a written agreement entered into before the federal tax lien was filed and it qualifies as a “commercial transactions financing agreement”.
- If your underlying loans were made pursuant to a written agreement within 45 days of the filing of the tax lien or prior to receiving the notice of the tax lien’s being filed
- The agreement covers “qualified property” which was acquired by the taxpayer within 45 days of the filing of the tax lien, and local law gives the security interest holder priority over a judgment lien by an unsecured creditor as of the time the federal lien was filed.
- The Internal Revenue Service considers security interest obligation, which arises from optional advance made during the 45-day period without actual notice or knowledge of existence of federal tax lien protected. However, it is essential for the lender to understand that such knowledge must be categorically proved which can be challenging to say the least.
- If you are a lender and your borrower has failed to properly cover the payroll taxes of their business and the trust fund recovery penalty has come into play, the collateral your loans are based on could be in real jeopardy.

The 45-Day Requirement (Superseded)

The IRS Code only invalidates tax lien as against security interests of lenders or purchasers that satisfy traditional choateness doctrine within 45 days after filing of tax lien; rule is not parity rule as it provides for "sudden death" of security interest that is not acquired within stated period; lender's or purchaser's security interest in taxpayer's "accounts receivable" must meet federal standard of choateness within 45 days after filing of tax lien to have priority over tax lien; security interest must have been "acquired" by lender or purchaser within that period; security interest in account receivable is not acquired, and is therefore inchoate, until account receivable comes into existence. Texas Oil & Gas Corp v United States (1972, CA5 Tex) 466 F2d 1040, 11 UCCRS 575, cert den 410 US 929, 35 L Ed 2d 591, 93 S Ct 1367.

Security interest arising within 45 days after federal tax lien is filed takes priority if security interest stems from written agreement entered into before federal tax lien was filed and it qualifies as "commercial transactions financing agreement", underlying loans were made pursuant to written agreement within 45 days of filing of tax lien or prior to receiving notice of tax lien's being filed, agreement covers "qualified property" which was acquired by taxpayer within 45 days of filing of tax lien, and local law gives security interest holder priority over judgment lien by unsecured creditor as of time federal lien was filed. Donald v Madison Industries, Inc. (1973, CA10) 73-2 USTC 9623.

Absent contrary local law or specific statutory priority rules relating to judgment liens, Internal Revenue Service considers security interest obligation which arises from optional advance made during 45 day period without actual notice or knowledge of existence of federal tax lien protected; rule applies only to security interest under 26 USCS 6323 (c) (2) and (d). Rev Rul 72-290, FLAG 1972-1 p 385.

6321 n 14. Accounts receivable or payable

Taxpayer's invoice instructions to his customer to make checks payable jointly to the taxpayer and the taxpayer's creditors did not constitute an assignment of the customer's account to the creditors; hence, although the tax was not assessed until after instructions were mailed to the customer, the tax lien attached to the entire amount due from the customer. Harbert Constr. Corp. v United Iron Works, Inc. (1967, DC Ala) 67-2 USTC 9668.

Accounts receivable for "future" sales to taxpayer's customer assigned by the taxpayer to his supplier in payment for logs to be delivered to the taxpayer, was not subject to Treasury's tax lien. Harter v District Director of Internal Revenue (1968, DC Wash) 68-2 USTC 94.

Chapter 17

IRS Criminal Investigation Division

("CI")

Overview

Headquartered in Washington DC, the IRS Criminal Investigation (CI) is comprised of approximately 3,700 employees worldwide, approximately 2,600 of whom are special agents whose investigative jurisdiction includes tax, money laundering and Bank Secrecy Act laws. While other federal agencies also have investigative jurisdiction for money laundering and some bank secrecy act violations, IRS is the only federal agency that can investigate potential criminal violations of the Internal Revenue Code.

Compliance with the tax laws in the United States relies heavily on self-assessments of what tax is owed. This is called voluntary compliance. When individuals and corporations make deliberate decisions to not comply with the law, they face the possibility of a civil audit or criminal investigation which could result in prosecution and possible jail time. Publicity of these convictions provides a deterrent effect that enhances voluntary compliance.

As financial investigators, CI special agents fill a unique niche in the federal law enforcement community. Today's sophisticated schemes to defraud the government demand the analytical ability of financial investigators to wade through complex paper and computerized financial records. Due to the increased use of automation for financial records, CI special agents are trained to recover computer evidence. Along with their financial investigative skills, special agents use specialized forensic technology to recover financial data that may have been encrypted, password protected, or hidden by other electronic means.

Criminal Investigation's conviction rate is one of the highest in federal law enforcement. Not only do the courts hand down substantial prison sentences, but those convicted must also pay fines, civil taxes and penalties.[ix]

History

The **Criminal Investigation Division** of the IRS **("CI")** was created on July 1, 1919. At the time, the Commissioner of the IRS created the Division which at the time was called the Intelligence Unit to probe in assertions of tax fraud. The division was originally composed of a small group of postal inspectors which is quite different from the current group of highly trained, individuals that make up the department today.[x]

The CI became known nationwide when they assisted in the conviction of Al Capone for income tax evasion.

In 1978 the agency changed its name to **Criminal Investigation** which has transformed to its currently known name, the CI. Over time, in addition to investigating tax law violations, the CI expanded its duties to include investigating currency and money laundering violations. But the CI's primary objective is to ensure the integrity and fairness of the United States tax system.

Since the CI since its creation has continually been able to convict no less than 90% of the taxpayers they alleged to have violated U.S. tax law. This conviction rate is unmatched to all other branches of Federal law enforcement.[xi]

Background

The Criminal Investigation Division ("CI") is the "policing" arm of the IRS. When a taxpayer's actions are scrutinized as having potentially violated U.S. tax law, they may be assigned to the CI and in turn assigned an IRS Special Agent. The IRS Special Agent must adhere to strict rules set forth in the Internal Revenue Manual ("IRM") which include warning a taxpayer that he or she is under criminal investigation as well as providing credentials if requested.

A taxpayer is under no obligation to speak to a Special Agent, and in fact may and probably should remain silent when questioned by a Special Agent. If your Client is going to be or has been approached by the CI, it is in their best interest not to respond to any request of a Special Agent without having proper representation.

The IRS CI will evaluate several criteria in order to determine if a taxpayer should or should not be investigated by their Department. The main determination in deciding to proceed is based upon whether or not the CI believes their recommendation to prosecute will lead to a conviction. If the CI determines that their subject should be prosecuted, the case is then reviewed by the District Counsel ("DC") of the IRS and if passed by the DC, it is then referred to the Tax Division of the

Department of Justice ("DOJ"). If the DOJ determines that the case is worthy of prosecution, it is then referred to the U.S. Attorney and prosecuted pending final approval.

In order for a taxpayer to be charged with a felony, a Federal Grand Jury must vote in favor of issuing an indictment. Here the Grand Jury has to make some subjective decisions based upon whether they believe there has been a violation in Federal tax law as well as whether they believe that the accused has broken said tax law under the same standard. A Grand Jury is composed of anywhere from16 to 23 people that are picked by the U.S. District Court. At least 12 jurors must vote to proceed with an indictment. If less than twelve agree, the case will not proceed.

How the CI works

It is the goal of an IRS Special Agent to investigate, discover and provide proof that the taxpayer had criminal intent when the performed the act/s for which they are being investigated. Keep in mind that the Special Agents best resource is the taxpayer themselves. Giving false testimony or admitting to something that is not necessary will most definitely assist the Special Agent in their case. Therefore a taxpayer under investigation should consult a qualified representative to advise them through this process.

A taxpayer with proper representation will most likely remain silent when questioned by a Special Agent. This causes the Special Agent to turn to other investigative means including third party interviews via Summons and interviewing the taxpayer's tax return preparer to establish intent via circumstantial evidence. The Special Agent may also examine the taxpayer's past and present bank account statements, financial records and tax returns. Keep in mind that if the Special Agent cannot directly establish proof, he or she may attempt to provide indirect evidence that the taxpayer intended to commit fraud.

There are 3 main concerns for which IRS CI conducts an investigation:

1. Tax evasion.
2. Filing a false return.
3. Failure to file a tax return.

Keep in mind that millions of people each year act in a way that would fall into one of the above-mentioned categories. In addition to committing the act, there is the severity of how the act was committed that must be considered as well.

Under USC § 7206 Any person who…

(1) **Declaration under penalties of perjury**
willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) **Aid or assistance**

willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) **Fraudulent bonds, permits, and entries**

simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof

…shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.[xii]

According to section ***25.1.1.2.4 (12-16-2011)*** of the Internal Revenue Manual ("irm") tax avoidance is not a criminal offense and tax evasion is.

Avoidance vs. Evasion

1. Avoidance of tax is not a criminal offense. Taxpayers have the right to reduce, avoid, or minimize their taxes by legitimate means. One who avoids tax does not conceal or misrepresent, but shapes and preplans events to reduce or eliminate tax liability within the perimeters of the law.

2. Evasion involves some affirmative act to evade or defeat a tax, or payment of tax. Examples of affirmative acts are deceit, subterfuge, camouflage, concealment, attempts to

color or obscure events, or make things seem other than they are.

3. Common evasion schemes include:

    - Intentional understatement or omission of income,
    - Claiming fictitious or improper deductions,
    - False allocation of income, and/or
    - Improper claims, credits, or exemptions,
    - Concealment of assets.

Examples (see Appendix D for actual case studies)

Employment Tax Evasion Schemes[xiii]

Employment tax evasion schemes can take a variety of forms. Some of the more prevalent methods of evasion include pyramiding, employee leasing, paying employees in cash, filing false payroll tax returns or failing to file payroll tax returns.

Pyramiding

"Pyramiding" of employment taxes is a fraudulent practice where a business withholds taxes from its employees but intentionally fails to remit them to the IRS. Businesses involved in pyramiding frequently file for bankruptcy to discharge the liabilities accrued and then start a new business under a different name and begin a new scheme.

Employment Leasing

Employee leasing is another legal business practice, which is sometimes subject to abuse. Employee leasing is the practice of contracting with outside businesses to handle all administrative, personnel, and payroll concerns for employees. In some instances, employee-leasing companies fail to pay over to the IRS any portion of the collected employment taxes. These taxes are often spent by the owners on business or personal expenses. Often the company dissolves, leaving millions in employment taxes unpaid.

Paying Employees in Cash

Paying employees, whole or partially, in cash is a common method of evading income and employment taxes resulting in lost tax revenue to the government and the loss or reduction of future social security or Medicare benefits for the employee.

Filing False Payroll Tax Returns or Falling to File Payroll Tax Returns

Preparing false payroll tax returns understating the amount of wages on which taxes are owed, or failing to file employment tax returns are methods commonly used to evade employment taxes.

Statistical Data - Employment Tax Evasion

How to Interpret Criminal Investigation Data

Since actions on a specific investigation may cross fiscal years, the data shown in cases initiated may not always represent the same universe of cases shown in other actions within the same fiscal year.

Year-Over-Year Comparison (2014 – 2016)[xiv]

	FY 2020	FY 2019	FY 2018
Investigations initiated	2,596	2,485	3,051
Prosecution recommendations	1,859	1,893	2,130
Indictments/Informations	1,512	1,800	2,011
Convictions	1,187	1,735	1,879
Sentenced*	1,226	1,726	2,111
Percent to prison	79.8%	78.8%	82.0%
*Sentence includes confinement to federal prison, halfway house, home detention, or some combination thereof.			

How to Interpret Criminal Investigation Data

Since actions on a specific investigation may cross fiscal years, the total shown under Investigations Initiated may not represent the same universe of investigations displayed under other actions within the same fiscal year. (Example: an investigation initiated in fiscal year 2012 may not be sentenced until fiscal year 2013)

Data Source: Criminal Investigation Management Information System. Fiscal years run from October through September.

Options

If a taxpayer suspects that he or she may be subject to a criminal investigation by the IRS, they may consider making a voluntary disclosure to the CI to avoid prosecution. The IRS has established policy surrounding voluntary disclosures that if properly complied with ensure that the majority of taxpayers who make a proper voluntary disclosure need not fear criminal prosecution. *Keep in mind that a voluntary disclosure is not the same as an admission against your interest. If you wait until the IRS has caught, it may be too late.*

Keep in mind that **the IRS's voluntary disclosure policy does not guarantee a grant of amnesty or immunity from prosecution**. The IRS states that a voluntary disclosure occurs when a taxpayer makes a truthful, timely, and complete disclosure, and the taxpayer cooperates with the IRS and makes a good faith arrangement with the IRS to pay all determined deficiencies, including interest and penalties. To qualify as a true voluntary disclosure, the disclosure must be made before the disclosing individual is aware of events that indicate the government is likely to discover the crime being disclosed. Given the technical and tactical aspects of making voluntary disclosure, experienced tax counsel should be engaged.

What is the consequence of a taxpayer lying to an IRS agent?

At some point during a civil examination or criminal investigation taxpayers may find themselves explaining their previous actions regarding their tax return to an IRS Special Agent. Because it is a crime in and of itself, to lie or mislead a federal agent, the taxpayer really only has one of two choices when faced with an interview by and IRS agent; (1) say nothing or (2) "fess up" and tell the truth. If the taxpayer knows that they substantially understated income, overstated deductions and or falsely claimed credits then it is imperative that they seek counsel from an experienced professional before continuing any further communication with the IRS. Better to say nothing than say something that can be used against you.

In 2012 IRS CI released its ***Annual Report*** highlighting strong gains in enforcement actions and penalties imposed on convicted tax criminals.

The 28-page report summarizes a wide variety of CI activity on a range of tax related issues during the fiscal year ending Sept. 30, 2012.

Richard Weber, the Chief of Criminal Investigation states "The key to our successes is perseverance and dedication to working complex financial investigations aimed at stopping tax fraud, identity theft, offshore tax evasion, public corruption, money laundering and other financial crimes…"

Highlights of the Annual Report include:

Investigations initiated and prosecution recommendations were both up nearly 9 percent in fiscal 2012 compared to the prior year. Filings of indictments and other charging documents rose 13 percent.

Meanwhile, convictions and those sentenced both gained roughly 12 percent from the prior year.

Criminal investigation initiations totaled 5,125 cases in fiscal 2012 while investigations completed were 4,937 – up 5 percent from fiscal 2011.

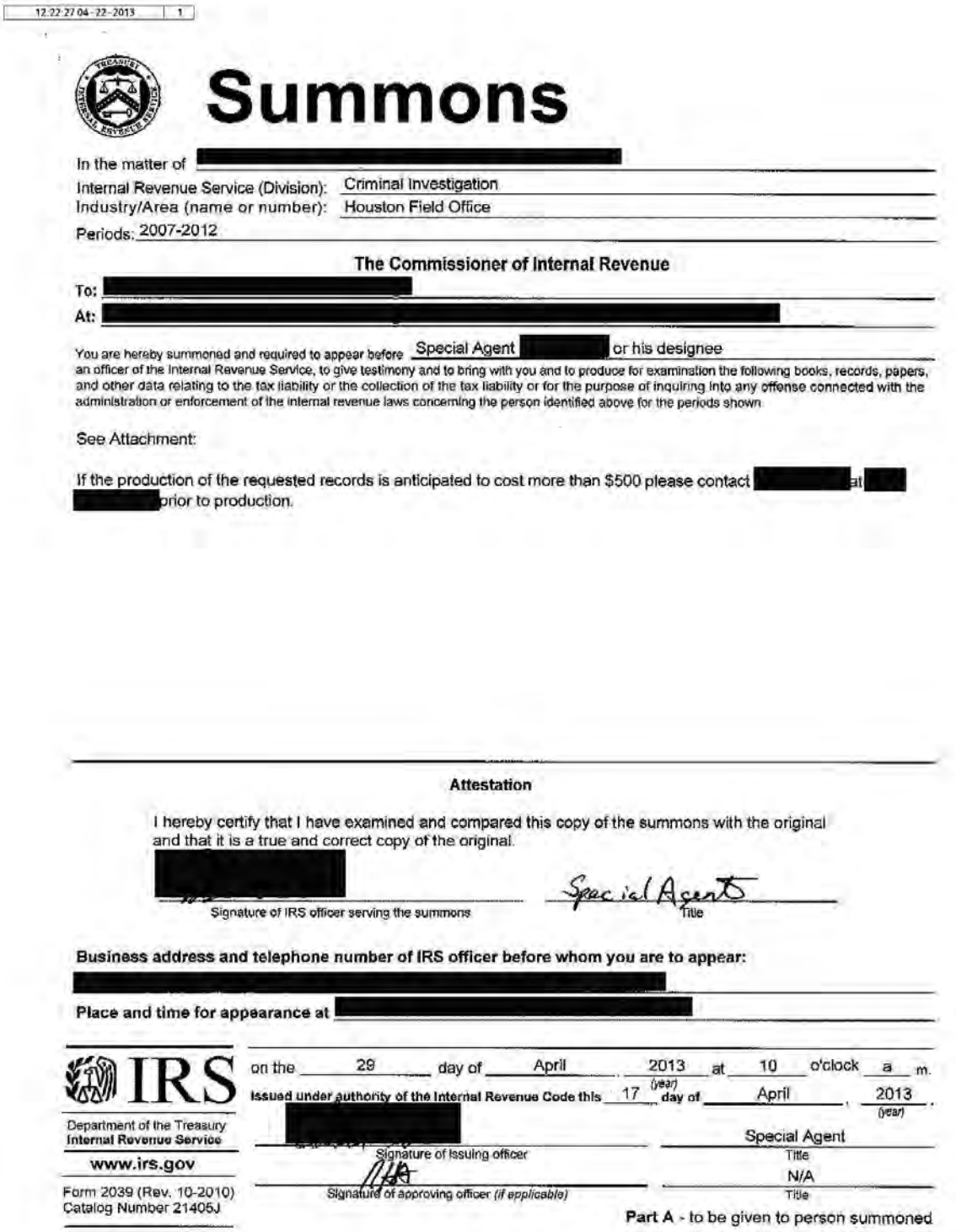
Convictions totaled 2,634 in fiscal 2012 while the conviction rate edged up slightly to 93 percent.

Mr. Weber also indicated "This annual report showcases some of the many significant cases that were completed by CI during fiscal year 2012 and the many program areas we cover as an organization. These cases are just a few examples of the thousands of investigations initiated by CI last year, as we continue to make our mark as the finest financial investigators in the world…"

Relative to the total number of taxpayers, an extremely small amount of individuals are criminally investigated; however, keep in mind that if an investigation is opened, one must be prepared to defend themselves because prosecutions are on the rise.

The IRS tends to be meticulous when investigating a taxpayer at this level, even more so than a typical Police Department. It is not uncommon for an investigation to span several years and may involve gathering information form the taxpayer's family, friends, neighbors, and business associates. The IRS is able to enlist the USPS to keep tabs on a taxpayer's mail correspondence. In addition a taxpayers financial advisors including banker and accountants may be required to divulge otherwise private information to the IRS.

IRS Summons from CI (*sample*)



12.22.27 04-22-2013 1

Summons

In the matter of [redacted]

Internal Revenue Service (Division): Criminal Investigation

Industry/Area (name or number): Houston Field Office

Periods: 2007-2012

The Commissioner of Internal Revenue

To: [redacted]

At: [redacted]

You are hereby summoned and required to appear before Special Agent [redacted] or his designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown

See Attachment:

If the production of the requested records is anticipated to cost more than $500 please contact [redacted] at [redacted] prior to production.

Attestation

I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.

[redacted] Special Agent

Signature of IRS officer serving the summons — Title

Business address and telephone number of IRS officer before whom you are to appear:

[redacted]

Place and time for appearance at [redacted]

on the 29 day of April 2013 (year) at 10 o'clock a m.

Issued under authority of the Internal Revenue Code this 17 **day of** April 2013 (year)

[redacted] Special Agent

Signature of issuing officer — Title

N/A

Signature of approving officer *(if applicable)* — Title

IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 10-2010)
Catalog Number 21405J

Part A - to be given to person summoned

Chapter 18

Bulk Transfer

Sample

May 25, 2008

<Client >
<Business, Inc.>
<Address>

MEMORANDUM OF UNDERSTANDING

Re: Business, Inc. Chapter # 11
941 liability re draw vs. loan re officers compensation
Informal cram down of unsecured creditors
Administrative procedure and Administrative remedy
Avoid successor liability, fraudulent conveyance

Dear Client:

As per our conversation, the following may represent Administrative Procedure and Administrative Remedy:

- *File amended return 941-X, Re draw / loan from officers and/or stockholders.*
- ***Organize** and **Strategize** Bulk Transfer for Corporate Industries, Inc.*
- *Including Buy-Sell agreement (Purchase Agreement)*
- *File notice of Bulk Transfer to Creditors*
- ***Pre sanctioned IRS Bulk Transfer with Revenue Officer.***
- *Provide IRS with copy of F.F.E. **(see Bulk Transfer documents).***
- *Hire auctioneers acceptable to IRS.*
- *Avoid Successor liability / fraudulent conveyance re new company.*
- *Provide list of items we need for IRS **(see documents -blue backed)***
- *Place ad with newspaper.*
- *UCC1 due diligence*
- *Establish escrow.*

Chapter 11 perils avoided:

- *Avoid chapter 11, D I P account*

- *Avoid interim & operating reports*
- *Avoid Quarterly Bankruptcy fees*
- *Avoid plan of reorganization confirmation fees*
- *Avoid bankruptcy exit fees*
- *Dismiss Chapter 11 without prejudice* ***(provided IRS sanctions).***

IRS "Offer in Compromise"

Defend all officers re: Trust Fund Assessment, Draw vs. Salary accounting methodology.
Strategize and complete "Offer in Compromises"

Contingent liability
(see Processing an Offer)
Abate penalty & interest

Adequate representation- Trust Fund Recovery "4180"
Provide a formal 2751 Appeals defense

Bulk Transfer Process

The following is an overview/continuum of the **Bulk Transfer** Process which we have discussed with the Revenue Officer to avoid a **"Writ to enter and seize."**

I. Statutory Foundation

A. 6101 - Short Title

This process shall be known and may be cited as Uniform Commercial Code- Bulk Transfers.

This article attempts to simplify and make uniform the bulk sales laws of the states that adopt this Act.

Many states have bulk sales laws, of varying type and coverage.

Their central purpose is to deal with two common forms of commercial fraud, namely:

- The merchant, owing debts, who sells out his stock in trade to a friend for less than it is worth, pays his creditors less than he owes them, and hopes to come back into the business through the back door sometime in the future.
- The merchant, owing debts, who sells out his stock in trade to any one for any price, pockets the proceeds, and disappears leaving his creditors unpaid.

B. 6102 - Bulk Transfer, Transfer of Equipment

A “bulk transfer” is any transfer in bulk and not in the ordinary course of the transferor’s business of a substantial part of the materials, supplies, merchandise, or other inventory (Section 9109) of an enterprise subject to this division.

C. 6103 - Transfers exempt from this article

The following transfers are not subject to this division:

- Assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee hereunder.
- Transfers of property subject to a lien or other security interest in settlement or realization of such lien or other security interest.
- Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process.
- Transfers of property which is exempt from enforcement of a money judgment.

D. 6105 - Notice to Creditors

- Any bulk transfer subject to this division except one made by auction sale (Section 6108) is fraudulent and void against any creditor of the transferor unless the transferee gives notice of the transfer in the manner and within the time hereafter provided.
- The term “noticed sale date” as used in this division means the date set forth in the notice provided for in subdivision (1) of Section 6107 on or after which the bulk transfer may be consummated.

E. 6106 - Transferee to apply consideration to pay debts of transferor

- This section applies only to a bulk transfer where the consideration is less than one million dollars ($1,000,000) and substantially all cash or an obligation of the transferee to pay cash in the future to the transferor or a combination thereof.

is

- Upon every bulk transfer subject to this section except one made by sale at auction it is the duty of the transferee (or, if the transaction is handled through an escrow, the escrow agent) to apply the consideration in accordance with the provisions of this section so far as necessary to pay those debts of the transferor for which claims are due and payable on or before the noticed sale date and are filed in writing on or prior to the date specified as the last date to file claims with the person designated in the notice to receive claims. This duty of the transferee or escrow agent runs to each creditor timely filing such a claim.
- The notice shall state, in addition to the matters required by Section 6107, the name and address of the person with whom claims may be filed and the last date for filing claims, which shall be the business day before the noticed sale date. Claims shall be deemed timely filed only if actually received by the person designated in the notice to receive claims before the close of business on the day specified in the notice as the last date for filing claims.

F. 6106.1 - Claims against transferor handled through escrow

In any case where the notice of a bulk transfer subject to Section 6106 states that claims may be filed with a person who is an escrow agent, the intended transferee shall deposit with the escrow agent the full amount of the purchase price or consideration. If at the time the transfer is otherwise ready to be consummated the amount of cash deposited or agreed to be deposited at or prior to consummation in the escrow is insufficient to pay in full all of the claims filed with the escrow agent, the escrow agent shall:

1a. Delay the distribution of the consideration and the passing of legal title for a period of not less than 25 days nor more than 30 days from the date the notice required in paragraph (b) of this subdivision is mailed; and

1b. Within five business days after the time the transfer would otherwise have been consummated, send a written notice to each claimant who has filed a claim stating the total consideration deposited or agreed to be deposited in the escrow, the name of each claimant who filed a claim against the escrow and the amount of each claim, the amount proposed to be paid to each claimant, the new date scheduled for the passing of legal title pursuant to paragraph (a) of this subdivision and the date on or before which distribution will be made to claimants which shall not be more than five days after the new date specified for the passing of legal title.

2. Distribute the consideration in the following order of priorities:
    - All obligations owing to the United States, to the extent given priority by federal law.
    - Secured claims, including statutory and judicial liens, to the extent of the consideration fairly attributable to the value of the properties securing such

claims and in accordance with the priorities provided by law; provided, however, that a secured creditor shall participate in the distribution pursuant to this subdivision only if a release of lien is deposited by such secured creditor conditioned only upon receiving an amount equal to such distribution.

- Escrow and professional charges and broker's fees attributable directly to the sale.
- Wage claims given priority by Section 1205 of the Code of Civil Procedure.
- All other tax claims.
- All other unsecured claims pro rata, including any deficiency claims of partially secured creditors.

3. To the extent that an obligation of the transferee to pay cash in the future is a part of the consideration and the cash consideration is not sufficient to pay all claims filed in full, apply all principal and interest received on such obligation to the payment of claims in accordance with subdivision (2) until they are paid in full before making any payment to the transferor. In such case, the notice pursuant to subdivision (1) shall state the amount, terms and due dates of the obligation and the portion of the claims expected to be paid thereby. No funds shall be drawn from the escrow, prior to the actual closing and completion of the escrow, for the payment, in whole or in part, of any commission, fee or other consideration as compensation for a service which is contingent upon the performance of any act, condition, or instruction set forth in an escrow.

G. 6107 - Notice

1. The notice to creditors (Section 6105) shall state:

- **That a bulk transfer is about to be made;**
- **The names and business addresses of the transferor and, except in the case of a sale at auction, the transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee;**
- **The location and general description of the property to be transferred;**
- **The place, and the date on or after which, the bulk transfer is to be consummated; and**
- **Whether or not the bulk transfer is subject to Section 6106, and if so subject, the matters required by subdivision (3) of Section 6106.**

2. The notice shall be:

- **Recorded in the office of the county recorder in the county or counties in which the property to be transferred is located at least 12 business days before the bulk transfer is to be consummated or the sale by auction is to be commenced; and**
- **Published at least once in a newspaper of general circulation published (i) in the judicial district in which the property is located and (ii) in the judicial district, if different, in which the chief executive officer of the transferor, or, if the chief executive office is not in California, the principal business in California, is located, if in either case there is one, and if there is none, then in a newspaper of general circulation in the county embracing such judicial district, at least 12 business days before the bulk transfer is to be consummated or the sale by auction is to be commenced; and**
- **Delivered or sent by registered or certified mail at least 12 business days before the bulk transfer is to be consummated or the sale by auction is to be commenced to the county tax collector in the county or counties in which the property to be transferred is located.**

If the property to be transferred is located in more than one judicial district, the publication required by paragraph (b) of subdivision (2) shall be in a newspaper published in the judicial district where a greater portion of the property is located, on the date the notice is published, than in any other judicial district, or in the county embracing such judicial district, as the case may be. As used in this section, "business day" means any day other than a Saturday, Sunday or a day observed as a holiday by the California state government.

H. 6108 - Auction Sales

1. A bulk transfer is subject to this division even though it is by sale at auction, but only in the manner and with the results stated in this section.
2. The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall be responsible for giving the notice of the transfer (Section 6107). In the cause of a sale by auction, in addition to the matters specified in Section 6107, the notice shall state that the sale is to be by auction, the name of the auctioneer, and the time and place of the auction.
3. Failure of the auctioneer to give the notice of the transfer does not affect the validity of the sale to or the title of the purchasers, but such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the reasonable value of the assets sold. If the auctioneer consists of several persons their liability is joint and several.

I. 6109 - What creditors protected

The creditors of the transferor mentioned in this division are those holding claims based on transactions or events occurring before the bulk transfer.

J. 6110 - Subsequent Transfers

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this division, then:

- A purchaser of any such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but
- A purchaser for value in good faith and without such notice takes free of such defect.

K. 6111 - Limitations of Actions and Levies

- No action under this division shall be brought nor levy made more than one year after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, an action may be brought or levy made within one year after its discovery by the creditor bringing such action or making such levy or after it should have been discovered by such creditor in the exercise or reasonable diligence, whichever first occurs.

If a bulk transfer is subject to and complies with Section 6106, no levy shall be made by a creditor of the transferor on the proceeds of sales in the hands of transferee or escrow agent after the transferee takes legal title to the goods, except to the extent of that creditor's share of the proceeds pursuant to Section 6106 and 6106.1.

II. Step by Step overview of the process

- Implement due diligence of all UCC-1 filings with the Secretary of State.
- Compile list of **all** creditors.
- C. Appraise all relevant Furniture, Fixtures, and Equipment (See attachment 1).
- Advertise sale of Furniture, Fixtures, and Equipment (See attachment 2).
- Mail notice of sale to all creditors 12 business days before consummation of said sales (See attachment 3).
- Establish new corporation.

- Open up escrow.
- Provide IRS and State escrow number.
- Proceeds of sale remitted to regulatories and any other secured creditors.
- Old company closes doors.
- Abatement of penalty and interest via 4180 defense also referred to as Trust Fund Recovery.

FOR DISCUSSION PURPOSES ONLY:

If you opted for Chapter 7, debtors are not liable to IRS for interest and penalties on pre-petition tax claim under 11 USCS SS. 507 where: (1) claim has been or will be paid in full; and (2) failure to make payments to IRS resulting in interest and penalty liability is fault of trustee who has failed to make timely payments. Re Irvin (1989, BC WD Mo) 95 BR 1014, 20 CBC2d 1007.

Regarding any Revenue Officer's tax examination and all its ramifications could take 30 to 60 days to complete. IRS officer and I would work on the document request list. We would isolate the issue from the other ones, this is the one that carries the most exposure, remember it is legal to avoid but illegal to evade.

SEC. 7602 - Examination of Books and Witnesses.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized:

(1) To examine any books, papers, records or other data which may be relevant or material to such inquiry;

To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(2) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Upon further research, we should note how the conspiracy statute and fraud statues can affect you within adequate representation.

Definition of Fraud

Fraud is not defined either in Section 6653(b) or in the regulations. Some clue to the meaning of the term may be found from the version of the penalty contained in the 1939 Code, which imposed the penalty for "fraud with intent to evade tax." The change in Section 6653(b) to the imposition of the penalty for "fraud" from "fraud with intent to evade tax" was made without an apparent legislative purpose to change meaning. This means that the fraud referred to in Section 6653(b) is fraud with intent to evade tax. Also, fraud itself signifies an intent to deceive, and this intent to deceive overlaps to some extent the conduct involved in evasion. This overlap is reflected in cases holding that a taxpayer convicted of evasion is collaterally stopped from contesting the issue of fraud in a civil penalty case because the conviction necessarily carries with it the ultimate factual determination that the deficiency was due to fraud. Accordingly, a taxpayer who willfully attempts to evade tax also underpays tax with the requisite fraudulent intent for purposes of the civil penalty statute. The evasion element in fraud makes principles announced in evasion cases that willful conduct is an intentional violation of a known legal duty (Pomponio) and that "conduct, the likely effect of which would be to mislead or conceal" is evidence from which a willful attempt may be inferred (Spies), seem to apply as well to the civil fraud penalty. Thus, the long-standing definition of fraud articulated in Mitchell V. Comm's under the 1939 Code version of the penalty remains authoritative.

*"Negligence", whether slight or great, is not equivalent to the fraud with intent to evade tax named in the statute. The fraud meant **is actual**, intentional wrongdoing, and the intent required is the specific **purpose to evade a tax believes to owe**.*

The Conspiracy Status: 18 USC SS 371

The Offense of criminal conspiracy has two elements: (1) an agreement between two or more persons either (a) to commit an offense against or (b) to defraud the United States in any manner or for any purpose, and (2) an overt act committed by one or more of the conspirators to accomplish the object of the conspiracy. Conspiracy reaches farther into criminal activity than evasion, which is an attempt-type crime requiring affirmative conduct, by punishing mere agreement to commit a crime. In tax cases, the conspiracy charged is usually an agreement to commit a substantive tax offense (e.g., evasion) or to defraud the United States (e.g., by impeding the IRS in the determination or collection of tax). All that need be established is that two or more persons have agreed to commit a substantive tax offense or to defraud the United States in some manner. The overt act requirement of the federal conspiracy statute serves to establish the existence of the agreement, and need not be particularly significant if it is, in fact, in furtherance of the conspiracy.

Procedurally, the crime of conspiracy differs from other crimes in ways that give prosecutors the following advantages at trial:

(1) A conspiracy prosecution may be brought in a judicial district where an overt act took place. The venue rule gives prosecutors an opportunity to elect a place of trial at which conviction is more likely or which may be inconvenient to the defendants.

There are rules of evidence peculiar to conspiracy prosecutions. A general rule, subject to many exceptions, is that hearsay is not admissible; one particular exception is that a statement by a co-conspirator during the course and in furtherance of the conspiracy does not constitute hearsay and is admissible against the defendant. Thus, if conspirator X told witness W that X along with Y and Z planned to hold back business receipts of their corporation, W could testify about the statement and it would be admissible against both Y and Z, as well as against X. The rationale of this rule is the legal fiction that a conspiracy makes the co-conspirators mutual agents. Moreover, although the statement is required to have been made during the course and in furtherance of the conspiracy, any statement relating to the conspiracy frequently is admitted. Also, the defendant's difficulties are exacerbated by the willingness of courts to admit these statements before the existence of a conspiracy has actually been established, subject only to an instruction cautioning the jury that evidence is not to be considered unless the conspiracy is proved by independent evidence.

To establish the existence of a conspiracy, prosecutors in addition enjoy a wide latitude in offering circumstantial evidence to establish a conspiracy. This procedure is justified by the difficulties prosecutors would otherwise face in proving the existence of a conspiracy, which by its nature requires secrecy and concealment. When several defendants have been charged, they may face joint trial where evidence damaging to one may be used against all.

(2) Finally, the procedural advantages prosecutors have are coupled with the substantive vagueness and ambiguity of the crime itself. It is not certain, for example what constitutes an agreement for purposes of the conspiracy and what mental state must be shown. This uncertainty and the unfairness it may occasion have prompted the Supreme Court to discourage extensions of the conspiracy offense and the Service and Justice Department's Tax Division to utilize the charge with restraint.

The rationale of the conspiracy statute is that collective or group activity ought to be punished separate and apart from any substantive crime because it represents a grave threat to society than individual criminal activity. A partnership in crime "both increases the likelihood that the criminal object will be fully attained and decreases the probability that the individuals involved will depart their path of criminality." For this reason, as we shall see, the conspiracy offense is separate and distinct from the crime the conspirators agree to commit, so a conspirator may be punished both for conspiracy and for the contemplated crime. For example, if A and B agree to raise the deductions of their corporation falsely and in fact file false returns for the corporation, they could receive maximum sentences for both evasion and conspiracy. Punishment under the conspiracy statute, however, has gradations, depending upon the offense that the conspirators have agreed to commit. A conspiracy to evade is punishable as a felony in the same manner as the evasion itself; but if the conspiracy is one to fail to file a tax return, the offense is punished as a misdemeanor with the same punishment Section 7203 provides.

Conspiracy to Defraud

A conspiracy to defraud combines the vagueness of a conspiracy charge with broad allegations of

an attempt to impede or obstruct government functions. In United States v. Klein, the indictment charged the defendants with a conspiracy to defraud the United States "by impeding, obstructing and defeating the functions of the Department of the Treasury in the collection of the revenue, to wit, income taxes." Inter-corporate transactions of considerable complexity were alleged to have concealed the nature and source the income realized from an immense whiskey-selling business. The Second Circuit said that mere failure to disclose income would not be sufficient to establish the crime of conspiracy to defraud the United States, but that such a charge does include interference or obstruction of lawful government functions by deceit, craft, or trick, or dishonest means. In Klein, the acts of concealment were various acts of alteration of books and false statements on tax returns and to IRS agents.

The Klein-type conspiracy (i.e., a conspiracy to defraud by acts of concealment) may be charged against a tax adviser as well as a taxpayer. Just when tax planning becomes concealment is unclear, and determining where the line is to be drawn in the contest of a criminal conspiracy trial represents a prospect both difficult and dangerous.

Transferee Liability in Equity

The elements of transferee liability in equity derive in substantial part from the requirements of state fraudulent conveyance laws. A proper understanding of transferee liability in equity therefore requires some background in the law of fraudulent conveyances.

Fraudulent Conveyances

The substantive law of transferee liability varies from state to state, but in most transferee liability cases the state law involved is its fraudulent conveyances law. With some understanding of this body of law, the elements of transferee liability are made comprehensible. The modern law of fraudulent conveyances derives from a statute enacted in 1570 during the reign of Queen Elizabeth, which in substance provided that any transfer made "to delay, hinder or defraud creditors or others" was voidable by the persons hindered, delayed or defrauded. Since proof of fraudulent intent was difficult, circumstantial evidence from which an intent to defraud could be inferred, called "badges of fraud," came to be recognized. In the United States, the states recognized different badges of fraud, but intra-family transfers, transfers of property without consideration, and transfers of all or a substantial amount of property immediately before anticipated litigation are facts generally considered to be badges of fraud.

Because of the variations in the fraudulent conveyance statues and common law, a Uniform Fraudulent Conveyance Act (UFCA) has been proposed and adopted in almost half the states. Different types of fraudulent conveyances are described in Sections 4 through 8 of the UFCA, but Section 4 (conveyances by insolvents) and Section 7 (conveyances made with intent to defraud) are the ones most commonly used. Under Section 4, every conveyance made (1) "without fair consideration" (2) by a person who is or will thereby be rendered insolvent constitutes a fraudulent conveyance without regard to the actual intent of the debtor. For the purposes of the UFCA, "fair consideration" uses two comparative value standards: "Fair equivalent" if the transfer is an absolute transfer such as an exchange of property or a gift; and "not disproportionately small" if the transfer is a transfer for security, for example, under Article 9 of the Uniform Commercial code.

Fair consideration also requires good faith, which has been interpreted to exist where there is (1) an honest belief in the propriety of the activities in question: (2) no attempt to made unconscionable advantage of others; and (3) no attempt to, or knowledge of the fact that the activities in question will hinder, delay or defraud others. The other element of a Section 4 fraudulent conveyance is "insolvency," which is defined by Section 2 to exist "when the present fair salable value" of the debtor's assets is less than "the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured."

A conveyance is fraudulent under Section 7 of the UFCA when it is made "with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors.." for Section 7 purposes, the focus is on intent, not the adequacy of the consideration or the financial condition of the transferor as it is under Section 2. Usually, this actual intent to defraud is established by the same evidence that constitutes "badges of fraud" under prior law.

Under the UFCA, the rights of creditors depend on whether their claims have matured. Where a creditor's claim has matured, the creditor may either (1) have the conveyance set aside to the extent necessary to satisfy his claim, or (2) disregard the conveyance and levy execution on the property conveyed. In this respect the UFCA restates the remedies available to a creditor at common law. The remedy of having the conveyance set aside was an equitable remedy usually enforced by a creditor's bill. This remedy was preferable to disregarding the conveyance and attaching or levying execution on the property conveyed, because the validity of the conveyance was determined in advanced of the sale of the property, so that the amount received on the sale would probably be higher. Where the rights of creditors have not matured, under the UFCA a creditor still may proceed in court and may ask the court to (1) restrain the defendant from disposing of his property; (2) appoint a receiver to take charge of the property; (3) set aside the conveyance or annul the obligation; or (4) make any order which the circumstances of the case may require. The

UFCA somewhat expands the rights of creditors with un-matured interests in the extent of the remedies available. A prior judgment was generally necessary to maintain an action to set aside a fraudulent conveyance. It was not necessary, however, that the creditor's claim be reduced to judgment at the time of the conveyance was made, so long as the creditor has a claim at the time of the conveyance, whether that claim was liquidated or contingent.

Fraudulent transfers

Successor corporation was liable for assessed taxes, interest and fraud penalty of predecessor corporation where successor corporation was formed subsequent to claims by Treasury for income tax deficiencies, civil fraud penalties and interest; assets were transferred for inadequate consideration and with no provision for assumption of impending tax liability; after successor corporation was formed, predecessor corporation stipulated for decision against it determining deficiencies and fraud penalties; transfer was void for fraud of creditors, and at most paper transaction, since same business was conducted by same principals before and after formation of successor corporation and liability was imposed upon successor corporation without invocation of doctrine of transferee liability and all assets of successor would be considered property of predecessor for purposes of satisfying judgment. United States v. Plastic Electro-Finishing Corp. (1970, Ed NY) 313 F Supp 330.

Taxpayer made fraudulent transfer where he was informed by IRS that it was considering assessment against him for taxes arising out of his 1969 gambling activities in October 1970 and on Oct. 20, 1976, he transferred his residence to his wife, making himself insolvent; although liability was not assessed until May of 1971, transfer was fraudulent as debt existed at time of transfer. United States v. Watkins (1976, DC Ga) 77-1 USTC Par. 16242.

Transfers to controlled corporation were fraudulent where individual, who was later convicted for income tax evasion, made transfers of $186,000 in assets to controlled corporation without consideration, such transfers leaving him with assets of $45,000 and liability for taxes, penalties and interest of over $213,000, and where, in addition, extensive use of cash and concealment of assets in bank accounts were further evidence of attempt to hinder, delay and defraud Treasury. Wills corp. v. Commissioner (1969) 28 TCM 174.

Corporations

Transferee of corporate assets was bound by acts of directors of corporation, such directors also representing transferee. Warner Collieries Co. v United States (1933, CA6 Ohio) 63 F2d 34.

Corporation taking long-term lease of property of another corporation, of which it was a stockholder, and agreeing in such lease to pay rental to stockholders of lessor, was not liable as a transferee though rental distributed was in excess of taxes. Western Union Tel. Co. v. Commissioner (1933, CA2) 68 F2d 16, cert den 292 US 636, 78 L Ed 1489, 54 S Ct 715.

Liability of corporation as transferee is not obviated because transaction by which it acquires the assets of transferor is taxable transfer; agreement of transferee corporation to pay debts of transferor company can be enforced by government in proceeding for assessment of tax against transferee though amount of tax is not ascertained at time of transfer; proceedings against predecessor-transferor corporation and successor-transferee corporation at same time were distinct and not incongruous, particularly where it was manifest that transferor had disposed of all its property and that proceeding against it would be unavailing. California Iron Yards Corp. v. Commissioner (1936, CA9) 82 F2d 776, cert den 299 US 553, 81 L Ed 407, 57 S Ct 15.

New corporation organized to take over assets of old corporation, and which owned shares in old corporation, was charged with tax liabilities of old corporation. Delacroix Corp. v. Commissioner (1936, CA5) 84 F2d 442.Board's (now Tax Court's) determination of liability of corporate transferee of assets of corporation which owned entire capital stock of three other companies for which consolidated return for period in question was filed by petitioner, would be affirmed. Continental Oil Co. v. Helvering (1938) 69 App DC 236, 100 F2d 101.

Corporation organized to hold all stock of taxpayer corporation was liable for taxes assumed. Hatch v Morosco Holding Co. 91929, DC NY) 34 F2d 579, affd (CA2 NY) 50 F2d 138, cert den 284 US 668, 76 L Ed 565, 52 S Ct 42. General equitable liability of transferee for initial tax liability of transferor corporation is recognized by predecessor to 26 USCS Sect. 6901. United States v Barber (1938, DC Md) 24 F Supp. 229.

Transferees of Corporations

Mere proof of taking over assets and assumption of liabilities of dissolved corporation did not show liability as distributee. People's Industrial Life Ins. Co. v United States (1928, CA5 La) 29 F2d 650.

Petitioners were not transferees of assets of corporation under such circumstances

as to make them liable under trust fund doctrine where government did not meet its burden of proving that its claim against corporation for previous years constituted "current bill" within agreement by former stockholders for payment of current bills. Commissioner v Keller 91932, CA7) 59 F2d 499.

Our purpose in this communiqué is not to frighten you but to educate you. We feel this is not a simple matter and must be handled with diplomacy and skill. We welcome any communication with your corporate council on these pending matters.

Processing of an Offer Re: 941 liability of approximately $_____

Upon receipt of an Offer, it is processed by the Service Center where a thorough search of the taxpayer's computerized tax records is conducted to determine the exact amount and nature of all taxes owed by Officers/ Stockholders. This process takes from two weeks to two months. Subsequent to the processing by the Service Center, a proposed Offer in Compromise based upon inability to pay is sent to the Special Procedures Branch of the IRS District Office where it is reviewed by an advisory Revenue Officer. Most Offers based upon doubt as to liability are forwarded to the Examination Division, but Offers on 100% penalties are considered by the Collection Division. If the advisory Revenue Officer in Special Procedures determines that the Offer is totally inappropriate and insufficient, she will recommend that a summary rejection letter be issued by the Chief of the Collection Division. The Internal Revenue Manual sets forth grounds upon which an Offer might be summarily rejected as follows:

Summary rejection in SPF can be made on the grounds that the Offer is frivolous, was filed merely to delay collection, or where there is no basis for compromise. Although not all-inclusive, the following list provides guidelines on the criteria for summary rejection most often encountered:

- Taxpayer has equity in assets subject to the Federal tax lien clearly in excess of the total liability sought to be compromised.
- The total liability is extremely large and the taxpayer has offered only a minimal sum well below his equity and earnings potential, (e.g., offering $100 to compromise a $50,000 tax liability).
- The taxpayer is not current in his filing or payment requirements for periods not included in the offer.
- The taxpayer refuses to submit a complete financial statement (Form 433).
- Acceptance of the offer would adversely affect the image of the government.
- Taxpayer has submitted a subsequent offer which is not significantly different from a previously rejected offer and the taxpayer's financial condition has not changed.
- In cases involving doubt as to liability for the 100% penalty the liability is clearly

established and the taxpayer has offered no new evidence to cast doubt on its validity. (IRM 57(10)7.1(2).)

Transmittal to a Revenue Officer

If the advisory Revenue Officer determines that the Offer deserves further consideration, the Offer will be transmitted to a Revenue Officer for further investigation. The Revenue Officer will investigate the taxpayer's current financial condition as disclosed on the Form 433. The taxpayer may be required to submit appraisals of property if its value is not readily determinable. The taxpayer may also be required to submit all of his financial records for review by the Revenue Officer including, but not limited to, bank statements, canceled checks and receipts.

Adequacy of Offer

The IRS is very stringent in its consideration of the adequacy of an Offer. A settlement amount which would be considered fair and adequate by an average person may not be acceptable to the Service.

An Offer in Compromise must reflect the taxpayer's maximum capacity to pay, i.e., all that can be collected from the taxpayer's equity in assets and income, present and prospective. In addition, the Service will consider amounts which may be collectible through transferee assessment or suit, 100% penalty assessments, and from assets or income that are available to the taxpayer, but beyond the reach of the government. In considering Offers based on inability to pay, the Service will investigate the priority of the federal tax claim in relation to other claims, and the liquidating value of the taxpayer's assets.

Quick Sale Value of Assets as Basis of Considering Offer

The starting point in the consideration of an Offer submitted on the basis of inability to pay is ordinarily the liquidating or quick sale value of the taxpayer's assets. The quick sale value is the amount which would be realized from the sale of an asset in a situation where financial pressures cause the taxpayer to sell in a short period of time. For Offer purposes, the taxpayer's equity in assets is defined as the quick sale value less any encumbrances against the assets which have priority over the Federal Tax Lien. Quick sale value is a valuation unique to the Offer process. It is employed because of the nature of the Offer investigation and the fact that the taxpayer and the Service are in a position to negotiate, to make mutual concessions.

Forced Sale Value vs. Fair Market Value

The two values normally considered in the collection of accounts are forced sale value and fair market value. The former represents the amount the Service can collect from a distrait sale of the taxpayer's assets; therefore, this value does not represent any concession on the taxpayer's part. The latter represents the value arrived at between a willing buyer and willing seller and normally indicates the maximum valuation for the taxpayer's assets.

Between these two values there exists a wide range of possible asset valuations (i.e. quick sale value) and any asset valuation in this range can be acceptable if negotiated and agreed upon by the taxpayer and Offer examiner. If the Service is in a position to gain more revenue at less cost than can be secured through the enforced collection of all the taxpayer's assets, then the Offer might be accepted. The negotiation process involved reading agreement on asset valuations (including determination of forced sale, quick sale and fair market value). An offer should not be rejected based on a narrow criterion of asset values. We will argue your position aggressively and support valuations with appraisals by a reputable appraiser.

Calculation of Quick Sale Value

Although no specific guidelines can be formulated to compute quick sale value, certain general guidelines can be presented to indicate how quick sale values can vary depending on local conditions and the type of property involved. Local factors affecting quick sale value may conclude availability of mortgage money, appropriateness of the assets to local conditions (e.g., farm equipment in a mostly urban area), health of the local economy, etc. Also, the type of asset will in general affect the quick sale value. Unusual items are hard to sell. Quick sale value should be a reasonable reflection of the value of the property. Normally the service will not set quick sale value at less than 70% of fair market value. However, even within this range, the revenue officer will have considerable discretion in negotiating asset valuations with the taxpayer to arrive at an acceptable Offer. The basis used to calculate quick sale value will depend on the facts and circumstances of the individual case.

Although assets will normally be valued at their quick sale value, an Offer can be considered based on the forced sale value of assets if it can be shown that accepting this valuation for Offer Purposes would be in the best interest of the Government. The reasons for such a valuation must be extensively documented by the proponent and the IRS will rarely accept forced sale value.

Other Considerations

In addition to the taxpayer's equity in assets the taxpayer's earning capacity will be evaluated. Information about the taxpayer's education, profession or trade, age and experience, health, past and present income, and future prospects will be considered by the Service. We will aggressively present negative factors about any of the above listed factors (IRM 57(10)7.51).

During the course of negotiating an inability to pay the Offer, the major disputes will center on the value of Officers/ Stockholders' assets. One convention that the IRS uses is to find the average balance in a taxpayer's bank account over a period of time to determine cash on hand. The minimum time frame for averaging that we observed is six months. The IRS will not accept an Offer unless it is allowed to inspect the taxpayer's safe deposit box.

Closely Held Companies

Particularly tough valuation disputes arise when valuing securities in closely held companies. The IRS will normally require substantial disclosure of company financial data for the purposes of valuation. It also may require submission of independent appraisals. If the taxpayer's interest in such entitles is very limited, the investigating Revenue Officer is required by the IRS Manual to be more flexible in his or her disclosure demands.

Going Concern Value

The IRS takes the position that in consideration of an Offer it can reflect "going concern value" in its valuation. Therefore, it will not normally accept the liquidation value of tangible company assets to be the sole measure of quick sale value.

Pension Plan

Pension plans can also pose a problem for valuation purposes. The Internal Revenue Manual sets forth the following guidelines:

- Where under the terms of employment, a taxpayer is required to contribute a percentage of your gross earnings to a retirement plan and the amount contributed, plus any increments cannot be withdrawn until separation, retirement, demise, etc., this asset will be considered as having no realizable equity.
- If the taxpayer is within five years of retirement (including early retirement and the plan permits the taxpayer to take the pension in a lump sum, a collateral agreement must be secured whereby the taxpayer agrees to request the lump sum and to pay over to the Service the amount of the lump sum when received. This is required because if the taxpayer had access to the funds at the time of submitting the offer, the full amount would have been considered an asset and therefore payable in full as part of the offer.
- Where the taxpayer is not required, as a condition of employment, to participate in a pension plan, but voluntarily elects to do so, the realizable equity for compromise purposes shall be the gross amount in the taxpayer's plan reduced by the employer's contributions. However, in these situations each case should stand on its own merits.
- If the taxpayer is permitted to borrow up to the full amount of his/her equity in a plan, this should be taken into consideration in the computation of realizable equity.
- The current value of property deposited in an Individual Retirement Account (IRA) or Keogh Act Plan Account should be considered in the computation of realizable equity. Cash deposits should be included at full value. If assets other than cash are invested (e.g. stock, mutual funds), the IRA should be valued at the quick sale value, less expenses. The penalty for early withdrawal should be subtracted in computing net realizable equity (IRC 57(10)8.4).

Note: Negotiations concerning the terms and requirements of pension plans will require extensive information from the employer. Start gathering the information early in the process.

Inspection of Assets

The revenue officer investigating the Offer will normally require the taxpayer to allow inspection of the household and all of the personal effects and household goods. Expensive art work, coins, stamps, silverware, china, antique furniture and glassware will all be evaluated by a Revenue Officer during such visits to a taxpayer's residence.

Note: If any officers or stockholders had substantial assets, we would make sure the amount offered is a reflection of the substantial assets' quick sale value. Remember, we don't want you to be criminally charged if materially misrepresents assets.

Joint Ownership

The Service may grant special relief for taxpayers who own property in tenancy by the entirety with an innocent spouse (irm 57(108.1(12)3(2)). The IRS may consider such interests to be less than 50% of the total value of the property as long as at least 20% is offered. Tenancy in common and joint tenancy property, however, are normally considered to be valued based upon the taxpayer's entire interest.

Approval Process

If after investigation, the Revenue Officer determines that approval is appropriate, she will submit reports to her superiors recommending approval. The Offer in Compromise will then be processed by the Special Procedures Function through the bureaucracy to the District Director for his or her final approval. Any of the various managers in the chain of review may return it to the Revenue Officer for further investigation, if it is determined that there are unresolved issues within the compromise.

Appeals

During the course of an investigation, a proponent of an Offer may request a conference before and/or after the Offer is rejected. If the proponent disagrees with the recommendation of the investigating officer, he or she may appeal the proposed rejection. The initial conference takes place at the District Director's level. The proponent may appeal the Director's decision to the appropriate District Appeals Office and request a hearing. The Appeals Office may overrule the Director's rejection and accept the Offer.

Public Policy

All accepted Offers become public record and are maintained in the local District Office for public viewing. The Service is, therefore, very reluctant to accept Offers from certain individuals because of the adverse publicity that might be generated by acceptance. The Service will reject an Offer even though it can be conclusively shown that the amounts offered are greater than can

be reasonably collected in any other manner, if it believes acceptance would be detrimental to the Government's interest. The following are examples of where the IRS might invoke public policy considerations.

- Taxpayer's notoriety is such that acceptance of an Offer will hamper future Service collection and/or compliance efforts.
- There is a possibility of establishing a precedent which might lead to numerous Offers being submitted on liabilities revealed as a result of occupational drives to enforce tax compliance.
- Taxpayer has been recently convicted of tax related crimes. Again, the notoriety of the individual will be considered when making a public policy determination. The publicity surrounding the case, taxpayer's compliance since the case was concluded, or the taxpayer's position in the community will all be considered prior to rejecting an otherwise acceptable Offer.
- Situations where the Service suspects that the financial benefits of criminal activity are concealed or the criminal activity is continuing would normally preclude acceptance of the Offer for public policy reasons. Criminal investigation function might be contacted to coordinate the government's action in such cases.

The examples are not all inclusive and we have found that mere perception of a client as a "dishonorable person" can doom an Offer. As in any negotiation with the IRS Collection division, personalities have an impact on success.

Collateral Agreements

Revenue regulations provide that as a condition of accepting an Offer in Compromise, the taxpayer may be required to enter into a collateral agreement or to post security deemed sufficient to protect the interests of the United States. If the taxpayer has future earning potential, the Service will normally require a Future Income Collateral Agreement wherein the taxpayer agrees to payment of a percentage of his excess earnings over necessary living expenses for a period of several years following acceptance of the Offer (App 6-C). Generally, we recommend that you try to keep the period of the collateral to a minimum number of years. The Service will normally request a five year collateral. The Service also has sometimes accepted other types of collateral, including waivers of certain tax benefits and the pledging of assets. Each Offer is negotiated separately and the practitioner has an opportunity to be innovative when offering a collateral agreement.

Offers which cast doubt as to liability, other than 100% penalties, will be reviewed by the Examination Division of the Service rather than the Collection Division. In reviewing such Offers, the Examination Division will use guidelines similar to those used in making audit determinations. Usually, the proponent must establish a valid question of law or fact which would render the liability in question doubtful. Generally, a more appropriate means of determining such issues would be to seek a determination by the Tax Court or via refund litigation. Most Districts seldom grant offers on this basis.

In summary, it would be our agenda to abate the penalty and interest and negotiate our ultimate dollar amount to approximately 30% of trust fund taxes owed. This will have tremendous impact on your ability to put the past behind you. Please read this material, it may be germane to your case. Thank you for your time and attention and please do not hesitate to call me if you have any questions.

Suggested Minimum Retainer Amount: $20,000+

Chapter 19

Taxes and Bankruptcy

Dischargeability of Taxes in Bankruptcy

It is a common misunderstanding that bankruptcy cannot eliminate income tax liability. Although treatment of tax liability is one of the most complicated aspects of consumer bankruptcy law, the Bankruptcy Code can offer many debtors substantial income tax relief. Whether or not your bankruptcy filing relieves your tax debt depends on several factors including the nature and the status of tax liability as well as the type of bankruptcy proceeding.

Taxes may be discharged under bankruptcy following one of three rules.

PROTIP 9

Bankruptcy Tax Dischargeability Rules

Three-year Rule - 3 years from the Due Date of a Return including extensions.

Two-year Rule - 2 years from the date a tax return was filed and liability was assessed.

240-day Rule - 240 days from the date of assessment (for audited and amended returns)

Type of Tax

Only individuals (not businesses) can discharge certain taxes through bankruptcy. The only taxes eligible for discharge are personal income taxes. Bankruptcy offers no relief from taxes for which the debtor/taxpayer was responsible for collecting from others such as FICA withheld from employees.

Bankruptcy also may not relieve liability for most excise taxes such as estate tax, gift tax, sales tax, or fuel taxes.

Secured Tax Debts

In the course of its collection efforts, the IRS has the power to file a tax lien to "perfect" its tax claim against individuals. A tax lien, having been filed becomes a secured lien on all of the taxpayer's property. If a tax lien is in place prior to your filing bankruptcy, the IRS's secured tax lien has priority over the bankruptcy filing, and bankruptcy will not disassociate the lien from your property. Even property which would otherwise be exempt in a bankruptcy, such as a homestead cannot be sold or transferred without payment of the IRS tax lien. In this instance a bankruptcy would provide no tax relief.

Tax Relief in a Chapter 7 Bankruptcy

Chapter 7 Bankruptcy will eliminate all income taxes except the following:

a. Taxes for which a tax return was due to be filed within three years (plus extensions) prior to the date of filing bankruptcy. For example, the tax return for 2003 income taxes was due to be filed on April 15, 2004 (plus any extensions), and therefore, these income taxes cannot be discharged by filing for bankruptcy on or before April 15, 2007 (plus the time of extensions); OR

b. Taxes assessed by the IRS within 240 days before the filing of bankruptcy. Assessment date is the date that tax liability is entered on IRS records; OR

c. Taxes not yet assessed but still assessable; OR

d. Taxes for which a tax return was filed late and filed within two years prior to filing bankruptcy; OR

e. Taxes of a debtor who committed fraud related to a tax return or willfully attempted to evade or defeat taxes sought to be discharged.

Income taxes that do not fail any of the above five tests may be discharged in a Chapter 7 Bankruptcy.

Tax Relief in a Chapter 13 Bankruptcy Taxes which are non-dischargeable in Chapter 13 are considered priority debts and must be paid in full during the Chapter 13 plan without interest.

Points to Remember

1. **Chapter 7 vs. Chapter 13**

    a. Dischargeable taxes are eliminated in Chapter 7

    b. Dischargeable taxes are treated as general, unsecured creditors in Chapter 13
    a. Secured tax liens cannot be discharged in Chapter 7

2. **Tolling Events/Rules (Statutes of Limitation)**

    The Statute of Limitation for collection by the IRS tolls (is extended) under the following circumstances:

    a. For income taxes and taxes on gross receipts to be discharged, the taxing authority must have assessed (entered the liability on the taxing authority's records) the tax against the tax debtor at least for the following number of days or months before the filing of the tax debtor's bankruptcy petition:

        i. 240 days; plus

        ii. The number of days each offer in compromise for the applicable tax had been pending; plus

        iii. The number of days each prior bankruptcy proceeding had been pending after the related tax return due date with valid extensions; plus

        iv. Thirty days for each applicable offer in compromise; plus

        v. Six months[xv] for each applicable bankruptcy proceeding. §5523 (a)(l)(A) & 507 (a)(S)(A)(ii). Prior bankruptcies and other occurrences may extend the 240-day period. Here too, the taxing authority's records are the starting point to verify the assessment date and the dates offers in compromise were pending.

b. The period of time taxpayer spends living outside the country (It is important to verify that your client has been a U.S. resident for the entire term of the statute of limitation)

c. The period of time between the date the IRS has created a Substitute for Return (SFR) and the time an actual Tax Return has been filed

Sales Tax Dischargeability & "Responsible Persons"

(The State of California used as an example)

11 U.S.C. § 507 specifies the kinds of claims that are entitled to priority in distribution, and the order of the priority. The eighth priority is for certain taxes. 11 U.S.C. § 507(a)(8).

Allowed unsecured claims of governmental units are granted priority, "only to the extent that such claims are for...an excise tax on a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition." 11 U.S.C. § 507(a)(8)(E).

Sales tax under California law is an excise and privilege tax levied on a retailer for the privilege of selling tangible property. Cal. Rev. & Tax Code § 6051. See Livingston Rock & Gravel Co. v. De Salvo, 136 Cal App 2nd 156, 288 P.2d 317 (1955). Opinion followed in Xerox Corp. v. Orange County (1977) 66 CA3d 746; Bar Master Inc. v. State Board of Equalization (1976) 65 CA3d 408.

Thus, when sales tax is a tax imposed on the retailer or seller for the privilege of doing business in the state, as is the law in California, the tax is dischargeable if the transaction or event giving rise to the tax is more than three years old prior to the bankruptcy filing.

In re Raiman, 172 B.R. 933 (9th Cir. BAP 1994), the Bankruptcy Appellate Panel found California's sales tax to be a tax akin to a personal income tax measured by income or gross receipts, and thus subject to a priority tax analysis under 11 U.S.C. § 507(a)(8)(A). The BAP raised but refused to rule on whether the California sales tax was also an excise tax. The ruling would make it irrelevant whether it was an excise tax or not ... it could be both an excise tax and a tax measured on gross receipts.

If California "sales tax is a tax measured by gross receipts," then under 11 U.S.C. § 507(a) (8) (A) it will not be a Priority Tax Claim if it meets the same criteria as that for a personal income tax claim, i.e. the tax year is over three years old and it has been assessed for more than 240 days previous to the bankruptcy filing.

Also, since sales tax in California requires a quarterly return and payment, the excise tax is dischargeable in Chapter 7 only if the required quarterly returns were actually filed by the taxpayer at least two years prior to the bankruptcy, pursuant to 11 U.S.C. § 523(a)(1)(B)(ii).

IRS SFRs and Bankruptcy

For tax liability to be discharged in bankruptcy, it must stem from liability assessed based upon tax returns filed by the taxpayer that meet the aging requirements (see the 3-year rule, 2-year rule and 240-day rule). A question has come up whether liability assessed by the IRS via a Substitute for Return ("SFR") prior to the late filing of a tax return by a taxpayer can be discharged in bankruptcy.

In 2014 and 2015 the First, Fifth and Tenth circuit courts determined that liability assessed prior to a tax return being filed could not be discharged in bankruptcy. They indicated that in some cases if the return reflected a liability higher than the previously assessed amount, the additional liability may be able to be discharged. In most cases, however it would not make sense to file a return if the taxpayer will increase their liability.

Recently the Bankruptcy Appellate Panel ("BAP") for the Ninth Circuit (whose region covers Alaska, Oregon, Washington, Idaho, Montana, California, Nevada and Arizona) sided with the taxpayer, concluding that regardless of whether liability had been assessed prior to the filing of a late return by the taxpayer, the liability may be discharged assuming it meets all other requirements. It is important to note that the Ninth Circuit's decision contradicts the findings of the First, Fifth and Tenth circuits. It remains a question as to whether these amounts may be discharged but it shows promise for the taxpayer.

If you are contemplating the discharge of a client's taxes for a liability assessed prior to the filing of a return you need to consult with a bankruptcy attorney and realize you still may be rolling the dice if you are facing an SFR issue.

Chapter 20

Benefits of Incorporating

<u>It is possible to earn over $1,500 an hour providing this service. Make sure you know how to properly sell and deliver this service to your clients!!!</u>

We will show you how!

<u>Seven Basic Reasons for Incorporating:</u>

1. Protect yourself from personal liability

Corporation signs lease.

Corporation borrows money.

Corporation buys goods and services on credit.

Employees or Independent Contractors of the Corporation injure someone while working.

<u>You are not personally liable!</u>

2. Tax Advantages

The ability to take what would otherwise be non-deductible personal expenses and turn them into deductible business expenses.

Personal liabilities relating to the business that might not otherwise be reimbursed by the Corporation can be reimbursed by the Corporation and become deductible business expenses of the Corporation by means of corporate indemnification.

Use of motor vehicle by Corporation

Use of part of your residence by the Corporation with the utilization of a lease not considered a home office.

Annual meeting of shareholders and directors in far away or a resort city and deduct for taxes

The goal is to convert as many non-deductible personal expenses into legitimate deductible business expenses, in this area, there is no limit to what the mind can conceive

IRS Form 1040, Schedule C (Profit or Loss from a Business) is the target of many IRS audits, however, compare this to the audit rates of similar businesses that have incorporated and the audit rate is almost NIL

3. Privacy

The Corporation can be established in such a way so that shareholder/owners remain anonymous; many times the same anonymity can be accomplished for officers and directors.

4. Avoid Probate

By owning shares jointly with your spouse you can avoid probate of the shares upon the death of either spouse.

5. Use of a Marketing framework

Hold the business out to all as a corporation but yet still maintain centralized management

Gives the appearance that your company is much larger than it actually is.

Attracts investors more easily.

Appears more stable, established and permanent due to the perpetual nature and continuity of life of the corporation, unlike a sole proprietorship, a corporation can continue even after the death of an owner .

6. Raising capital

Because of the ease of transfer of ownership and the separate entity concept of the Corporation, it is much easier to attract investors than otherwise.

7. Easy control and transfer of ownership and assets

Put real estate in Corporation and transfer through private agreement, i.e. stock transfer rather than formal closing.

Re-title asset in a Corporation yet continue to maintain control.

Ease of transfer of ownership in the Corporation

Management and control of a corporation may be influenced by a stock option.

Chapter 21

Ruling Procedures

Most practitioners do not deal with these terms on a daily basis so they are listed here as a reminder.

Regulation

A regulation is issued by the Internal Revenue Service and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register.

Revenue Ruling

A revenue ruling is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to taxpayers, IRS personnel and tax professionals. For example, a revenue ruling may hold that taxpayers can deduct certain automobile expenses.

Revenue Procedure

A revenue procedure is an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge. It is also published in the Internal Revenue Bulletin. While a revenue ruling generally states an IRS position, a revenue procedure provides return filing or other instructions concerning an IRS position. For example, a revenue procedure might specify how those entitled to deduct certain automobile expenses should compute them by applying a certain mileage rate in lieu of calculating actual operating expenses.

Private Letter Ruling

A private letter ruling, or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. A PLR may not be relied on as precedent by other taxpayers or IRS personnel. PLRs are generally made public after all information has been removed that could identify the taxpayer to whom it was issued.

Technical Advice Memorandum

A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural questions that develop during a proceeding. A request for a TAM generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the taxpayer whose circumstances triggered a specific memorandum.

Notice

A notice is a public pronouncement that may contain guidance that involves substantive interpretations of the Internal Revenue Code or other provisions of the law. For example, notices can be used to relate what regulations will say in situations where the regulations may not be published in the immediate future.

Announcement

An announcement is a public pronouncement that has only immediate or short-term value. For example, announcements can be used to summarize the law or regulations without making any substantive interpretation; to state what regulations will say when they are certain to be published in the immediate future; or to notify taxpayers of the existence of an approaching deadline.

Appendices

Appendix A: IRS Circular 230

Treasury Department Circular No. 230

(Rev. 6-2014)

Catalog Number 16586R www.irs.gov

Department of the Treasury

Internal Revenue Service

Regulations Governing Practice before the Internal Revenue Service

Title 31 Code of Federal Regulations, Subtitle A, Part 10, published (June 12, 2014)
Subject to section 500 of title 5, the Secretary of the Treasury may —

(1) regulate the practice of representatives of persons before the Department of the Treasury; and
(2) before admitting a representative to practice, require that the representative demonstrate —
  (A) good character;
  (B) good reputation;
    (a) necessary qualifications to enable the representative to provide to persons valuable service; and
    (b) competency to advise and assist persons in presenting their cases.
    (c) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department, or censure, a representative who —
      (1) is incompetent;
      (2) is disreputable;
      (3) violates regulations prescribed under this section; or
      (4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be

represented.

The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.

(d) After notice and opportunity for a hearing to any appraiser, the Secretary may —

(1) provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service, and
(2) bar such appraiser from presenting evidence or testimony in any such proceeding.

Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

(Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 884; Pub. L. 98–369, div. A, title I, §156(a), July 18, 1984, 98 Stat. 695; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 108–357, title VIII, §822(a)(1), (b), Oct. 22, 2004, 118 Stat. 1586, 1587; Pub. L. 109–280, title XII, §1219(d), Aug. 17, 2006, 120 Stat. 1085.)

IRS Circular 230 Table of Contents

Paragraph 1. The authority citation for 31 CFR, part 10 continues to read as follows:
Authority: Sec. 3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et. seq.; 5 U.S.C. 301, 500, 551-559; 31 U.S.C. 321; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp., p. 1017.

§ 10.0 Scope of part.

(a) This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice; subpart C of this part prescribes the sanctions for violating the regulations; subpart D of this part contains the rules applicable to disciplinary proceedings; and subpart E of this part contains general provisions relating to the availability of official records.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

Subpart A — Rules Governing Authority to Practice

§ 10.1 Offices.

(a) *Establishment of office(s)*. The Commissioner shall establish the Office of Professional Responsibility and any other office(s) within the Internal Revenue Service necessary to administer and enforce this part. The Commissioner shall appoint the Director of the Office of Professional Responsibility and any other Internal Revenue official(s) to manage and direct any office(s) established to administer or enforce this part. Offices established under this part include, but are not limited to:

(1) The Office of Professional Responsibility, which shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions; and

(2) An office with responsibility for matters related to authority to practice before the Internal Revenue Service, including acting on applications for enrollment to

practice before the Internal Revenue Service and administering competency testing and continuing education.

(b) Officers and employees within any office established under this part may perform acts necessary or appropriate to carry out the responsibilities of their office(s) under this part or as otherwise prescribed by the Commissioner.

(c) *Acting.* The Commissioner will designate an officer or employee of the Internal Revenue Service to perform the duties of an individual appointed under paragraph (a) of this section in the absence of that officer or employee or during a vacancy in that office.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011, except that paragraph (a)(1) is applicable beginning June 12, 2014.

§ 10.2 Definitions.

(a) As used in this part, except where the text provides otherwise —

(1) *Attorney* means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(2) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) *Commissioner* refers to the Commissioner of Internal Revenue.

(4) *Practice before the Internal Revenue Service* 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. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; 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; and representing a client at conferences, hearings, and meetings.

(5) *Practitioner* means any individual described in paragraphs (a), (b), (c), (d), (e), or (f) of §10.3.

(6) A *tax return* includes an amended tax return and a claim for refund.

(7) *Service* means the Internal Revenue Service.

(8) *Tax return preparer* means any individual within the meaning of section 7701(a)(36) and 26 CFR 301.7701-15.

(b) *Effective/applicability date.* This section is applicable on August 2, 2011.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice **b**efore the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under §10.37, but their rendering of this advice is practice before the Internal Revenue Service.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.*

(1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on

nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. § 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and registered tax return preparers.

(e) *Enrolled retirement plan agents —*

(1) Any individual enrolled as a retirement plan agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as an enrolled retirement plan agent is limited to representation with respect to issues involving the following programs: Employee Plans Determination Letter program; Employee Plans Compliance Resolution System; and Employee Plans Master and Prototype and Volume Submitter program. In addition, enrolled retirement plan agents are generally permitted to represent taxpayers with respect to IRS forms under the 5300 and 5500 series which are filed by retirement plans and plan sponsors, but not with respect to actuarial forms or schedules.

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (e)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled actuaries, and registered tax return preparers.

(f) *Registered tax return preparers.*

(1) Any individual who is designated as a registered tax return preparer pursuant to §10.4(c) of this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(2) Practice as a registered tax return preparer is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. A registered tax return preparer may prepare all or

substantially all of a tax return or claim for refund of tax. The Internal Revenue Service will prescribe by forms, instructions, or other appropriate guidance the tax returns and claims for refund that a registered tax return preparer may prepare and sign.

(3) A registered tax return preparer may represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination if the registered tax return preparer signed the tax return or claim for refund for the taxable year or period under examination. Unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. A registered tax return preparer's authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the Internal Revenue Service.

(4) An individual who practices before the Internal Revenue Service pursuant to paragraph (f)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries.

(g) *Others.* Any individual qualifying under paragraph §10.5(e) or §10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(h) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. §§ 203 or 205.

(i) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

(j) *Effective/applicability date.* Paragraphs (a), (b), and (g) of this section are applicable beginning June 12, 2014. Paragraphs (c) through (f), (h), and (i) of this section are applicable beginning August 2, 2011.

§ 10.4 Eligibility to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Enrollment as an enrolled agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled agent to an applicant eighteen years of age or older who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment as a retirement plan agent upon examination.* The Commissioner, or delegate, will grant enrollment as an enrolled retirement plan agent to an applicant eighteen years of age or older who demonstrates special competence in qualified retirement plan matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, who possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(c) *Designation as a registered tax return preparer.* The Commissioner, or delegate, may designate an individual eighteen years of age or older as a registered tax return preparer provided an applicant demonstrates competence in Federal tax return preparation matters by written examination administered by, or administered under the oversight of, the Internal Revenue Service, or otherwise meets the requisite standards prescribed by the Internal Revenue Service, possesses a current or otherwise valid preparer tax identification number or other prescribed identifying number, and has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part.

(d) *Enrollment of former Internal Revenue Service employees.* The Commissioner, or delegate, may enrollment as an enrolled agent or enrolled retirement plan agent to an applicant who, by virtue of past service and technical experience in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the suspension or disbarment of any practitioner under the provisions of this part, under the following circumstances:

(1) The former employee applies for enrollment on an Internal Revenue Service form and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) The appropriate office of the Internal Revenue Service provides a detailed report

of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment as an enrolled agent based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular specialty or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant. Enrollment as an enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service will be limited to permit the presentation of matters only with respect to qualified retirement plan matters.

(4) Application for enrollment as an enrolled agent or enrolled retirement plan agent based on an applicant's former employment with the Internal Revenue Service must be made within three years from the date of separation from such employment.

(5) An applicant for enrollment as an enrolled agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to income, estate, gift, employment, or excise taxes.

(6) An applicant for enrollment as an enrolled retirement plan agent who is requesting such enrollment based on former employment with the Internal Revenue Service must have had a minimum of five years continuous employment with the Internal Revenue Service during which the applicant must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations relating to qualified retirement plan matters.

(7) For the purposes of paragraphs (d)(5) and (6) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least three of which occurred within the five years preceding the date of application, is the equivalent of five years continuous employment.

(e) *Natural persons*. Enrollment to practice may be granted only to natural persons.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.5 Application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Form; address.* An applicant to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer must apply as required by forms or procedures established and published by the Internal Revenue Service, including proper execution of required forms under oath or affirmation. The address on the application will be the address under which a successful applicant is enrolled or registered and is the address to which all correspondence concerning enrollment or registration will be sent.

(b) *Fee.* A reasonable nonrefundable fee may be charged for each application to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. See 26 CFR part 300.

(c) *Additional information; examination.* The Internal Revenue Service may require the applicant, as a condition to consideration of an application, to file additional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the Internal Revenue Service will afford the applicant the opportunity to be heard with respect to the application.

(d) *Compliance and suitability checks.*

(1) As a condition to consideration of an application, the Internal Revenue Service may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the Internal Revenue Service for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in §10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§10.51 and 10.52.

(2) If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment or registration card or certificate pursuant to §10.6(b) of this part. An applicant who is initially denied enrollment or registration for failure to pass a tax compliance check may reapply after the initial denial if the applicant becomes current with respect to the applicant's tax liabilities.

(e) *Temporary recognition.* On receipt of a properly executed application, the Commissioner,

or delegate, may grant the applicant temporary recognition to practice pending a determination as to whether status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant granting the application to practice, or the Commissioner, or delegate, has information indicating that the statements in the application are untrue or that the applicant would not otherwise qualify to become an enrolled agent, enrolled retirement plan agent, or registered tax return preparer. Issuance of temporary recognition does not constitute either a designation or a finding of eligibility as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, and the temporary recognition may be withdrawn at any time.

(f) *Protest of application denial.* The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(f) *Effective/applicability date.* This section is applicable to applications received on or after August 2, 2011.

§ 10.6 Term and renewal of status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(a) *Term.* Each individual authorized to practice before the Internal Revenue Service as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will be accorded active enrollment or registration status subject to renewal of enrollment or registration as provided in this part.

(b) *Enrollment or registration card or certificate.* The Internal Revenue Service will issue an enrollment or registration card or certificate to each individual whose application to practice before the Internal Revenue Service is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer may not practice before the Internal Revenue Service if the card or certificate is not current or otherwise valid. The card or certificate is in addition to any notification that may be provided to each individual who obtains a preparer tax identification number.

(c) *Change of address.* An enrolled agent, enrolled retirement plan agent, or registered tax return preparer must send notification of any change of address to the address specified

by the Internal Revenue Service within 60 days of the change of address. This notification must include the enrolled agent's, enrolled retirement plan agent's, or registered tax return preparer's name, prior address, new address, tax identification number(s) (including preparer tax identification number), and the date the change of address is effective. Unless this notification is sent, the address for purposes of any correspondence from the appropriate Internal Revenue Service office responsible for administering this part shall be the address reflected on the practitioner's most recent application for enrollment or registration, or application for renewal of enrollment or registration. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

(d) *Renewal.*

(1) *In general*. Enrolled agents, enrolled retirement plan agents, and registered tax return preparers must renew their status with the Internal Revenue Service to maintain eligibility to practice before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement.

(2) *Renewal period for enrolled agents.*

(i) All enrolled agents must renew their preparer tax identification number as prescribed by forms, instructions, or other appropriate guidance.

(ii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(iii) Enrolled agents who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(iv) Enrolled agents who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(v) Thereafter, applications for renewal as an enrolled agent will be

required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(2)(i), (d)(2)(ii), or (d) (2)(iii) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment as an enrolled agent after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(3) *Renewal period for enrolled retirement plan agents.*

(i) All enrolled retirement plan agents must renew their preparer tax identification number as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(ii) Enrolled retirement plan agents will be required to renew their status as enrolled retirement plan agents between April 1 and June 30 of every third year subsequent to their initial enrollment.

(4) *Renewal period for registered tax return preparers.* Registered tax return preparers must renew their preparer tax identification number and their status as a registered tax return preparer as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(5) *Notification of renewal.* After review and approval, the Internal Revenue Service will notify the individual of the renewal and will issue the individual a card or certificate evidencing current status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer.

(6) *Fee*. A reasonable nonrefundable fee may be charged for each application for renewal filed. See 26 CFR part 300.

(7) *Forms.* Forms required for renewal may be obtained by sending a written request to the address specified by the Internal Revenue Service or from such other source as the Internal Revenue Service will publish in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)) and on the Internal Revenue Service webpage (www.irs.gov).

(e) *Condition for renewal*: continuing education. In order to qualify for renewal as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer, an individual must certify, in the manner prescribed by the Internal Revenue Service, that the individual has satisfied the requisite number of continuing education hours.

(1) *Definitions*. For purposes of this section —

(i) *Enrollment year* means January 1 to December 31 of each year of an enrollment cycle.

(ii) *Enrollment cycle* means the three successive enrollment years preceding

the effective date of renewal.

(iii) *Registration year* means each 12-month period the registered tax return preparer is authorized to practice before the Internal Revenue Service.

(iv) *The effective date of renewal* is the first day of the fourth month following the close of the period for renewal described in paragraph (d) of this section.

(2) *For renewed enrollment as an enrolled agent or enrolled retirement plan agent —*

(i) *Requirements for enrollment cycle*. A minimum of 72 hours of continuing education credit, including six hours of ethics or professional conduct, must be completed during each enrollment cycle.

(ii) *Requirements for enrollment year*. A minimum of 16 hours of continuing education credit, including two hours of ethics or professional conduct, must be completed during each enrollment year of an enrollment cycle.

(iii) Enrollment during enrollment cycle —

(A) *In general*. Subject to paragraph (e)(2)(iii)

(B) of this section, an individual who receives initial enrollment during an enrollment cycle must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month. (B) *Ethics*. An individual who receives initial enrollment during an enrollment cycle must complete two hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

(3) *Requirements for renewal as a registered tax return preparer*. A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year.

(f) *Qualifying continuing education —*

(1) *General —*

(i) *Enrolled agents*. To qualify for continuing education credit for an enrolled agent, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or

ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(ii) *Enrolled retirement plan agents*. To qualify for continuing education credit for an enrolled retirement plan agent, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in qualified retirement plan matters; and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(iii) *Registered tax return preparers*. To qualify for continuing education credit for a registered tax return preparer, a course of learning must —

(A) Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics); and

(B) Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

(2) *Qualifying programs* —

(i) *Formal programs*. A formal program qualifies as a continuing education program if it —

(A) Requires attendance and provides each attendee with a certificate of attendance;

(B) Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program);

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfies the requirements established for a qualified continuing education program pursuant to §10.9.

(ii) *Correspondence or individual study programs (including taped programs)*. Qualifying continuing education programs include correspondence or individual study programs that are conducted by continuing education providers and completed on an individual basis by

the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs only if they —

(A) Require registration of the participants by the continuing education provider;

(B) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider;

(C) Provide a written outline, textbook, or suitable electronic educational materials; and

(D) Satisfy the requirements established for a qualified continuing education program pursuant to §10.9.

(iii) *Serving as an instructor, discussion leader or speaker*.

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum continuing education credit for instruction and preparation may not exceed four hours annually for registered tax return preparers and six hours annually for enrolled agents and enrolled retirement plan agents.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle or registration year will receive continuing education credit for only one such presentation for the enrollment cycle or registration year.

(3) *Periodic examination*. Enrolled Agents and Enrolled Retirement Plan Agents may establish eligibility for renewal of enrollment for any enrollment cycle by —

(i) Achieving a passing score on each part of the Special Enrollment

Examination administered under this part during the three year period prior to renewal; and

(ii) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(iii) *Measurement of continuing education coursework*.

(4) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(5) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour.

(6) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(7) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(g) *Recordkeeping requirements*.

(1) Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing education credit hours. Such information includes —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program, qualified program number, and description of its content;

(iv) Written outlines, course syllabi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing education provider.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of four years following the date of renewal —

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and copy of its content;
(iv) The dates of the program; and
(v) The credit hours claimed.

(h) *Waivers*.

(1) Waiver from the continuing education requirements for a given period may be granted for the following reasons —
(i) Health, which prevented compliance with the continuing education requirements;
(ii) Extended active military duty;
(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and
(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status. The individual will be notified that the waiver was not approved and that the individual has been placed on a roster of inactive enrolled agents, enrolled retirement plan agents, or registered tax return preparers.

(5) If the request for waiver is not approved, the individual may file a protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest filed under this section is not governed by subpart D of this part.

(6) If a request for waiver is approved, the individual will be notified and issued a card or certificate evidencing renewal.

(7) Those who are granted waivers are required to file timely applications for renewal of enrollment or registration.

(i) *Failure to comply*.

(1) Compliance by an individual with the requirements of this part is determined by the Internal Revenue Service. The Internal Revenue Service will provide notice to any individual who fails to meet the continuing education and fee requirements of eligibility for renewal. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to

furnish the requested information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered in making a final determination as to eligibility for renewal. The individual must be informed of the reason(s) for any denial of a renewal. The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(2) The continuing education records of an enrolled agent, enrolled retirement plan agent, or registered tax return preparer may be reviewed to determine compliance with the requirements and standards for renewal as provided in paragraph (f) of this section. As part of this review, the enrolled agent, enrolled retirement plan agent or registered tax return preparer may be required to provide the Internal Revenue Service with copies of any continuing education records required to be maintained under this part. If the enrolled agent, enrolled retirement plan agent or registered tax return preparer fails to comply with this requirement, any continuing education hours claimed may be disallowed.

(3) An individual who has not filed a timely application for renewal, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations “EA” or “ERPA” or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing education hours for the enrollment cycle or registration year. Continuing education credit under this paragraph (j)

(5) may not be used to satisfy the requirements of the enrollment cycle or registration year in which the individual has been placed back on the active roster.

(6) An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such

individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual as provided in this section.

(7) Inactive status is not available to an individual who is the subject of a pending disciplinary matter before the Internal Revenue Service.

(j) *Inactive retirement status*. An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

(k) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action under this part is required to conform to the requirements for renewal of enrollment or registration before the individual's eligibility is restored.

(l) *Enrolled actuaries.* The enrollment and renewal of enrollment of actuaries authorized to practice under paragraph (d) of §10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.72.

(m) *Effective/applicability date.* This section is applicable to enrollment or registration effective beginning August 2, 2011.

§ 10.7 Representing oneself; participating in rulemaking; limited practice; and special appearances.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. See 5 U.S.C. § 553.

(c) *Limited practice —*

(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory

identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a **p**arent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(2) *Limitations*.

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under §10.50.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) *Special appearances*. The Commissioner, or delegate, may, subject to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Fiduciaries*. For purposes of this part, a fiduciary (for example, a trustee, receiver,

guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.8 Return preparation and application of rules to other individuals.

(a) *Preparing all or substantially all of a tax return*. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) *Preparing a tax return and furnishing information*. Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) *Application of rules to other individuals*. Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701-15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.9 Continuing education providers and continuing education programs.

(a) *Continuing education providers —*

(1) *In general*. Continuing education providers are those responsible for

presenting continuing education programs. A continuing education provider must —

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia;

(iii) Be recognized and approved by a qualifying organization as a provider of continuing education on subject matters within §10.6(f) of this part. The Internal Revenue Service may, at its discretion, identify a professional organization, society or business entity that maintains minimum education standards comparable to those set forth in this part as a qualifying organization for purposes of this part in appropriate forms, instructions, and other appropriate guidance; or

(iv) Be recognized by the Internal Revenue Service as a professional organization, society, or business whose programs include offering continuing professional education opportunities in subject matters within §10.6(f) of this part. The Internal Revenue Service, at its discretion, may require such professional organizations, societies, or businesses to file an agreement and/or obtain Internal Revenue Service approval of each program as a qualified continuing education program in appropriate forms, instructions or other appropriate guidance.

(2) *Continuing education provider numbers* —

(i) *In general*. A continuing education provider is required to obtain a continuing education provider number and pay any applicable user fee.

(ii) *Renewal*. A continuing education provider maintains its status as a continuing education provider during the continuing education provider cycle by renewing its continuing education provider number as prescribed by forms, instructions or other appropriate guidance and paying any applicable user fee. Fee requirements *for qualified continuing education programs*. A continuing education provider must ensure the qualified continuing education program complies with all the following requirements —

(iii) Programs must be developed by individual(s) qualified in the subject matter;

(iv) Program subject matter must be current;

(v) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(vi) Programs must include some means for evaluation of the technical

content and presentation to be evaluated;

(v) Certificates of completion bearing a current qualified continuing education program number issued by the Internal Revenue Service must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the continuing education provider to verify the participants who attended and completed the program for a period of four years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(3) *Program numbers* —

(i) *In general*. Every continuing education provider is required to obtain a continuing education provider program number and pay any applicable user fee for each program offered. Program numbers shall be obtained as prescribed by forms, instructions or other appropriate guidance. Although, at the discretion of the Internal Revenue Service, a continuing education provider may be required to demonstrate that the program is designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics) and complies with the requirements in paragraph (a)(2)of this section before a program number is issued. *Update programs*. Update programs may use the same number as the program subject to update. An update program is a program that instructs on a change of existing law occurring within one year of the update program offering. The qualifying education program subject to update must have been offered within the two year time period prior to the change in existing law.

(ii) *Change in existing law*. A change in existing law means the effective date of the statute or regulation, or date of entry of judicial decision, that is the subject of the update.

(b) *Failure to comply*. Compliance by a continuing education provider with the requirements of this part is determined by the Internal Revenue Service. A continuing education provider who fails to meet the requirements of this part will be notified by the Internal Revenue Service. The notice will state the basis for the determination of noncompliance and will provide the continuing education provider an opportunity to furnish the requested information in writing relating to the matter within 60 days of the date of the notice. The continuing education provider may, within 30 days after receipt of the notice of denial, file a

written protest as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under this section is not governed by subpart D of this part.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

Subpart B — Duties and Restrictions Relating to Practice Before the Internal Revenue Service

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.*

(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) *Interference with a proper and lawful request for records or information.* A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds

that the record or information is privileged.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence —

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

(c) **E***ffective/applicability date.* Paragraph (a) of this section is applicable on September 26, 2007. Paragraph (b) of this section is applicable beginning June 12, 2014.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section —

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly, or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a special Government employee as defined in *18 U.S.C. 202(a)*, or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Particular matter involving specific parties* is defined at 5 CFR 2637.201(c), or superseding post- employment regulations issued by the U.S. Office of Government Ethics.

(5) *Rule* includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and revenue procedures published in the Internal Revenue Bulletin (see *26 CFR 601.601(d)(2)(ii)(b)*).

(b) *General rules* —

(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate *18 U.S.C. 207* or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may, subsequent to

Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after Government employment is ended, communicate with or appear before, with the intent to influence, any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated in, or for which, within a period of one year prior to the termination of Government employment, the former government employee had official responsibility. This paragraph (b)(4) does not, however, preclude any former employee from appearing on one's own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific parties involving the application or interpretation of a rule with respect to that particular matter, provided that the representation is otherwise consistent with the other provisions of this section and the former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation —*

(1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

(d) *Pending representation.* The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.
(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *In general.* A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.
(b) *Contingent fees* —
    (1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.
    (2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to —
        (i) An original tax return; or
        (ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.
    (3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.
    (4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.
(c) *Definitions.* For purposes of this section —
    (1) *Contingent fee* is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal

Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) *Matter before the Internal Revenue Service* includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and 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. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) *Effective/applicability date.* This section is applicable for fee arrangements entered into after March 26, 2008.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section — Records of the client include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the

course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if —

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law; and

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.*

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, enrolled retirement plan agents, or registered tax return preparers, in describing their professional designation, may not utilize the term "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptable description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.*

(1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information —

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph

(b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, and electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the **c**ommunication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

(Approved by the Office of Management and Budget under Control No. 1545-1726)

§ 10.31 Negotiation of taxpayer checks.

(a) A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:
  (1) 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.
  (2) Establishing the facts, determining which facts are relevant, 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.
  (3) 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.
  (4) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Procedures to ensure best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

(c) *Applicability date.* This section is effective after June 20, 2005.

§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) *Tax returns*.
  (1) A practitioner may not willfully, recklessly, or through gross incompetence —
    (i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —
      (A) Lacks a reasonable basis;
      (B) Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

(b) *Documents, affidavits and other papers* —

(1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service —

(i) The purpose of which is to delay or impede the administration of the Federal tax laws;

(ii) That is frivolous; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

(c) *Advising clients on potential penalties* —

(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to —

(i) A position taken on a tax return if —

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such

penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) *Effective/applicability date.* Paragraph (a) of this section is applicable for returns or claims for refund filed, or advice provided, beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits, and other papers filed on or after September 26, 2007.

§ 10.35 Competence.

(a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

(b) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.36 Procedures to ensure compliance.

(a) Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with subparts A, B, and C of this part, as applicable. In the

absence of a person or persons identified by the firm as having the principal authority and responsibility described in this paragraph, the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

(b) Any such individual who has (or such individuals who have or share) principal authority as described in paragraph (a) of this section will be subject to discipline for failing to comply with the requirements of this section if—

(1) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part, as applicable, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable;

(2) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable; or

(3) The individual knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this part, as applicable, and the individual, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective/applicability date.* This section is applicable beginning June 12, 2014.

§ 10.37 Requirements for written advice.

(a) *Requirements.*

(1) A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements in paragraph (a)(2) of this section. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a

Federal tax matter for purposes of this section. The preceding sentence does not apply to presentations marketing or promoting transactions.

(2) The practitioner must—

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable

(v) Relate applicable law and authorities to facts; and

(vi) Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

(b) *Reliance on advice of others.* A practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when—

(1) The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;

(2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

(3) The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

(c) *Standard of review.*

(1) In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(2) In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) 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 any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

(d) *Federal tax matter.* A Federal tax matter, as used in this section, is any matter concerning the application or interpretation of---

(1) A revenue provision as defined in section 6110(i)(1)(B) of the Internal Revenue Code;

(2) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or

(3) Any other law or regulation administered by the Internal Revenue Service.

(e) *Effective/applicability date.* This section is applicable to written advice rendered after June 12, 2014.

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in §10.1.

(b) *Effective date.* This section is applicable beginning August 2, 2011.

Subpart C — Sanctions for Violation of the Regulations

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or delegate,

after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of §10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of §10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or delegate, after due notice and opportunity for hearing, may disqualify any appraiser for a violation of these rules as applicable to appraisers.

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

(c) *Authority to impose monetary penalty —*

(1) *In general.*

(i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known of such conduct.

(2) *Amount of penalty.* The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) *Coordination with other sanctions.* Subject to paragraph (c)(2) of this section —

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under

paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to or in lieu of penalties imposed under paragraph (c) (1)(i) of this section.

(d) *Authority to accept a practitioner's consent to sanction.* The Internal Revenue Service may accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

(e) *Sanctions to be imposed.* The sanctions imposed by this section shall take into account all relevant facts and circumstances.

(f) *Effective/applicability date.* This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohibited conduct that occurs after October 22, 2004.

§ 10.51 Incompetence and disreputable conduct.

(a) *Incompetence and disreputable conduct.* Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to

(1) Conviction of any criminal offense under the Federal tax laws.

(2) Conviction of any criminal offense involving dishonesty or breach of trust.

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax

laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(l3) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of

ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.52 Violations subject to sanction.

(a) A practitioner may be sanctioned under §10.50 if the practitioner —

(1) Willfully violates any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(a)(13)) violates §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective/applicability date.* This section is applicable to conduct occurring on or after September 26, 2007.

§10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service*. If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) *Other persons*. Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(c) *Destruction of report*. No report made under paragraph (a) or (b) of this section shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D*. The destruction of any report will not bar any proceeding under subpart D of this part, but will preclude the use of a copy of the report in a proceeding under subpart D of this part.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011

Subpart D — Rules Applicable to Disciplinary Proceedings

§ 10.60 Institution of proceeding.

(a) Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the practitioner may be reprimanded or, in accordance with §10.62, subject to a proceeding for sanctions described in §10.50.

(b) Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce

this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded or, in accordance with §10.62, subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(c) Except as provided in §10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.61 Conferences.

(a) *In general.* The Commissioner, or delegate, may confer with a practitioner, employer, firm or other entity, or an appraiser concerning allegations of misconduct irrespective of whether a proceeding has been instituted. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner, employer, firm or other entity, or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Voluntary sanction —*

(1) *In general.* In lieu of a proceeding being instituted or continued under §10.60(a), a practitioner or appraiser (or employer, firm or other entity, if applicable) may offer a consent to be sanctioned under §10.50.

(2) *Discretion; acceptance or declination.* The Commissioner, or delegate, may accept or decline the offer described in paragraph (b)(1) of this section. When the decision is to decline the offer, the written notice of declination may state that the offer described in paragraph (b)(1) of this section would be accepted if it contained different terms. The Commissioner, or delegate, has the discretion to accept or reject a revised offer submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.62 Contents of complaint.

(a) *Charges*. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and

be signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

(b) *Specification of sanction*. The complaint must specify the sanction sought against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer*. The respondent must be notified in the complaint or in a separate paper attached to the complaint of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Internal Revenue Service to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.63 Service of complaint; service of other papers; service of evidence in support of complaint; filing of papers.

(a) *Service of complaint.*

(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a) (2) or (3) of this section.

(2) *Service by certified or first class mail.*

(i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.*

(i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212

of the Internal Revenue Code and the regulations there under) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this section, *respondent* means the practitioner, employer, firm or other entity, or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner, employer, firm or other entity or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under §10.69(a)(2) by:

(1) mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) as provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Internal Revenue Service.* Whenever a paper is required or permitted to be served on the Internal Revenue Service in connection with a proceeding under this part, the paper will be served on the Internal Revenue Service's authorized representative under §10.69(a)

(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the office(s) established to enforce this part under the authority of §10.1, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

(d) *Service of evidence in support of complaint.* Within 10 days of serving the complaint, copies of the evidence in support of the complaint must be served on the respondent in any manner described in paragraphs (a)(2) and (3) of this section.

(e) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Internal Revenue Service, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under §10.69(a)(2) and must include a statement directly

above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. §1001.

(f) Effective/applicability date. This section is applicable beginning August 2, 2011.

§ 10.65 Supplemental charges.

(a) *In general*. Supplemental charges may be filed against the respondent by amending the complaint with the permission of the Administrative Law Judge if, for example —
  (1) It appears that the respondent, in the answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent possesses such information; or
  (2) It appears that the respondent has knowingly introduced false testimony during the proceedings against the respondent.

(b) *Hearing.* The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded a reasonable opportunity to prepare a defense to the supplemental charges.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.66 Reply to answer.

(a) The Internal Revenue Service may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

(b) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions —*

(1) In general. At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

(2) *Summary adjudication.* Either party may move for a summary adjudication upon all or any part of the legal issues in controversy. If the non- moving party opposes summary adjudication in the moving party's favor, the non-moving party must file a written response within 30 days unless ordered otherwise by the Administrative Law Judge.

(3) *Good Faith.* A party filing a motion for extension of time, a motion for postponement of a hearing, or any other non-dispositive or procedural motion must first contact the other party to determine whether there is any objection to the motion, and must state in the motion whether the other party has an objection.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, and the nonmoving party files no response, the nonmoving party is deemed to oppose the motion. If a nonmoving party does not respond within 30 days of the filing of a motion for decision by default for failure to file a timely answer or for failure to prosecute, the nonmoving party is deemed not to oppose the motion.

(c) *Oral motions; oral argument —*

(1) The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions.

(2) The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

(d) *Orders.* The Administrative Law Judge should issue written orders disposing of any motion or request and any response thereto.

(e) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.69 Representation; ex parte communication.

(a) *Representation*.

(1) The Internal Revenue Service may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Internal Revenue Service in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Internal Revenue Service.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to §10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication*. The Internal Revenue Service, the respondent, and any representatives of either party, may not attempt to initiate or participate in ex parte discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

(c) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the sanction (as described in §10.50) of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge appointed as provided by *5 U.S.C. 3105*.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under §10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;
(6) Take or authorize the taking of depositions or answers to requests for admission;
(7) Receive and consider oral or written argument on facts or law;
(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;
(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and
(10) Make decisions.

(c) *Effective/applicability date.* This section is applicable on September 26, 2007.

§ 10.71 Discovery.

(a) *In general.* Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery and subject to the requirements of §10.72(d)(2) and (3). Within 10 days of receipt of the answer, the Administrative Law Judge will notify the parties of the right to request discovery and the timeframe for filing a request. A request for discovery, and objections, must be filed in accordance with §10.68. In response to a request for discovery, the Administrative Law Judge may order —
(1) Depositions upon oral examination; or
(2) Answers to requests for admission.

(b) *Depositions upon oral examination —*
(1) A deposition must be taken before an officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in Federal tax law matter, and place of the deposition. The opposing party, if attending, will be provided the opportunity for full examination and cross-examination of any witness.
(2) Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken. Travel expenses of the deponent shall be borne by the party requesting the deposition, unless otherwise authorized by Federal law or regulation.

(c) *Requests for admission.* Any party may serve on any other party a written request for admission of the truth of any matters which are not privileged and are relevant to the subject matter of this proceeding. Requests for admission shall not exceed a total of 30 (including any subparts within a specific request) without the approval from the

Administrative Law Judge.

(d) *Limitations.* Discovery shall not be authorized if —

(1) The request fails to meet any requirement set forth in paragraph (a) of this section;

(2) It will unduly delay the proceeding;

(3) It will place an undue burden on the party required to produce the discovery sought;

(4) It is frivolous or abusive;

(5) It is cumulative or duplicative;

(6) The material sought is privileged or otherwise protected from disclosure by law;

(7) The material sought relates to mental impressions, conclusions, of legal theories of any party, attorney, or other representative, or a party prepared in the anticipation of a proceeding; or

(8) The material sought is available generally to the public, equally to the parties, or to the party seeking the discovery through another source.

(e) *Failure to comply.* Where a party fails to comply with an order of the Administrative Law Judge under this section, the Administrative Law Judge may, among other things, infer that the information would be adverse to the party failing to provide it, exclude the information from evidence or issue a decision by default.

(f) Other discovery. No discovery other than that specifically provided for in this section is permitted.

(g) *Effective/applicability date.* This section is applicable to proceedings initiated on or after September 26, 2007.

§ 10.72 Hearings.

(a) *In general* —

(1) *Presiding officer.* An Administrative Law Judge will preside at the hearing on a complaint filed under §10.60 for the sanction of a practitioner, employer, firm or other entity, or appraiser.

(2) *Time for hearing.* Absent a determination by the Administrative Law Judge that, in the interest of justice, a hearing must be held at a later time, the Administrative Law Judge should, on notice sufficient to allow proper preparation, schedule the hearing to occur no later than 180 days after the time for filing the answer.

(3) *Procedural requirements.*

(i) Hearings will be stenographically recorded and transcribed and the

testimony of witnesses will be taken under oath or affirmation.

(ii) Hearings will be conducted pursuant to *5 U.S.C. 556*.

(iii) A hearing in a proceeding requested under §10.82(g) will be conducted de novo.

(iv) An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless —

(A) The Internal Revenue Service withdraws the complaint;

(B) A decision is issued by default pursuant to §10.64(d);

(C) A decision is issued under §10.82 (e);

(D) The respondent requests a decision on the written record without a hearing; or

(E) The Administrative Law Judge issues a decision under §10.68(d) or rules on another motion that disposes of the case prior to the hearing.

(b) *Cross-examination.* A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination, in the presence of the Administrative Law Judge, as may be required for a full and true disclosure of the facts. This paragraph (b) does not limit a party from presenting evidence contained within a deposition when the Administrative Law Judge determines that the deposition has been obtained in compliance with the rules of this subpart D.

(c) *Prehearing memorandum.* Unless otherwise ordered by the Administrative Law Judge, each party shall file, and serve on the opposing party or the opposing party's representative, prior to any hearing, a prehearing memorandum containing —

(1) A list (together with a copy) of all proposed exhibits to be used in the party's case in chief;

(2) A list of proposed witnesses, including a synopsis of their expected testimony, or a statement that no witnesses will be called;

(3) Identification of any proposed expert witnesses, including a synopsis of their expected testimony and a copy of any report prepared by the expert or at his or her direction; and

(4) A list of undisputed facts.

(d) *Publicity* —

(1) *In general.* All reports and decisions of the Secretary of the Treasury, or delegate, including any reports and decisions of the Administrative Law Judge, under this subpart D are, subject to the protective measures in paragraph (d)(4) of this section, public and open to inspection within 30 days after the agency's decision becomes final.

(2) *Request for additional publicity.* The Administrative Law Judge may grant a request by a practitioner or appraiser that all the pleadings and evidence of the disciplinary proceeding be made available for inspection where the parties stipulate in advance to adopt the protective measures in paragraph (d)(4) of this section.

(3) *Returns and return information —*

(i) *Disclosure to practitioner or appraiser.* Pursuant to *section 6103(l)(4) of the Internal Revenue Code,* the Secretary of the Treasury, or delegate, may disclose returns and return information to any practitioner or appraiser, or to the authorized representative of the practitioner or appraiser, whose rights are or may be affected by an administrative action or proceeding under this subpart D, but solely for use in the action or proceeding and only to the extent that the Secretary of the Treasury, or delegate, determines that the returns or return information are or may be relevant and material to the action or proceeding.

(ii) *Disclosure to officers and employees of the Department of the Treasury.* Pursuant to *section 6103(l)(4)(B) of the Internal Revenue Code* the Secretary of the Treasury, or delegate, may disclose returns and return information to officers and employees of the Department of the Treasury for use in any action or proceeding under this subpart D, to the extent necessary to advance or protect the interests of the United States.

(iii) *Use of returns and return information.* Recipients of returns and return information under this paragraph (d)(3) may use the returns or return information solely in the action or proceeding, or in preparation for the action or proceeding, with respect to which the disclosure was made.

(iv) *Procedures for disclosure of returns and return information.* When providing returns or return information to the practitioner or appraiser, or authorized representative, the Secretary of the Treasury, or delegate, will —

(A) Redact identifying information of any third party taxpayers and replace it with a code;

(B) Provide a key to the coded information; and

(C) Notify the practitioner or appraiser, or authorized representative, of the restrictions on the use and disclosure of the returns and return information, the applicable damages remedy under *section 7431 of the Internal Revenue Code*, and that unauthorized disclosure of information provided by the Internal Revenue Service under this paragraph (d)(3) is also a

violation of this part.

(4) *Protective measures* —

(i) *Mandatory protection order.* If redaction of names, addresses, and other identifying information of third party taxpayers may still permit indirect identification of any third party taxpayer, the Administrative Law Judge will issue a protective order to ensure that the identifying information is available to the parties and the Administrative Law Judge for purposes of the proceeding, but is not disclosed to, or open to inspection by, the public.

(ii) *Authorized orders.*

(A) Upon motion by a party or any other affected person, and for good cause shown, the Administrative Law Judge may make any order which justice requires to protect any person in the event disclosure of information is prohibited by law, privileged, confidential, or sensitive in some other way, including, but not limited to, one or more of the following —

(1) That disclosure of information be made only on specified terms and conditions, including a designation of the time or place;

(2) That a trade secret or other information not be disclosed, or be disclosed only in a designated way.

(iii) *Denials.* If a motion for a protective order is denied in whole or in part, the Administrative Law Judge may, on such terms or conditions as the Administrative Law Judge deems just, order any party or person to comply with, or respond in accordance with, the procedure involved.

(iv) *Public inspection of documents.* The Secretary of the Treasury, or delegate, shall ensure that all names, addresses or other identifying details of third party taxpayers are redacted and replaced with the code assigned to the corresponding taxpayer in all documents prior to public inspection of such documents.

(e) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(f) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

(g) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.73 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to §10.71 may be admitted into evidence in any proceeding instituted under §10.60.

(c) *Requests for admission.* Any matter admitted in response to a request for admission under §10.71 is conclusively established unless the Administrative Law Judge on motion permits withdrawal or modification of the admission. Any admission made by a party is for the purposes of the pending action only and is not an admission by a party for any other purpose, nor may it be used against a party in any other proceeding.

(d) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. Any documents, records, and papers may be evidenced by a copy attested to or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(e) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(f) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

(g) *Effective/applicability date.* This section is applicable on September 26, 2007. § 10.74 Transcript.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the

maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82-137) (65 Stat. 290) (31 U.S.C. § 483a).

§ 10.75Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) *In general* —

(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in

§10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proved by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or delegate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal*. Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal*. The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non-appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response*. Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response

brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right*. Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses*. Notwithstanding the time for filing briefs and responses provided in paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.78 Decision on review.

(a) *Decision on review.* On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal

(b) *Standard of review.* The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.79 Effect of disbarment, suspension or censure.

(a) *Disbarment*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized

to do so by the Internal Revenue Service pursuant to §10.81.

(b) *Suspension*. When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Internal Revenue Service) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure*. When the final decision in the case is against the respondent (or the Internal Revenue Service has accepted the respondent's offer to consent, if such offer was made) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions*. After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to specified conditions designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because the practitioner failed to advise the practitioner's clients about a potential conflict of interest or failed to obtain the clients' written consents, the practitioner may be required to provide the Internal Revenue Service with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

(e) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

(a) *In general*. On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

(b) *Effective/applicability date*. This section is applicable beginning August 2, 2011.

§ 10.81 Petition for reinstatement.

(a) *In general*. A practitioner disbarred or suspended under §10.60, or suspended under §10.82, or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

(b) *Effective/applicability date*. This section is applicable beginning June 12, 2014.

§ 10.82 Expedited suspension.

(a) *When applicable.* Whenever the Commissioner, or delegate, determines that a practitioner is described in paragraph (b) of this section, the expedited procedures described in this section may be used to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years prior to the date that a show cause order under this section's expedited suspension procedures is served:

(1) Has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(a)(10).

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions imposed on the practitioner pursuant to §10.79(d).

(4) Has been sanctioned by a court of competent jurisdiction, whether in a civil or criminal proceeding (including suits for injunctive relief), relating to any taxpayer's tax liability or relating to the practitioner's own tax liability, for —

(i) Instituting or maintaining proceedings primarily for delay;

(ii) Advancing frivolous or groundless arguments; or

(iii) Failing to pursue available administrative remedies.

(5) Has demonstrated a pattern of willful disreputable conduct by—

(i) Failing to make an annual Federal tax return, in violation of the Federal tax laws, during 4 of the 5 tax years immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section; or

(ii) Failing to make a return required more frequently than annually, in violation of the Federal tax laws, during 5 of the 7 tax periods immediately preceding the institution of a proceeding under paragraph (c) of this section and remains noncompliant with any of the practitioner's Federal tax filing obligations at the time the notice of suspension is issued under paragraph (f) of this section.

(c) *Expedited suspension procedures.* A suspension under this section will be proposed by a show cause order that names the respondent, is signed by an authorized representative of the Internal Revenue Service under §10.69(a)(1), and served according to the rules set forth in §10.63(a). The show cause order must give a plain and concise description of the allegations that constitute the basis for the proposed suspension. The show cause order must notify the respondent —Of the place and due date for filing a response;

(1) That an expedited suspension decision by default may be rendered if the respondent fails to file a response as required;

(2) That the respondent may request a conference to address the merits of the show cause order and that any such request must be made in the response; and

(3) That the respondent may be suspended either immediately following the expiration of the period within which a response must be filed or, if a conference is requested, immediately following the conference.

(d) *Response*. The response to the show cause order described in this section must be filed no later than 30 calendar days following the date the show cause order is served, unless the time for filing is extended. The response must be filed in accordance with the rules set forth for answers to a complaint in §10.64, except as otherwise provided in this section. The response must include a request for a conference, if a conference is desired. The respondent is entitled to the conference only if the request is made in a timely filed response.

(e) *Conference*. An authorized representative of the Internal Revenue Service will preside at a conference described in this section. The conference will be held at a place and time selected by the Internal Revenue Service, but no sooner than 14 calendar days after the date by which the response must be filed with the Internal Revenue Service, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference.

(f) *Suspension—*

(1) *In general.* The Commissioner, or delegate, may suspend the respondent from practice before the Internal Revenue Service by a written notice of expedited suspension immediately following:

(i) The expiration of the period within which a response to a show cause order must be filed if the respondent does not file a response as required by paragraph (d) of this section;

(ii) The conference described in paragraph (e) of this section if the Internal Revenue Service finds that the respondent is described in paragraph (b) of this section; or

(iii) The respondent's failure to appear, either personally or through an authorized representative, at a conference scheduled by the Internal Revenue Service under paragraph (e) of this section.

(2) *Duration of suspension.* A suspension under this section will commence on the date that the written notice of expedited suspension is served on the practitioner, either personally or through an authorized representative. The suspension will remain effective until the earlier of:

(i) The date the Internal Revenue Service lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(ii) The date the suspension is lifted or otherwise modified by an Administrative Law Judge or the Secretary of the Treasury, or delegate deciding appeals, in a proceeding referred to in paragraph (g) of this section and instituted under §10.60.

(g) *Practitioner demand for §10.60 proceeding.* If the Internal Revenue Service suspends a practitioner under the expedited suspension procedures described in this section, the practitioner may demand that the Internal Revenue Service institute a proceeding under §10.60 and issue the complaint described in §10.62. The demand must be in writing, specifically reference the suspension action under §10.82, and be made within 2 years from the date on which the practitioner's suspension commenced. The Internal Revenue Service must issue a complaint demanded under this paragraph (g) within 60 calendar days of receiving the demand. If the Internal Revenue Service does not issue such complaint within 60 days of receiving the demand, the suspension is lifted automatically. The preceding sentence does not, however, preclude the Commissioner, or delegate, from instituting a regular proceeding under §10.60 of this part.

(h) *Effective/applicability date*. This section is generally applicable beginning June 12, 2014, except that paragraphs (b)(1) through (4) of this section are applicable beginning August 2, 2011.

Subpart E — General Provisions

§ 10.90 Records.

(a) *Roster*. The Internal Revenue Service will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters —

(1) Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.

(2) Enrolled agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted by the Internal Revenue Service under §10.61.

(3) Enrolled retirement plan agents, including individuals —

(i) Granted active enrollment to practice;

(ii) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(iii) Whose enrollment has been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from enrollment has been accepted under §10.61.

(4) Registered tax return preparers, including individuals —

(i) Authorized to prepare all or substantially all of a tax return or claim for refund;

(ii) Who have been placed in inactive status for failure to meet the requirements for renewal;

(iii) Who have been placed in inactive retirement status; and

(iv) Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the Internal Revenue Service under §10.61

(5) Disqualified appraisers.

(6) Qualified continuing education providers, including providers —

(i) Who have obtained a qualifying continuing education provider number; and

(ii) Whose qualifying continuing education number has been revoked for failure to comply with the requirements of this part.

(b) *Other records.* Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable law.

(c) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

§ 10.91 Saving provision.

Any proceeding instituted under this part prior to June 12, 2014, for which a final decision has not been reached or for which judicial review is still available is not affected by these revisions. Any proceeding under this part based on conduct engaged in prior to June 12, 2014, which is instituted after that date, will apply subpart D and E of this part as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred. § 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Except as otherwise provided in each section and Subject to §10.91, Part 10 is applicable on July 26, 2002.

John Dalrymple,
Deputy Commissioner for Services and Enforcement

Approved: June 3, 2014 Christopher J. Meade,
General Counsel

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Appendix B: Conference and Practice Requirements[xvi]

Statement of Procedural Rules

Conference and Practice Requirements

Sections 601.501 through 601.509 of Subpart E of Part 601 of Title 26 Code of Federal Regulations

Title 26 - Internal Revenue

Chapter I - Internal Revenue Service, Department of Treasury

Subchapter H - Internal Revenue Practice: Part 601 - Conference and Statement of Procedural Rules; Subpart E - Conference and practice Requirements

This Publication contains the revision of Sections 601.501 through 601.509 of Subpart E, Part 601, Title 26, Code of Federal Regulations appearing in 32 F. R. 13058, dated September 14, 1967, and includes the following amendments:

Amendment appearing in 33 F. R. 6825, dated May 4, 1968, which adds a new paragraph (b) (4) to Section 601.502 and revises paragraph (b) of Section 601.503.

Amendment appearing in 33 F. R. 17241, dated November 21, 1968, which revises paragraph (b) (4) and adds a new subdivision (iv) to paragraph (c) (3) of Section 601.502. This amendment also revises paragraph (b) of Section 601.505.

Amendment appearing in 34 F. R. 643 1, dated April 12, 1969, which revises so much of paragraph (c) (1) as precedes subdivision (i) thereof, and paragraph (c) (2) (i) adds new paragraph (c) (5) to Section 601.502. This amendment also revises paragraph (b) of Section 601.505.

Amendment appearing in 34 E R. 14603, dated September 19, 1969, which revises paragraph (a) of Section601.501.

Amendment appearing in 37 F. R. 1016, dated January 21, 1972, which revises paragraph (a) of Section 601.501.

Amendment appearing in 41 F. R. 20883, dated May 21, 1976, which revises paragraph (b)(1)(ii) of section 601.504.

Amendment in 43 F. R. 53030, dated November 15, 1978, which revises paragraph (b) of section 601.505.

Amendment appearing in 45 F. R. 7257-7259 dated February 1, 1980, which revises Sections 601.501, 601.502, 601.503, 601.504, 601.505, 601.506, 601.507 and 601.509 by eliminating discriminatory language and bringing certain provisions of the Statement of Procedural Rules up to date.

Amendment appearing in 46 F. R. 26055 dated May 11, 198 1, which revises paragraph (a) of Section 601.506.

Amendment appearing in 47 F. R. 39676 dated September 9, 1982, which adds a new subparagraph (b)(2) to Section 601.502. Existing subparagraphs (2), (3), and (4), are redesignated (3), (4), and (5) respectively.

Amendments appearing in 49 F. R. 19650-19651 dated May 9, 1984 which revises Sections 601.502, 601.503,
601.504, and 601.506.

Amendments appearing in 56 F. R. 24001-24009 dated May 28, 1991 which revises Sections 601.501 through 601.509.

TABLE OF CONTENTS
SUBPART E.-CONFERENCE AND PRACTICE REQUIREMENTS

Scope of rules.

Subpart E-Conference and Practice Requirements

§601.501 Scope of rules; definitions.

(a) Scope of Rules. The rules prescribed in this subpart concern, among other things, the representation of taxpayers before the Internal Revenue Service under the authority of a power of attorney. These rules apply to all offices of the Internal Revenue Service in all matters under the jurisdiction of the Internal Revenue Service and apply to practice before the Internal Revenue Service (as defined in 31 CFR 10.2(a) and 10.7(a)(7)). For special provisions relating to alcohol, tobacco, and firearms activities, see §§601.521 through 601.527. These rules detail the means by which a recognized representative is authorized to act on behalf of a taxpayer. Such authority must be evidenced by a power of attorney and declaration of representative filed with the appropriate office of the Internal Revenue Service. In general, a power of attorney must contain certain information concerning the taxpayer, the recognized representative, and the specific tax matter(s) for which the recognized representative is authorized to act. (See §601.503(a).) A ''declaration of representative'' is a written statement made by a recognized representative that he/she is currently eligible to practice before the Internal Revenue Service and is authorized to represent the particular party on whose behalf he/she acts. (See §601.502(b).)

(b) Definitions (l) Attorney-in-fact. An agent authorized by a principal under a power of attorney to perform certain specified act(s) or kinds of act(s) on behalf of the principal.

(2) Centralized Authorization File (CAF) system. An automated file containing information regarding the authority of an individual appointed under a power of attorney or a person designated under a tax information authorization.

(3) Circular No. 230. Treasury Department Circular No. 230 (codified at 31 CFR Part 10) which sets forth the regulations governing practice before the Internal Revenue Service.

(4) Declaration of representative. (See §601.502(b).)

(5) Delegation of authority. An act performed by a recognized representative whereby authority given under a power of attorney is delegated to another recognized representative. After a delegation is made, both the original recognized representative and the recognized representative to whom a delegation is made will be recognized to represent the taxpayer. (See §601.505(b)(2).)

(6) Form 2848, ''Power of Attorney and Declaration of Representative.'' The Internal Revenue Service power of attorney form which may be used by a taxpayer who wishes to

appoint an individual to represent him/her before the Internal Revenue Service. (See §601.503(b)(1).)

(7) Matter. The application of each tax imposed by the Internal Revenue Code and the regulations thereunder for each taxable period constitutes a (separate) matter.

(8) Office of the Internal Revenue Service. The office of each district director, the office of each service center, the office of each compliance center, the office of each regional commissioner, and the National Office constitute separate offices of the Internal Revenue Service.

(9) Power of attorney. A document signed by the taxpayer, as principal, by which an individual is appointed as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the principal. Specific types of powers of attorney include the following-

(i) General power of attorney. The attorney-in-fact is authorized to perform any or all acts the taxpayer can perform.

(ii) Durable power of attorney. A power of attorney which specifies that the appointment of the attorney-in-fact will not end due to either the passage of time (i.e., the authority conveyed will continue until the death of the taxpayer) or the incompetency of the principal (e.g., the principal becomes unable or is adjudged incompetent to perform his/her business affairs).

(iii) Limited power of attorney. A power of attorney which is limited in any facet (i.e., a power of attorney authorizing the attorney -in -fact to perform only certain specified acts as contrasted to a general power of attorney authorizing the representative to perform any and all acts the taxpayer can perform).

(10) Practice before the Internal Revenue Service. Practice before the Internal Revenue Service encompasses all matters connected with presentation to the Internal Revenue Service or any of its personnel relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a taxpayer at conferences, hearings, and meetings. (See 31 CFR 10.2(a).)

(11) Principal. A person (i.e., taxpayer) who appoints an attorney-in-fact under a power of attorney.

(12) Recognized representative. An individual who is recognized to practice before the Internal Revenue Service under the provisions of §601.502.

(13) Representation. Acts performed on behalf of a taxpayer by a representative in practice before the Internal Revenue Service. (See §601.501(b)(10).) However, any person may prepare a tax return, may appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees. (See 31 CFR 10.7(c).)

(14) Substitution of representative. An act performed by an attorney-in-fact whereby authority given under a power of attorney is transferred to another recognized representative. After a substitution is made, only the newly recognized representative will be considered the taxpayer's representative. (See §601.505(b)(2).)

(15) Tax information authorization. A document signed by the taxpayer authorizing any individual or entity (e.g., corporation, partnership, trust or organization) designated by the taxpayer to receive and/or inspect confidential tax return information in a specified matter.(See section 6103 of the Internal Revenue Code and the regulations there-under.)

(c) Conferences--(I) Scheduling. The Internal Revenue Service encourages the discussion of any Federal tax matter affecting a taxpayer. Conferences may be offered only to taxpayers and/or their recognized representative(s) acting under a valid power of attorney. As a general rule, such conferences will not be held without previous arrangement. However, if a compelling reason is shown by the taxpayer that an immediate conference should be held, the Internal Revenue Service official(s) responsible for the matter has the discretion to make an exception to the general rule.

(2) Submission of information. Every written protest, brief, or other statement the taxpayer or recognized representative Wishes to be considered at any conference should be submitted to or filed with the appropriate Internal Revenue Service official(s) at least five business days before the date of the conference. If the taxpayer or the representative is unable to meet this requirement, arrangement should be made with the appropriate Internal Revenue Service official for a postponement of the conference to a date mutually agreeable to the parties. The taxpayer or the representative remains free to submit additional or supporting facts or evidence within a reasonable time after the conference.

§601.502 Recognized representative.

A recognized representative is an individual who is appointed as an attorney-in-fact under a power of attorney and is a member of one of the categories described in §601.502(a) and who files a declaration of representative, as described in §601.502(b).

(a) Categories (1) Attorney. Any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia;

(2) Certified public accountant. Any individual who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia;

(3) Enrolled agent. Any individual who is enrolled to practice before the Internal Revenue Service and is in active status pursuant to the requirements of Circular No. 230 (31 CFR Part 10);

(4) Enrolled actuary. Any individual who is enrolled as an actuary by and is in active status with the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242.

(5) Other individuals. (i) Temporary recognition. Any individual who is granted temporary recognition as an enrolled agent by the Director of Practice (See 31 CFR 10.5(c).)

(ii) Practice based on a relationship or special status with a taxpayer. Any individual authorized to represent a taxpayer with whom/which a special relationship exists (31 CFR 10.7(a)(1) through (6)). (For example, an individual may represent another individual who is his/her regular full-time employer or a member of his/her immediate family; an individual who is a bona fide officer or regular full-time employee of a corporation or certain other organizations may represent that entity.)

(iii) Unenrolled return preparer. Any individual not otherwise eligible to practice before the Internal Revenue Service who signs a return as having prepared it for a taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that the return be signed by the preparer. The acts which an unenrolled return preparer may perform are limited to representation of a taxpayer before revenue agents and examining officers of the Examination Division in the offices of District Director with respect to the tax liability of the taxpayer for the taxable year or period covered by a return prepared by the unenrolled return preparer(31 CFR 10.7(a)(7)).

(iv) Special appearance. Any individual who, upon written application, is authorized by the Director of Practice to represent a taxpayer in a particular matter (See 31CFR 10.7(b).)

(b) Declaration of representative. A recognized representative must attach to the power of attorney a written declaration (e.g., Part 11 of Form 2848) stating the following

(1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service;

(2) I am aware of the regulations contained in Treasury Department Circular No. 230, (31 CFR Part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);

(3) I am authorized to represent the taxpayer(s) identified in the power of attorney; and

(4) I am an individual described in §601.502(a); If an individual is unable to make such declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service or perform the acts described in §601.504(a)(2) through (6).

§601.503 Requirements of power of attorney, signatures, fiduciaries and Commissioner's authority to substitute other requirements

(a) Requirements. A power of attorney must contain the following information -

(1) Name and mailing address of taxpayer,

(2) identification number of the taxpayer (i.e., social security number and/or employer identification number);

(3) employee plan number (if applicable);

(4) name and mailing address of the recognized representative(s);

(5) description of the matter(s) for which representation is authorized which, if applicable, must include

(i) the type of tax involved;

(ii) the Federal tax form number;

(iii) the specific year(s)/period(s) involved; and

(iv) in estate matters, decedent's date of death; and a clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s)

(b) Acceptable power of attorney documents (I)Form 2848. A properly completed Form 2848 satisfies the requirements for both a power of attorney (as described in §601.503(a)) and a declaration of representative (as described in §601.502(b)).

(2) Other documents. The Internal Revenue Service will accept a power of attorney other than Form 2848 provided such document satisfies the requirements of §601.503(a). However, for purposes of processing such documents onto the Centralized Authorization File (see §601.506(d)), a completed Form 2848 must be attached. (In such situations, Form 2848 is not the operative power of attorney and need not be signed by the taxpayer. However, the Declaration of Representative must be signed by the representative.)

(3) Special provision. The Internal Revenue Service will not accept a power of attorney which fails to include the information required by §601.503(a)(1) through (5). If a power of attorney fails to include some or all of the information required by such section, the attorney- in-fact can cure this defect by executing a Form 2848 (on behalf of the taxpayer) which includes -the missing information. Attaching a Form 2848 to a copy of the original power of attorney will validate the original power of attorney (and will be treated in all circumstances as one signed and filed by the taxpayer) provided the following conditions are satisfied

(i) The original power of attorney contemplates authorization to handle, among other things, Federal tax matters, (e.g., the power of attorney includes language to the effect that the attorney-in-fact has the authority to perform any and all acts); and

(ii) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the Form 2848 which states that the original power of attorney is valid under the laws of the governing jurisdiction

(4) Other categories of powers of attorney. Categories of powers of attorney not addressed in these rules (e.g., durable powers of attorney) will be accepted by the Internal Revenue Service provided such documents satisfy the requirements of §601.503(b)(2) or (3).

(c) Signatures. Internal Revenue Service officials may require a taxpayer (or such individual(s) required or authorized to sign on behalf of a taxpayer) to submit appropriate identification or evidence of authority. Except when Form 2848 (or its equivalent) is executed by an attorney-in-fact under the provisions of §601.503(b)(3),the individual who must execute a Form 2848 depends on the type of taxpayer involved

(1) Individual taxpayer. In matter(s) involving an individual taxpayer, a power of. attorney must be signed by such individual.

(2) Husband and wife. In matters involving a joint return the following rules apply

(i) Joint representation. In the case of any matter concerning a joint return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

(ii) Individual representation. In the case of any matter concerning a joint return in which both husband and wife are not to be represented by the same recognized representative(s), the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse being represented cannot perform alone.

(3) Corporation. In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority.

(4) Association. In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that he/she has such authority.

(5) Partnership. In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that he/she has such authority.

(6) Dissolved partnership. In the case of a dissolved partnership, each of the former partners must execute a power of attorney. However, if one or more of the former partners is deceased, the following provisions apply

(i) The legal representative of each deceased partner(s) (or such person(s) having legal control over the disposition of partnership interest(s) and/or the share of partner- ship asset(s) of the deceased partner(s)) must execute a power of attorney in the place of such deceased partner(s). (See §601.503(c)(6)(ii).)

(ii) Notwithstanding §601.503(c)(6)(i), if the law of the governing jurisdiction provides that such partner(s) has exclusive right to control or possession of the firm's assets for the purpose of winding down its affairs, the signature(s) of the surviving partner(s) alone will be sufficient. (If the surviving partner(s) claims exclusive right to control or possession of the firm's assets for the purpose of winding down its affairs, Internal Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of the law of the governing jurisdiction upon which the surviving partner(s) relies.)

(d) Fiduciaries. In general, when a fiduciary is involved in a tax matter, a power of attorney is not required. Instead Form 56, ''Notice Concerning Fiduciary Relationship'' should be filed. Types of taxpayers for which fiduciaries act are

(1) Dissolved corporation (i) Appointed trustee. In the case of a dissolved corporation, Form 56, "Notice Concerning Fiduciary Relationship,'' should be filed by the liquidating trustee(s), if one or more have been ap- pointed, or by the trustee(s) deriving authority under a law of the jurisdiction in which the corporation was organized. If there is more than one trustee, all must join unless it is established that fewer than all have authority to act in the matter under consideration. Internal Revenue Service officials may require the submission of a properly authenticated copy of the instrument and/or citation to the law under which the trustee derives his/her authority. If the authority of the trustee is derived under the law of a jurisdiction, Internal Revenue Service officials may require a statement (signed under penalty of perjury) setting forth the facts required by the law as a condition precedent to the vesting of authority in said trustee and stating that the authority of the

trustee has not been terminated vice officials may require the submission of a copy of or a citation to the pertinent provisions of the law of the governing jurisdiction upon which the surviving partner(s) relies.)

(iii) No appointed trustee. If there is no appointed trustee, a Form 56, "Notice Concerning Fiduciary Relationship," should be filed by the stockholder(s) holding a majority of the voting stock of the corporation as of the date of dissolution. Internal Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to a power of attorney, the date of dissolution, and a representation that no trustee has been appointed.

(2) Insolvent taxpayer. In the case of an insolvent tax- payer, Form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee, receiver, or attorney appointed by the court. Internal Revenue Service officials may require the submission of a certified order or document from the court having jurisdiction over the insolvent taxpayer which shows the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement

(3) Deceased taxpayers (i) Executor, personal representative- or administrator. In the case of a deceased taxpayer, a Form 56, "Notice Concerning Fiduciary Relationship," should be filed by the executor, personal representative or administrator if one has been appointed and is responsible for disposition of the matter under consideration. Internal Revenue Service officials may require the submission of a short-form certificate (or authenticated copy of letters testamentary or letters of administration) showing that such authority is in full force and effect at the time the Form 56, "Notice Concerning Fiduciary Relationship," is filed.

(ii) Testamentary trustee(s). In the event that a trustee is acting under the provisions of a will, a Form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee, unless the executor, personal representative or administrator has not been discharged and is responsible for disposition of the matter. Internal Revenue Service officials may require either the submission of evidence of the discharge of the executor and appointment of the trustee or other appropriate evidence of the authority of the trustee.

(iv) Residuary legatee(s). If no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee(s), a Form 56, "Notice Concerning Fiduciary Relationship," should

be filed by the residuary legatee(s). Internal Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter, naming the residuary legatee(s), and indicating the proper share to which each is entitled.

(iv) Distributee(s). In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter (or none was ever appointed), a Form 56, ''Notice Concerning Fiduciary Relationship," should be filed by the distributee(s). Internal Revenue Service officials may require the submission of evidence of the discharge of the administrator (if one had been appointed) and evidence that the administrator is not responsible for disposition of the matter. It also may require a statement(s) signed under penalty of perjury (and such other appropriate evidence as can be produced) to show the relationship of the individual(s) who sign the Form 56, ''Notice Concerning Fiduciary Relationship,'' to the decedent and the right of each signer to the respective shares of the assets claimed under the law of the domicile of the decedent.

(4) Taxpayer for whom a guardian or other fiduciary has been appointed. In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, a Form 56, ''Notice Concerning Fiduciary Relationship," should be filed by the fiduciary. Internal Revenue Service officials may require the submission of a court certificate or court order showing that the individual who executes the Form 56, ''Notice Concerning Fiduciary Relationship,'' has been appointed and that his/her appointment has not been terminated.

(5) Taxpayer who has appointed a trustee. In the case of a taxpayer who has appointed a trustee, a Form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instrument, showing

(i) The date of the instrument;

(ii) That it is or is not of record in any court;

(iii) The names of the beneficiaries;

(iv) The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and

(v) That the trust has not been terminated and the trustee appointed therein is still legally acting as such. In the event that the trustee appointed in the original trust instrument has

been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.

(d) Commissioner's authority to substitute other requirements for power of attorney. Upon application of a taxpayer or a recognized representative, the Commissioner of Internal Revenue may substitute a requirement(s) other than provided herein for a power of attorney as evidence of the authority of the representative.

§601.504 Requirements for filing power of attorney.

(a) Situations in which a power of attorney is required. Except as otherwise provided in §601.504(b), a power of attorney is required by the Internal Revenue Service when the taxpayer wishes to authorize a recognized representative to perform one or more of the following acts on behalf of the taxpayer

(1) Representation. (see §§601.501(b)(10) and 601.501 (b)(I 3).)

(2) Waiver Offer and/or execution of either -

(i) a waiver of restriction on assessment or collection of a deficiency in tax, or

(ii) a waiver of notice of disallowance of a claim for credit or refund.

(3) Consent. Execution of a consent to extend the statutory period for assessment or collection of a tax.

(4) Closing agreement. Execution of a closing agreement under the provisions of the Internal Revenue Code and the regulations thereunder.

(5) Check drawn on the United States Treasury. The authority to receive (but not endorse or collect) a check drawn on the United States Treasury must be specifically granted in a power of attorney. (The endorsement and payment of a check drawn on the United States Treasury are governed by Treasury Department Circular No. 21, as amended, 31 Part CFR 240.) Endorsement of such check by any person other than the payee must be made under one of the special types of powers of attorney prescribed by Circular No. 21, as amended, (31 CFR Part 240). For restrictions on the assignment of claims, see Revised Statute section 3477, as amended (31 U.S.C. 3727).)

(6) Signing tax returns. The filing of a power of attorney does not authorize the recognized representative to sign a tax return on behalf of the taxpayer unless such act is both

(i) permitted under the Internal Revenue Code and the regulations thereunder (e.g., the authority to sign income tax returns is governed by the provisions of section 1.6012-1 (a)(5) of the Income Tax Regulations); and

(ii) specifically authorized in the power of attorney.

(b) Situations in which a power of attorney is not required (l) Disclosure of confidential tax return information. The submission of a tax information authorization to request the disclosure of confidential tax return information does not constitute practice before the Internal Revenue Service. (Such procedure is governed by the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.) Nevertheless, if a power of attorney is properly filed, the recognized representative also is authorized to receive and/or inspect confidential tax return information concerning the matter(s) specified in the power of attorney (provided the power of attorney places no limitations upon such disclosure).

(2) Estate matter. A power of attorney is not required at a conference concerning an estate tax matter if the individual seeking to act as a recognized representative presents satisfactory evidence to Internal Revenue Service officials that he/she is

(i) an individual described in §601.502(a); and

(ii) the attorney of record for the executor, personal representative, or administrator before the court where the will is probated or the estate is administered.

(3) Bankruptcy matters. A power of attorney is not required in the case of a trustee, receiver, or an attorney (designated to represent a trustee, receiver, or debtor in possession) appointed by a court having jurisdiction over a debtor. In such a case, Internal Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the debtor showing the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(c) Administrative requirements of filing (l) General. Except as provided in this section, a power of attorney (including the declaration of representative and any other required statement(s)) must be filed in each office of the Internal Revenue Service in which the recognized representative desires to perform one or more of the acts described in §601.504(a).

(2) Regional offices. If a power of attorney (including the declaration of representative and any other required statement(s)) is filed with the office of a district director or with a

service center which has the matter under consideration, it is not necessary to file a copy with the office of a regional commissioner which subsequently has the matter under consideration unless requested.

(3) National Office. In case of a request for a ruling or other matter to be considered in the National Office, a power of attorney, including the declaration of representative and any other required statement(s), must be submitted with each request or matter.

(4) Copy of power of attorney. The Internal Revenue Service will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (FAX) also will be accepted.

(d) Practice by correspondence. If an individual desires to represent a taxpayer through correspondence with the Internal Revenue Service, such individual must submit a power of attorney, including the declaration of representative and any other required statement(s), even though no personal appearance is contemplated.

§601.505 Revocation, change in representation and substitution or delegation of representative.

(a) By the taxpayer (I) New power of attorney filed. A new power of attorney revokes a prior power of attorney if it is granted by the taxpayer to another recognized representative with respect to the same matter. However, a new power of attorney does not revoke a prior power of attorney if it contains a clause stating that it does not revoke such prior power of attorney and there is attached to the new power of attorney either -

(i) a copy of the unrevoked prior power of attorney; or

(ii) a statement signed by the taxpayer listing the name and address of each recognized representative authorized under the prior unrevoked power of attorney.

(2) Statement of revocation filed. A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with those offices of the Internal Revenue Service where the tax- payer has filed the power of attorney to be revoked. The statement of revocation must indicate that the authority of the first power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each recognized representative whose authority is revoked must be listed (or a copy of the power of attorney to be revoked must be attached).

(b) By the recognized representative (1) Revocation of power of attorney. A recognized representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with those offices of the Internal Revenue Service where the power of attorney to be revoked was filed. The statement must be signed by

the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

(2) Substitution or delegation of recognized representative. Any recognized representative appointed in a power of attorney may substitute or delegate authority under the power of attorney to another recognized representative if substitution or delegation is specifically permitted under the power of attorney. Unless otherwise provided in the power of attorney, a recognized representative may make a substitution or delegation without the consent of any other recognized representative appointed to represent the taxpayer in the same matter. A substitution or delegation is effected by filing the following items with offices of the Internal Revenue Service where the power of attorney has been filed -

(i) Notice of substitution or delegation. A Notice of Substitution or Delegation is a statement signed by the recognized representative appointed under the power of attorney. The statement must contain the name and mailing address of the new recognized representative and, if more than one individual is to represent the taxpayer in the matter, a designation of which recognized representative is to receive notices and other written communications;

(ii) Declaration of representative. A written declaration which is made by the new representative as required by §601.502(b); and

(iii) Power of attorney. A power of attorney which specifically authorizes the substitution or delegation.

An employee of a recognized representative may not be substituted for his/her employer with respect to the representation of a taxpayer before the Internal Revenue Service unless the employee is a recognized representative in his/her own capacity under the provisions of §601.502(a). However, even if such employee is not a recognized representative in his/her own capacity under the provisions of §601.502(a), that individual may be authorized by the taxpayer under a tax information authorization to receive and/or inspect confidential tax return information under the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.

§601.506 Notices to be given to recognized representative; direct contact with taxpayer; delivery of a check drawn on the United States Treasury to recognized representative.

(a) General. Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative according to the following procedures

(1) If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice of the Internal Revenue Service to give copies of such to two (but not more than two) individuals so designated.

(2) In a case in which the taxpayer does not designate which recognized representative is to receive notices, it will be the practice of the Internal Revenue Service to give notices and other communications to the first recognized representative appointed on the power of attorney.

(3) Failure to give notice or other written communication to the recognized representative of a taxpayer will not affect the validity of any notice or other written communication delivered to a taxpayer.

Unless otherwise indicated in the document, a power of attorney other than Form 2848 will be presumed to grant the authority to receive notices or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter(s) before the Internal Revenue Service to which the power of attorney pertains.

(b) Cases where taxpayer may be contacted directly. Where a recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated requests, non-privileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection or investigation may request the permission of his/her immediate supervisor to contact the taxpayer directly for such information

(1) Procedure. If such permission is granted, the case file will be documented with sufficient facts to show how the examination, collection or investigation was being delayed or hindered. Written notice of such permission. The fact that a power of attorney or tax information authorization cannot be recorded onto the CAF system is not determinative of the (current or future) validity of such document. For example, a power of attorney or tax designee authorized under a tax information authorization.

(2) Effect of direct notification. Permission to by-pass a recognized representative and contact a taxpayer directly does not automatically disqualify an individual to act as the recognized representative of a taxpayer in a matter. However, such information may be referred to the Director of Practice for possible disciplinary proceedings under Circular No. 230, (31 CFR Part 10).

(c) Delivery of a check drawn on the United States Treasury-(I) General. A check drawn on the United States Treasury (e.g., a check in payment of refund of internal revenue taxes, penalties, or interest, see §601.504(a)(5)) will be mailed to the recognized representative of a taxpayer provided that a power of attorney is filed containing specific authorization for this to be done.

(2) Address of recognized representative. The check will be mailed to the address of the recognized representative listed on the power of attorney unless such recognized representative notifies the Internal Revenue Service in writing that his/her mailing address has been changed.

(3) Authorization of more than one recognized representative. In the event a power of attorney authorizes more than one recognized representative to receive a check on the taxpayer's behalf, and such representatives have different addresses, the Internal Revenue Service will mail the check directly to the taxpayer, unless a statement (signed by all of the recognized representatives so authorized) is submitted which indicates the address to which the check is to be mailed.

(5) Cases in litigation. The provisions of §601.506(c) concerning the issuance of a tax refund do not apply to the issuance of a check in payment of claims which have been either reduced to judgment or settled in the course(or as a result) of litigation.

(d) Centralized Authorization File (CAF) system-(I) Information recorded onto the CAF system. Information from both powers of attorney and tax information authorizations is recorded onto the CAF system. Such information enables Internal Revenue Service personnel who do not have access to the actual power of attorney or tax information authorization to-

(i) determine whether a recognized representative or a designee is authorized by a taxpayer to receive and/or inspect confidential tax return information;

(ii) determine, in the case of a recognized representative, whether that representative is authorized to perform the acts set forth in §601.504(a); and

(iii) send copies of computer generated notices and communications to a recognized representative or a designee so authorized by the taxpayer.

(2) CAF number. A Centralized Authorization File(CAF) number generally will be issued to-

(i) a recognized representative who files a power of attorney and a written declaration of representative; or

(ii) a designee authorized under a tax information authorization. The issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the Internal Revenue Service. Such determination is made under the provisions of Circular No. 230, (31 CFR Part 10). The purpose of the CAF number is to facilitate the processing of a power of attorney or a tax information authorization submitted by a recognized representative or a designee. A recognized representative or a designee should include the same CAF number on every power of attorney or tax information authorization filed. However, because the CAF number is not a substantive requirement (i.e., as listed in §601.503(a)), a tax information authorization or power of attorney which

does not include such number will not be rejected based on the absence of a CAF number.

(3) Tax matters recorded on CAF, Although a power of attorney or tax information authorization may be filed in all matters under the jurisdiction of the Internal Revenue Service, only those documents which meet each of the following criteria will be recorded onto the CAF system-

(i) Specific tax period. Only documents which concern a matter(s) relating to a specific tax period will be recorded onto the CAF system. A power of attorney or tax information authorization filed in a matter unrelated to a specific period (e.g., the 100% penalty for failure to pay over withholding taxes imposed by section 6672 of the Internal Revenue Code, applications for an employer identification number, and requests for a private letter ruling pertaining to a proposed transaction) cannot be recorded onto the CAF system.

(ii) Future three-year limitation. Only documents which concern a tax period that ends no later than three years after the date a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system. For example, a power of attorney received by the Internal Revenue Service on August 1, 1990, which indicates that the authorization applies to Forms 941 for the quarters ended December 31, 1990 through December 31, 2000, will be recorded onto the CAF system for the applicable tax periods which end no later than July 31, 1993 (i.e., three years after the date of receipt by the Internal Revenue Service).

(iii) Documents for prior tax periods. Documents which concern any tax period which has ended prior to the date on which a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system provided that matters concerning such years are under consideration by the Internal Revenue Service.

(iv) Limitation on the number of representatives recorded onto the CAF system. No more than three representatives appointed under a power of attorney or three persons designated under a tax information authorization will be recorded onto the CAF system. If more than three representatives are appointed under a power of attorney or more than three persons are designated under a tax information authorization, only the first three names will be recorded onto the CAF system.

The fact that a power of attorney or tax information authorization cannot be recorded onto the CAF system is not determinative of the (current or future) validity of such document.

For example, a power of attorney or tax information authorization which concerns tax periods that end more than three years from the date of receipt by the Internal Revenue Service is not invalid for the period(s) not recorded onto the CAF system. Such power of attorney or tax information authorization may be resubmitted at a later date

§601.507 Evidence required to substantiate facts alleged by a recognized representative.

The Internal Revenue Service may require a recognized representative to submit all documentary evidence required to substantiate alleged facts (except that of a supplementary or incidental character) over a declaration (signed under penalty of perjury) that the recognized representative prepared or reviewed such documentary evidence and that to the best of his/her knowledge or belief the facts contained therein are true. In any case in which a recognized representative is unable or unwilling to declare his/her own knowledge that the facts are true and correct, the Internal Revenue Service may require the taxpayer to make such a declaration under penalty of perjury.

§601.508 Dispute between recognized representatives of a taxpayer.

Where there is a dispute between two or more recognized representatives concerning who is entitled to represent a taxpayer in a matter pending before the Internal Revenue Service (or to receive a check drawn on the United States Treasury), the Internal Revenue Service will not recognize any of the disputing representatives. However, if the contesting recognized representatives designate one or more of their number under the terms of an agreement signed by all, the Internal Revenue Service will recognize such designated recognized representative(s) upon receipt of a copy of such agreement according to the terms of the power of attorney information authorization which concerns tax periods that end more than three years from the date of receipt by the Internal Revenue Service is not invalid for the period(s) not recorded onto the CAF system. Such power of attorney or tax information authorization may be resubmitted at a later date.

§601.509 Power of attorney not required in cases docketed in the Tax Court of the United States.

The petitioner and the Commissioner of Internal Revenue stand in the position of parties litigant before a judicial body in a case docketed in the Tax Court of the United States. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney is not required to be submitted by an attorney of record in a case which is docketed in the Tax Court.

Correspondence in connection with cases docketed in the Tax Court will be addressed to the attorney of record before the Court. However, a power of attorney is required to be submitted by

an individual other than the attorney of record in any matter before the Internal Revenue Service concerning a docketed case.

(Section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917; 26 U.S.C. 7805) and 5 U.S.C. 301)

FRED T. GOLDBERG, JR.
Commissioner of Internal Revenue (SEAL)
(As published in the issue of the Federal Register for May 28, 1991, 56 F. R. 24001-24009).

Appendix C: Practicing Before the IRS[xvii]

Practice Before the IRS

The Office of Professional Responsibility generally has responsibility for matters related to practitioner conduct, and exclusive responsibility for discipline, including disciplinary proceedings and sanctions. The Return Preparer Office is responsible for matters related to the issuance of PTINs, acting on applications for enrollment and administering competency testing and continuing education for designated groups.

What Is Practice Before the IRS?

Circular 230 covers all matters relating to any of the following.

- Communicating with the IRS on behalf of a taxpayer regarding the taxpayer's rights, privileges, or liabilities under laws and regulations administered by the IRS.
- Representing a taxpayer at conferences, hearings, or meetings with the IRS.
- Preparing, filing or submitting documents, or advising on the preparation, filing or submission of documents, including tax returns, with the IRS on behalf of a taxpayer.
- Providing a client with written tax advice on one or more Federal matters.

Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund, appear as a witness for the taxpayer before the IRS, or furnish information at the request of the IRS or any of its officers or employees.

Who Can Practice Before the IRS?

The following individuals are subject to the Regulations contained in Circular 230. However, any individual who is authorized generally to practice (a recognized representative) must be designated as the taxpayer's representative and file a written declaration with the IRS stating that he or she is authorized and qualified to represent a particular taxpayer. Form 2848 can be used for this purpose.

Appraisers. Any individual who prepares appraisals supporting the valuation of assets in connection with one or more federal tax matters is subject to the regulations contained in Circular 230. Appraisers have no representation rights but may appear as witnesses on behalf of taxpayers.

Attorneys. Any attorney who is not currently under suspension or disbarment from practice before the IRS and who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia may practice before the IRS.

Certified public accountants (CPAs). Any CPA who is not currently under suspension or disbarment from practice before the IRS and who is duly qualified to practice as a CPA in any state, possession, territory, commonwealth, or the District of Columbia may practice before the IRS.

Enrolled agents. Any enrolled agent in active status who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS.

Enrolled retirement plan agents. Any enrolled retirement plan agent in active status who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. The practice of enrolled retirement plan agents is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.

Enrolled actuaries. Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. The practice of enrolled actuaries is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.

Low Income Taxpayer Clinic Student Interns. Under certain circumstances, a student who is supervised by a practitioner at a law school or equivalent program providing tax services for low income taxpayers may request authorization to represent a taxpayer before the IRS. For more information, see *Authorization for Special Appearances* , later.

Unenrolled return preparers. An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary who prepares and signs a taxpayer's return as the paid preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

Unenrolled return preparers may represent taxpayers only before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) and only during an examination of the tax returns they prepared and signed prior to December 31, 2015. Unenrolled return preparers may not represent taxpayers before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury. Unenrolled return preparers may not execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, or sign any document on behalf of a taxpayer.

If an unenrolled return preparer does not meet the requirements for limited representation, you may authorize the unenrolled return preparer to inspect and/or request your tax information by filing Form 8821. Completing Form 8821 will not authorize the unenrolled return preparer to represent you before the IRS. See Form 8821.

Annual Filing Season Program Record of Completion. Beginning January 1, 2016, only unenrolled return preparers who hold a record of completion for BOTH the tax return year (2015 or thereafter) under examination and the year the examination is conducted may represent under the following conditions: Unenrolled return preparers may represent taxpayers only before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) and only during an examination of the taxable year or period covered by the tax returns they prepared and signed. Unenrolled return preparers may not represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury. Unenrolled return preparers may not execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, or sign any document on behalf of a taxpayer.

If an unenrolled return preparer does not meet the requirements for limited representation, you may authorize the unenrolled return preparer to inspect and/or request your tax information by filing Form 8821. Completing Form 8821 will not authorize the unenrolled return preparer to represent you before any IRS personnel. See Form 8821.
Practice denied. Any individual engaged in limited practice before the IRS who is involved in disreputable conduct is subject to disciplinary action. Disreputable conduct includes, but is not limited to, the list of items under *Incompetence and Disreputable Conduct* shown later under *What Are the Rules of Practice?* .

Other individuals who may serve as representatives. Because of their special relationship with a taxpayer, the following individuals may represent the specified taxpayers before the IRS, provided they present satisfactory identification and, except in the case of an individual described in (1) below, proof of authority to represent the taxpayer.

1. An individual. An individual can represent himself or herself before the IRS and does not have to file a written declaration of qualification and authority.
2. A family member. An individual can represent members of his or her immediate family. Immediate family includes a spouse, child, parent, brother, or sister of the individual.
3. An officer. A bona fide officer of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group can represent the corporation, association, or organized group. An officer of a governmental unit, agency, or authority, in the course of his or her official duties, can represent the organization before the IRS.
4. A partner. A general partner may represent the partnership before the IRS.
5. An employee. A regular full-time employee can represent his or her employer. An employer can be, but is not limited to, an individual, partnership, corporation (including a parent, subsidiary, or other affiliated corporation), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.
6. A fiduciary. A fiduciary (trustee, executor, personal representative, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative. See *Fiduciary* under *When Is a Power of Attorney Not Required?* , later.

Representation Outside the United States

Any individual may represent an individual or entity, who is outside the United States, before personnel of the IRS when such representation also occurs outside the United States. See section 10.7(c)(1)(vii) of Circular 230.

Authorization for Special Appearances

The Commissioner of Internal Revenue, or delegate, can authorize an individual who is not otherwise eligible to practice before the IRS to represent another person for a particular matter. The prospective representative must request this authorization in writing from the Office of Professional Responsibility. However, it is granted only when extremely compelling circumstances exist. If granted, the Commissioner, or delegate, will issue a letter that details the conditions related to the appearance and the particular tax matter for which the authorization is granted.

The authorization letter should not be confused with a letter from an IRS center advising an individual that he or she has been assigned a Centralized Authorization File (CAF) number. The issuance of a CAF number does not indicate that an individual is either recognized or authorized to practice before the IRS. It merely confirms that a centralized file for authorizations has been established for the individual under that number.

Students in LITCs and the STCP. A student who works in a Low Income Taxpayer Clinic (LITC) or a Student Tax Clinic Program (STCP) must receive permission to represent taxpayers before the IRS by virtue of their status as a law, business, or accounting student. Authorization requests must be sent to the Taxpayer Advocate Service. If granted, a letter authorizing the student's special appearance and detailing any conditions related to the appearance will be issued. Students receiving an authorization letter generally can represent taxpayers before any IRS function or office subject to any conditions in the authorization letter and must be under the direct supervision of an individual authorized to practice before the IRS. If you intend to have a student represent you, review the authorization letter and ask your student, your student's supervisor, or the Taxpayer Advocate Service if you have questions about the terms of the authorization.

Who May Not Practice Before the IRS?

In general, individuals who are not eligible, or who have lost the privilege as a result of certain actions, may not practice before the IRS. If an individual loses eligibility to practice, the IRS will not recognize a power of attorney that names the individual as a representative.

Corporations, associations, partnerships, and other persons that are not individuals. These organizations (or persons) are not eligible to practice before the IRS.

Loss of Eligibility

Generally, individuals lose their eligibility to practice before the IRS in the following ways.

- Not meeting the requirements for renewal of enrollment (such as continuing professional education).
- Requesting to be placed in inactive retirement status.
- Being suspended or disbarred, or determined ineligible for practice, by the Office of Professional Responsibility for violating the regulations contained in Circular 230 or the standards in Revenue Procedure 81–38.
- Losing their state license to practice as an attorney or a certified public accountant, irrespective of the basis for the license revocation.

Failure to meet requirements. Enrolled individuals and Record of Completion holders who fail to comply with the requirements for eligibility for renewal will be notified by the IRS. The notice will explain the reason for ineligibility and provide the individual with a time-sensitive opportunity to furnish information for reconsideration.

Inactive roster. An enrolled individual will be placed on the roster of inactive enrolled individuals for a period of three years, if he or she:

- Fails to respond timely to the notice of noncompliance with the renewal requirements,
- Fails to file timely the application for renewal, or
- Does not satisfy the requirements of eligibility for renewal.

The enrolled individual must file an application for renewal and satisfy all requirements for renewal after being placed in inactive status. Otherwise, at the conclusion of the next renewal cycle, he or she will be removed from the roster and the enrollment status will be terminated.

Inactive retirement status. Enrolled individuals who request to be placed in an inactive retirement status will be ineligible to practice before the IRS. They must continue to adhere to all renewal requirements. They can be reinstated to active enrollment status by filing an application for renewal and providing evidence that they have completed the required continuing professional education hours for the enrollment cycle or registration year.

Suspension and disbarment. All individuals practicing before the IRS are subject to disciplinary proceedings and may be censured, suspended, disbarred or monetarily penalized for violating any regulation in Circular 230. This includes engaging in acts demonstrating incompetence or disreputable conduct. For more information, see *Incompetence and Disreputable Conduct* under *What Are the Rules of Practice?* , later.

Practitioners who are suspended or disbarred in a disciplinary proceeding are not allowed to represent taxpayers before the IRS during the period of suspension/disbarment. A practitioner can seek reinstatement from the Office of Professional Responsibility at the earlier of a specified period of suspension or after five years of disbarment. See *What Is Practice Before the IRS?* , earlier.

If the practitioner seeks reinstatement, he or she may not practice before the IRS until the Office of Professional Responsibility grants reinstatement. The Office of Professional Responsibility may reinstate the practitioner:

- If the practitioner's future conduct is not likely to be in violation of the regulations, and
- If granting the reinstatement would not be contrary to the public interest.
- Subject to other conditions for a reasonable period.

How Does an Individual Become Enrolled?

The IRS website www.irs.gov/Tax-Professionals/Enrolled-Agents/Become-an-Enrolled-Agent provides complete information on the steps to be taken to become an enrolled agent.

For complete rules on earning an Annual Filing Season Program Record of Completion, see www.irs.gov/Tax-Professionals/Annual-Filing-Season-Program.

What Are the Rules of Practice?

The rules governing practice before the IRS are published in the Code of Federal Regulations at 31 C.F.R. Subtitle A, Part 10 and released digitally as Treasury Department Circular No. 230 (Circular 230). The regulations can be accessed at www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals. An attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS (referred to hereafter as a practitioner) and an appraiser has the duty to perform certain acts and is restricted from performing other acts. In addition, a practitioner cannot engage in disreputable conduct (discussed later). Any practitioner who does not comply with the rules of practice or who engages in incompetent or disreputable conduct is subject to disciplinary action. Also, unenrolled preparers must comply with the rules of practice and conduct to exercise the privilege of limited practice before the IRS. There are two specific sets of rules that apply, both are contained in Circular 230:

1. Duties and Restrictions relating to practice (Subpart B of Cir. 230), and
2. Conduct considered to exhibit incompetence or disrepute (Subpart C, Section 10.51 of Cir. 230).

Duties and Restrictions

Individuals subject to Circular 230 must promptly submit records or information sought by a proper and lawful request from officers or employees of the IRS, except when the practitioner believes on reasonable belief and good faith that the information is privileged. Communications with respect to tax advice between a federally authorized tax practitioner (See Internal Revenue Code (IRC) sec. 7525) and a taxpayer generally are confidential to the same extent that communication would be privileged if it were between a taxpayer and an attorney if the advice relates to:

- Noncriminal tax matters before the IRS, or
- Noncriminal tax proceedings brought in federal court by or against the United States.

Communications regarding corporate tax shelters. This protection of tax advice communications does not apply to any written communications between a federally authorized tax practitioner and any person, including a director, shareholder, officer, employee, agent, or representative of a corporation if the communication involves the promotion of the direct or indirect participation of the corporation in any tax shelter.

Duty to advise. Individuals subject to Circular 230 who know that his or her client has not complied with the revenue laws or has made an error or omission in any return, document, affidavit, or other required paper, has the responsibility to advise the client promptly of the noncompliance, error, or omission, and the consequences of the noncompliance, error, or omission.

General due diligence. Individuals subject to Circular 230 must exercise due diligence when performing the following duties.

- Preparing or assisting in the preparing, approving, and filing of returns, documents, affidavits, and other papers relating to IRS matters.
- Determining the correctness of oral or written representations made by him or her to the Department of the Treasury.
- Determining the correctness of oral or written representations made by him or her to clients with reference to any matter administered by the IRS.

Reliance on others. A presumption that due diligence has been exercised will apply in situations where there has been reliance on the work product of another person reasonable care was used in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the Circular 230 individual and the person.

Delays. Individuals subject to Circular 230 must not unreasonably delay the prompt disposition of any matter before the IRS.

Assistance from disbarred or suspended persons and former IRS employees. Individuals subject to Circular 230 must not knowingly, directly or indirectly, do the following.

- Accept assistance from, or assist, any person who is under disbarment or suspension from practice before the IRS if the assistance relates to matters considered practice before the IRS.
- Accept assistance from any former government employee where provisions of Circular 230 or any federal law would be violated.

Performance as a notary. Individuals subject to Circular 230 may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the IRS and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

Negotiation of taxpayer refund checks. Individuals subject to Circular 230 may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

Incompetence and Disreputable Conduct

Individuals subject to Circular 230 may be disbarred or suspended from practice before the IRS, or censured, for incompetence or disreputable conduct. A monetary penalty may also be imposed, in addition to any other discipline, on both individuals and their firms. The following list contains examples of conduct that is considered disreputable. Further examples are shown in Circular 230, Sec. 10.51(a).

- Being convicted of any criminal offense under the revenue laws or of any offense involving dishonesty or breach of trust.
- Knowingly giving false or misleading information in connection with federal tax matters, or participating in such activity.
- Soliciting employment by prohibited means as discussed in section 10.30 of Circular 230.
- Willfully failing to file a federal tax return, evading or attempting to evade any federal tax or payment, or participating in such actions.
- Misappropriating, or failing to properly and promptly remit, funds received from clients for payment of taxes or other obligations due the United States.
- Directly or indirectly attempting to influence the official action of IRS employees by the use of threats, false accusations, duress, or coercion, or by offering gifts, favors, or any special inducements.
- Being disbarred or suspended from practice as an attorney, CPA, public accountant, or actuary, by the District of Columbia or any state, possession, territory, commonwealth, or any federal court, or any federal agency, body, or board.
- Knowingly aiding and abetting another person to practice before the IRS during a period of suspension, disbarment, or ineligibility of that other person.
- Using abusive language, making false accusations and statements knowing them to be false, circulating or publishing malicious or libelous matter, or engaging in any contemptuous conduct in connection with practice before the IRS.
- Giving a false opinion knowingly, recklessly, or through gross incompetence; or following a pattern of providing incompetent opinions in questions arising under the federal tax laws.

Censure, Disbarments, and Suspensions

The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar an individual subject to Circular 230 from practice before the IRS if the individual is shown to be incompetent or disreputable, fails to comply with the regulations in Subpart B; or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

Censure is a public reprimand. Individuals subject to Circular 230 include any attorney, certified public accountant, or appraiser engaged in taxpayer representation or advice-giving activity with respect to federal tax matters, enrolled agent, enrolled actuary, enrolled retirement plan agent, or annual filing season program record of completion holders.

Authorizing a Representative

You may either represent yourself, or you may authorize an individual to represent you before the IRS. If you chose to have someone represent you, your representative must be a person eligible to do so before the IRS. See *Who Can Practice Before the IRS?* , earlier.

What Is a Power of Attorney?

A power of attorney is your written authorization for an individual to receive your confidential tax information from the IRS and to perform certain actions on your behalf. If the authorization is not limited, the individual generally can perform all acts that you can perform, except negotiating a check. The authority granted to enrolled retirement plan agents, enrolled actuaries and unenrolled return preparers holding records of completion is limited. For information on the limits regarding annual filing season program record of completion holders, see Revenue Procedure 2014–42 and www.irs.gov/Tax-Professionals/Return-Preparer-Office-(RPO)-At-a-Glance.

Acts performed. Attorneys, certified public accountants, and enrolled agents may perform the following acts:

1. Represent you before any office of the IRS.
2. Sign an offer or a waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund.
3. Sign a consent to extend the statutory time period for assessment or collection of a tax.
4. Sign a closing agreement.

Signing your return. The representative named under a power of attorney is not permitted to sign your income tax return unless:

1. The signature is permitted under the Internal Revenue Code and the related regulations (see Regulations section 1.6012-1(a)(5)), and
2. You specifically authorize this in your power of attorney.

For example, the regulation permits a representative to sign your return if you are unable to sign the return due to:

- Disease or injury.
- Continuous absence from the United States (including Puerto Rico) for a period of at least 60 days prior to the date required by law for filing the return.
- Other good cause if specific permission is requested of and granted by the IRS.

When a return is signed by a representative, it must be accompanied by a power of attorney (or copy) authorizing the representative to sign the return. For more information, see the Form 2848 instructions.

Limitation on substitution or delegation. A recognized representative can substitute or delegate authority under the power of attorney to another recognized representative only if the act is specifically authorized by you on the power of attorney.

After a substitution has been made, only the newly recognized representative will be recognized as the taxpayer's representative. If a delegation of power has been made, both the original and the delegated representative will be recognized by the IRS to represent you.

Disclosure of returns to a third party. Your representative cannot execute consents that will allow the IRS to disclose tax return or return information to a third party unless you specifically delegate this authority to your representative on line 5 of Form 2848.

Incapacity or incompetency. A power of attorney is generally terminated if you become incapacitated or incompetent.

The power of attorney can continue, however, in the case of your incapacity or incompetency if you authorize this on line 5 “Other” of the Form 2848 and if your non-IRS durable power of attorney meets all the requirements for acceptance by the IRS. See *Non-IRS powers of attorney* , later.

When Is a Power of Attorney Required?

Submit a power of attorney when you want to authorize an individual to receive your confidential tax information and represent you before the IRS, whether or not the representative performs any of the other acts cited earlier under *What Is a Power of Attorney?* .

A power of attorney is most often required when you want to authorize another individual to perform at least one of the following acts on your behalf.

1. Represent you at a meeting with the IRS.
2. Prepare and file a written response to an IRS inquiry.

Form Required

Use IRS Form 2848 to appoint a recognized representative to act on your behalf before the IRS. Individuals recognized to represent you before the IRS are listed under *Part II, Declaration of Representative,* of Form 2848. Your representative must complete that part of the form.

Non-IRS powers of attorney. The IRS will accept a non-IRS power of attorney, but a completed Form 2848 must be attached in order for the power of attorney to be entered on the Centralized Authorization File (CAF) system. For more information, see *Processing a non-IRS power of attorney* , later.

If you want to use a document other than Form 2848 to authorize the representation, it must contain the following information.

- Your name and mailing address.
- Your social security number and/or employer identification number.
- Your employee plan number, if applicable.
- The name and mailing address of your representative(s).
- The types of tax involved.
- The federal tax form number.
- The specific year(s) or period(s) involved.
- For estate tax matters, the decedent's date of death.
- A clear expression of your intention concerning the scope of authority granted to your representative(s).
- Your signature and date.

You also must attach to the non-IRS power of attorney a signed and dated statement made by your representative. This statement, which is referred to as the Declaration of Representative, is contained in Part II of Form 2848. The statement should read:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority,
2. I am subject to regulations contained in Circular 230 (31 C.F.R., Subtitle A, Part 10) as amended, governing practice before the Internal Revenue Service,
3. I am authorized to represent the taxpayer(s) identified in the power of attorney, and
4. I am a (naming the capacity in which representation is undertaken, as set forth in the list of eligible representatives at Part II of Form 2848.)

Required information missing. The IRS will not accept your non-IRS power of attorney if it does not contain all the information listed above. You can sign and submit a completed Form 2848 or a new non-IRS power of attorney that contains all the information. If you cannot sign an acceptable replacement document, your attorney-in-fact may be able to perfect (make acceptable to the IRS) your non-IRS power of attorney by using the procedure described next.
Procedure for perfecting a non-IRS power of attorney. Under the following conditions, the attorney-in-fact named in your non-IRS power of attorney can sign a Form 2848 on your behalf.

1. The original non-IRS power of attorney grants authority to handle federal tax matters (for example, general authority to perform any acts).
2. The attorney-in-fact attaches a statement (signed under penalty of perjury) to the Form 2848 stating that the original non-IRS power of attorney is valid under the laws of the governing jurisdiction.

Example.

John Elm, a taxpayer, signs a non-IRS durable power of attorney that names his neighbor and CPA, Ed Larch, as his attorney-in-fact. The power of attorney grants Ed the authority to perform any and all acts on John's behalf. However, it does not list specific tax-related information such as types of tax or tax form numbers.

Shortly after John signs the power of attorney, he is declared incompetent. Later, a federal tax matter arises concerning a prior year return filed by John. Ed attempts to represent John before the IRS but is rejected because the durable power of attorney does not contain required information.

If Ed attaches a statement (signed under the penalty of perjury) that the durable power of attorney is valid under the laws of the governing jurisdiction, he can sign a completed Form 2848 and submit it on John's behalf. If Ed can practice before the IRS (see *Who Can Practice Before the IRS?* , earlier), he can name himself as representative on Form 2848. Otherwise, he must name another individual who can practice before the IRS.

Processing a non-IRS power of attorney. The IRS has a centralized computer database system called the CAF system. This system contains information on the authority of taxpayer representatives. Generally, when you submit a power of attorney document to the IRS, it is processed for inclusion on the CAF system. Entry of your power of attorney on the CAF system enables IRS personnel, who do not have a copy of your power of attorney, to verify the authority of your representative by accessing the CAF. It also enables the IRS to automatically send copies of notices and other IRS communications to your representative if you specify that your representative should receive those communications.

You can have your non-IRS power of attorney entered on the CAF system by attaching it to a completed Form 2848 and submitting it to the IRS. Your signature is not required; however, your attorney-in-fact must sign the *Declaration of Representative* (see Part II of Form 2848).

Preparation of Form — Helpful Hints

The preparation of Form 2848 is illustrated by an example, later under *How Do I Fill Out Form 2848?* . However, the following will also assist you in preparing the form.

Line-by-line hints. The following hints are summaries of some of the line-by-line instructions for Form 2848.

Line 1—Taxpayer information. If a joint return is involved, the husband and wife each must file a separate Form 2848 if they both want to be represented, even if the representative is the same person. If only one spouse wants to be represented in the matter, that spouse files a Form 2848.

Line 2—Representative(s). Only individuals may be named as representatives. If your representative has not been assigned a CAF number, enter “None” on that line and the IRS will issue one to your representative. If the representative's address or phone number has changed since the CAF number was issued, you should check the appropriate box. Enter your representative's fax number if available.

If you want to name more than four representatives, attach additional Form(s) 2848. The IRS will send copies of notices and communications to up to two of your representatives. You **must**, however, check the boxes on line 2 of the Form 2848 if you want the IRS to routinely send copies of notices and communications to your representatives. If you do not check the boxes, your representatives will not routinely receive copies of notices and communications.

Line 3—Tax matters. You may list any tax years or periods that have already ended as of the date you sign the power of attorney. You also may include on a power of attorney future tax periods if that seems appropriate under the circumstances. Avoid general references such as “all years,” “all periods,” or “all taxes.” Any Form 2848 with such general references will be returned.

Line 4—Specific use not recorded on Centralized Authorization File (CAF). Certain matters cannot be recorded on the CAF system. Examples of such matters include, but are not limited to, the following. (A more detailed list appears in the Form 2848 instructions.)

- Requests for a private letter ruling or technical advice.
- Applications for an employer identification number (EIN).
- Claims filed on Form 843, Claim for Refund and Request for Abatement.
- Corporate dissolutions.
- Requests for change of accounting method.
- Requests for change of accounting period.
- Applications for recognition of exemption under sections 501(c)(3), 501(a), or 521 (Forms 1023, 1024, or 1028).
- Request for a determination of the qualified status of an employee benefit plan (Forms 5300, 5307, or 5310).
- Application for Award for Original Information under section 7623.
- Voluntary submissions under the Employee Plans Compliance Resolution System (EPCRS).
- Freedom of Information Act requests.

If the tax matter described on line 3 of Form 2848 concerns one of these matters specifically, check the box on line 4. If this box is checked, the representative should mail or fax the power of attorney to the IRS office handling the matter. Otherwise, the representative should bring a copy of the power of attorney to each meeting with the IRS.

Where To File a Power of Attorney

Generally, you can mail or fax a paper Form 2848 directly to the IRS. To determine where you should file Form 2848, see *Where To File* in the instructions for Form 2848.

If Form 2848 is for a specific use, mail or fax it to the office handling that matter. For more information on specific use, see the *Instructions for Form 2848*, line 4.

FAX copies. The IRS will accept a copy of a power of attorney that is submitted by facsimile transmission (fax). If you choose to file a power of attorney by fax, be sure the appropriate IRS office is equipped to accept this type of transmission.

Your representative may be able to file Form 2848 electronically via the IRS website. For more information, your representative can go to www.irs.gov and under the Tax Professionals tab, click on e-services–Online Tools for Tax Professionals. If you complete Form 2848 for electronic signature authorization, do not file Form 2848 with the IRS. Instead, give it to your representative, who will retain the document.

Updating a power of attorney. Submit any update or modification to an existing power of attorney in writing. Your signature (or the signature of the individual(s) authorized to sign on your behalf) is required. Do this by sending the updated Form 2848 or non-IRS power of attorney to the IRS office(s) where you previously sent the original(s), including the center where the related return was, or will be filed.

A recognized representative may substitute or delegate authority if you specifically authorize your representative to substitute or delegate representation in the original power of attorney. To make a substitution or delegation, the representative must file the following items with the IRS office(s) where the power of attorney was filed.

1. A written notice of substitution or delegation signed by the recognized representative.
2. A written declaration of representative made by the new representative.
3. A copy of the power of attorney that specifically authorizes the substitution or delegation.

Retention/Revocation of Prior Power(s) of Attorney

A newly filed power of attorney concerning the same matter will revoke a previously filed power of attorney. However, the new power of attorney will not revoke the prior power of attorney if it specifically states it does not revoke such prior power of attorney and either of the following are attached to the new power of attorney.

- A copy of the unrevoked prior power of attorney, or
- A statement signed by the taxpayer listing the name and address of each representative authorized under the prior unrevoked power of attorney.

Note.

The filing of Form 2848 will not revoke any
Form 8821 that is in effect.

Revocation of Power of Attorney/Withdrawal of Representative

Revocation by taxpayer. If you want to revoke a previously executed power of attorney and do not want to name a new representative, you must write "REVOKE" across the top of the first page of the Form 2848 with a current signature and date immediately below this annotation. Then, you must mail or fax a copy of the power of attorney with the revocation annotation to the IRS, using the *Where To File Chart*, in the 2848 instructions, or if the power of attorney is for a specific matter, to the IRS office handling the matter.

Withdrawal by representative. If your representative wants to withdraw from representation, he or she must write "WITHDRAW" across the top of the first page of the Form 2848 with a current signature and date immediately below the annotation. Then, he or she must provide a copy of the power of attorney with the withdrawal annotation to the IRS in the same manner described in *Revocation by taxpayer* , above. If your representative does not have a copy of the power of attorney he or she wants to withdraw, he or she must send the IRS a statement of withdrawal that indicates the authority of the power of attorney is withdrawn, lists the matters and years/periods, and lists the name, TIN, and address (if known) of the taxpayer. The representative must sign and date this statement.

A power of attorney held by a student will be recorded on the CAF system for 130 days from the receipt date. If you are authorizing a student to represent you after that time, you will need to submit another updated Form 2848.

When Is a Power of Attorney Not Required?

A power of attorney is not required when the third party is not dealing with the IRS as your representative. The following situations do not require a power of attorney.

- Providing information to the IRS.
- Authorizing the disclosure of tax return information using Form 8821, *Tax Information Authorization,* or other written or oral disclosure consent.
- Allowing the IRS to discuss return information with a third party via the checkbox provided on a tax return or other document.
- Allowing a tax matters partner (TMP) to perform acts for the partnership.
- Allowing the IRS to discuss return information with a fiduciary.

How Do I Fill Out Form 2848?

The following example illustrates how to complete Form 2848. The two completed forms for this example are shown on the next pages.

Example.

Stan and Mary Doe have been notified that their joint tax returns (Forms 1040) for 2011, 2012, and 2013 are being examined. They have decided to appoint Jim Smith, an enrolled agent, to represent them in this matter and any future matters concerning these returns. Jim, who has prepared returns at the same location for years, already has a Centralized Authorization File (CAF) number assigned to him. Mary does not want Jim to sign any agreements on her behalf, but Stan is willing to have Jim do so. They want copies of all notices and written communications sent to Jim. This is the first time Stan and Mary have given power of attorney to anyone. They should each complete a Form 2848 as follows.

Line 1—Taxpayer information. Stan and Mary must each file a separate Form 2848. On his separate Form 2848, Stan enters his name, street address, and social security number in the spaces provided. Mary does likewise on her separate Form 2848.

Line 2—Representative(s). On their separate Forms 2848, Stan and Mary each enters the name and current address of their chosen representative, Jim Smith. Both Stan and Mary want Jim Smith to receive notices and communications concerning the matters identified in line 3, so on their separate Forms 2848, Stan and Mary each checks the box in the first column of line 2. They also enter Mr. Smith's CAF number, his telephone number, and his fax number. Mr. Smith's address, telephone number, and fax number have not changed since the IRS issued his CAF number, so Stan and Mary do not check the boxes in the second column.

Line 3—Tax Matters. On their separate Forms 2848, Stan and Mary each enters “income tax” for the type of matter, “1040” for the form number, and “2011, 2012, and 2013” for the tax years.

Line 4—Specific use not recorded on Centralized Authorization File (CAF). On their separate Forms 2848, Stan and Mary make no entry on this line because they do not want to restrict the use of their powers of attorney to a specific use that is not recorded on the CAF. See *Preparation of Form — Helpful Hints* , earlier.

Line 5—Acts authorized. Mary wants to sign any agreement that reflects changes to her and Stan's joint 2011, 2012, and 2013 income tax liability, so she writes “Taxpayer must sign any agreement form” on line 5b of her Form 2848. Stan does not wish to restrict the authority of Jim Smith in this regard, so he leaves line 5b of his Form 2848 blank. If either Mary or Stan had chosen, they could have listed other restrictions on line 5b of their separate Forms 2848.

Line 6—Retention/revocation of prior power(s) of attorney. Stan and Mary are each filing their first powers of attorney, so they make no entry on this line. However, if they had filed prior powers of attorney, the filing of this current power would revoke any earlier ones for the same tax matter(s) unless they checked the box on line 6 and attached a copy of the prior power of attorney that they wanted to remain in effect.

If Mary later decides that she can handle the examination on her own, she can revoke her power of attorney even though Stan does not revoke his power of attorney. (See *Revocation of Power of Attorney/Withdrawal of Representative* , earlier, for the special rules that apply.)

Line 7—Signature of taxpayer. Stan and Mary each signs and dates his or her Form 2848. If a taxpayer does not sign, the IRS cannot accept the form.

Part II—Declaration of Representative. Jim Smith must complete this part of Form 2848. If he does not sign this part, the IRS cannot accept the form.

What Happens to the Power of Attorney When Filed?

A power of attorney will be recognized after it is received, reviewed, and determined by the IRS to contain the required information. However, until a power of attorney is entered on the CAF system, IRS personnel may be unaware of the authority of the person you have named to represent you. Therefore, during this interim period, IRS personnel may request that you or your representative bring a copy to any meeting with the IRS.

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Filled-in Form 2848 - Page 1

This image is too large to be displayed in the current screen. Please click the link to view the image.

Filled-in Form 2848 - Page 2

This image is too large to be displayed in the current screen. Please click the link to view the image.

Filled-in Form 2848 - Page 1

This image is too large to be displayed in the current screen. Please click the link to view the image.

Filled-in Form 2848 - Page 2

Processing and Handling

How the power of attorney is processed and handled depends on whether it is a complete or incomplete document.

Incomplete document. If Form 2848 is incomplete, the IRS will attempt to secure the missing information either by writing or telephoning you or your representative. For example, if your signature or signature date is missing, the IRS will contact you. If information concerning your representative is missing and information sufficient to make a contact (such as an address and/or a telephone number) is on the document, the IRS will try to contact your representative.

In either case, the power of attorney is not considered valid until all required information is entered on the document. The individual(s) named as representative(s) will not be recognized to practice before the IRS, on your behalf, until the document is complete and accepted by the IRS.

Complete document. If the power of attorney is complete and valid, the IRS will take action to recognize the representative. In most instances, this includes processing the document on the CAF system. Recording the data on the CAF system enables the IRS to direct copies of mailings to authorized representatives and to readily recognize the scope of authority granted.

Documents not processed on CAF. Specific-use powers of attorney are not processed on the CAF system (see *Preparation of Form — Helpful Hints* , earlier). For example, a power of attorney that is a one-time or specific-issue grant of authority is not processed on the CAF system. These documents remain with the related case files. In this situation, you should check the box on line 4 of Form 2848. In these situations, the representative should bring a copy of the power of attorney to each meeting with the IRS.

Dealing With the Representative

After a valid power of attorney is filed, the IRS will recognize your representative. However, if it appears the representative is responsible for unreasonably delaying or hindering the prompt disposition of an IRS matter by failing to furnish, after repeated requests, nonprivileged information, the IRS can contact you directly. For example, in most instances in which a power of attorney is recognized, the IRS will contact the representative to set up appointments and to provide lists of required items. However, if the representative is unavailable, does not respond to repeated requests, and does not provide required items (other than items considered privileged), the IRS can bypass your representative and contact you directly.

If a representative engages in conduct described above, the matter can be referred to the Office of Professional Responsibility for consideration of possible disciplinary action.

Notices and other correspondence. If you want to authorize your representative to receive copies of all notices and communications sent to you by the IRS, you must check the box that is provided under the representative's name and address. **No more than two representatives may receive copies of notices and communications sent to you by the IRS.** Do not check the box if you do not want copies of notices and communications sent to your representative(s).

Note.

Representatives will not receive forms, publications, and other related materials with the correspondence.

Appendix D: Criminal Case Studies

Case Studies:

Examples of Tax Fraud Investigations

Fiscal Years 2011 - 2015[xviii]

2015

The following examples of employment tax fraud investigations are written from public record documents on file in the court records in the judicial district in which the cases were prosecuted.

Vision for IRS Criminal Investigation (for 2015):

Investigative Priorities: CI's highest priority is to enforce our country's tax laws and support tax administration. The Fiscal Year 2015 **i**nvestigative priorities were:

- Identity Theft Fraud
- Abusive Return Preparer Fraud & Questionable Refund Fraud
- International Tax Fraud
- Fraud Referral Program
- Political/Public Corruption
- Organized Crime Drug Enforcement Task Force (OCDETF)
- Bank Secrecy Act and Suspicious Activity Report (SAR) Review Teams
- Asset Forfeiture
- Voluntary Disclosure

Restaurant Chain Accountant Sentenced For Tax Fraud Scheme On Aug. 6, 2015, in Philadelphia, Pennsylvania, William J. Frio, of Springfield Township, was sentenced to 60 months in prison, four years of supervised release and ordered to pay $1.7 million in restitution. Frio pleaded guilty on Jan. 26, 2015, to conspiracy to commit tax evasion, filing false tax returns, loan fraud and aggravated structuring of financial transactions. Frio was an accountant and income tax preparer who provided services to the Nifty Fifty's organization dating back to 1986. Frio and five others, including the restaurant chain's owners and managers, participated in a long-running scheme to avoid paying millions of dollars in personal and employment taxes. The scheme defrauded the IRS by failing to properly account for more than $15 million in gross receipts. Frio and the owners and principals of Nifty Fifty's conspired in a scheme to use skimmed cash to pay themselves and people and businesses who supplied goods and services to the Nifty Fifty's restaurants. In 2008, Frio submitted a false loan application and other documents to a bank, for a $417,000 mortgage for his personal residence. Between January 2009 and November 2009, Frio knowingly structured transactions with the bank, totaling more than $2.6 million, as part of a pattern of illegal activity involving transactions of more than $100,000 in a 12-month period. Frio used his position as the Nifty Fifty's accountant to embezzle millions of dollars that belonged to the organization.

Former Construction Boss Sentenced for Role In $58 Million HOA Scheme, Tax Evasion On Aug. 6, 2015 in Las Vegas, Nevada, Leon Benzer, a former construction boss from Las Vegas, was sentenced to 188 months in prison and ordered to pay restitution of $13,294,100. Benzer pleaded guilty on Jan. 23, 2015, to conspiracy to commit mail and wire fraud, wire fraud, mail fraud and tax evasion for his role in a scheme to fraudulently gain control of condominium homeowners' associations (HOAs) in the Las Vegas area in order to secure construction and other contracts for himself and others. Benzer admitted that, from about August 2003 through February 2009, he and an attorney developed a scheme to control the boards of directors of HOAs in the Las Vegas area. As part of the scheme, Benzer and his co-conspirators recruited straw buyers to purchase condominiums and secure positions on HOAs' boards of directors. Benzer paid the board members to take actions favorable to his interests, including hiring his co-conspirator's law firm to handle construction-related litigation and awarding remedial construction contracts to Benzer's company, Silver Lining Construction. Forty-two individuals have been convicted of crimes in connection with the scheme. In addition, beginning around Sept. 25, 2007, Benzer owed the IRS at least $459,204 for his individual income taxes for tax years 2001 through 2005. However, Benzer willfully attempted to evade the payment of these taxes by preparing and causing to be prepared false financial forms with the IRS in order to conceal income and assets. Also, about Sept. 25, 2007, Benzer owed at least $705,982 for employment taxes for tax periods Sept. 30, 2003, Dec. 31, 2003 and March 31, 2004 and for unemployment taxes for tax year 2003. Instead of paying these taxes, Benzer willfully attempted to evade payment by opening a bank account in his name to conceal money and assets and preparing and filing false financial forms with the IRS.

Married Lawyer and Doctor Sentenced for Obstructing IRS Audit On July 31, 2015, in Manhattan, New York, Jeffrey S. Stein and Marla Stein, who are husband and wife, were sentenced to 18 months and 12 months and one day in prison, respectively and ordered to pay restitution of $344,989 to the IRS for obstructing the IRS. Jeffrey S. Stein, a vascular surgeon, and Marla Stein, a New York personal injury lawyer, reported the profits from their medical and law practices, respectively, on separate Schedules C (Profit or Loss From Business) attached to the joint U.S. Individual Income Tax Returns, Forms 1040, that they filed for the tax years 2009-2012. The Steins provided false and fictitious information to their accountant in order to fraudulently reduce the amount of taxes they would have to pay to the IRS. In February 2013, the IRS notified the Steins that their tax returns for the 2010 and 2011 tax years had been selected for audit. In response to requests by an IRS auditor for documents, the Steins created and provided various fabricated and fictitious 7 documents and information as part of a corrupt effort to convince the IRS auditor that the expenses claimed on their respective Schedules C were legitimate. Additionally, for the tax years 2007-2013, the Steins failed to inform their accountant that they employed and paid approximately $15,000 annually in cash wages to a household employee. As a result, the Steins failed to pay to the IRS various employment taxes due and owing to the IRS, and also aided the employee in avoiding detection by the IRS of the employee's failure to report her cash wages to the IRS for the tax years 2007-2013.

Happy's Pizza Founder and Co-Conspirators Sentenced for Multi-Million Dollar Tax Fraud Scheme On July 10, 2015, in Detroit, Michigan, Happy Asker, of West Bloomfield, was sentenced to 50 months in prison, three years of supervised release and ordered to pay $2.5 million in restitution to the IRS. Asker was convicted of filing false income tax returns for the years 2006 through 2008, aiding and assisting in the filing of false income and payroll tax returns for the years 2006 through 2009, and corruptly endeavoring to obstruct and impede the administration of the Internal Revenue Code. Asker was the president and founder of Happy's Pizza, a chain of restaurants in Michigan, Ohio and Illinois. From 2004 through 2011, Asker, along with certain franchise owners and employees, executed a systematic and pervasive tax fraud scheme to defraud the IRS. Gross sales and payroll amounts were substantially underreported on numerous corporate income tax returns and payroll tax returns filed for nearly all 60 Happy's Pizza franchise locations. From 2008 to 2010, Asker and his co-conspirators diverted for personal use more than $6.1 million in cash gross receipts from approximately 35 different Happy's Pizza stores. In total, Asker and certain employees and franchise owners failed to report approximately $3.84 million of gross income and approximately $2.39 million in payroll taxes from the various Happy's Pizza franchises to the IRS. Maher Bashi, Happy's Pizza corporate chief operating officer; Tom Yaldo, an owner of numerous franchises; Arkan Summa, an owner of numerous franchises; and Tagrid Bashi, a nominee franchise owner; have been sentenced for their roles in the scheme to terms ranging from three years of supervised release to 24 months of prison and ordered to pay total restitution of $1,134,222.

Refund Fraud Program Refund fraud poses a significant threat to the tax system. Criminal attempts to obtain money from the government under false pretenses via the filing of a fraudulent tax return not only results in the loss of funds needed for vital government programs but can also impact taxpayers confidence in the tax system and their willingness to voluntarily meet tax filing obligations. The Refund Fraud Program is broken down into two distinct categories: the *Questionable Refund Program*, which also includes identity theft investigations and the *Abusive Return Preparer Program.* The primary focus of the Questionable Refund Program is to identify fraudulent claims for tax refunds. Generally, these schemes involve individuals filing multiple false tax returns supported by false information or using the identifiers of other individuals knowingly or unknowingly. The Abusive Return Preparer Program investigations generally involve the orchestrated preparation and filing of false income tax returns, in either paper or electronic form, by dishonest preparers who may claim inflated personal or business expenses, false deductions, excessive exemptions, and/or unallowable tax credits. The preparers' clients may or may not have knowledge of the falsity of the returns. Identity Theft Identity theft-related crimes continue to be a priority area of investigation for CI. During FY 2015, CI remained committed to investigating egregious identity theft schemes through administrative and grand jury investigations utilizing various field office and multiregional task forces including state/local and federal law enforcement agencies. Currently, CI participates in more than 70 task forces/working groups throughout the country that investigate both financial crimes as well as identity theft crimes. CI's level of commitment towards the fight against identity theft continues to be evident. There is a designated

management official who serves as the National Identity Theft Coordinator. This position is responsible for overseeing CI's national identity theft efforts including formulating policy and procedures. In addition to a national coordinator, there are identity theft coordinators within each of 8 CI's 25 field offices. CI is a key partner on the Commissioner's Security Summit, which includes the IRS, State Divisions of Taxation, and private sector entities who joined in a collaborative effort to share critical information and ideas to combat tax related identity theft.

Data Compromises: Data compromises, more commonly referred to as data breaches, have impacted all sectors of society. During FY 2015, CI experienced an increase in tax-related identity theft, which was generally linked to compromised personal identifying information acquired via a variety of situations involving compromised detailed financial data. Twenty-two field offices initiated investigations linked to computer intrusions, account takeovers, and data compromises affecting tax administration. CI continued outreach efforts within the IRS, the law enforcement community, and the private sector to acquire information regarding compromised data that could impact tax administration. This information helped CI to proactively identify or prevent successful false claims for refunds utilizing the stolen data. Additionally, CI continues to participate in a cross functional working group within the IRS to develop new analytical filters, as well as enhanced victim assistance.

Identity Theft Clearinghouse (ITC): The ITC continues to develop and refer identity theft refund fraud schemes to CI field offices for investigation. The ITC serves as a centralized focal point to address incoming identity theft leads from throughout the country. The ITC's primary responsibilities are analyzing identity theft leads and facilitating discussions between field offices with multi-jurisdictional issues.

Law Enforcement Assistance Program (LEAP): In March 2013, IRS announced that the Law Enforcement Assistance Program, formerly known as the "Identity Theft Pilot Disclosure Program," was expanding nationwide. This program was developed jointly by CI and other IRS counterparts as a result of a significant increase in requests from state and local law enforcement agencies for tax return documents associated with identity theft- related refund fraud. The program allows for the disclosure of tax returns and return information associated with accounts of known and suspected victims of identity theft with the express written consent of those victims. To date, more than 1,100 state and local law enforcement agencies from 48 states have participated in this program. In FY 2015 over 6,700 requests for assistance were received representing a 119% increase over FY 2014.

Outreach: CI's outreach strategy included hosting or attending educational events focusing on enhanced IT security efforts, tax-related ID theft investigative techniques and other refund-related frauds. Target audience groups included law enforcement partners, private sector entities involved in tax preparation, payroll service industries and IRS personnel. Local and

national events included presentations at the International Association of Financial Criminal Investigators, National Association of Attorneys General, American Payroll Association training seminars and tax practitioner events throughout the country. Additional efforts included creating educational materials regarding LEAP and information on the impact of identity theft/data compromises on tax administration. These included fraud alerts, bulletins, and training materials to regional law enforcement information sharing systems, the International Association for Chiefs of Police and the National Sheriff's Association.

Proactive Prevention: CI continues to receive information from private and public sector sources involving compromised personal identifying information. This information is shared with W&I and allows the IRS to analyze and make necessary adjustments to accounts of taxpayers that are likely victims of identity theft. Additionally, CI collaborates with cross functional partners in the development and implementation of analytical filters designed to identify fraudulent claims at filing and prevent further victimization of impacted individuals.

Examples of identity theft investigations adjudicated in FY 2015 include:

Nine Defendants Sentenced in $24 Million Stolen Identity Tax Refund Fraud Ring On Sept. 25, 2015, in Montgomery, Alabama, Keisha Lanier, of Newnan, Georgia, was sentenced to 180 months in prison, three years of supervised release and ordered to forfeit $5,811,406 for her role as the ringleader of a stolen identity tax refund fraud conspiracy. Between January 2011 and December 2013, Lanier and co-conspirator, Tracy Mitchell, led a large-scale identity theft ring that filed more than 9,000 false individual federal income tax returns that claimed more than $24 million in fraudulent claims for tax refunds. The IRS paid out close to 9 $10 million in refunds on these fraudulent claims. The defendants obtained the stolen identities from various sources, including from the U.S. Army, several Alabama state agencies, a Georgia call center and employee records from a Georgia company. Mitchell worked at the hospital located at Fort Benning, Georgia, where she had access to the identification data of military personnel. She stole the personal information of the personnel and used it to file false tax returns. In order to file the false tax returns, the defendants obtained several IRS Electronic Filing Numbers in the names of sham tax businesses. The defendants then applied for bank products, to include blank check stock. The defendants directed the IRS to pay the anticipated tax refunds to prepaid debit cards, by U.S. Treasury checks and to financial institutions, which in turn issued the tax refunds via prepaid debit cards or checks. When the refunds were sent through the financial institutions, the defendants simply printed out the refund checks from the check stock that had been sent to their homes. After the financial institutions stopped the defendants from printing out the tax refund checks, the defendants recruited U.S. Postal Service employees. The corrupt postal employees gave the defendants specific addresses along their postal routes for mailing the U.S. Treasury checks. Once the checks came to the address, the postal employees took the checks and turned them over to the defendants for a fee. The scheme also involved a complex money laundering operation. Almost $10 million in fraudulent tax refund checks were cashed at several businesses located in Alabama, Georgia

and Kentucky. On Aug. 7, 2015, in Montgomery, Alabama, eight residents of Alabama and Georgia were sentenced for their roles in a $24 million stolen identity refund fraud (SIRF) conspiracy. Sentenced were:

- Tracy Mitchell, 159 months in prison and ordered to pay a forfeiture judgment in the amount of $329,242, which was seized in cash from her residence;
- Talarius Paige, 60 months in prison;
- Mequetta Snell-Quick, 24 months and one day in prison;
- Latasha Mitchell, 36 months in prison;
- Dameisha Mitchell, 65 months in prison;
- Sharonda Johnson, 24 months in prison;
- Patrice Taylor, 12 months and one day in prison; and
- Cynthia Johnson, two years of probation.

Four Georgia Residents Sentenced For Filing Over 1,100 Fraudulent Tax Returns On July 27, 2015, in Albany, Georgia, four defendants were sentenced for their roles in a tax refund fraud conspiracy. Patrice Taylor, of Ashburn, was sentenced to 84 months in prison and ordered to pay $1,107,802 in restitution to the IRS. Her husband, Antonio Taylor was sentenced to 147 months in prison and ordered to pay $1,107,802 in restitution to the IRS. Jarrett Jones, of Ty-Ty, Georgia, was sentenced to 20 months in prison and ordered to pay $94,959 in restitution. Victoria Davis, of Cordele, Georgia, was sentenced to 12 months in prison and ordered to pay $6,256 in restitution.

Florida Man Sentenced for Stolen ID Theft Scheme, Obstruction of Justice On Aug. 11, 2015, in Richmond, Virginia, Eddie Blanchard, of Miami, Florida, was sentenced to 204 months in prison, three years of supervised release and ordered to pay $568,625 in restitution for his role in a stolen identity tax refund fraud scheme. Blanchard participated in the Miami-based scheme with three confederates, Ramoth Jean, Junior Jean Merilia, and Jimmy Lord Calixte. The men travelled repeatedly to Richmond in 2012 and used stolen personal identifying information (PII) to file hundreds of fraudulent tax returns, utilizing online tax preparation programs. The men claimed significant refunds on the fraudulent returns and requested the refunds be placed on pre-paid debit cards, which were later mailed to Richmond addresses selected by the conspirators. The scheme began to unravel when a Henrico County, Virginia, police officer encountered Jean removing a box containing stolen PII from a storage unit rented by the coconspirators. Following Jean's subsequent arrest on June 20, 2013, Blanchard convinced him to mislead federal investigators about the identity of his actual co-conspirators, going so far as to facilitate the creation of a fictional accomplice. Jean ultimately refused to testify before a federal grand jury about this matter. Jean was sentenced on Jan. 9, 2014 to 114 months in prison and subsequently sentenced to an additional eight months on a separate contempt charge for his refusal to testify before the grand jury. Merilia was sentenced on June 19, 2015 to 133 months in prison for his role in the fraud scheme and the subsequent obstruction of justice. Calixte is currently a fugitive. Between January 2011 and February

2013, Patrice Taylor conspired with her husband and Jones to file over 1,100 fraudulent tax returns. At least 1,089 of the returns were filed electronically from two IP addresses registered to Patrice Taylor, both located at their home. From January 2012 to October 2012, a cell phone subscribed to Patrice Taylor was used to call the IRS's Automated Electronic Filing PIN Request 114 times. In addition, Patrice Taylor was employed at Tift Regional Hospital and used the personal identifying information of five patients to file fraudulent federal income tax returns. Also, the identities of 531 sixteen-year-olds were used to file fraudulent federal income tax returns. Finally, in January 2012, Patrice Taylor filed a federal income tax return, which included a dependent she was not authorized by law to claim, and requested a refund in the amount of $6,776.

Ringleader and Conspirators Sentenced in Large-Scale Stolen Identity Refund Fraud Scheme On July 21, 2015, in Newark, New Jersey, Julio C. Concepcion, of Passaic, was sentenced to 84 months in prison, three years of supervised release and ordered to pay $5,643,695 in restitution. Concepcion previously pleaded guilty to conspiracy to theft of government funds. Concepcion also pleaded guilty to conspiracy to commit wire fraud in connection with his involvement in a separate mortgage fraud scheme. From about October 2009 through May 2013, Concepcion and others participated in a conspiracy to obtain the personal identifying information of other individuals, including residents of Puerto Rico. Conspirators filed false and fraudulent income tax returns using the stolen information, which generated income tax refund checks. Concepcion got the fraudulent refund checks and recruited others to open bank accounts and deposit the checks, sometimes providing them with false identification in order to do so. Other conspirators were sentenced as follows: Concepcion's two sons, Angel Concepcion-Vasquez and Julio ConcepcionVasquez were each sentenced to 16 months in prison; Jose Zapata and Romy Quezada were sentenced to three years and two years of probation, respectively; and Reyes Flores-Perez was sentenced to 26 months in prison. From January 2008 through March 2010, Concepcion conspired with others to commit wire fraud, specifically mortgage fraud. Concepcion and others caused people to purchase homes and receive mortgages either by using false identification documents or without the intent to live in the homes or pay off the mortgages.

Tampa Tax Fraudster and Wife Sentenced in Identity Theft Tax Fraud Scheme On June 30, 2015, in Tampa, Florida, Eneshia Carlyle was sentenced to 138 months in prison and three years of supervised release for wire fraud and aggravated identity theft. In addition, Carlyle received a forfeiture money judgment in the amount of $1,820,759 and ordered to pay restitution in the same amount. Carlyle pleaded guilty on Nov. 26, 2014. On June 19, 2015, her husband, James Lee Cobb III, was sentenced to 324 months in prison, five years of supervised release and ordered to forfeit $1,820,759 in a money judgment and to pay restitution in the same amount. Cobb pleaded guilty on Dec. 1, 2014 to conspiracy to commit mail and wire fraud, wire fraud, aggravated identity theft, and for being a felon in possession of a firearm as an armed career criminal. Cobb and Carlyle conspired with others to use stolen names, dates of birth, and Social Security numbers to file false tax returns and open pre-paid debit cards. He also obtained "burner" phones using stolen identities. From 2011 through November 2013, Cobb and his co-conspirators filed false tax returns claiming approximately

$3 million in refunds. During the execution of a search warrant at their residence, law enforcement officers recovered lists and medical records containing the personal identifying information of more than 7,000 victims. Many of the victims had their identities stolen from healthcare facilities, including from the James A. Haley VA hospital; the Florida Hospital (formerly known as University Community Hospital); ambulance services in Virginia, Georgia, and Texas; a local medical billing company; and court records. In addition, a number of deceased victims' names were obtained from genealogy websites. At the time of this offense, Cobb was on supervised release from a prior federal conviction.

Fifteen Georgia Residents Sentenced In Stolen Identity and Tax Fraud Scheme On June 23, 2015, in Statesboro, Georgia, Stacy Williams, of Statesboro, was sentenced to 94 months in prison, three years of supervised and ordered to pay restitution in the amount of $84,940. Williams was convicted by jury trial on Sept. 23, 2014 of conspiracy, wire fraud, wrongful disclosure of individually identifiable health information and aggravated identity theft. Williams was the last of 15 federal defendants charged in April 2014 for their roles in a largescale identity theft and tax fraud scheme. In addition to Williams, the other participants convicted and sentenced as part of this prosecution include:

- Angellica Roberts, Claxton, Georgia, 126 months in prison;
- Katrina Beasley, Claxton, 104 months;
- Terry Gordon, Swainsboro, 81 months;
- Santana Lundy, Statesboro, 69 months;
- Aishia Mills, Statesboro, 27 months;
- Latasha Charles, Statesboro, 57 months;
- Chrystal Harlie, Statesboro, 54 months;
- Martisha Hill, Augusta, Georgia, 42 months;
- Monica Whitfield, Statesboro, 42 months;
- Melissa Whitfield, Statesboro, 40 months;
- Candace Hills, Claxton, 36 months;
- Marquita Watson, Claxton, 18 months;
- Deondray Richardson, Keysville, Georgia, five years of probation; and
- Mary McDilda, Claxton, five years of probation.

Abusive Return Preparer Program

The Abusive Return Preparer Program investigations generally involve the orchestrated preparation and filing of false income tax returns, in either paper or electronic form, by dishonest preparers who may claim: inflated personal or business expenses, false deductions, excessive exemptions, and/or unallowable tax credits. The preparers' clients may or may not have knowledge of the falsity of the returns.

Examples of abusive return preparer program investigations adjudicated in FY 2015 include:

Husband and Wife Tax Preparers Sentenced for Tax and Wire Fraud On Feb. 20, 2015, in Fort Worth, Texas, Jacqueline Morrison and Gladstone Morrison were each sentenced to 187 months in prison and ordered to pay nearly $18 million in restitution. The married couple operated Jacqueline Morrison & Associates (JMA) in Arlington and Fort Worth, Texas. A federal jury convicted Jacqueline and Gladstone Morrison each on one count of conspiracy to aid and assist in the preparation and presentation of false and fraudulent tax returns in October 2014. In addition, they were both convicted of aiding and assisting in the preparation, the presentation of false and fraudulent tax returns and wire fraud. The Morrisons were responsible for filing numerous tax returns that were false and fraudulent to increase client refunds. The Morrisons and JMA tax return preparers, who the Morrisons trained, used the false substantial losses reported to offset wage income, resulting in clients recovering all or most of their tax withholding. As part of the conspiracy, the Morrisons developed a series of forms for the client to sign at the time the return was prepared. These forms were intended to protect the Morrisons by placing all the responsibility for any false information on the client. The Morrisons also attempted to profit by using JMA's fraud to build a large client list, which they then leveraged into a franchise agreement with Express Tax Services. However, after they entered the franchise agreement, the IRS terminated the Morrisons' Electronic Filing Identification Numbers (EFINs) because of their fraudulent activities. To conceal that fact, and perpetuate the continuation of the franchise agreement, the Morrisons provided Express Tax Services EFINs that belonged to a business associate. The franchise agreement included wiring a payment of $750,000 from Express Tax to the Morrisons. In addition, the Morrisons entered into a separate agreement to sell JMA. Gladstone Morrison misled the buyer about the true nature of JMA's relationship with Express Tax by telling the buyer that the arrangement was nothing more than a "co-branding" or "co-marketing" agreement. By entering into parallel agreements with separate entities — Express Tax and an individual buyer, the Morrisons received payments from both entities for the same asset. When the Morrison's agreements with both Express Tax and the buyer fell apart, they again tried to profit by selling JMA to RealTex Ventures LLC for $425,000.

Texas Return Preparers Sentenced for Tax Fraud On May 13, 2015, in Fort Worth, Texas, Ramona C. Johnson and her daughter-in-law, Nekia N. Everson, both tax return preparers, were sentenced to 170 months and 95 months in prison, respectively. Both women were convicted at trial in November 2014. Johnson and Everson were each convicted on conspiracy to aid and assist in the preparation and presentation of a false tax return. Johnson was also convicted of aiding and assisting in the preparation of a false tax return and filing false tax returns. Johnson managed/ operated a tax preparation business in Fort Worth that was known, among other names, as Tax Office One. Johnson's daughter-in-law, Everson, was a return preparer for the business. Johnson and Everson, and those working with them, prepared and filed false and fraudulent tax returns that included various false and fraudulent schedules,

deductions, exemptions, and credits with the goal of reducing the amount of taxes owed by the taxpayers and obtaining larger refunds for the taxpayers than they were entitled to receive. As a result of the larger refunds, Johnson and Everson could charge higher fees for preparing returns, build client loyalty, and increase business through client referrals. For calendar years 2009 and 2010, Johnson filed tax returns where she reported total income of $2,850 and $16,906, respectively, when she well knew that the income amount was understated in that it did not include income she received for her work preparing tax returns. Between January 2008 and October 2011 Johnson's tax preparation business collected more than $1.9 million in tax preparation fees from clients.

Louisiana Tax Return Preparer, 12 CoDefendants Sentenced For $10 Million Tax Fraud, Money Laundering Conspiracies On Nov. 19, 2014, in New Orleans, Jacqueline J. Arias, a tax return preparer from Spruce Pine, Alabama, was sentenced to 97 months in prison, three years of supervised release and ordered to pay restitution of $10,589,326 for her role in filing false tax returns and money laundering. Arias was also ordered to forfeit nearly $400,000 in cash that was seized as part of the case. On July 8, 2014, Arias pleaded guilty to conspiracy to defraud the United States, mail fraud and money laundering. Arias admitted to her role in a years-long scheme to defraud the United States by filing false income tax returns that fraudulently claimed large tax refunds. Arias, her husband, and 19 other individuals, all of whom were foreign nationals, as well as her tax preparation business were charged as part of the case. Four defendants are fugitives overseas, and one defendant, recently arrested in Panama, is currently set for trial in December. The defendants below, who all previously pleaded guilty, received the following sentences:

- Cesar Alejandro Soriano, 42 months;
- Oscar Armando Perdomo, 42 months;
- Yoni Perdomo, 38 months;
- Arnulfo Santos-Medrado, 38 months;
- Elsides Edgardo Alvarado-Canales, 36 months;
- Eliecer Obed Rodriguez, 34 months;
- Octavio Josue Perdomo, 34 months;
- Elber Mendoza-Lopez, 34 months;
- Aurelio Montiel-Martinez, 24 months;
- Miller Perdomo-Aceituno, 24 months;
- Santos Martin Hernandez, 24 months; and
- Susana Carillo Mendoza, 19 months

Arias and her co-conspirators filed false returns listing Individual Taxpayer Identification Numbers (ITINs). An ITIN is a tax processing number issued by the Internal Revenue Service (IRS) to individuals who do not have, and are not eligible to obtain, a Social Security Number. Arias was a Certified Acceptance Agent, meaning that she was entrusted by the IRS with the responsibility of reviewing the documentation of an ITIN applicant's identity and alien status

for authenticity, completeness and accuracy before submitting their application to the IRS. However, Arias filed false applications for ITINs, false income tax returns, and collected preparation fees from the fraudulently-obtained tax refunds. Arias was also charged with filing false tax returns for her corporation, JB Tax Professional Services, and for herself individually.

Former Arkansas Tax Preparer Sentenced for Preparing Fraudulent Tax Returns On June 18, 2015, in Little Rock, Arkansas, Christopher T. Craig was sentenced to 46 months in prison, one year of supervised release and ordered to pay $1,092,177 in restitution to the IRS. On Aug. 25, 2014, Craig pleaded guilty to aiding and assisting in the preparation of fraudulent income tax returns. Craig, in his capacity as a paid return preparer, prepared false employment tax returns on behalf of other taxpayers for tax years 2010 and 2011. Unknown to the taxpayers, Craig filed the returns in a way that reduced the amount of taxes owed to the IRS by the taxpayers. Craig collected tax payments from the taxpayers for the correct amount of taxes and diverted the difference to between the correct amount owed and the amount paid to the IRS. As a result of Craig's fraudulent conduct, which affected more than 50 victims, the total loss to the government was $1,092,177.

Rhode Island Tax Preparer Sentenced for Stealing and Selling Identities of Minors On March 13, 2015, in Providence, Rhode Island, Evelyn Nunez was sentenced to 30 months in prison, two years of supervised release and ordered to pay more than $1.4 million in restitution, jointly with her coconspirators, to the IRS and the State of Rhode Island. Nunez pleaded guilty on Dec. 12, 2014, to conspiracy to defraud the government and aggravated identity theft. Co-conspirator, Tashia Bodden was sentenced to 36 months in prison and two years of supervised release and a third defendant, Wendy Molina, received three years of probation, with the first six months as home confinement. The trio's scheme was to steal the personal identifying information of minors named as dependents on legitimate tax returns prepared by the company, NBP Multiservices (NBP), a tax preparation business in Cranston and then sold the information to other tax filers for use on their tax returns in order to increase tax refunds. The Scheme Development Center, a division of the IRS, conducted an analysis of tax returns prepared by individuals working at NBP and identified questionable use of children claimed as dependents. Between January 2008 and February 2012, taxpayers purchased false dependents for approximately $600 - $700 per dependent. On numerous tax returns the defendants falsely claimed dozens of children as foster children, nieces and nephews of some of their clients. In reality, they had no relation to the taxpayer. The investigation revealed that the scheme defrauded the IRS of more than $1.34 million and defrauded the State of Rhode Island of more than $65,500.

Missouri Woman Sentenced for Orchestrating Tax Scheme to Obtain "Free Money" On June 12, 2015, in East St. Louis, Illinois, Tanya Nichols, of St. Louis, Missouri, was sentenced to 57 months in prison, three years of supervised release and ordered to pay $603,898 in restitution. Nichols pleaded guilty on March 5, 2015, to conspiracy to obstruct or impair the IRS in the lawful assessment and collection of income taxes and distribution of tax refunds, mail fraud and theft of government property. Nichols prepared fraudulent income tax returns for individual tax filers in order to generate "refundable tax credits," such as the earned income tax

credit and the child tax credit. The false tax returns generated a larger tax refund than the filer was entitled to receive. Nichols shared the proceeds generated from the fraudulent returns with the tax filers, while collecting a fee in excess of that typically charged by legitimate tax preparers. Nichols also paid finders' fees to those who recruited tax filers to participate in the scheme. Nichols and her co- conspirators solicited low-income individuals residing in St. Louis and East St. Louis to participate in this refund scheme by promising IRS tax refunds, sometimes marketed as "free money." Nichols' half-brother Justin Durley, of Hazelwood, Missouri, was charged with theft of government property and was separately sentenced to three months in prison for stealing more than $3,000.

California Tax Return Preparer Sentenced for Tax Fraud On July 31, 2015, in Oakland, Runnveer Singh, of Hayward, was sentenced to 24 months in prison, one year of supervised release and ordered to pay $124,528 in restitution to the IRS. Singh pleaded guilty to aiding and assisting in the preparation of false tax returns. For tax years 2009 through 2011, Singh prepared false tax returns claiming both false and ineligible deductions and credits for clients. By including these items on his clients' tax returns, he caused the IRS to issue inflated tax refunds of at least $130,435. On Nov. 14, 2012, during a search warrant at Singh's residence, he told IRS Special Agents that he knowingly prepared false tax returns in order to obtain returning customers. Following the execution of the search warrant and his statement to IRS-CI Special Agents, Singh instructed one of his clients to submit both false and ineligible information to an IRS Revenue Agent during the audit of his 2010 income tax return, in order to justify the false and ineligible business expenses Singh reported on the client's 2010 tax return.

Questionable Refund Program

The primary focus of the Questionable Refund Program is to identify fraudulent claims for tax refunds. Generally, these schemes involve individuals filing multiple false tax returns supported by false information or using the identifiers of other individuals knowingly or unknowingly.

Examples of questionable refund program investigations adjudicated in FY 2015 include:

Alabama Woman Sentenced for Leading $4 Million Dollar Stolen Identity Refund Fraud Ring On June 25, 2015, in Montgomery, Alabama, Tamaica Hoskins, of Phenix City, was sentenced to 145 months in prison, three years of supervised release and ordered to forfeit $1,082,842 in proceeds from the Stolen Identity Refund Scheme she led. Between September 2011 and June 2014, Hoskins, co-conspirators Roberta Pyatt, Lashelia Alexander and others, used stolen identities to file more than 1,000 false federal income tax returns that fraudulently claimed more than $4 million in tax refunds. Hoskins obtained stolen identities from various sources. In order to file the false tax returns, Hoskins and Pyatt obtained two Electronic Filing Identification Numbers using sham tax businesses. On behalf of those sham tax businesses, they also applied to various financial institutions for bank products, such as blank check stock.

The conspirators directed the IRS to mail U.S. Treasury checks to addresses under their control and to send the tax refunds to prepaid debit cards and financial institutions where the conspirators maintained and controlled bank accounts using the sham tax businesses. When the tax refunds were deposited into the financial institutions, the conspirators printed the refund checks using the blank check stock and cashed the refunds. In January 2014, Alexander, who worked for a Walmart check cashing center in Columbus, Georgia, was approached by several co- conspirators about cashing fraudulent tax refund checks issued in the names of third parties and in return, Alexander would receive a portion of the refunds. Alexander cashed more than $100,000 in fraudulently obtained thirdparty refund checks containing forged endorsements. Alexander was sentenced to six months in prison and five years of probation and ordered to pay restitution of $110,804 to the IRS. Pyatt received three years of probation and was ordered to pay $88,155 in restitution to the IRS, joint and several with Hoskins and Alexander.

Texas Men Sentenced for Role in Stolen Identity Refund Fraud Scheme On Aug. 24, 2015, in Dallas, Reminco Zhangazha was sentenced to 93 months in prison and ordered to pay $2,648,334, joint and several in restitution. Zhangazha's co-defendant, Tonderai Sakupwanya, was sentenced earlier in 2015 to 87 months in prison and ordered to pay more than $2.6 million in restitution. In addition, the defendants will forfeit $10,613 cash seized from Zhangazha's vehicle; $93,513 cash from an apartment; and $4,500 from a residence. Zhangazha and Sakupwanya engaged in a scheme to defraud the IRS by obtaining stolen tax refunds that were generated by e-filing false and fraudulent income tax returns. The defendants rented private mailboxes in the names of aliases by using forged United Kingdom passports. They then established bank accounts using the alias names and mailing addresses. The IRS was directed to electronically deposit refunds into bank accounts the defendants established, as well as to be issued by a treasury check and mailed to an address under the control of the defendants. The income tax returns also directed refunds to accounts established at a third-party financial services company that would enable them to issue a check containing the tax refund. These third party checks and the treasury checks were deposited into bank accounts the defendants established. After the checks were deposited, or the tax refunds were electronically deposited, the defendants would withdraw the funds for their own use and benefit.

New York and Arizona Women Sentenced in Identity Theft Tax Fraud Case On Aug. 5, 2015, in Utica, New York, Elaine Monique Zavalla-Charres, of Winslow, Arizona was sentenced to 72 months in prison, three years of supervised release and ordered to pay $411,309 in restitution to the IRS. From 2011 through 2013, co-defendant Lacey Hollinger, of Massena, New York, contacted Massena area residents via Facebook and other electronic media to tell them they were eligible for a tax refund, even though they were unemployed and had no income, as part of a U.S. government "stimulus program." No such program existed. Several dozen people responded and gave Hollinger their personal identifying information. Hollinger forwarded this information to Charres, who used it to create false and fraudulent tax returns that, with others obtained from Arizona residents, generated over $400,000 in tax refunds. Charres, Hollinger, and others involved in the fraudulent scheme stole these funds

after they were electronically deposited in bank accounts in Arizona. The Massena area residents never saw the fraudulent tax returns. Some received pre-paid debit cards that Charres directed to them but many got nothing, as Charres and Hollinger kept most of the refund money. Hollinger was sentenced on May 22, 2015 to 36 months in prison, three years of supervised release and ordered to pay restitution.

Georgia Pastor Sentenced for Role in Tax Fraud Scheme On July 9, 2015, in Savannah, Georgia, Xavier Franklin Lewis, former pastor of the Holy Ghost raise and Deliverance Ministries, was sentenced to 119 months in prison, five years of supervised release and ordered to pay $163,602 in restitution. A jury found Lewis guilty in 2014 for submitting false claims to the IRS, theft of public money, aggravated identity theft, operation of unlicensed money transmitting business and bank fraud. Lewis used a number of separate bank accounts he controlled, including three accounts opened in the name of his church, to negotiate over 90 governmentfunded tax refund checks. Lewis obtained the checks after they were either generated as the result of submitting a fraudulent income tax return with the IRS or were generated at the legitimate request of a taxpayer, but stolen from the mail before it reached the taxpayer. In total, Lewis fraudulently negotiated nearly $250,000 worth of government-funded checks.

Final Defendants Sentenced for Stolen Identity Refund Fraud Scheme On July 27, 2015, in Houston, Texas, Jason Maclaskey, of Spring, and Omar Butt, of Brooklyn, New York, were sentenced to 120 months and 40 months, respectively for their roles in a scheme to steal identities and file fraudulent federal tax returns. A third defendant, Heather Dale, of Grant, Alabama, was previously sentenced to 24 months in prison. The court also ordered them to pay $314,868 in restitution. The defendants unlawfully obtained the names, dates of birth and Social Security numbers from 371 taxpayers and used this information to file false tax returns in 2009. The defendants also used this information to set up fraudulent bank accounts and directed the tax refunds to be sent to debit cards in the taxpayers' names. The defendants then withdrew this money using the debit cards at ATMs and by making purchases at various retail stores. Through this conspiracy, the defendants claimed a total of more than $1.4 million in false tax refunds, succeeded in withdrawing more than $300,000 before the scheme was uncovered.

Former Accountant Sentenced for Tax Fraud Scheme On Aug. 7, 2015, in Oakland, California, Robert Thomas Doyle, was sentenced to 51 months in prison, three years of supervised release, and pay $142,031 in restitution. Doyle pleaded guilty on Feb. 23, 2015, to wire fraud and aggravated identity theft. During 2011, 2012, and 2013, Doyle implemented an identity theft and tax fraud scheme in which he caused the filing of a number of tax returns claiming fraudulent refunds. As part of his scheme, Doyle, a former certified public accountant, created false businesses and claimed false income and expenses for his clients in order to maximize the Earned Income Tax Credit. The fraudulent income and expenses led to a larger-than allowed claimed refund. Doyle did not ask his clients about any income earned or current or past employment history. Doyle also used the names and social security numbers of former clients to prepare and file false tax returns without these victims' knowledge or consent. On

many of the tax returns, Doyle directed the refunds to be mailed to addresses where he could retrieve them or have the refunds electronically deposited into bank accounts that he controlled.

Minnesota Business Executive Sentenced on Charges of Conspiracy, Tax Evasion and Failure to File Tax Returns On May 27, 2015, in Minneapolis, Minnesota, Michael Andrew Schlegel was sentenced to 60 months in prison and three years of supervised release. Schlegel was convicted on March 13, 2014, following a seven-day trial, of conspiracy to defraud the United States, tax evasion, and failure to file tax returns. According to the court documents, from 2002 to 2009, Schlegel controlled NatureRich, Inc., a multi-level marketing company that sold natural and healthrelated products. At various times between 2002 and 2009, Schlegel and co-defendant Bradley Mark Collin received wages and commission payments from NatureRich that totaled more than $400,000. Schlegel caused NatureRich to pay his commissions to a nominee trust called the "Andrew James Living Trust," from which he then paid his family's expenses. During that time, Schlegel also operated a painting business, receiving more than $400,000 in income from painting contracts. In 2004, the defendants, through the use of nominee entities, began engaging the "warehouse" banking services of Olympic Business Systems and Century Business Concepts. The defendants also filed misleading federal corporate tax returns in the name of NatureRich in an effort to conceal the true extent of their personal interest in, and the income derived, from NatureRich. In all, the defendants attempted to conceal at least $3 million in gross income from the IRS, thereby avoiding income taxes on that amount and also avoiding having those funds seized for payment of their previous tax debts. From 2002 through 2010, Schlegel and Collin conspired with others to defraud the United States by obstructing the IRS in its lawful collection and assessment of individual income taxes. Schlegel failed to make any payments toward the back taxes, interest and penalties levied against him in 2000, which totaled more than $600,000. Schlegel also failed to file federal individual tax returns for tax years 2002-2009. On Nov. 4, 2014, Bradley Mark Collin was sentenced to 24 months in prison and three years of supervised release.

Within the Abusive Tax Schemes program, CI focuses on the investigation of promoters and clients who willfully participate in domestic and/or offshore tax schemes for the purpose of violating the tax laws. Participants in these abusive schemes usually create structures such as trusts, foreign corporations and partnerships for the purpose of making it appear that a trustee, nominee, non-resident alien or other foreign entity is the owner of the assets and income, when in fact the true ownership and control remains with a United States taxpayer.

Examples of abusive tax scheme investigations adjudicated in FY 2015 include:

Nevada Men Sentenced in Massive Tax Fraud Scheme In Las Vegas, Nevada, Daniel William Porter, of Chino, California, was sentenced to 55 months in prison and three years of supervised release. Porter was the designer of Tax Break 2000, which sold through the National Audit Defense Network (NADN), and resulted in fraud losses of more than $36 million

and an intended tax loss of more than $60 million. On March 11, 2015, three others were sentenced for their role in this tax fraud scheme. Alan Rodrigues, NADN's former general manager and executive vice president, was sentenced to 72 months in prison. Weston Coolidge, a businessman who served as NADN's president, was sentenced to 70 months in prison. Joseph Prokop, who served as the National Marketing Director for Oryan Management and Financial Services, a company affiliated with NADN, was sentenced to 18 months in prison. All three men were also ordered to pay more than $35 million in restitution to the victims. The evidence at trial established that through NADN, the defendants promoted and sold a product called Tax Break 2000 to customers throughout the United States. They falsely and fraudulently told customers that buying the product would allow them to claim legitimate income tax credits and deductions under the Americans with Disabilities Act (ADA). Although the price of the product that was claimed on the tax returns was $10,475, the customers only paid between $2,000 and $2,695 out-of-pocket. The remainder of the cost was covered by a promissory note that customers were not expected to repay. The defendants knew that the websites provided to customers made little, if any, money from sales commissions and that they did not entitle the purchaser to either a tax credit or any deductions. The defendants taught and directed the tax return preparers working for NADN to prepare thousands of tax returns for customers that claimed the fraudulent tax credit and deductions. From 2001 through approximately May 2004, NADN sold the Tax Break 2000 product more than 18,000 times to thousands of customers. As a result of the defendants' fraud, thousands of NADN customers were audited by the IRS.

Four Pennsylvania Family Members Sentenced for Tax Fraud On July 23, 2015, in Allentown, Pennsylvania, four Lancaster County family members were sentenced to prison for their participation in a long-term, complex and concerted effort to avoid taxation. In October 2010, Chester A. Bitterman Jr. and his sons, Craig L. Bitterman, C. Grant Bitterman and Curtis L. Bitterman, were convicted of conspiracy to defraud the United States. Craig Bitterman was additionally convicted of obstruction of justice. Prior to sentencing, the defendants paid $437,000 in restitution to the IRS. The four were sentenced as follows: Craig L. Bitterman was sentenced to 18 36 months in prison; C. Grant Bitterman was sentenced to 21 months in prison; Curtis L. Bitterman was sentenced to 21 months in prison; and Chester A. Bitterman Jr. was sentenced to three years' probation. According to court documents, from 1996 to 2005, the Bittermans owned and operated the Bitterman Scale Company. To conceal their income and assets from the IRS, the Bittermans used aliases, offshore bank accounts and a complex series of sham paper transactions to disguise income. The defendants transferred their personal and business assets to sham trusts purchased from the Commonwealth Trust Company, an organization that marketed trust products to clients for the purpose of avoiding federal income tax payment. The trusts were used to make it appear as though the defendants had little or no assets or income. In reality, the defendants retained complete access and control over their funds. Non-filer Investigations Taxpayers who fail to file income tax returns and effectively stop paying income tax, pose a serious threat to tax administration and the American economy. Their actions undermine public confidence in the Service's ability to administer the tax laws fairly and effectively. Criminal Investigation devotes investigative resources to individuals who simply refuse to comply with the law.

Examples of non-filer investigations adjudicated in FY 2015 include:

Pennsylvania Lawyer Sentenced For Tax Evasion and Fraud Scheme On Sept. 10, 2015, in Philadelphia, Randolph Scott, of Doylestown, was sentenced to 48 months in prison, three years of supervised release and ordered to pay restitution of $2,317,917. Scott pleaded guilty on March 25, 2015, to mail fraud, tax evasion and attempting to interfere with administration of Internal Revenue laws and failure to file income tax returns. Scott was an attorney and maintained a law office, Randolph Scott Associates, in Warrington. His practice included estate and probate matters. Between December 2005 and October 2011, while representing an estate, Scott diverted approximately $2,317,917 of estate funds to his law office accounts. Because the estate was valued at more than $6 million at the time of the decedent's death in 2005, federal law required that a federal estate tax return be filed which would have resulted in approximately $520,351 being paid to the IRS. Scott deliberately failed to file the required form in order to maintain sufficient money in the estate to pay its beneficiaries and to avoid detection of the theft. After the estate's executor died in 2009, Scott failed to disclose the executor's death so that Scott could continue to receive money intended for the estate at his law firm. Scott would then forge the deceased executor's after a jury found him guilty of tax evasion relating to tax years 2007, 2008 and 2009. From 2007 through 2009, West earned taxable income of approximately $272,224 while living and working in Omaha, Nebraska. Upon that income West had a tax due and owing of approximately $52,824. West willfully evaded his personal income taxes by failing to file federal individual income tax returns for tax years 2007 through 2009. After being informed by the IRS that he was required to file federal income tax returns, West continued to submit information to his employer in an attempt to avoid the withholding of any employment taxes from his pay, including numerous letters and purported affidavits stating his position that he was not subject to taxation on his income. Between 2007 through 2009, West deposited personal income into bank accounts opened in the names of companies he created in an effort to hide and conceal his income from the IRS. West had not filed federal individual income tax returns since at least the 2000 taxable year.signature and deposit funds intended for the estate into accounts under his control. Scott had the successor executor sign a document renouncing the position of successor executor so that Scott could continue to forge the signature of the deceased executor and divert money belonging to the estate.

North Carolina Businessman Sentenced for Income Tax Evasion On Sept. 21, 2015 in Winston-Salem, Thomas Tilley, a millionaire businessman, was sentenced to 32 months in prison, one year of supervised release and ordered to pay $7,676,757 in restitution to the IRS. Tilley pleaded guilty on Nov. 21, 2014, to corruptly endeavoring to impede and obstruct the administration of the Internal Revenue Code. Starting in 1993 and continuing through at least 2010, Tilley sent the IRS fraudulent financial instruments in an attempt to fraudulently discharge his tax debt; used nominee and sham trusts to purchase and sell real estate to conceal his assets; and placed false liens on properties to impede the IRS' collection of his tax debt. Tilley also failed to file federal and state income tax returns for tax years 1994 through 2013, despite earning substantial income. Specifically, in 2009, Tilley claimed a net worth as high as $30 million and annual income of $822,000 on a financial statement. Tilley obstructed

justice by providing misleading information to probation and the court after pleading guilty and revoked his acceptance of responsibility credit based on this conduct.

Former Nebraska Man Sentenced for Failing to File Tax Returns On Aug. 25, 2015, in Omaha, Chet Lee West, of Nebo, North Carolina, was sentenced to 51 months in prison, three years of supervised release and ordered to pay $439,515 in restitution. West was convicted on Feb. 25, 2015 Employment Tax Fraud Employment tax evasion schemes can take a variety of forms. Some of the more prevalent methods of evasion include "pyramiding," employee leasing, paying employees in cash, filing false payroll tax returns or failing to file payroll tax returns. Employment taxes include federal income tax withholding, social security taxes, and federal unemployment taxes. Some business owners withhold taxes from their employees' paychecks, but intentionally fail to remit those taxes to the IRS.

Examples of employment tax fraud investigations adjudicated in FY 2015 include:

Former CEO Sentenced for $25 Million Fraud Scheme On June 8, 2015, in Nashville, Tennessee, L. Brian Whitfield, formerly of Franklin, was sentenced to 240 months in prison and three years of supervised release. Whitfield was also ordered to pay a $1.8 million money judgment and more than $25.9 million in restitution. On Nov. 7, 2014, a jury found Whitfield guilty of conspiracy, wire fraud, theft from an employee benefit program, filing a false tax return, and money laundering. Whitfield controlled the finances and funds of the Sommet Group LLC, a payroll processing company that operated in Franklin, Tennessee. From 2008 until 2010, Whitfield diverted millions of dollars of client funds that had been earmarked to fund client employee retirement accounts, to pay health claims, and to pay taxes. Whitfield diverted millions of dollars to prop up affiliated companies that he controlled, spent millions of dollars to acquire the naming rights of Nashville's professional hockey arena and paid for personal expenses. Whitfield also vastly underreported wages and taxes on Sommet's quarterly employer tax return that he personally prepared and filed. Across six quarters from 2008 through 2010, Whitfield's actions resulted in an underpayment of more than $20 million in taxes.

Owner of Employee Leasing Company Sentenced for Immigration and Tax Fraud Scheme On July 23, 2015, in Philadelphia, Pennsylvania, Kim Meas, of Cambodia, was sentenced to 30 months in prison and ordered to pay $1.7 million in restitution to the IRS and $23 million in forfeiture. On Nov. 24, 2014, Meas pleaded guilty to conspiracy to commit an offense against the United States, transporting illegal aliens and failure to collect and pay federal income and employment taxes. Meas was the managing director of LS Services Corporation, an employee leasing company. Meas negotiated labor leasing contracts with various companies that leased temporary workers from LS. Meas established approximately 14 shell companies to create the illusion that the workers who LS leased to other companies were employees of the shell corporations. As such, the shell corporations, and not LS, would be responsible for collecting and paying employment and income taxes for the employees.

Meas attempted to make it impossible for the IRS to determine the identity of the employer of the illegal aliens, as well as the amount of employment and income taxes that the employer of the illegal aliens was required to pay. The companies that leased employees from LS did not withhold federal income taxes on the wages paid to the employees, nor did these companies collect and pay to the IRS, employment taxes on the income earned by the workers.

Tennessee Man Sentenced for Federal Tax Offenses On July 9, 2015, in Knoxville, Zebbie Joe Usher, III, was sentenced to 70 months in prison, three 20 years of supervised release and ordered to pay $29,174,931 in restitution to the IRS. On June 2, 2014, Usher pleaded guilty to tax evasion and conspiracy to commit tax evasion. Usher was previously the chief executive officer of Service Provider Group and was involved in the management of a number of companies, known as professional employer organizations (PEOs). These companies were engaged in the employee leasing and payroll processing business. The PEOs collected federal payroll taxes from employees and were required to turn over those funds to the IRS in a timely manner. However, Usher and others used the funds for other company and personal expenses. In an attempt to avoid discovery of their nonpayment of payroll taxes, Usher and his co-conspirators submitted false documents to the IRS.

Florida Man Sentenced for Payroll Tax Fraud On July 10, 2015, in Miami, Sonny Austin Ramdeo, of Sunrise, was sentenced to 240 months in prison, three years of supervised release and ordered to pay $21,442,173 in restitution. Ramdeo previously pleaded guilty to wire fraud and money laundering. From as early as 2005, Ramdeo was employed as the payroll supervisor at Promise Healthcare, Inc. and Success Healthcare Group, both of which owned and operated hospital facilities throughout the United States. As payroll supervisor for these two companies, Ramdeo was responsible for overseeing the payment of bi-weekly wages and related payroll taxes for approximately 4,000 employees. To execute this scheme, Ramdeo incorporated PayServ Tax Inc., and thereafter represented to officers and employees of Promise Healthcare and Success Healthcare that his company would handle the transfer of local, state and federal payroll taxes to the proper agencies. Instead of forwarding all of the monies due to the taxing authorities for employee payroll taxes, Ramdeo stole and embezzled the funds resulting in a $21 million dollar underpayment. By stealing the payroll tax money, Ramdeo caused hospitals to lay off employees, adversely affected the maintenance and operations of 17 acute care hospitals, jeopardized services provided to patients, challenged investors' security, and reduced the amount of money the taxing authorities actually collected. Ramdeo used the proceeds from this fraudulent scheme in order to finance a now defunct charter airline company.

Former Minnesota Real Estate Developer Sentenced for Tax Evasion, Mail and Wire Fraud On Sept. 9, 2015, in Minneapolis, Bartolomea Joseph Montanari, formerly of Bayport, was sentenced to 78 months in prison, ordered to pay mandatory restitution of $100,000 and, pay more than $1.5 million as a special assessment for the taxes, interest, and penalties owed. On Nov. 25, 2014, a federal jury found Montanari guilty of tax evasion, mail fraud and wire fraud. From 2009 until January 2012, Montanari willfully evaded evaded payment of more than $700,000 in taxes. In December 2009, when the IRS attempted to collect taxes and Trust Fund

Recovery Penalties (TFRPs), Montanari filed a fraudulent financial statement making numerous misrepresentations to the IRS to avoid paying the taxes he owed. the payment of employment and excise taxes owed by him and the three businesses he controlled. One of the ways Montanari avoided paying taxes was by transferring over $1.1 million into a bank account in the name of Bella Luca Properties LLC, a shell company used by Montanari to pay personal expenses. Montanari also falsely claimed to be living in Bayport, Minnesota, when, in truth, he had already moved into a $1.4 million house he was purchasing in Knoxville, Tennessee. In addition, Montanari lied about the sale price of a Caterpillar bulldozer that he needed to purchase for one of his companies. Montanari submitted a falsified invoice to the dozer financing company, which issued a check for the dozer for $100,000 more than the true purchase price. Montanari kept the extra $100,000 and used it as a down payment for his house in Tennessee. The Illegal Source Financial Crimes Program encompasses all tax and tax-related, money laundering and currency violations. These investigations are focused on individuals deriving income from illegal sources, such as dollars obtained through embezzlement, bribery, and illegal gambling operations. The individuals can be legitimate business owners but obtain their income through illegal means. These investigations are also focused on methods through which individuals seek to “launder” their income by making it appear that the income is from a legitimate source. Frequent money laundering techniques include the manipulation of currency reporting requirements, layering of transactions and international movement of funds. In these types of investigations, CI works hand-in-hand with our federal, state, and local law enforcement partners, as well as with foreign tax and law enforcement agencies. Financial Institution Fraud This program addresses criminal violations involving fraud against banks, savings and loan associations, credit unions, check cashers, and stockbrokers. Criminal Investigation is a major contributor in the effort to combat financial institution fraud, and the United States Attorneys’ recognize CI’s financial investigative expertise in this complex area. The ability to bring income tax and money laundering charges augments prosecutors’ effectiveness in combating fraud committed against financial institutions, whether the violators work within or outside of the institution.

Examples of financial institution fraud investigations adjudicated in FY 2015 include:

North Carolina Land Developer and CoDefendants Sentenced in $23 million Bank Loan Scheme On June 25, 2015, in Asheville, Keith Vinson, of Arden, was sentenced to 216 months in prison, three years of supervised release and to pay $18,384,584 in restitution. A federal jury convicted Vinson in October 2013 of conspiracy, bank fraud, wire fraud, and money laundering conspiracy. Vinson was sentenced for his role in a scheme involving the development of Seven Falls, a golf course and luxury residential community in Henderson County, North Carolina. On June 2, 2015, five additional individuals were sentenced for their roles in the scheme. Avery Ted “Buck” Cashion III, of Lake Luke, was sentenced to 36 months in prison, three years of supervised release and ordered to pay $14,266,256 in restitution. Raymond M. “Ray” Chapman, of Brevard, was sentenced to 36 months in prison, three years of supervised release and ordered to pay $14,266,256 in restitution. Thomas E. “Ted” Durham Jr., former president of the failed Pisgah Community Bank, of Fletcher, was sentenced to 30 months in prison, three years of supervised

release and ordered to pay $6,237,453 in restitution. Aaron Ollis, a former licensed real estate appraiser, of Arden, was sentenced to two years of probation, including 12 months and one day home detention, and ordered to pay $10,199,106 in restitution. In addition, George M. Gabler, a former Certified Public Accountant from Fletcher, was sentenced to two years of probation and fined $5,000. Trial evidence and statements made in court, beginning in 2008, the defendants conspired and obtained money from several banks through a series of straw borrower transactions, in order to funnel monies to Vinson and his failing development of Seven Falls. To advance this scheme Vinson, Chapman, Cashion and others recruited local bank officials including George Gordon "Buddy" Greenwood and Ted Durham, who at the time were presidents of banks. When bank officials realized that they had reached their legal lending limits with respect to some of the straw borrowers, additional straw borrowers were recruited to the scheme to make additional loans. Seven Falls and another luxury residential golf development by Vinson failed, resulting in millions in property losses. In addition, two banks failed and were taken over by the FDIC. Previously, Buddy Greenwood was sentenced to 42 months in prison.

Former Bank Executive Sentenced for Role in Conspiracy and Fraud Involving Investment Contracts On May 18, 2015, in Asheville, North Carolina, Phillip D. Murphy, a former Bank of America executive, was sentenced to 26 months for his role in a conspiracy related to bidding for contracts for the investment of municipal bond proceeds and other municipal finance contracts. On Feb. 10, 2014, Murphy pleaded guilty to participating in multiple fraud conspiracies and schemes with various financial institutions and brokers from as early as 1998 until 2006. Murphy conspired with employees of Rubin/Chambers Dunhill Insurance Services Inc., also known as CDR Financial Products, a broker of municipal contracts and others. Murphy also pleaded guilty to conspiring with others to make false entries in the reports and statements originating from his desk, which were sent to bank management. Murphy conspired with CDR and others to increase the number and profitability of investment agreements and other municipal finance contracts awarded to Bank of America. Along with bid rigging, Murphy and his coconspirators submitted numerous intentionally false certifications that were relied upon by both municipalities and the IRS. These false certifications misrepresented that the bidding process had been conducted in a competitive manner that was in conformance with U.S. Treasury regulations. These false certifications caused municipalities to award contracts to Bank of America and other providers based on false and misleading information. The false certifications also impeded and obstructed the ability of the IRS to collect revenue owed to the U.S. Treasury.

Florida Businessman Sentenced for $44 Million Bank Fraud Conspiracy On April 13, 2015, in Orlando, Florida, Pedro "Pete" Benevides was sentenced to 108 months in prison and ordered to forfeit $44,059,565, including bank accounts containing about $40 million in cash and two exotic sports cars. In addition, Benevides was also ordered to pay full restitution to the financial institutions that were the victims of his offense. From about 2005 through September 2008, Benevides obtained 20 commercial and residential loans and lines of credit from several federally insured financial institutions. Benevides obtained the fraudulent loans by providing the financial institutions with documents that, among other things, contained false information concerning his income and assets or the business that he used to obtain the loans and lines of credit. Once he

received the loans, Benevides used the fraudulently obtained funds for his own purposes, including paying the interest and principal on other, earlier loans that he had obtained in order to continue the fraudulent scheme, paying business expenses, paying the other co-conspirators involved in the scheme, and funding living expenses for himself and his family.

Former Federal Credit Union Employee Sentenced for Bank Fraud and Filing False Tax Returns On March 25, 2015, in Valdosta, Georgia, Kelly Yawn was sentenced to 41 months in prison and ordered to pay $628,539 in restitution to the fraud victims and $139,865 to the IRS. On Jan. 6, 2015, Yawn pleaded guilty to bank fraud and filing false tax returns. Between February 2008 and November 2011, while employed by a federal credit union Yawn accessed the credit union's computer system to prevent electronic transactions (ACH) and written share drafts from posting to her account. Using that scheme, Yawn was able to misdirect for her own benefit more than 900 share drafts and more than 1,200 ACH transactions, totaling more than $499,000 that were paid from credit union funds. Yawn took additional actions to cover up the transactions so that they would not be discovered by the credit union or outside auditors by posting fraudulent deposits to credit union accounts. Yawn also filed federal income tax returns for 2008 through 2011 and failed to include the money she received from the scheme on her federal tax returns as income in those years.

Ohio Man Sentenced for Defrauding Credit Union On Feb. 23, 2015, in Cleveland, Ohio, John Struna, of Concord Township, was sentenced to 43 months in prison and ordered to pay more than $2.3 million in restitution. Struna was also ordered to forfeit a restaurant he owned, a condominium and a 2014 Mazda. Struna previously pleaded guilty to conspiracy to commit bank fraud, bank fraud, making false statements and money laundering. Struna defrauded the Taupa Lithuanian Credit Union, based in Cleveland, out of $2.3 million. Credit union CEO Alex Spirikaitis, former teller Michael Ruksenas and Vytas Apanavicius were previously found guilty for their roles in conspiracies related to defrauding the credit union. Struna maintained both personal and corporate accounts at Taupa dating back to 1995. He began a conspiracy with Spirikaitis in 2002 and continued through 2013, during which time Spirikaitis caused Taupa to make approximately 46 fraudulent transfers into Struna's accounts. In 2011, Struna requested and received $112,105 from Spirikaitis for the purchase of a condominium located in Fort Myers, Florida. At no time did Struna submit any credit applications or loan documents. The fraudulent transfers totaled approximately $2.3 million. From 2002 through 2013, Struna repaid only approximately $15,000 of the $2.3 million Spirikaitis transferred into his accounts.

Co-Conspirators Sentenced for Bank Fraud On Feb. 5, 2015, in New Bern, North Carolina, Joseph Grecco, of DuBois, Pennsylvania, was sentenced to 30 months in prison and three years of supervised release. Grecco pleaded guilty on March 12, 2014 to conspiracy to commit bank fraud. On Jan. 8, 2015, Ronald Doerrer, of Kure Beach, North Carolina, was sentenced to 18 months in prison and three years of supervised release. On Aug. 8, 2014, Edward A. Yates, of Wilmington, North Carolina, was sentenced to 12 months and one day in prison and three years of supervised release. A fourth co-defendant, and leader of the conspiracy, Ronald Hayden Kotler, remains at large. Kotler and Doerrer operated a company, Commercial Loan Solutions (CLS) from

2006 to 2009. CLS offered its services as a broker to provide bank financing for individuals and companies, in exchange for hefty fees, ranging from 15% to 25% of the loan amount. As part of the conspiracy, Kotler and Doerrer helped clients falsify loan applications by submitting false tax returns and vastly inflating the individuals' business income and assets. The scheme involved obtaining money, funds, credits, and other things of value from financial institutions by providing them with materially false information and making fraudulent representations and promises. The financial institutions suffered losses in excess of $4.5 million as a result of the scheme. Public Corruption CI continues to pursue investigations involving individuals who violate the public's trust. The individuals include both elected and appointed officials from all levels of government, including local, county, state, federal and foreign officials. Public corruption investigations encompass a wide variety of criminal offenses including bribery, extortion, embezzlement, illegal kickbacks, tax fraud and money laundering.

Examples of public corruption investigations adjudicated in FY 2015 include:

Former Chief of Staff to Connecticut House GOP Minority Leader Sentenced for Kickback Arrangement On Aug. 27, 2015, in Hartford, Connecticut, George Gallo, of East Hampton, was sentenced to 12 months and one day in prison, three years of supervised release and ordered to pay restitution of $117,266. On April 27, 2015, Gallo pleaded guilty to one count of mail fraud. Gallo was an employee of the state of Connecticut as the chief of staff to the minority leader of the Connecticut House of Representatives. As part of his responsibilities, Gallo was responsible for the campaign program of the House Republican Campaign Committee ("HRCC"). Gallo made an arrangement with a political campaign direct mail vendor that he would steer business to them through the HRCC program. In exchange, the company would make payments to Gallo equal to 10 percent of the revenue that the company received from candidates participating in the program. Meanwhile, Gallo made false representations to the minority leader of the Connecticut House of Representatives and others that he did not receive any compensation from any HRCC sponsored vendor. From 2008 through 2012, the political campaign direct mail vendor mailed checks made payable to the Vinco Group, a Cromwell based limited liability company in which Gallo was the sole member, totaling approximately $117,266.

Former Baltimore City Official Sentenced for Bribery Scheme On June 23, 2015, in Baltimore, Maryland, Barry Stephen Robinson, of Accokeek, was sentenced to 12 months and a day in prison, three years of supervised release and ordered to pay forfeiture of $20,000. Robinson was chief of the Division of Transit and Marine Services of the Baltimore City Department of Transportation. In this position, Robinson supervised Baltimore City's "Circulator" and "Water Taxi" programs and had authority to approve contracts with advertisers and vendors and to purchase and pay for goods and services. In January 2014, Robinson offered to cancel $60,000 of debt in return for $20,000 in cash. From January 23 to March 11, 2014, Robinson received four cash payments of $5,000 each. In return, Robinson provided a signed letter on Baltimore City letterhead falsely stating that the $60,000 debt had been paid. In 2011, Robinson arranged for

Baltimore City to purchase 13 bus shelters from a Canadian company for $249,290. On April 9, 2014, Robinson illegally sold and accepted $70,000, in return for the city's bus shelters. Seeking to disguise the source of the bribery proceeds, Robinson deposited the cash bribe payments he received into two bank accounts in the name of another person. He used a portion of the proceeds for home improvements and other items. The intended loss to the City of Baltimore from Robinson's schemes was approximately $310,000.

Former Illinois Public Health Chief of Staff Sentenced On June 23, 2015, in Springfield, Quinshaunta R. Golden, of Homewood, was sentenced to 96 months in prison, three years of supervised release and ordered to pay $1,000,000 in restitution to the Illinois Department of Public Health (IDPH), jointly with Roxanne Jackson. On April 10, 2014, Golden pleaded guilty to taking bribes and kickbacks. Golden served as Chief of Staff at IDPH from 2003 to early 2008. From 2006 to 2008, Golden used her agency position to direct approximately $11 million in grant funds to three not-for-profit organizations and a forprofit corporation controlled by Leon Dingle Jr. As part of the scheme, Golden directed that Roxanne Jackson, a former IDPH administrator, be hired as a paid consultant for Dingle and the three not-for-profit entities. As a result, approximately $772,500 in grant funds disbursed to the three not-for-profit entities was paid to Jackson from July 2007 to April 2008. Golden required that Jackson pay her one-half of whatever she received, less any funds to be withheld for payment of taxes, which were never paid. Golden also directed that Jackson work as a paid consultant for VIP Security. Golden caused approximately $2 million in contract funds to be paid by IDPH to VIP Security and again required Jackson to give her kickback payments. On June 12, 2015, Roxanne Jackson was sentenced to 25 months in prison and ordered to pay $1,000,000 jointly with Golden for her part in the bribery and kickback scheme and filing false income tax returns. Dingle, and his wife Karin, both of Chicago, were convicted of conspiracy to defraud, mail fraud and money laundering will be sentenced at a later date.

Former Executive Director of the Virgin Islands Legislature Sentenced for Bribery and Extortion On May 14, 2015, in St. Thomas, U.S. Virgin Islands, former executive director of the Virgin Islands Legislature, Louis "Lolo" Willis was sentenced to 60 months in prison. On Nov. 19, 2014, a jury in the Virgin Islands convicted Willis of federal programs bribery and extortion under color of official right. Willis was the executive director of the Legislature between 2009 and 2012. His responsibilities included oversight of the major renovation of the Legislature building and awarding and entering into government contracts in connection with the project. Willis was also responsible for authorizing payments to the contractors for their work. Willis accepted bribes, including $13,000 in cash and checks, from contractors in exchange for using his official position to secure more than $350,000 in work for the contractors and to ensure they received payment upon completion.

Four Sentenced for Role in Rocky Boy's Corruption Probe On March 11, 2015, in Great Falls, Montana, Mark Craig Leischner and Tammy Kay Leischner, of Laurel, were sentenced to 24 months in prison and three years' supervised release. Mark Leischner was also ordered to pay $281,313 in restitution, and Tammy Leischner was ordered to pay $375,092 in restitution. Mark Leischner pleaded guilty to embezzlement of over $200,000 in funds from the Chippewa Cree

Tribe Rodeo Association, federal student financial aid fraud, and obstruction of justice. Tammy Leischner pleaded guilty to aiding the embezzlement of $311,000 in federal funds, bankruptcy fraud, federal student financial aid fraud, and blackmail. Tammy Leischner's brother, Dr. James Howard Eastlick, was also sentenced to 72 months in prison, three years supervised release and ordered to pay $424,800 in restitution. Eastlick, the former psychologist for the Rocky Boy Health Clinic pleaded guilty to charges of bribery relating to a federally funded program, bribery of a councilman and income tax evasion. On March 10, 2015, Bruce Sunchild, was sentenced to 34 months in prison, three years supervised release, and ordered to pay $370,088 in restitution. Sunchild pleaded guilty to bribery, embezzlement and tax evasion. All four sentencings were a result of the Rocky Boy's Corruption Probe.

Former Virginia Governor and First Lady Sentenced for Public Corruption On Jan. 6, 2015, in Richmond, Robert F. McDonnell, former Virginia governor, was sentenced to 24 months in prison and two years of supervised release. On Feb. 20, 2015, in Richmond, the former First Lady of Virginia, Maureen G. McDonnell, was sentenced to 12 months and one day in prison. The McDonnells were convicted on Sept. 4, 2014, following a jury trial of conspiracy to commit honest-services wire fraud and conspiracy to obtain property under color of official right. From April 2011 through March 2013, the McDonnells participated in a scheme to use the former governor's official position to enrich themselves and their family members by soliciting and obtaining payments, loans, gifts and other things of value from Star Scientific and Jonnie R. Williams Sr., then CEO of Star Scientific. The McDonnells obtained these items in exchange for the former governor performing official actions to legitimize, promote and obtain research studies for Star's products, including the dietary supplement Anatabloc. The McDonnells obtained from Williams more than $170,000 in direct payments as gifts and loans, thousands of dollars in golf outings, and numerous items. As part of the scheme, Robert McDonnell arranged meetings for Williams with Virginia government officials, hosted and attended events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of Star's products and to promote Star's products to doctors, contacted other Virginia government officials to encourage Virginia state research universities to initiate studies of Star's products, and promoted Star's products and facilitated its relationships with Virginia government officials. The McDonnells attempted to conceal the things of value received from Williams and Star by routing gifts and loans through family members and corporate entities controlled by the former governor to avoid annual disclosure requirements. Corporate Fraud The Corporate Fraud program concentrates on violations of the Internal Revenue Code (IRC) and related statutes committed by publicly traded or private corporations, and/or by their senior executives. Some of the specific criminal acts within a corporate fraud investigation include falsifying and fabricating or destroying company records for the purpose of falsifying tax returns, financial statements or reports to regulatory agencies or investors. It also includes conduct by executives to enrich themselves by attempting to derive unauthorized compensation through unapproved payments or bonuses, payment of personal expenses with corporate funds or bogus loans. Many corporate fraud investigations are joint efforts involving other federal agencies.

Examples of corporate fraud investigations adjudicated in FY 2015 include:

Former CEO Sentenced for $25 Million Fraud Scheme On June 8, 2015, in Nashville, Tennessee, L. Brian Whitfield, formerly of Franklin, was sentenced to 240 months in prison and three years of supervised release. Whitfield was also ordered to pay a $1.8 million money judgment and more than $25.9 million in restitution. On Nov. 7, 2014, a jury found Whitfield guilty of conspiracy, wire fraud, theft from an employee benefit program, filing a false tax return and money laundering. Whitfield controlled the finances and funds of the Sommet Group LLC, a payroll processing company that operated in Tennessee. From 2008 until 2010, Whitfield diverted millions of dollars of client funds that had been earmarked to fund client employee retirement accounts to pay health claims and to pay taxes. Instead of using these client funds as Sommet had promised, Whitfield diverted millions of dollars to prop up affiliated companies that he controlled, spent millions of dollars to acquire the naming rights of Nashville's professional hockey arena and to pay personal expenses. Whitfield also vastly underreported wages and taxes on Sommet's quarterly employer tax return that he personally prepared and filed. Across six quarters from 2008 – 2010, Whitfield's actions resulted in an underpayment of more than $20 million in taxes. In July 2013 D. Edwin Todd, a part owner of Sommet, pleaded guilty to conspiracy in this case, and Marsha Whitfield, Sommet's vice president of payroll, pleaded guilty to conspiracy and wire fraud. On June 25, 2015, Marsha Whitfield was sentenced to five years of probation with the first six months spent in a half-way house and ordered to pay $3,736,653 in restitution. Todd awaits sentencing.

Washington Man Sentenced for Evading Taxes on Money Stolen from Investors On June 10, 2015, in Spokane, Washington, Michael Peter Spitzauer, of Kennewick, Washington, was sentenced 48 months in prison, one year of supervised release and ordered to pay $10,365,000 in restitution to the victims of his fraud scheme, and $2,585,177 in restitution to the IRS. Spitzauer previously pleaded guilty to filing a false tax return and failing to file a tax return. Spitzauer served as the CEO and 26 President of Green Power, Inc., a biodiesel fuel business, which Spitzauer asserted possessed the technology to turn waste into biofuel. Spitzauer defrauded various investors by representing that he would maintain their investment deposits in accounts controlled by an attorney, and not be utilized without the parties' written agreement. In fact, Spitzauer controlled the bank accounts, and spent the investors' deposits in unauthorized ways, such as on luxury goods and repaying prior investors who sought return of their funds. Spitzauer also defrauded additional investors by falsely representing that their funds would be used to pay state agency fees or insurance bonds. From 2007 to 2013, Spitzauer stole more than $10.3 million from the various victims, who reside across the globe, including in China, Spain, the Netherlands, Ireland, Australia, Slovenia, Canada, Texas, and Maryland. Spitzauer filed false tax returns for tax years 2007 and 2009, when he reported that he received no income and failed to disclose the funds he fraudulently obtained from his investors, which totaled approximately $4.5 million in taxable income for 2007 and 2009. For tax year 2008, Spitzauer failed to file a tax return, despite receiving approximately $3.2 million in taxable income, which represented funds he stole from the defrauded investors. As a result, Spitzauer evaded the assessment of approximately $2.5 million in taxes.

Associates of Bernard L. Madoff Investment Securities Sentenced for Roles in the Fraud On Dec. 15, 2014, in Manhattan, New York, Joann Crupi, who managed hundreds of millions of dollars in fictitious investments for Bernard L. Madoff Investment Securities LLC, was sentenced to 72 months in prison, four years of supervised release and ordered to forfeit $33.9 billion. Several other employees of Bernard L. Madoff's fraudulent investment advisory business were recently sentenced, including Daniel Bonventre, the former Director of Operations, who was sentenced on Dec. 8, 2014, to 120 months in prison, two years of supervised release and ordered to forfeit more than $155.5 billion. Annette Bongiorno, the manager of the fraudulent investment advisory business, was sentenced on Dec. 9, 2014, to 72 months in prison, two years of supervised release and ordered to forfeit more than $155 billion. Bonventre was previously convicted of securities fraud, bank fraud, tax fraud, falsifying the books and records of Madoff Securities, making false filings with the United States Securities and Exchange Commission, and conspiracy. Bongiorno and Crupi were convicted of securities fraud, falsifying the books and records of Madoff Securities, conspiracy and tax fraud. Crupi was also convicted of bank fraud. Bongiorno, an employee of the business for 40 years, managed hundreds of investment advisory accounts, supervised employees and was for many years the head of the fraudulent investment business. While managing several investment accounts, Bongiorno and Crupi backdated the purchase dates of purported trades so that they could control the amount of gains reflected in the investment advisory accounts, including, at least on one occasion, a back-dated trade of more than 12 years. Bonventre, while responsible for maintaining and supervising the production of the principal internal accounting documents, directed that false entries be made that concealed the scope of fraudulent investment advisory operations and understated liabilities by billions of dollars. Finally, Bonventre, Bongiorno and Crupi also filed false income tax returns on their own behalf, in which they failed to report income they received from Madoff Securities. investor reports were fabricated. US Ventures raised more than $33 million from investors for its purported trading activities. Holloway and US Ventures made "profit distributions" to investors from funds solicited from new investors, and Holloway misappropriated investors' funds for a variety of personal expenses. During 2006 alone, Holloway diverted more than $1.2 million in investor funds to a "business" account that he used as a personal account and falsely claimed a gross income of only $27,500 on his personal tax return.

Gaming

California Investment Manager Sentenced for $33 Million Ponzi Scheme On Dec. 17, 2014, in Salt Lake City, Utah, Robert L. Holloway, of San Diego, was sentenced to 225 months in prison and ordered to pay $15.2 million in restitution for orchestrating a $33 million Ponzi scheme resulting in $15.2 million in losses to investors. Holloway was found guilty on Aug. 5, 2014, of wire fraud and making a false income tax return. Holloway served as the chief executive officer and

managing partner of US Ventures LC between May 2005 and April 2007. From October 2005 until at least April 2007, Holloway recruited investors by making false representations, including that US Ventures used proprietary trading software that was consistently profitable, that US Ventures generated returns of 0.8% per trading day and that US Ventures would retain a 30% share of investors' profits as a management fee. Holloway also generated and distributed reports to investors showing false daily returns on their investments. Between October 2005 and April 2007, contrary to the returns shown on the false reports, US Ventures lost more than $10 million in trading, and the "profit" figures on the CI focuses on the enforcement of tax, money laundering and related financial crimes to combat illegal activity within the gaming industry, as well as to uncover and shutdown illegal gaming operations. The use of the Internet has greatly increased the reach of domestic and international gaming operations. Illegal gambling operations can be found in a number of different forms, including bookmaking, numbers, online gaming and some charitable gaming operations. CI's gaming program consists of a two-faceted, proactive approach to industry compliance. First is the investigation of entities suspected of violating tax, money laundering, or related laws. Second are liaison activities with federal, state, and tribal gaming boards, licensing commissions, industry regulators, gaming operators, gaming industry suppliers, and other law enforcement. A critical component of both facets is CI's coordination with the civil functions of the IRS in addressing trends and concerns in the gaming industry.

Examples of gaming investigations adjudicated in FY 2015 include:

Brothers Sentenced on Gambling Charges On April 15, 2015, in Rochester, New York, Joseph Ruff was sentenced to 41 months prison and three years of supervised release. Joseph Ruff was also ordered to forfeit $1,230,489 in addition to other funds and a lakefront residence. On March 25, 2015, in Rochester, Mark Ruff, of Connecticut, was sentenced to 108 months in prison, three years of supervised release and ordered to forfeit $230,000. Both men were previously convicted of conducting an illegal gambling business and conspiracy to commit money laundering. Mark Ruff conducted an illegal gambling business with his brother, Joseph, and Paul Borrelli, both of Rochester. The gambling operation involved sports betting through multiple offshore internet gambling websites. Mark Ruff also conspired with his brother and others to launder $230,000 in illegal gambling proceeds. Mark Ruff transferred the gambling proceeds from Rochester to an associate in Connecticut to conceal their source by depositing proceeds into a credit line and making subsequent cash withdrawals and writing checks from the credit line for himself and his brother. Those checks included $40,000 to a local country club for Joseph Ruff that the federal government seized Aug. 11, 2014. On Sept. 8, 2015, Borrelli was sentenced to eight months home confinement, three years of supervised release and pay a judgement of $1.2 million.

Leader of Sports Betting Ring Sentenced on Racketeering and Related Charges On Feb. 17, 2015, in Philadelphia, Pennsylvania, Joseph Vito Mastronardo Jr., of Meadowbrook, was sentenced to 20 months in prison, three years of supervised release and ordered to forfeit approximately $3.7 million. Mastronardo pleaded guilty on Jan. 31, 2014, to conspiring to

participate in a racketeering enterprise (RICO), conducting an illegal gambling business, conducting four conspiracies to launder money, interstate travel in aid of racketeering, transmitting wagering information and aggravated structuring of cash deposits. Mastronardo Jr. was the leader of the Mastronardo Bookmaking Organization, a multimillion dollar sports betting operation with bettors throughout the United States. At its peak, the Mastronardo Bookmaking Organization had more than 1,000 bettors and was generating millions of dollars a year. Between Jan. 1, 2005 and Jan. 1, 2011, the organization used Internet websites and telephone numbers that allowed bettors to place sports bets on football, baseball, basketball, golf, horse racing and other sporting events. Residents of Costa Rica staffed the Internet websites and answered the telephones. In 2006 and 2010, law enforcement seized more than $2.1 million that Mastronardo hid in and around his home, including in specially-built secret compartments and in PVC pipes that were buried in his backyard. The Mastronardo Bookmaking Organization laundered the gambling proceeds by using a check cashing agency, two private bank accounts and numerous international bank accounts. On 28 occasion, Mastronardo Jr. also provided instructions so that a losing bettor could pay a gambling debt through a charitable donation.

Colorado Man Sentenced for Running an Illegal Gambling Business On Jan. 5, 2015, in Denver, Colorado, Kerwin Dale Sande was sentenced to 15 months in prison and three years of supervised release. In addition, Sande agreed to the forfeiture of $2 million in cash and assets for conspiring to own and operate an illegal gambling business and money laundering. Starting in the summer of 2006 and continuing through October 2013, Sande operated a gambling business out of his home. His business focused primarily on sports bookmaking, which included wagers on a variety of sporting events to include major league baseball games and golf, as well as professional and collegiate football, basketball and hockey. Sande recruited, entertained and interacted with bettors at exclusive golf and country clubs. He assigned a given bettor a credit limit within which the bettor was authorized to place bets and accepted bets through various means including on the telephone, through at least five or more "bet-takers", and over the internet using an offshore internet betting website which he controlled. The website was housed and maintained through computer servers registered in Costa Rica. Sande collected gambler's debts in a variety of ways including taking cash payments directly from bettors at golf clubs, private parties or other public locations. He also accepted checks from bettors that would commonly be made out to his company, KDS Enterprises., Inc., as well as collecting wire transfers. Sande paid bettors their winnings in cash, but occasionally he would write checks and he would sometimes send cash payments directly to bettors using federal express where he would conceal the cash in the sealed pages of a magazine. Sande drove and owned several highend sports and luxury cars, a number of which contained built-in, hidden lock boxes which he utilized to transport and transfer large sums of bulk currency for his unlawful gambling operation.

Three Sentenced in Illegal Gambling Operation in Guam On Oct. 8, 2014, in Hagatna, Guam, three individuals were sentenced in a criminal conspiracy to conduct an illegal gambling business at the former MGM Spa in Tamuning. Jimmy Hsieh was sentenced to 24 months in prison and ordered to pay a $423,640 money judgment. In addition, Hsieh agreed to forfeit $178,113 from personal accounts and that three of his condos are subject to possible forfeiture proceedings.

Hsieh pleaded guilty to gambling conspiracy and money laundering. William Perez, the manager and supervisor of the MGM poker operation in 2010, was sentenced to six months in prison, six months home confinement and three years of supervised release for conspiring to operate the illegal gambling business. Pauline Perez was sentenced to one year of probation and community service. According to court documents, from at least January 2006 until December 2010, the defendants conspired to offer card games of chance, including baccarat and poker, at the MGM Spa building. The defendants took a percentage of the winnings from each game. They knowingly conducted financial transactions involving the proceeds from the illegal gambling operation. Insurance Fraud & Healthcare Fraud The Insurance Fraud Program addresses criminal tax and money laundering violations relative to insurance claims and fraud perpetrated against insurance companies. Insurance fraud covers a wide variety of schemes, including phony insurance companies, offshore/unlicensed Internet companies and staged auto accidents. The Healthcare Fraud Program involves the investigation of individuals who bill healthcare insurance companies for medical expenses never incurred or for unnecessary medical procedures and medical equipment.

Examples of insurance fraud and healthcare fraud investigations adjudicated in FY 2015 include:

New York Pharmacist Sentenced for Multimillion-Dollar Medicare/Medicaid Fraud Scheme On March 26, 2015, in Manhattan, New York, Purna Chandra Aramalla, of Port Washington, was sentenced to 36 months in prison, ordered to forfeit $7,503,605, pay restitution to his victims in the same amount, file amended tax returns for the years 2010 through 2012 and pay back taxes and applicable penalties. Aramalla was sentenced for conducting a scheme to defraud Medicaid, Medicare, and the New York Statefunded AIDS Drug Assistance Program (“ADAP”) through the purchase and sale of illegally diverted prescription drugs, including HIV medication. Aramalla was also sentenced for tax evasion. Aramalla, a pharmacist, owned and operated A Fair Deal Pharmacy Inc. in Queens, New York, and Quality Drug Inc. in the Bronx, New York. Using these pharmacies, Aramalla carried out a multimillion-dollar scheme to defraud the New York State Medicaid, Medicare, and ADAP programs through the sale of diverted prescription drugs, that is, drugs not obtained from legitimate sources. Further, Aramalla signed and filed a false U.S. Individual Income Tax Return, Form 1040, for the 2011 calendar year. Aramalla falsely underreported business income by $2,164,545 which resulted in tax due and owing of $757,591.

Dallas County Man Sentenced for Role in Staged Accident Fraud Scheme On Jan. 5, 2015, in Dallas, Texas, Leroy Nelson, of DeSoto, Texas, was sentenced to 108 months in prison and ordered to pay $4,973,046 in restitution and agreed to forfeit several vehicles, a motor home, a boat and trailer and real estate. Nelson pleaded guilty in March 2014 to mail fraud and engaging in illegal monetary transactions. Beginning in 2005 and continuing through 2012, Nelson engaged in a scheme to defraud automobile insurance companies by fabricating and submitting false and fraudulent claims for damage to technical equipment damaged in fictitious road accidents. As part

of the scheme, Nelson promised cash payments to individuals he recruited for them to falsely report to their automobile insurance company that, while driving, they inadvertently damaged a piece of equipment. Nelson would instruct the individual on how to make the telephone call to the insurance company. Nelson then prepared and submitted the claims for property damage in the name of a "DBA" he created. The claim would include a photo of the equipment and a fictitious repair estimate that Nelson prepared. Nelson opened private mailboxes in numerous states to receive the insurance checks. The mailboxes were opened under an assumed business name that Nelson used as the owner of the damaged equipment in the claims. Nelson also used the addresses of two warehouses in Dallas and directed that mail received at the private mailboxes be forwarded to one of those two addresses. The cumulative total of the insurance claims prepared and submitted to insurance companies by Nelson from 2005 to 2012 totaled approximately $5 million.

Three Chiropractors Sentenced in Staged Automobile Accident Scheme On Oct. 14, 2014, in West Palm Beach, Florida, three chiropractors were sentenced for their participation in a massive staged automobile accident scheme. Kenneth Karow, of West Palm Beach, was sentenced to 132 months in prison; Hermann J. Diehl, of Miami, was sentenced to 108 months in prison; and Hal Mark Kreitman, of Miami Beach, was sentenced to 96 months in prison. All three men were convicted of mail fraud and money laundering. Between October 2006 and December 2012, the defendants and their co-conspirators staged automobile accidents and caused the submission of false insurance claims through chiropractic clinics they controlled.

Former Owner and Operator of New York Health Clinics Sentenced for $30 Million Medicare Fraud Scheme On Aug. 25, 2015, in Manhattan, New York, Oscar Huachillo was sentenced to 87 months in prison, three years of supervised release and ordered to pay $3,454,244 in restitution and $31,177,987 in forfeiture, including forfeiture of approximately $14 million of assets that were seized at or around the time of Huachillo's arrest in August 2013. Huachillo previously pleaded guilty to orchestrating a scheme to defraud Medicare out of more than $31 million and evading more than $3.4 million in federal income taxes by falsely underreporting his income. Huachillo set up and operated multiple health care clinics in New York City that purported to provide injection and infusion treatments to Medicare-eligible HIV/AIDS patients, but that were, in reality, health care fraud mills that routinely billed Medicare for medications that were never provided or were provided at highly diluted doses, and that were often unnecessary because the person being "treated" did not medically need the treatments. In addition, Huachillo willfully evaded over $3.4 million in taxes owed to the IRS during the tax years 2009 through 2011 by falsely underreporting his taxable income, including income he had obtained through fraudulent Medicare claims.

Michigan Oncologist Sentenced for Healthcare Fraud, Money Laundering On July 10, 2015, in Detroit, Michigan, Farid Fata, of Oakland Township, was sentenced to 540 months in prison and ordered to forfeit $17.6 million. Fata, a Detroit area hematologistoncologist, pleaded guilty in September 2014 to health care fraud, conspiracy to pay or receive kickbacks and money laundering. Fata was a licensed medical doctor who owned and operated a cancer treatment

clinic, Michigan Hematology Oncology P.C. (MHO), which had various locations in Michigan. He also owned a diagnostic testing facility, United Diagnostics PLLC, located in Rochester Hills, Michigan. Fata prescribed and administered unnecessary aggressive chemotherapy, cancer treatments, intravenous iron and other infusion therapies to 553 individual patients in order to increase his billings to Medicare and other insurance companies. Fata then submitted approximately $34 million in fraudulent claims to Medicare and other insurers for these unnecessary treatments. Furthermore, Fata used the proceeds of the health care fraud at his medical practice, MHO, to promote the carrying on of additional health care fraud at United Diagnostics, where he administered unnecessary and expensive positron emission tomography (PET) scans for which he billed a private insurer.

Doctors, Salesman Sentenced for Accepting Bribes for Test Referrals In the course of a long-running and elaborate scheme operated by Biodiagnostic Laboratory Services LLC (BLS), of Parsippany, New Jersey, its president and numerous associates, 38 people – 26 of them doctors – have pleaded guilty in connection with the bribery scheme, which its organizers have admitted involved millions of dollars in bribes and resulted in more than $100 million in payments to BLS from Medicare and various private insurance companies. The defendants sentenced so far include: • On July 8, 2015, Frank Santangelo, of Boonton, was sentenced to 63 months in prison, three years of supervised release and ordered to forfeit more than $1.8 million. On June 23, 2015, Douglas Bienstock, of Wayne, was sentenced to 37 months in prison, one year of supervised release and ordered to pay a $75,000 fine and forfeit $79,695. Crane, a patient recruiter, was also convicted of conspiracy to pay and receive kickbacks, and is scheduled to be sentenced in December 2015. Gibson IV is the operator of Devotions Care Solutions, a satellite psychiatric facility of Riverside General Hospital and Askew is the owner of Safe and Sound group home. From 2005 until June 2012, the defendants and others engaged in a scheme to defraud Medicare by submitting to Medicare, through Riverside and its satellite locations, approximately $158 million in false and fraudulent claims for partial hospitalization program (PHP) services. A PHP is a form of intensive outpatient treatment for severe mental illness. However, Medicare beneficiaries for whom the hospital billed Medicare did not qualify for, or need, PHP services. Moreover, the Medicare beneficiaries rarely saw a psychiatrist and did not receive intensive psychiatric treatment. Gibson III paid kickbacks to patient recruiters and to owners and operators of group care homes, including Askew, in exchange for those individuals delivering ineligible Medicare beneficiaries to the hospital's PHPs. Gibson IV also paid patient recruiters, including Robert Crane and others, to deliver ineligible Medicare beneficiaries to the specific PHP he operated. Another co-conspirator, Mohammad Khan, was sentenced on May 21, 2015, to 480 months in prison for his role in the scheme. William Bullock, Leslie Clark, Robert Ferguson, Waddie McDuffie and Sharonda Holmes, who were involved in paying or receiving kickbacks, also have pleaded guilty to participating in the scheme and await sentencing.

Southern California Medical Supply Company Owner Sentenced for Medicare Fraud Scheme On May 13, 2015, in Los Angeles, California, Olufunke Ibiyemi Fadojutimi, of Carson, was sentenced to 48 months in prison and ordered to pay $4,372,466 in restitution, with a codefendant. Fadojutimi was convicted by a jury on July 31, 2014, of conspiracy to commit health

care fraud, health care fraud and money laundering. Fadojutimi, a registered nurse and the former owner of Lutemi Medical Supply, fraudulently billed Medicare for more than $8 million of durable medical equipment that was not medically necessary. Specifically, between September 2003 and May 2010, Fadojutimi and others paid cash kickbacks to patient recruiters

- On June 17, 2015, Len Rubinstein, of Holmdel, was sentenced to 37 months in prison, one year of supervised release, ordered to forfeit $250,000 and pay a $10,000 fine.
- On June 2, 2015, Richard Goldberg, of Weston, Connecticut, was sentenced to 20 months in prison, three years of supervised release and ordered to pay a $5,000 fine. Gary Leeds, of Greenwich, Connecticut, was sentenced to 20 months in prison, one year of supervised release and ordered to pay a $15,000 fine. Goldberg and Leeds must each forfeit $108,000.
- On May 5, 2015, Eugene DeSimone, of Eatontown, and Franz Goyzueta, of New York, were each sentenced to 37 months in prison and one year of supervised release. Additionally, DeSimone was ordered to forfeit $260,500 and Goyzueta was ordered to forfeit $72,000.
- On March 31, 2015, Wayne Lajewski, of Madison, and Glenn Leslie, of Ramsey, were sentenced to 14 months and 24 months in prison, respectively. In addition to the prison term, both were sentenced to one year of supervised release and fined $10,000.
- On Dec. 16, 2014, Demetrios Gabriel, of Brooklyn, New York, was sentenced to 37 months in prison, one year of supervised release and fined $75,000.

Former President of Houston Hospital, Son and Co-Conspirator Sentenced in $158 Million Medicare Fraud Scheme On June 9, 2015, in Houston, Texas, Earnest Gibson III, former president of a Houston hospital, his son, Earnest Gibson IV, and Regina Askew, a co-conspirator, were sentenced to 540 months, 240 months and 144 months in prison, respectively, for their roles in a $158 million Medicare fraud scheme. In addition, Gibson III was ordered to pay restitution in the amount of $46,753,180; Gibson IV was ordered to pay restitution in the amount of $7,518,480; and Askew was ordered to pay restitution in the amount of $46,255,893. On Oct. 20, 2014, following a jury trial, Gibson III, Gibson IV and Askew were each convicted of conspiracy to commit health care fraud, conspiracy to pay and receive kickbacks, as well as related counts of paying or receiving illegal kickbacks. Both father and son were also convicted of conspiracy to commit money laundering. Co-defendant Robert in exchange for patient referrals, and additional kickbacks to physicians for fraudulent prescriptions for medically unnecessary durable medical equipment, such as power wheelchairs. Fadojutimi and others then used these prescriptions to support fraudulent claims to Medicare. As a result of this fraud scheme, Fadojutimi and others submitted approximately $8.3 million in false and fraudulent claims to Medicare, and received almost $4.3 million on those claims. Bankruptcy Fraud According to the United States Bankruptcy Court, there were 860,182 bankruptcy filings in FY 2015. Bankruptcy fraud results in serious consequences that undermine public confidence in the system and taint the reputation of

honest citizens seeking protection under the bankruptcy statutes. Since the IRS is often a creditor in bankruptcy proceedings, it is paramount that tax revenues be protected.

Examples of bankruptcy fraud investigations adjudicated in FY 2015 include:

Connecticut Couple Sentenced for Bankruptcy and Tax Fraud Schemes On Aug. 3, 2015, in Hartford, Connecticut, Jason Sheehan, of New Haven, was sentenced to 37 months in prison and three years of supervised release for engaging in an extensive bankruptcy and tax fraud scheme. Sheehan's wife, Glorvina Constant was sentenced to one year of probation for participating in a related mortgage fraud scheme. Restitution will be determined at a later date. On Oct. 8, 2014, Sheehan pleaded guilty to willful failure to collect, account for and pay tax, embezzlement from a bankruptcy estate and making a false declaration statement under penalty of perjury in a bankruptcy case. On Oct. 7, 2014, Constant pleaded guilty to conspiracy to commit bank fraud. Sheehan was the sole member of a limited liability company known as Infinistaff, LLC, which provided temporary workers to employers. In September 2010, Infinistaff filed a voluntary chapter 11 bankruptcy petition. As part of the bankruptcy case, Sheehan filed operating reports that falsely claimed that another company was being paid to process Infinistaff's payroll checks, and prepare and file its payroll tax returns and tax payments although the arrangement was terminated at that time. Sheehan filed these reports in order to conceal his embezzlement of more than $1 million from Infinistaff's bankruptcy estate. In addition, between 2011 and 2013, Infinistaff failed to account for and pay to the IRS more than $2.5 million in employment taxes the company had withheld from employee paychecks, and also failed to pay approximately $1.4 million in employer payroll taxes. Constant received Infinistaff payroll checks totaling $354,000 during the bankruptcy proceedings even though she performed no work for the company. Additionally, in 2013, Constant purchased a home using proceeds from a mortgage loan she obtained from a local bank, as well as approximately $260,000 embezzled by Sheehan from the Infinistaff bankruptcy estate. On two mortgage loan applications Constant falsely stated that she was employed by Infinistaff and earned a substantial salary.

Former Arkansas Business Developer Sentenced For Fraud On Oct. 28, 2014, in Fort Smith, Arkansas, Brandon Lynn Barber, of New York, New York, was sentenced to 65 months in prison and three years of supervised release. On July 31, 2013, Barber pleaded guilty to conspiracy to commit bankruptcy fraud, conspiracy to commit bank fraud and money laundering. From approximately 2005 through 2009, Barber was involved in several schemes to defraud banks, creditors and the Federal Bankruptcy Court. Barber provided false financial information and statements to banks for loans to finance the Legacy Condominium building and the Bellafont project in Fayetteville. Barber also concealed assets and income from creditors and the bankruptcy court by transferring funds to other co-defendants or accounts controlled by them and using those funds for his own personal benefit and expenses.

Former Leader and Former Chief Executive Officer of Hindu Temple of Georgia Sentenced for Fraud and Obstruction On April 13, 2015, in Atlanta, Georgia, Annamalai Annamalai, aka Dr. Commander Selvam, aka Swamiji Sri Selvam Siddhar, former leader of the now defunct Hindu Temple of Georgia and a resident of Baytown, Texas, was sentenced to 327 months in prison. Annamalai was convicted on Aug. 25, 2014 for bank fraud and tax fraud offenses. Co-defendant Kumar Chinnathambi, also of Baytown, was arrested and pleaded guilty to conspiracy to commit bankruptcy fraud on July 17, 2014. Chinnathambi was sentenced on May 1, 2015 to 24 months in prison, three years of supervised release and jointly ordered to pay $318,781 in restitution. Around Oct. 12, 2008, Chinnathambi was listed as the Chief Executive Officer of the Hindu Temple of Georgia, a position previously held by Annamalai. On or about Aug. 30, 2009, another individual was listed as the Chief Financial Officer and Secretary. About Aug. 31, 2009, the Hindu Temple filed for Chapter 11 bankruptcy. Annamalai signed the voluntary petition for bankruptcy on behalf of the Hindu Temple as President and Chief Executive Officer. About a Nov. 9, 2009, five days after a trustee was appointed to oversee the Hindu Temple's property in bankruptcy, Chinnathambi registered new temple with the Georgia Secretary of State, called Shiva Vishnu Temple of Georgia, Inc. (Shiva Vishnu), which listed the other individual as the Chief Executive Officer. About Nov. 12, 2009, Annamalai, Chinnathambi and anther individual opened a bank account in the name of Shiva Vishnu. From about Nov. 25, 2009, through about Oct. 25, 2010, Annamalai and Chinnathambi caused credit card receipts and donations that were intended for the Hindu Temple to be diverted and deposited into Shiva Vishnu's bank account, without disclosing the funds to the trustee charged with control of the debtor Hindu Temple's property in bankruptcy, or creditors of the Hindu Temple or the United States Trustee. Annamalai was also convicted on obstruction and false statements in connection with the grand jury investigation and the bankruptcy proceeding. Annamalai transmitted a fraudulent email to an IRS CI Special Agent, which was falsely made to appear as if the email had been written and authored by a witness of the criminal investigation. Annamalai submitted a false affidavit to the grand jury, and a false affidavit to the Bankruptcy Court in connection with the Hindu Temple's bankruptcy proceeding.

Prominent Businessman for Private Consulting Group Sentenced after Bilking Elderly Victim of $1.1 Million On March 31, 2015, in Portland, Oregon, Robert L. Keys was sentenced to 70 months in prison, three years of supervised release, and ordered to pay $1.1 million in restitution. Keys pleaded guilty on Sept. 9, 2014 to wire fraud, money laundering and bankruptcy fraud. In 2008, as Keys' business ventures were failing, he turned to one of his long-term clients, a widow in her mid-80s, and persuaded her to loan $1.1 million to co-defendant William Kearney, now deceased. Keys lied to his client about the terms of the loan, such as the existence of treasury bonds as collateral for the loan, and he failed to disclose important facts to her in order to fraudulently obtain money for his benefit and that of Kearney. Keys also received over $100,000 in kickbacks as part of the scheme. Those kickbacks were wired to him by Kearney the day after Keys persuaded his client to loan Kearney the $1.1 million. In addition, Keys and his wife filed for bankruptcy in 2010, and Keys fraudulently attempted to discharge $148 million in debt by lying to the Bankruptcy Court, concealing assets and income, and filing false documents with the court.

INTERNATIONAL OPERATIONS

In 2015 IO created the Investigation Development and Support Unit (IDS). The IDS is a newly created section of IO that was formed when the former International Lead Development Center (ILDC), Offshore Voluntary Compliance group and the Counterterrorism Center (CTC) were merged together and placed under one management structure. This new unit is located in the Office of International Strategy and Policy. The new unit continues to offer its resources to the field in a case support capacity while also focusing on developing significant financial investigations independent of the leads being received. The growth of the CI footprint internationally has increased the opportunities for case development. The IDS is specifically tasked with conducting research on potential international criminal investigations. In addition, CI has personnel assigned to Interpol and the International Organized Crime Intelligence and Operations Center (IOC-2) to combat the threats posed by international criminal organizations, assist in joint investigations and the apprehension of international fugitives. As part of IO, the Narcotics and Counterterrorism section provides policy guidance and operational coordination support to the field for the investigation of domestic and international narcotics traffickers and related money laundering organizations and investigations of individuals and organizations believed to be involved in, or supporting, terrorist activities.

Examples of international investigations adjudicated in FY 2015 include:

Tax Return Preparers Sentenced for Hiding Offshore Account and Assisting Wealthy Clients to Hide Millions in Secret Accounts On Aug. 10, 2015, in Los Angeles, California, David Kalai was sentenced to 36 months in prison, three years of supervised release, with a condition of home confinement to last the entire term of release, and ordered to pay a $286,000 fine. Nadav Kalai, David Kalai's son, was sentenced to 50 months in prison, three years of supervised release and ordered to pay a $10,000 fine. The Kalais were principals of United Revenue Service Inc. (URS), a tax return preparation business with 12 offices located throughout the United States. On Dec. 19, 2014, 34 the Kalais were convicted of conspiracy to defraud the IRS and two counts of willfully failing to file a Report of Foreign Bank and Financial Accounts (FBAR). The Kalais advised and assisted their high net-worth clients in concealing millions of dollars of assets and income in secret foreign bank accounts and filing false federal income tax returns. The Kalais also maintained a secret offshore account of their own at Bank Leumi in Luxembourg in the name of a foreign sham corporation and failed to disclose the account to the IRS or the U.S. Treasury. The Kalais purposefully prepared false individual income tax returns for their URS clients that did not disclose the clients' foreign financial accounts nor report the income earned from those accounts. In order to conceal the clients' income, ownership and control of assets from the IRS, the Kalais incorporated offshore companies in Belize and elsewhere and helped clients open secret bank accounts at the Luxembourg locations of two Israeli banks, Bank Leumi and Bank B. Three URS clients who testified at the Kalais' trial have pleaded guilty to tax felonies arising from their participation in the scheme. The Kalais each failed to file an FBAR for calendar years 2008 and 2009 with respect to a foreign account held at Bank Leumi in Luxembourg.

Commerzbank AG Pleads Guilty to Violating U.S Economic Sanctions and Bank Secrecy Act On March 12, 2015, in Washington, D.C., Commerzbank AG, a global financial institution headquartered in Frankfurt, and its U.S. branch, Commerzbank AG New York Branch, entered into a deferred prosecution agreement for violations of the International Emergency Economic Powers Act (IEEPA) and the Bank Secrecy Act (BSA) and agreed to pay a total of $1.45 billion. Commerzbank admitted and accepted responsibility for its criminal conduct in violation of IEEPA and the BSA, and Commerz New York admitted its criminal conduct in violation of the BSA. According to court documents, Commerzbank AG processed billions of U.S. dollar transactions through the U.S. financial system on behalf of Sudanese and Iranian entities subject to U.S. economic sanctions from 2002 to 2008. In addition, since 2008, and continuing until at least 2013, Commerz New York violated the BSA and its implementing regulations. Specifically, Commerz New York failed to maintain adequate policies, procedures and practices to ensure its compliance with U.S. law, including its obligation to detect and report suspicious activity. As a result of the wilful failure of Commerz New York to comply with U.S. law, a multibillion-dollar securities fraud was operated through Commerzbank and Commerz New York. Olympus, a Japanese-based manufacturer of medical devices and cameras, used Commerzbank and Commerz New York to perpetrate a massive accounting fraud. Commerz New York, through its branch and affiliates in Singapore, loaned money to offbalance-sheet entities created by or for Olympus to perpetrate the accounting fraud. Commerz New York transacted more than $1.6 billion in furtherance of the fraud.

New York Man Sentenced for Role in Multimillion-Dollar International Cybercrime Scheme On April 14, 2015, in Trenton, New Jersey, Oleg Pidtergerya, of Brooklyn, New York, was sentenced to 92 months in prison, three years of supervised release and ordered to pay restitution of $1,758,127 and a forfeiture judgment of $250,000. Pidtergerya, a member of an international cybercrime, identity theft and credit card fraud conspiracy, previously pleaded guilty to wire fraud conspiracy and conspiracy to commit access device fraud and identity theft. Oleksiy Sharapka, of Kiev, Ukraine, allegedly directed the conspiracy with the help of Leonid Yanovitsky, also of Kiev. Pidtergerya managed a cash-out crew in New York for Sharapka and Yanovitsky. The conspirators used information hacked from customer accounts held at more than a dozen banks, brokerage firms, payroll processing companies and government agencies in an attempt to steal at least $15 million from American customers. Conspiring hackers first gained unauthorized access to the bank accounts of customers then Sharapka and Yanovitsky diverted money from the hacked accounts to bank accounts and pre-paid debit cards they controlled. They employed crews of individuals known as “cashers” to withdraw the stolen funds from the fraudulent accounts by, among other ways, making ATM withdrawals and fraudulent purchases in New York, Massachusetts, Georgia and elsewhere. Pidtergerya was aware the fraudulent accounts and cards were created without the consent of the individuals in whose names they were opened. Pidtergerya coordinated ATM and bank 35 withdrawals of the stolen funds. He then sent the proceeds of the fraud to Sharapka and Yanovitsky in Ukraine.

Former SSA Employee and Eight Others Sentenced In Fraudulent Income Tax Refund Scheme On March 11, 2015, in Atlanta, Georgia, Marcus Behling, of Powder Springs, Georgia, was sentenced to 39 months in prison and ordered to pay $698,249 in restitution for his role in the scheme. From approximately January 2011 until March 2012, Shawn Brown led a criminal organization that used stolen personal identification information from more than 1,000 victims, along with fake wage and withholding information, to prepare and electronically file fraudulent returns claiming more than $5 million dollars in tax refunds. Brown and co-conspirator Maurice Pollock recruited Ronald Bennett, an employee of the United States Social Security Administration (SSA) in Jacksonville, Florida, to improperly access an SSA computer database to steal identities. Brown also recruited Christopher Edwards, an employee of an asset recovery company, to steal identities from a computer database he accessed through his employer. The stolen identities obtained by Bennett and Edwards were used to file fraudulent income tax returns. Brown also recruited Sergey Krayev, a naturalized U.S. citizen from Moldova, to employ individuals in Russia to file fraudulent income tax returns. More than 70 fraudulent returns were filed from Russia and refunds associated with those returns were electronically deposited into bank accounts Brown controlled. On March 6, 2015, Shawn Brown was sentenced to 160 months in prison and ordered to pay $1,230,021 in restitution. Also sentenced on March 6 were:

- Maurice Pollock to 70 months in prison and ordered to pay $888,697 in restitution;
- Jonathan Stubbs to 73 months in prison and ordered to pay $659,599 in restitution;
- Nyron Nelson to 37 months in prison and ordered to pay $98,671 in restitution;
- Kelly Lonas to 29 months in prison and ordered to pay $98,671 in restitution;
- Ronald Bennett to 27 months in prison and ordered to pay $3,000 in restitution;
- Christopher Edwards to 24 months in prison and ordered to pay $9,265 in restitution; and
- Sergey Krayev to 12 months' probation and ordered to pay $31,036 in restitution.

Massachusetts Man Sentenced for Role in Multimillion-Dollar International Cybercrime Scheme On Oct. 24, 2014, in Trenton, New Jersey, Robert Dubuc, of Malden, was sentenced to 21 months in prison, three years of supervised release and ordered to pay restitution of $338,685. Dubuc previously pleaded guilty to wire fraud conspiracy and conspiracy to commit access device fraud and identity theft. Dubuc was a member of an international cybercrime, identity theft and credit card fraud conspiracy that used information hacked from customer accounts held at more than a dozen banks, brokerage firms, payroll processing companies and government agencies to attempt to steal at least $15 million from American customers. Dubuc controlled a cash-out crew in Massachusetts for the organization. Conspiring hackers first gained unauthorized access to the bank accounts of customers then diverted money to other bank accounts and pre-paid debit cards they controlled. They implemented a sophisticated "cash-out" operation, employing crews of individuals known as "cashers" to withdraw the stolen funds from the fraudulent accounts, among other ways, by making ATM withdrawals and fraudulent purchases. Dubuc was aware the fraudulent accounts and cards were created without the consent of the individuals in whose names they were opened. He coordinated ATM and bank withdrawals of the stolen funds and sent proceeds of the fraud to co-conspirators in the Ukraine.

Two Colombian Citizens Sentenced for International Money Laundering Conspiracy On July 20, 2015, in Miami, Florida, Leonardo Forero Ramirez and Ubaner Alberto Acevedo Espinosa were sentenced to 37 months and 18 months in prison, respectively, and ordered to serve one year of supervised release. Both defendants previously pleaded guilty to conspiracy to commit money laundering. Both Acevedo and Forero were Colombian citizens residing in Bogota. During 2008 and 2009, Acevedo handled customer accounts at a stock brokerage firm that offered accounts that could be used by customers to receive deposits, wire transfers, and other credit or money, and to disburse the funds through wire transfers and cash or other withdrawals. The stock brokerage firm was authorized to receive funds in U.S. dollars, provided that they were properly 36 documented and justified as being for legitimate business transactions. Forero was one of Acevedo's customers. During the course of his participation in this scheme, Forero received approximately $1.2 million from IRS undercover accounts that he passed on to the people designated to receive it. Acevedo was involved in the transfer of approximately $335,000 from IRS undercover accounts in the United States to the stock brokerage firm in Colombia, and the conversion of the dollars into pesos and the subsequent withdrawal of the monies by Forero. Both Acevedo and Forero knew that the money was derived from criminal activity.

Creator and Operator of the "Silk Road" Website Sentenced On May 29, 2015, in Manhattan, New York, Ross Ulbricht, aka "Dread Pirate Roberts," of San Francisco, California, was sentenced to life in prison and ordered to forfeit $183,961,921. On Feb. 5, 2015, Ulbricht was found guilty of distributing narcotics, distributing narcotics by means of the Internet, conspiring to distribute narcotics, engaging in a continuing criminal enterprise, conspiring to commit computer hacking, conspiring to traffic in false identity documents, and conspiring to commit money laundering. Ulbricht created Silk Road in January 2011, and owned and operated the underground website until it was shut down by law enforcement authorities in October 2013. Silk Road served as a sophisticated and extensive criminal marketplace on the Internet where unlawful goods and services, including illegal drugs of virtually all varieties, were bought and sold regularly by the site's users. While in operation, Silk Road was used by thousands of drug dealers and other unlawful vendors to distribute hundreds of kilograms of illegal drugs and other unlawful goods and services to more than 100,000 buyers, and to launder hundreds of millions of dollars deriving from these unlawful transactions. Ulbricht sought to anonymize transactions on Silk Road by operating Silk Road on a special network of computers on the Internet, distributed around the world, designed to conceal the true IP addresses of the computers on the network and thereby the identities of the networks' users. Ulbricht also designed Silk Road to include a Bitcoin-based payment system that concealed the identities and locations of the users transmitting and receiving funds through the site.

Former Bechtel Executive Sentenced in Connection with Kickback Scheme On March 23, 2015, in Greenbelt, Maryland, Asem Elgawhary, of Potomac, Maryland, was sentenced to 42 months in prison and ordered to forfeit $5.2 million. Elgawhary, the former principal vice president of Bechtel Corporation and general manager of a joint venture operated by Bechtel and an Egyptian utility company, pleaded guilty on Dec. 4, 2014, to mail fraud, conspiracy to commit

money laundering, obstruction and interference with the administration of the tax laws. From 1996 to 2011, Elgawhary was assigned by Bechtel as the general manager at Power Generation Engineering and Services Company (PGESCo), a joint venture between Bechtel and Egypt's state-owned and state-controlled electricity company, known as EEHC. PGESCo assisted EEHC in identifying possible subcontractors, soliciting bids and awarding contracts to perform power projects for EEHC. Elgawhary accepted a total of $5.2 million from three power companies, who paid to secure a competitive and unfair advantage in the bidding process. One of the power companies, Alstom S.A., pleaded guilty on Dec. 22, 2014, to violations of the Foreign Corrupt Practices Act (FCPA) in connection with a scheme to pay bribes to foreign officials, including Elgawhary, in various countries. Elgawhary attempted to conceal the kickback scheme by routing the payments through various off-shore bank accounts under his control. In addition, Elgawhary obstructed and interfered with tax laws by failing to report any of the kickback payments as income for the tax years 2008 through 2011 and providing false information about foreign bank accounts. Narcotics and Counterterrorism CI's Narcotics and Counterterrorism Program support the goals of the President's Strategy to Combat Transnational Organized Crime, the U.S. National Drug Control Strategy, the National Money Laundering Strategy, and the U.S. Government's National Counterterrorism Strategy. CI contributes to the strategies by seeking to reduce or eliminate the profits and financial gains of individuals, entities, and Transnational Criminal Organizations (TOC) involved in the financing of terrorism, narcotics trafficking, and money laundering. CI Special Agent's expertise in "following the money" is vital to fulfilling the goals of U.S. government narcotics and counterterrorism strategies. CI special agents utilize their unique financial investigative expertise to trace the profits from an illegal activity back to an individual or criminal organization. CI is an integral partner in combatting the trafficking of narcotics and the financing of terrorism by investigating criminal violations of the Internal Revenue Code, Bank Secrecy Act and Federal Money Laundering statutes. Since its inception in 1982, CI has participated in the Organized Crime Drug Enforcement Task Force (OCDETF) program by focusing its narcotics efforts almost exclusively on high-priority OCDETF cases where its contributions have the greatest impact. The FY 2015 goal for CI's Direct Investigative Time (DIT) in narcotics investigations ranged between 11-12.5% of the agency's total DIT. At fiscal year-end, CI achieved its goal with a final rate of 11.4% of DIT charged to narcotics investigations. In addition, the FY 2015 goal of 90% of all narcotics investigation dedicated to the OCDETF program was reached with a final 91.4%. CI's Narcotics Program also supports the National Drug Control Strategy and the National Money Laundering Strategy through the assignment of CI personnel to the White House Office of National Drug Control Policy as well as the assignment of personnel to multi-agency task forces, including OCDETF, OCDETF Fusion Center (OFC), High Intensity Drug Trafficking Area (HIDTA), High Intensity Financial Crimes Area (HIFCA), Drug Enforcement Administration Special Operations Division, (SOD), and the El Paso Intelligence Center (EPIC). The goals of the U.S. Government's National Counterterrorism Strategy are guided by several key principles, including but not limited to harnessing every tool at the U.S. Government's disposal, including intelligence, military, and law enforcement. The CI special agent's expertise in tracking financial records is vital to the goal to disrupt, dismantle, and prosecute individuals, entities and TOC groups that finance terrorism. CI contributes to the strategy's goal by having its special agents use their financial investigative expertise to identify and investigate terrorism financing

schemes. CI also supports the U.S. Government's National Counterterrorism Strategy by assigning personnel to a number of FBI-led Joint Terrorism Task Forces (JTTF). Due to CI's mission and current limited resources, it's unable to participate in all of the JTTFs. However, CI plays a prominent role in many investigations of individuals and organizations believed to be involved in or supporting international terrorist activities. During FY2015, CI partnered with IRS's Tax Exempt and Government Entities (TEGE) to identify then investigate and/or sanction tax exempt, 501(c)(3), entities that are knowingly facilitating the financing of terrorist activity through their entity's financial infrastructure. Furthermore, CI's IDS proactively develops terrorism related investigative leads for investigation by CI special agents. The IDS also provides investigative support to CI special agents that investigate terrorism cases.

Examples of narcotics and counterterrorism investigations adjudicated in FY 2015 include:

Pill Mill Operator and Two Others Sentenced for Conspiracy to Dispense Controlled Substances On Aug. 27, 2015, in Chattanooga, Tennessee, Barbara Lang, aka "Aunt Bea," of Rossville, Georgia, was sentenced to 280 years in prison. Lang was convicted of conspiring to distribute and dispense Schedule II and IV controlled substances, outside the scope of professional practice and not for a legitimate medical purpose; maintaining a premise for the purpose of distributing controlled substances; and structuring financial transactions to evade reporting requirements. Lang's daughter, Faith Blake, pleaded guilty to conspiring to illegally distribute drugs through pain clinics she operated, obstructing the IRS and failing to appear for a federal court proceeding. Sentencing for Blake is set for later this year. Dr. Jerome Sherard, a medical director, pleaded guilty to conspiring to illegally distribute drugs and was sentenced to 60 months in prison and ordered to forfeit $192,956. Charles Larmore, a nurse practitioner, pleaded guilty to conspiring to illegally distribute drugs and was sentenced to 156 months in prison, fined $20,000 and ordered to forfeit $375,829.

Drug Trafficker Sentenced for Drug Distribution and Money Laundering Conspiracies On July 23, 2015, in Greenbelt, Maryland, 38 Anthony Torrell Tatum, of Arlington, Virginia, was sentenced to 324 months in prison for conspiracy to distribute cocaine and heroin, possession of a gun in furtherance of a drug trafficking offense and money laundering conspiracy. Tatum was ordered to pay a $108 million money judgment, as well as a forfeiture order for personal property seized during the investigation, including $328,700 in assorted jewelry, over $1 million in cash or deposited in bank accounts and a luxury vehicle. From at least January 2011 through his arrest on Sept. 6, 2013, Tatum conspired with Ishmael Ford-Bey and others to distribute cocaine and heroin. In May 2013, Tatum rented a storage unit in Maryland using an alias. Between August 2013 and October 2013, search warrants were executed at several locations and uncovered large quantities of cocaine, heroin, drug paraphernalia, weapons, cash, jewelry and heat sealers. Latent fingerprints recovered from the heat sealers were identified as belonging to Tatum and Ford-Bey. At one location, law enforcement discovered a fake driver's license bearing Tatum's picture. Tatum was present at the location and arrested. In an effort to disguise and hide their drug proceeds, Tatum and others created numerous business entities, including 1001 Solutions,

Beauty International Supply, Inc. and Going Green Towing, which had little, if any, legitimate business. They set up bank accounts in the names of each business and deposited their drug proceeds into those business accounts. Tatum used the drug proceeds to purchases several vehicles and expensive jewelry.

North Carolina Man Sentenced For Narcotics Distribution and Money Laundering On July 15, 2015, in Wilmington, James Rodrequias Pressley, of Dunn, was sentenced to life in prison and and five years of supervised release. Pressley was convicted by jury trial for conspiracy to distribute and possess with intent to distribute cocaine base (Crack) and five kilograms or more of cocaine and conspiracy to commit money laundering. From at least 1999 to 2012, Pressley was a drug trafficker responsible for possessing and distributing crack cocaine and cocaine. Pressley received these narcotics from several suppliers. Pressley used numerous others to distribute his drugs throughout eastern North Carolina. Between Dec. 12, 2011, and Feb. 1, 2012, investigative agents used a confidential informant to conduct several controlled purchases of crack cocaine from Pressley. Several of the controlled buys occurred at Pressley's residence. The IRS determined that Pressley had no verifiable employment history during the time of the offense; however, between June 12, 2009, and Aug. 17, 2010, Pressley purchased several properties in Dunn for a total of $10,500. Pressley subsequently made additions and/or renovations to the properties valued at $12,000. Pressley used these properties to sell and store cocaine and crack cocaine, and store proceeds from his drug- trafficking activities. During the drug conspiracy, Pressley ostensibly operated a legitimate music business, Blackbird Entertainment (BE), as well as a landscaping business in Dunn. Pressley used drug proceeds to pay for concerts and production costs in an attempt to promote BE. He also used $7,860 in drug proceeds to purchase equipment for his landscaping business. In order to conceal the source of illegal proceeds, between Jan. 5, 2009 and Nov. 22, 2011, Pressley made deposits totaling $29,805 to the bank account of his girlfriend, deposits totaling $20,060, to his landscaping account, and deposits totaling $15,000 to his account at Bank of America. Investigators also determined that between Sept. 5, 2009, and Feb. 28, 2011, Pressley used $26,912 in drug proceeds to purchase at least three vehicles.

Head of a Gulf Cartel Sentenced for Drug Trafficking, Money Laundering On June 30, 2015, in Beaumont, Texas, Juan Francisco Saenz-Tamez, of Camargo, Tamaulipas, Mexico, was sentenced to 360 months in prison and ordered to pay a money judgment of $100 million. Saenz-Tamez pleaded guilty on Jan. 13, 2015 to distribution and possession with intent to distribute cocaine, conspiracy to distribute and possession with intent to distribute marijuana, and conspiracy to commit money laundering. A federal investigation into the large-scale trafficking of illegal drugs from Mexico into the Eastern District of Texas revealed that Saenz-Tamez was responsible for the shipment of one-half ton of cocaine and 90 tons of marijuana into the area and then onto locations across the nation. As a result of this scheme, $100 million was laundered by Saenz-Tamez and his drug trafficking organization.

Former Ringleader of Albuquerque-Based Drug Trafficking Organization Sentenced On July 28, 2015, in Albuquerque, New Mexico, 39 Christopher Roybal, the former leader of an Albuquerque-based drug trafficking organization, was sentenced to 168 months in prison, five years of supervised release and required to pay a $184,080 money judgment. On Feb. 25, 2015, Roybal pleaded guilty to a second superseding indictment, charging him with participating in a cocaine trafficking conspiracy, three money laundering conspiracies, and a substantive money laundering offense. Christopher Roybal admitted that between Aug. 2011 and Dec. 2012, he conspired with others to distribute large quantities of cocaine in Albuquerque and Las Vegas. He also admitted participating in three conspiracies that laundered the proceeds of his drug trafficking organization. One conspiracy involved the transportation of drug proceeds from Albuquerque to California to pay for marijuana that was distributed by Christopher Roybal's organization. The second and third conspiracies involved the laundering of Christopher Roybal's drug proceeds through accounts at a bank and a credit union. Roybal agreed to forfeit his Albuquerque residence and a 1967 Chevrolet Camaro. The charges filed in the case were the result of a 16-month multi-agency investigation into a drug trafficking organization headed by Roybal.

Law School Graduate Sentenced for Conspiring to Launder Drug Money On April 23, 2015, in Kansas City, Kansas, Mendy Read-Forbes, a law school graduate, was sentenced to 240 months in prison. ReadForbes, of Platte City, Missouri, pleaded guilty to conspiracy. In March 2012, Read-Forbes began meeting with an agent posing as a drug dealer. Read-Forbes, a law school graduate who was not licensed to practice law, operated Forbes & Newhard Credit Solutions, Inc., a nonprofit corporation registered in Missouri to provide educational and social welfare services. The agent told Read-Forbes he had assets to conceal from the sale of marijuana. She said she could use her legal training and her connections with federal attorneys and law enforcement officers to help him launder the money. She told the agent she would launder his cash by running it through her business. The plan also involved her listing the agent as an employee of her business and putting him on her company's board of directors. As part of the scheme, she created a fictitious company called Maximus Lawn Care LLC. Over the course of the investigation, she laundered more than $200,000 in purported drug funds. She also agreed to invest $40,000 of her money with the agent for the purchase of marijuana.

Austinite Sentenced for Attempting to Travel to Syria to Join ISIL/ISIS On June 5, 2015, in Austin, Texas, Michael Wolfe (aka "Faruq") was sentenced to 82 months in prison and five years of supervised release for attempting to provide material support and resources to a foreign terrorist organization. In June 2014, Wolfe pleaded guilty to the charge, admitting that from Aug. 2013 to June 17, 2014, he planned to travel to the Middle East to provide his material support to the Islamic State of Iraq and the Levant (ISIL), also known as the Islamic State of Iraq and al-Sham/Syria (ISIS). Wolfe previously acknowledged that he applied for and acquired a U.S. passport, participated in physical fitness training, practiced military maneuvers and made efforts to conceal his communications about his plans to travel overseas to engage in violent jihad. Wolfe also purchased airline tickets so that he could travel to Europe to meet an FBI undercover employee, whom the defendant then believed would facilitate travel to Syria through Turkey. In furtherance of his attempt to provide material support to ISIL, Wolfe travelled to Houston and was

apprehended on June 17, 2014, on the jet-way, as he attempted to board a flight to Toronto, Canada. His ticketed itinerary had him traveling through Iceland and arriving in Copenhagen, Denmark, on June 18, 2014. He then planned to make his way to Syria to join with ISIL and engage in the armed conflict.

MONEY LAUNDERING AND BANK SECRECY ACT (BSA) In partnership with other law enforcement agencies and the Department of Justice, CI seeks to protect the United States financial system through the investigation and prosecution of individuals and organizations that are attempting to launder their criminally derived proceeds. CI also seeks to deprive individuals and organizations of their illegally obtained cash and assets through effective use of the federal forfeiture statutes. In money laundering cases, the money involved is earned from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source. Money laundering is one means by which criminals evade paying taxes on illegal income by concealing the source and the amount of profit. The Third Party Money Laundering (3PML) initiative was created in 2014 in conjunction with the Treasury Executive Office for Asset Forfeiture. In FY 2015, 3PML case initiations continued to increase. Major Case funding continues to be made available to combat the high costs generally associated with these complex financial investigations with asset forfeiture potential. CI has also been working in conjunction with Department of Treasury to comply with the Financial Action Task Force (FATF) audit of the United States. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

Since 2013, CI has pursued investigations into the use of virtual currency for illicit purposes. Virtual currency is any medium of exchange that operates like a fiat currency but does not have legal tender status in any jurisdiction. As with any money, virtual currency can be used in a wide variety of crimes involving tax fraud, money laundering, and other financial crimes. CI has had substantial roles in many virtual currency investigations. One example is the investigation of Carl Mark Force, a corrupt DEA agent who transferred bitcoins into his personal wallet while investigating Silk Road. CI was able to successfully follow the bitcoin transfers through the blockchain. In FY 2015, IRS-CI continued to focus on financial crimes that involved virtual currency by collaborating with FinCEN and other federal law enforcement agencies to identify the movement of illegal monies utilizing virtual currency. In addition, IRS-CI continued its collaboration efforts with other Business Operating Divisions (BOD) within IRS to include SB/SE and LBI to evaluate the effect of the virtual currency guidance issued by IRS in March 2014 and to investigate those individuals who use virtual currency as a tool to evade taxes. CI is a member of IRS' Virtual Currency Issue Team that looks into issues related to virtual currency, including how taxpayers can use virtual currency as a tool to evade the payment of taxes. On Sept. 17, 2015, IRS-CI participated in a formal CENTRA virtual currency course with the IRS Virtual Currency Issue team. The Financial Crimes section has also provided virtual currency presentations to several CI field offices to give a basic awareness of virtual currency, how it works and how it has

been used for illicit purposes. In FY 2016 IRS-CI will continue to provide training into virtual currency and incorporate advanced training that will include how to analyze the blockchain. In FY 2016, CI will continue to focus on financial crimes that involve virtual currency by collaborating with FinCEN and other federal law enforcement agencies to identify the movement of illegal monies utilizing virtual currency. In addition, CI will continue its collaboration efforts with other BODs. CI will also seek to work with private companies and organization, such as Coinbase and the Blockchain Alliance to stay current on the threats posed by the use of virtual currency. 41 Bank Secrecy Act The Bank Secrecy Act (BSA) mandates the reporting of certain currency transactions conducted with a financial institution, the disclosure of foreign bank accounts, and the reporting of the transportation of currency across United States borders. Through the analysis of BSA data, CI has experienced success in identifying significant and complex money laundering schemes and other financial crimes. CI is the largest consumer of BSA data. The CI BSA Program has grown substantially since its inception in the early 2000s when CI helped establish the initial 41 Suspicious Activity Report Review Teams (SAR-RT). The mission then, as it is today, was to scrutinize BSA data to identify and target significant illicit financial criminal activity. The current BSA program is comprised of participation in 94 SAR-RTs (one in each judicial district and led by the responsible U.S. Attorney Office), and sponsorship and management of 55 Financial Crimes Task Forces (FCTF) throughout the country. The FCTF involves collaboration between CI and state or local law enforcement agencies for the purpose of identifying and investigating specific geographic area illicit financial crimes, including BSA violations, money laundering, narcotics trafficking, terrorist financing and even tax evasion. More than 150 state or local agencies have joined FCTFs across the country and have detailed more than 350 law enforcement officers to become Task Force Officers. The Task Force Officers are granted the authority to investigate money laundering and BSA violations under the direction of CI. All task force investigations are conducted at the federal level and IRS-CI policies regarding authorized investigative techniques, enforcement actions, and seizures are followed by all the participants. CI strengthens the BSA program area by maintaining excellent working relationships with anti-money laundering officials within the financial industry. Additionally, CI also maintains excellent relationships with IRS civil functions responsible for Title 31 Compliance and other external sources. These relationships are developed at the headquarters and field office levels through outreach activities. In addition, during FY 2015, CI hosted two bank forums to help strengthen relationships with officials within the financial industry. The bank forums provide an opportunity for CI and the AntiMoney Laundering officials to discuss emerging trends of criminal activity.

FY 2015, FinCEN approved two Geographic Targeting Orders (GTOs). On Oct. 2, 2014, FinCEN approved a GTO for certain businesses located within the Los Angeles Fashion District. The order imposes additional reporting and recordkeeping obligations on certain trades and businesses located within the Los Angeles Fashion District. The GTO will enhance the IRS' ability to identify and pursue cases against person and businesses engaged in the illicit movement of U.S. currency to Mexico and Columbia using the black market peso exchange, sometimes known as trade based money laundering. In February 2015, the order was extended for another 180 days. On April 21, 2015, FinCEN approved a GTO for the Miami area (including surrounding counties) to enforce additional record keeping requirements on check cashing businesses/MSBs.

To help combat identity theft and refund fraud, FinCEN added additional requirements for cashing Treasury checks and Refund Anticipation Loans (RAL). Additional record keeping requirements include but are not limited to requesting the customer provide two forms of identification, a photo ID and a fingerprint on the check.

Examples of money laundering investigations adjudicated in FY 2015 include:

Second Missouri Man Sentenced for $1.2 Million K2 Distribution On Sept. 8, 2015, in Springfield, Eric Scott Reynolds, of Lebanon, was sentenced to 72 months in prison. On Oct. 15, 2015, Reynolds pleaded guilty to his role in a mail fraud conspiracy and a money laundering conspiracy that involved the distribution of more than $1.2 million of synthetic marijuana, commonly referred to as K2, from a head shop in Lebanon, Missouri. Reynolds was employed at Lucky's Novelties and distributed synthetic drugs from the head shop. His brother and co-defendant, Stephen Brian Reynolds, of Camdenton, was the owner of Lucky's Novelties. Stephen Reynolds was sentenced on June 29, 2015, to 72 months in prison and ordered to forfeit $1,167,990, as well as real estate, funds in bank accounts, approximately $128,000 that was seized from his residence, a car, motorcycle, and several guns. Both men participated in the conspiracy to commit mail fraud from March 1, 2011, to Dec. 11, 2012. They defrauded the Food and Drug Administration and the public by using mail deliveries in a conspiracy to distribute several products that were labeled as "incense" or "potpourri" and "not for human consumption," when in reality these substances were synthetic marijuana intended for human consumption as a drug. In addition, between Sept. 15, 2011, and July 25, 2012, Stephen and Eric Reynolds deposited $1,245,761 in proceeds from the distribution of K2 into bank accounts and a safety deposit box.

Long-Time Drug Trafficker and Money Launderer Sentenced On Sept. 14, 2015, in Anchorage, Alaska, Steven Nicholas Taylor was sentenced to 180 months in prison and five years of supervised release. Taylor agreed to forfeit and abandon any interest in his Seattle home. Taylor previously pleaded guilty to conspiracy to distribute controlled substances and conspiracy to commit money laundering. In a separate, but related, case arising in Missouri, Taylor was sentenced on his plea of guilty to drug trafficking conspiracy. Taylor and his accomplices were major sources of cocaine in Alaska going back 20 years. In the late 1990's, Taylor was convicted of drug conspiracy, money laundering, and interstate travel in aid of racketeering, and served 121 months in federal prison. In 2009, shortly after court-ordered supervision was terminated in the Seattle case, Taylor resumed drug trafficking operations with several of same accomplices, and supplied cocaine and other drugs to Alaska and Missouri. In the Alaska case, Taylor directed the activities of Timothy Northcutt, Joseph Irving, Etienne Devoe, Leonard Charles, Joshua Haynes, and others. In total, Taylor admitted to supplying between 15 and 50 kilograms of cocaine to Alaska, as well as an additional 5 to 15 kilograms to Missouri. Taylor also directed and instructed his coconspirators on money laundering for the continuation of Taylor's drug conspiracy operation, from which Taylor was the primary beneficiary. Devoe, Northcutt, Leonard, and Charles participated in the money laundering activities, including exchanging text messages with Taylor on

how to launder the money, and what bank accounts to use. Taylor's codefendants in the case received the following sentences:

- James Brown, Sr., 56 months,
- Leonard D. Charles, 60 months;
- Etienne Q. Devoe, 126 months;
- Shawn Cortez Cloyd, 36 months;
- Timothy W. Northcutt, 72 months;
- Joshua J. Haynes, 30 months;
- Gabrielle P. Haynes, 18 months;
- Joseph E. Irving, 21 months.

California Woman Sentenced for Role in Offshore Sweepstakes Scheme On Aug. 11, 2015, in Asheville, North Carolina, Patricia Diane Clark, of Sacramento, California, was sentenced to 130 months in prison and ordered to pay $642,032 in restitution and to forfeit the same amount jointly with her codefendants. Clark pleaded guilty to conspiracy to commit wire fraud, wire fraud and conspiracy to commit money laundering. From about 2007 through February 2013, Clark and her coconspirators called U.S. residents from Costa Rican call centers, falsely informing them that they had won a cash "sweepstakes." The victims, many of whom were elderly, were told that in order to receive the prize, they had to send money for a purported "refundable insurance fee." Clark picked up money from the victims and sent it to her co-conspirators in Costa Rica. Clark also managed others who picked up money from the victims in the US and she kept a portion of the victims' payments. Once the victims sent money, Clark's coconspirators contacted the individuals again and falsely informed them that the prize amount had increased, either because of a clerical error or because another prize winner was disqualified. The victims then had to send more money to pay for "new" fees to receive the larger sweepstakes prize. The attempts to collect additional money from the victims continued until an individual either ran out of money or discovered the fraudulent nature of the scheme. Clark, along with her co-conspirators, was responsible for approximately $640,000 in losses to more than a hundred U.S. citizens.

Two Colombian Citizens Sentenced for International Money Laundering On July 20, 2015, in Miami, Florida, Leonardo Forero Ramirez and Ubaner Alberto Acevedo Espinosa were sentenced to 37 months and 18 months in prison, respectively, and ordered to serve one year of supervised release. Both defendants previously pleaded guilty to conspiracy to commit money laundering. Both Acevedo and Forero were Colombian citizens residing in Bogota. During 2008 and 2009, Acevedo handled customer accounts at a stock brokerage firm that offered accounts that could be used by customers to receive deposits, wire 43 transfers, and other credit or money, and to disburse the funds through wire transfers and cash or other withdrawals. The stock brokerage firm was authorized to receive funds in U.S. dollars, provided that they were properly documented and justified as being for legitimate business transactions. Forero was one of Acevedo's customers. During the course of his participation in this scheme, Forero received

approximately $1.2 million from IRS undercover accounts that he passed on to the people designated to receive it. Acevedo was involved in the transfer of approximately $335,000 from IRS undercover accounts in the United States to the stock brokerage firm in Colombia, and the conversion of the dollars into pesos and the subsequent withdrawal of the monies by Forero Both Acevedo and Forero knew that the money was derived from criminal activity.

Pennsylvania Man Sentenced for Violating Drug, Gun and Money Laundering Laws On July 7, 2015, in Pittsburgh, Omali P. McKay, a citizen of Trinidad who formerly resided in Lower Burrell and Arnold, was sentenced to 180 months in prison, five years of supervised release and ordered to forfeit vehicles, a residence and $272,000 in cash. McKay was previously convicted of violating narcotics, firearms and money laundering laws. McKay conspired with others from 2006 to Aug. 25, 2012, to distribute cocaine and crack cocaine. McKay admitted possessing, with intent to distribute, cocaine seized from his Lower Burrell residence on Aug. 25, 2012, while simultaneously possessing an assault rifle in furtherance of the drug crime. Finally, McKay admitted to conspiring with others to launder his drug trafficking proceeds. He used those laundered funds to purchase the Lower Burrell residence for $243,000 in cash in August 2011. past three fiscal years:

Frivolous Arguments Working Group In FY 2013, CI created a working group to develop recommendations on tracking investigations and sharing information about potential safety concerns against the law enforcement community, IRS employees and other government officials. Some members of the sovereign citizen movement espouse frivolous arguments opposing the tax laws, as well as other laws.

Examples of frivolous argument investigations adjudicated in FY 2015 include:

Tax Defier Sentenced for Failing to Pay Federal Taxes On Aug. 4, 2015, Minneapolis, Minnesota, Tami Mae May was sentenced to 24 months in prison for failing to pay federal taxes for more than seven years. May pleaded guilty on June 9, 2014, to obstruction of due administration of Internal Revenue laws. From 1998 through 2004, May failed to file any income tax returns for the excavating business she ran with her husband, despite that fact that the business earned substantial income during that time. When notified by the IRS in April 2005 that the business owed tax debt, penalties and interest, May embarked on an eight-year campaign of frivolous filings, in an effort to obstruct the administration of Internal Revenue laws. May filed a host of fake documents with the IRS, including a “zero income” tax return, Forms 1099-OID falsely claiming that her husband had made payments to various IRS Revenue Officers, falsely claiming that the Mays or their business had received “original issue discounts” and had “federal tax withheld” by various banks and credit card companies, and forms claiming that the Mays were not United States Citizens, but instead were permanent residents of the “Kingdom of Heaven.” May also made nonsensical tax-defier-scheme-related statements to the IRS, including that her social security number was her “corporate fiction’s” social security number, that her family’s business was a foreign trust of which she was the trustee, and that there is no such thing as money.

Members of Sovereign Citizen Movement Sentenced for Scheme to Defraud the IRS On June 18, 2015, in Phoenix, Arizona, Gordon Leroy Hall, of Mesa, Arizona, was sentenced to 96 months in prison. Gordon Hall's business partner, Brandon Adams, of Albuquerque, New Mexico, was sentenced to 40 months in prison. Gordon Hall's son, Benton Hall, was sentenced to 27 months in prison. Gordon Hall partnered with Adams after they met at various seminars associated with the sovereign citizen movement. They devised a plan to create fictitious money orders to submit to the IRS in an attempt to eliminate Hall's and Hall's clients' tax debts. The scheme operated out of Hall's office and home in Mesa, Arizona, where Hall's children, including Benton Hall, acted as office managers. Adams created all of the fictitious money orders based on information provided by Hall's staff. In all, Hall and Adams created and caused the submission to the IRS of 149 fictitious money orders totaling approximately $93 million.

Tax Fraud Promoters Sentenced for Conspiring to Defraud Internal Revenue Service On May 20, 2015, in Salt Lake City, Utah, Gerrit Timmerman III, of Midvale, was sentenced to 48 months in prison and three years of supervised release. Carol Jean Sing, of Henderson, was sentenced to 36 months in prison and three years of supervised release. In February 2015, Timmerman and Sing were convicted at trial by a federal jury of conspiracy to defraud the United States. Between April 23, 2004 and March 5, 2007, Timmerman and Sing conspired to defraud the United States by marketing "corporations sole" as part of their scheme to evade the assessment and payment of federal income taxes. Timmerman and Sing falsely told their clients that corporations sole were exempt from United States income tax laws, had no obligation to file tax returns and had no obligation to apply for tax exempt status. They further claimed that individuals taxable by assigning it to the corporation sole, could draw a tax-free stipend from their corporation sole, and could render property immune from IRS collection activity by transferring property to the corporation sole. Sing used Trioid International Group Inc. as a resident could render their own income non agent for corporations sole and other business entities for their clients. Timmerman assisted others in evading their state and federal income tax liabilities and recommended the corporation sole to his clients as another way to impair the IRS. Both defendants referred customers to one another and paid each other referral fees.

Forfeitures

Count of Investigations Count of Assets Total Forfeited Value 385 1,055 $4,305,844,067

Criminal Investigation uses asset forfeiture statues to disrupt and dismantle criminal enterprises by seizing and forfeiting their assets or property used or acquired through illegal activities. Criminal Investigation also maintains an active fugitive program and coordinates information with other law enforcement agencies in order to identify and apprehend fugitives from justice where the fugitive has been charged with violations of the Internal Revenue laws and related offenses. The chart below summarizes the seizures and forfeitures during Fiscal Year 2015.

WARRANTS AND FORFEITURE

NATIONAL FORENSICS LABORATORY as well as the accreditation standards. Laboratory team members also audited case files and prepared the laboratory space to accommodate the on-site assessors. A pre-assessment was held in February 2015, resulting in very few opportunities for improvement being noted. The official assessment was held in May 2015 and the laboratory received compliments from the assessment team on the quality of the work performed by our employees. Accreditation was officially awarded on May 26, 2015— almost three months before the projected timeline date. Although the NFL is a small branch of CI, its work is critical in ensuring the efficient processing of crucial evidence in our investigations.

Examples of investigations involving forfeitures during FY 2015 include:

Edgar Paltzer (New York FO) - On Nov. 25, 2014, a Stipulation and Order of Settlement was filed forfeiting more than $12 million, to the United States. Edgar Paltzer was an attorney in Switzerland who also operated as a financial intermediary. In his capacity as a financial intermediary, Paltzer assisted U.S. taxpayer clients in maintaining undeclared accounts in Switzerland. Paltzer pleaded guilty to conspiring with certain U.S. taxpayers and others to defraud the IRS of taxes due and owing and filing false tax returns.

DaVita Inc. (Denver FO) – On Jan. 13, 2015, a Final Judgement was filed forfeiting $39 million to the United States. DaVita Healthcare Partners, Inc. is one of the leading providers of dialysis services in the United States and agreed to pay $350 million to resolve claims that it violated the False Claims Act by paying kickbacks to induce the referral of patients to its dialysis clinics. DaVita has also agreed to a Civil Forfeiture in the amount of $39 million based upon conduct related to two specific joint venture transactions entered into in Denver, Colorado. DaVita is headquartered in Denver, Colorado and has dialysis clinics in 46 states and the District of Columbia.

BNP Paribas S.A. (Washington DCFO) – On May 1, 2015, BNP Paribas was sentenced to a
The IRS CI National Forensic Laboratory (NFL) has been discussing accreditation for more than 25 years, closely following changes in forensic laboratory accreditation programs. However, developments within the forensic community, particularly over the course of the last five years, have made the need to earn accreditation unavoidable. For the past two years the NFL has dedicated significant time and resources preparing for the accreditation process. For example, since the start of FY 2014, a total of eight manuals and 29 forms have been drafted, reviewed, and finalized. Multiple internal audits have been conducted by laboratory personnel to ensure compliance with new laboratory policies and procedures five-year term of probation and ordered to forfeit more than $3.9 billion. BNP Paribas is the largest bank in France and one of the five largest banks in the world in terms of total assets. The sentencing is the first time a financial institution has been convicted and sentenced for violations of U.S. economic sanctions and the total financial penalty including the forfeiture and criminal fine is the largest financial penalty ever imposed in a criminal case.

Victor Anthony Nottoli (Oakland FO) – On May 31, 2015, Nottoli forfeited more than $6.6 million to the United States. Nottoli pleaded guilty to conspiracy to defraud the United States by interfering with the lawful governmental regulatory and enforcement functions of FDA and DEA and one count of causing misbranded smokable synthetic cannabinoids (SSC) to be introduced into interstate commerce.

ING Bank N.V. (Washington DC FO) – On June 19, 2015, ING Bank, N.V., forfeited $309.5 million to the United States. ING Bank, N.V., entered into a Deferred Prosecution Agreement in the District of Columbia on June 12, 2012. ING Bank, N.V. was charged with conspiring to violate the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA).

TECHNOLOGY OPERATIONS AND INVESTIGATIVE SERVICES

Technology continues to play an important investigative role as the sophisticated nature of financial crimes changes and evolves. CI's Technology Operations & Investigative Services (TOIS) division is responsible for outfitting Special Agents with the most effective technologies to do their job and supporting CI's financial investigations by collecting and analyzing its reams of digital evidence. TOIS' Electronic Crimes Office has special agents trained in the recovery and preservation of hardware and software evidence. In Fiscal Year 2015, the amount of seized electronically stored information/data for investigations totaled over 1,400 terabytes.

Electronic Crimes Statistics for FY 2015

The majority of CI Special Agent-Computer Investigative Specialists (CIS) are certified in the use of top-level forensic software, thus raising proficiency and providing an important certification for judicial proceedings. Forensic training for mobile devices continues to be a pressing emphasis for TOIS' Electronic Crimes Office. In FY 2015, Special agent-CISs saw a 30% annual increase in the number mobile devices (non-laptop) that needed to be forensically imaged and analyzed. The vision of TOIS is to provide innovative solutions that make the CI crime fighter more effective.

Total Operations/Search Warrants 419 Total Sites 650

Total CISs Deployed 638 Total Systems Imaged 4319

Total Volume of Data (terabytes) 1439

Electronic Crimes Enforcement Statistics

TOIS' Four Strategic Themes:

1. Mobile Information Availability: CI Special Agents use their smartphones to access more data about their cases than ever, so that more time is spent in the field than in the office.
2. Office Anywhere Collaboration: ATLAS, CI's investigative support tool, enables Special Agents to collaborate and de-conflict on cases across the country by having one common application to store and organize their investigations. ECE, CI's digital evidence collection and analysis tool, centrally stores digital evidence using the latest in virtual environment technologies.
3. More Efficiently Operating Technology: TOIS engages in activities to reduce its year-over-year operations and maintenance costs as part of being a steward of scarce financial resources.
4. Supporting the Advancement of Financial Investigations through Technology: CI's Lead and Case Analytics took identifies the criminal relationships and schemes behind the illicit activities that thwart our nation's tax system. TOIS's special agent-CIS's will leverage their technical forensic expertise to build CI's cybercrime knowledge and capability.

2014

Oregon Man Sentenced on Tax Evasion Charges

On Sept. 26, 2014, in Portland, Oregon, Stephen Gregory Nagy, of Hillsboro, Oregon, was sentenced to 19 months in prison, three years of supervised release and ordered to pay $481,517 in restitution to the IRS. Nagy, who had previously pleaded guilty to tax evasion, was the president of S&S Drywall Assemblies, a company providing drywall services in the construction industry, from January 2005 through September 2011. Nagy conducted extensive business transactions in cash in order to hide funds from the IRS. He obtained the cash by illegally hiring undocumented workers to work on prevailing wage jobs, paying them a small portion of the prevailing hourly rate, and demanding that they kick back the largest portion of their wages to him in cash. Nagy failed to report this cash to the IRS. Nagy also forced some S&S Drywall employees to file for unemployment benefits through the Oregon Employment Department. After the employees filed for unemployment coverage, Nagy fraudulently insisted that they continue to work full-time for S&S Drywall. The unemployment benefits did not fully compensate the employees at a rate equal to their previous S&S Drywall salaries. To make up the deficit, Nagy gave employees cash payments amounting to the difference between the unemployment benefits and their full-time salaries. These cash wages were not reported to the IRS. Nagy also did not withhold federal

income taxes, or Social Security and Medicare taxes from these cash payments. Nagy thwarted IRS collection efforts by placing business and personal assets in the names of others, by physically hiding the assets, and by eventually transferring all S&S Drywall Assemblies income, contracts, receivables, and assets to ASM Drywall, Inc., a shell company he created and placed in his sister's name.

Wisconsin Man Sentenced for Failure to Pay Over Payroll Taxes

On Sept. 23, 2014, in Madison, Wisconsin, Jeffrey Grams, of Edgerton, was sentenced to 15 months in prison and three years of supervised release. According to court documents, Jeffrey Grams was the sole owner of Rock River Concrete and managing partner of Braton Property Group. He had corporate responsibility to collect, account for, and pay over payroll taxes for these corporations. From 2007 to 2009, Grams collected over $265,000 from his employees in federal income taxes and Medicare and social security taxes, but made no payments to the IRS for the withheld taxes.

Former Defense Contractor Sentenced to Prison for Theft of Employee Payroll Taxes and Pension Plan Contributions

On Sept. 11, 2014, in Alexandria, Virginia, William P. Danielczyk Jr., formerly of Oakton, was sentenced to 18 months in prison, three years of supervised release, and ordered to pay more than $1.6 million in restitution to the IRS. Danielczyk pleaded guilty on June 10 to failing to collect and pay more than $2.2 million in employee payroll taxes and engaging in theft of more than $186,000 from an employee pension plan. Danielczyk's sentencing will be served consecutively to a 28 month prison term he is already serving for committing campaign finance violations during the 2008 presidential primary and a 2006 U.S. Senate campaign. According to court documents, from March 2009 until December 2011, Danielczyk was the executive chairman of Innolog Holdings Corporation, which acquired Innovative Logistics Technology Inc. in March 2009. From mid-2009 through the end of 2011, Danielczyk was responsible for collecting, accounting for and paying appropriate payroll tax amounts to the IRS. Although payroll taxes were withheld from the wages of Innovative's employees, Danielczyk failed to pay both the employee withholdings amounts and the employer's matching portions to the IRS. Additionally, Innovative's employees were allowed to contribute money from their bi-weekly paychecks to a qualified pension plan that was administered by an asset custodian. Danielczyk, was the person responsible for authorizing payments to the asset custodian, and failed to send these payments over the course of three years. From 2009 through 2011, this conduct led to a total loss of $186,263. Danielczyk made a variety of purchases for his personal use from company accounts.

Pennsylvania Businessman Sentenced for Tax Crimes

On Aug. 22, 2014, in Philadelphia, Pennsylvania, Harvey G. Bitler, Sr., of Shillington, was sentenced to 46 months in prison, three years of supervised release and ordered to pay restitution of $5,078,897. Bitler previously pleaded guilty to failing to pay over to the government income taxes, social security taxes and Medicare taxes withheld from his employees' paychecks. According to court documents, Bitler was the owner of Big H Farms and BH Farms in Berks County, Pennsylvania. Big H Farms provided labor for mushroom growing facilities and BH Farms employed salaried employees associated with the operation and management of Big H Farms. The companies withheld Medicare and Social Security taxes (FICA taxes) and income taxes from their employees' paychecks but, between 2007 and 2012, Big H made no payments to the Internal Revenue Service of these withheld taxes. Between 2008 and 2012, BH Farms also failed to pay over all the taxes withheld in the first quarter of 2008, and made no payments to the Internal Revenue Service for the remaining quarters of those years.

Construction Company Owner Sentenced for Fraud in Connection With Renovation of Federal Building

On Aug. 7, 2014, in Boston, Massachusetts, Wael Isreb, of Wrentham, was sentenced to four years of probation, including 18 months of home confinement, and ordered to pay $164,627 in restitution. In March 2014, Isreb and his co-defendant, Aluisio Dasilva, of Hudson, each pleaded guilty to conspiracy to commit mail fraud and false statements in connection with the renovation of the John W. McCormack Post Office and Courthouse in Boston. According to court documents, Isreb was the owner of Taunton Forms, a now-defunct concrete construction company that was retained as a subcontractor to perform work on the McCormack Building. Taunton Forms was paid in excess of $1 million for its work. Beginning in about December 2007, Isreb conspired with Dasilva and others to pay Taunton Forms workers less than the prevailing wage while certifying that they were being paid the prevailing wage. The defendants also falsely reported that workers had been laid off which permitted the workers to offset their lower wages with unemployment benefits. Isreb also avoided making fringe benefit payments as required. Finally, Isreb failed to withhold applicable payroll taxes. On July 15, 2014, Dasilva was sentenced to one year of probation and ordered to pay restitution of $10,840.

Maine Woman Sentenced on Immigration, Money Laundering and Tax Charges

On July 1, 2014, in Bangor, Maine, Mei Ya Zhang, of Waterville, was sentenced to 15 months in prison, three years of supervised release and ordered to pay more than $88,000 in restitution to the IRS. On June 5, 2013, Zhang pleaded guilty to harboring undocumented aliens for commercial advantage and private financial gain, money laundering conspiracy, and conspiracy to file false employer's quarterly federal tax returns. According to court records, between 2006 and 2011, Zhang was the manager of a Chinese buffet restaurant that brought undocumented aliens into Maine to work. Among other actions, Zhang paid the undocumented aliens under the table with

cash generated illegally by their employment. Zhang filed numerous false quarterly employment tax returns in which the undocumented aliens were not disclosed and employment taxes were not properly withheld or paid.

Georgia Business Owner Sentenced for Impeding the Collection of Payroll Taxes

On June 30, 2014, in Atlanta, Georgia, Paulette Bryant, of Stockbridge, was sentenced to 36 months in prison, one year of supervised release and ordered to pay restitution of $2,914,931. Bryant previously pleaded guilty to obstructing and impeding the IRS's collection of payroll taxes. According to court documents, Bryant owned and operated a temporary employment staffing business in Georgia. Between 1998 and 2009, except for brief periods during or relating to an IRS audit, Bryant's business failed to make the required quarterly filings and to pay the IRS the payroll taxes owed by her employees and business. Bryant used the funds that should have been paid to the IRS to operate her company and fund her personal lifestyle. Additionally, Bryant formed and used new, overlapping corporate identities that had various names and that used various pseudonyms as corporate officers. Bryant's intent was to delay and hinder the IRS's efforts to collect the employment taxes that her business owed.

Business Owner Sentenced for Failure to Pay Employment Taxes

On May 29, 2014, in Springfield, Missouri, Kerry W. May, of Ozark, was sentenced to 12 months and one day in prison and ordered to pay $94,485 in restitution, in addition to the $373,200 in restitution that May has already paid. On Oct. 3, 2012, May pleaded guilty to two counts of failure to collect, or to truthfully account for and pay over employment taxes for his two corporations, Spring Creek Antiques, Inc. and Riverview Antique Center, Inc. According to court documents, from 2003 through 2009, May engaged in a deliberate scheme to avoid reporting or paying the trust fund taxes on approximately $373,200 he withheld from his employees' paychecks. May withheld taxes from his employees' pay, but simply pocketed the funds without reporting the withholding to the IRS or making the required trust fund payments.

Missouri Man Sentenced on Conspiracy Charges

On June 2, 2014, in St. Louis, Missouri, Jason Rauschelbach, of O'Fallon, was sentenced to 24 months in prison. Rauschelbach pleaded guilty to conspiring to defraud the United States and several banks. According to court documents, Rauschelbach was the CEO of The Mortgage Store, Inc. (TMS) and the president of Title America. The businesses were operating at a financial deficit in 2008. TMS incurred over $600,000 in federal employment tax liabilities in the first three quarters of 2008 that were not paid over to the United States. There were not sufficient funds available to fund the disbursements from TMS and, in addition, to meet all of the expenses incurred by TMS. In order to meet certain expenses and, at the same time, conceal the absence

of adequate funds, Rauschelbach and others at TMS caused insufficient funds checks drawn on the checking accounts of both TMS and Title America to be deposited between those accounts in such a way that the “float” concealed the true balances of each account. The TMS account had a negative balance of approximately $850,000 in June, 2008, when the banks stopped accepting the floated checks. Court documents showed that Rauschelbach received substantial distributions from TMS and Title America in 2008 despite the federal employment tax delinquencies and other unpaid liabilities. In addition, he and others at TMS directed that TMS funds be paid on loans on properties at Tan Tar A Resorts in the Lake of the Ozarks, and for a ranch property in Breckenridge, Colorado. He was a partial owner of those properties. Rauschelbach submitted a false net worth statements to HUD and failed to pay over about $31,000 in employees’ withholdings for a 401K plan and health insurance. Restitution payments will be first directed to reimburse those employees.

Texas Business Owners Sentenced for Failing to Pay Taxes to IRS

On May 2, 2014, in Laredo, Texas, Jorge Montemayor and Leticia Reyna were sentenced to 30 months and 15 months in prison, respectively, and three years of supervised release. In addition, Montemayor was ordered to pay $368,025 in restitution while Reyna was ordered to pay $48,562 in restitution. Montemayor and Reyna pleaded guilty on Jan. 24, 2014, and Nov. 18, 2013, respectively, to failing to pay over employment taxes to the IRS. According to court documents, Montemayor was the chief financial officer of GDM Home Health Inc. and Reyna was the president of Professional Skilled Services Inc., both home health care businesses that provided basic skilled care in Laredo. In their roles, both had authority to conduct financial transactions and exercised signatory authority on the company's bank accounts. As part of the plea, Montemayor admitted he knowingly and willfully failed to pay approximately $368,025 of federal income and FICA and Medicare taxes withheld from employee wages from the year 2008 while Reyna admitted she failed to pay over to the IRS approximately $48,562 for the fourth quarter of 2008. In his plea agreement, Montemayor admitted that corporate funds were used for lavish trips to Europe and Las Vegas, sporting events, restaurants, jewelry and real estate. In her agreement, Reyna admitted that corporate funds were used for shopping, restaurants and private school expenses.

Owner of Trucking Company Sentenced for Failure to Collect and Pay Over FICA Taxes

On April 24, 2014, in Minneapolis, Minn., Marlin Dahl, owner of Dahl Trucking in Elmore, Minn., was sentenced to 12 months and a day in prison. Dahl was convicted on Dec. 3, 2013 of failure to collect and pay over Federal Insurance Contribution Act (FICA) taxes. According to the evidence presented at trial, from 2007 to 2010, Dahl failed to deduct more than $54,000 in FICA taxes from his employees’ payroll checks. Instead, Dahl recorded wage payments as “road expenses” incurred by Dahl Trucking employees, which were falsely treated them as reimbursements and not wages.

Businessmen Sentenced for Tax Fraud

On April 15, 2014 in San Antonio, Texas, Larry Kimes and Charles Pircher were sentenced to 144 months in prison and 132 months in prison, respectively, and three years of supervised release. Both men were each ordered to pay $132 million in restitution for their roles in a tax fraud conspiracy. According to court documents, Kimes was the manager of AccounTex Financial Services, LLC, and Pircher was the manager of a series of Professional Employer Organizations (PEOs) based in San Antonio, including Service Professionals. The PEOs entered into staff leasing agreements with various client companies to manage the companies' payroll and insurance programs. Between 2002 and 2008, the defendants stole more than $130 million from the clients of a series of PEOs. Kimes, Pircher and other co-conspirators diverted to their own use and benefit clients' monies that should have been paid for payroll taxes and insurance premiums.

Indiana Physician Sentenced for Failing to Pay Employment Taxes

On April 11, 2014, in Hammond, Ind., Ronald Eugene Jamerson, of Schererville, Ind., was sentenced to 12 months and one day in prison and ordered to pay $541,083 in restitution to the IRS. On Oct. 25, 2013, Jamerson pleaded guilty to one count of willfully failing to truthfully account for, collect and pay over employment taxes to the IRS. According to court documents, Jamerson is an otolaryngologist who opened his own medical practice in the late 1990s. Jamerson deducted and collected from his employees' paychecks federal income taxes and employment taxes in the amount of $63,929 over the 11 tax quarters, but failed to file the employment tax returns and pay over the related employment taxes.

Dental Center Owner Sentenced for Tax Evasion

On April 7, 2014, in Indianapolis, Ind., Sally Metzner was sentenced to 24 months in prison. Metzner previously pleaded guilty to tax evasion and failing to withhold social security and Medicare taxes for her employees. According to court documents, Metzner owned Anderson Dental Center in Anderson, Ind., for more than 10 years. Metzner, who is not a dentist, has a background in accounting and bookkeeping and personally controlled all of Anderson Dental's financial records. Metzner did not pay or file personal income taxes from 2006 to 2010. Metzner evaded income taxes through various means, including accounting for her own income from Anderson Dental as "miscellaneous expenses," and accounting for numerous personal expenses through the business as if they were business expenses. Metzner also failed to withhold and pay over taxes she was obligated to pay for social security and Medicare on behalf of her employees. The employee's pay stubs show that the appropriate amount of taxes were being withheld, however, Metzner did not pay any of this money to the IRS.

Maine Woman Sentenced on Immigration, Money Laundering and Tax Charges

On March 25, 2014, in Bangor, Maine, Mei Juan Zhang, of Fairfield, was sentenced to 14 months in prison, three years of supervised release and ordered to pay $54,288 in restitution to the IRS. Zhang pleaded guilty on April 18, 2013 to charges of harboring undocumented aliens for commercial advantage and private financial gain, money laundering and filing false employer's quarterly federal tax returns. According to court records, between 2009 and 2011, Zhang was the manager of the two restaurants in Waterville. In that capacity, she managed a Chinese buffet restaurant that brought undocumented aliens into Maine to work at the restaurants. Zhang paid them under the table with cash and filed numerous false quarterly employment tax returns in which the undocumented aliens were not disclosed and employment taxes were not properly withheld or paid. The investigation revealed that about half of the employees at the restaurant over that period were undocumented, and that the defendant's activities concealed about $250,000 in wages and thwarted the collection of about $55,000 in employment taxes.

Business Owners Sentenced on Tax Charges

On March 17, 2014 in Los Angeles, Calif., Robert and Karen Burdett were sentenced to 18 months in prison, three years of supervised release and ordered to jointly pay $1,074,223 in restitution. The Burdetts pleaded guilty in November 2013 to embezzlement from an employee benefit plan and failure to collect or pay over tax. According to the plea agreements, beginning in January 1996, the Burdetts began serving as trustees for their employee retirement benefit plan. Beginning in June 2004, they fell behind in the transmission of funds withheld by employees from their respective paychecks for contribution to the retirement plan. By June 2006, the Burdetts stopped transmitting any funds employees withheld from their respective paychecks for contribution to the retirement plan, embezzling $102,327 from the employee-participants plan. In addition, from at least September 1996 to July 2007, the Burdetts were the responsible parties regarding the collection and payment of their employees' federal income taxes and Federal Insurance Contributions Act taxes. During this time they failed to pay to the IRS approximately $971,896 in withheld trust fund taxes.

New Jersey Attorney Sentenced for Income Tax Evasion and Failing to Pay Payroll Taxes

On March 11, 2014, in Trenton, N.J., Lee Gottesman, of Toms River, N.J., was sentenced to six months in prison, six months of home confinement, three years of supervised release and ordered to pay $27,384 representing taxes owed from 2006 to the present. Gottesman, an attorney, previously pleaded guilty to an indictment charging him with one count of federal income tax evasion and one count of failing to pay payroll taxes for the employees of his law firm. According to court documents, Gottesman operated a law firm in Toms River. In 2002, the IRS filed a levy on Gottesman's assets because of unpaid taxes. Gottesman then opened a sub-account, within his attorney trust account, in the name of his wife. His wife had never been a legal client of his. Gottesman ran nearly all of his personal and business expenses through the account, closing all

other business and personal accounts in his name. His payments from the account included more than $90,000 in mortgage payments for his home; more than $17,000 in household expenses, including maintenance on his pool, landscaping services and construction costs; and thousands of dollars in other personal expenses, such as life insurance premiums, auto body repair work and personal credit card payments. The scheme allowed Gottesman to avoid paying personal income taxes on the hidden income. Gottesman also withheld payroll and other taxes from his employees' pay, but never filed the required forms or turned the withheld payments over to the IRS. Gottesman specifically admitted he did not pay all his personal income taxes owed for 2006 or payroll taxes for 2009.

San Antonio Businessmen Sentenced for Money Laundering and Mail Fraud

On Feb. 21, 2014 in San Antonio, Texas, three individuals were sentenced for their roles in a $133 million tax fraud scheme. John Bean was sentenced to 72 months in prison, three years of supervised release and ordered to pay over $120 million in restitution. Bean pleaded guilty in March 2013 to money laundering and a mail fraud conspiracy. Pat Mire was sentenced to 36 months in prison, three years of supervised release and ordered to pay $10 million in restitution. Mire pleaded guilty in November 2011 to money laundering and a mail fraud conspiracy. Mike Solis was sentenced to 24 months in prison and three years of supervised release. Solis pleaded guilty in December 2012 to mail fraud conspiracy. A fourth defendant, John D. Walker II, was sentenced to five years' probation and ordered to pay $450,000 restitution. Walker pleaded guilty in May 2012 to a Klein tax fraud conspiracy charge and a false statements charge. Two other co-defendants, Larry Kimes and Charles Pircher, have both pleaded guilty and await sentencing. According to court documents, between 2002 and 2008, the defendants participated in a scheme in which they stole more than $133 million from the clients of a series of Professional Employer Organizations (PEO) operated by the defendants. The PEOs entered into staff leasing agreements with various client companies to manage the companies' payroll and insurance programs. The co-conspirators diverted to their own use and benefit clients' monies that should have been paid for payroll taxes and insurance premiums.

New York Attorney Sentenced for Tax Violations

On Feb. 19, 2014, in Buffalo, N.Y., Edmund J. Renaud, of Olean, N.Y., was sentenced to 15 months in prison. Renaud was convicted of evading the payment of taxes involving his moving companies. According to court documents, Renaud failed to pay employment taxes for businesses he ran from 2002 through 2008. Renaud ran Southern Tier Moving and Storage, Inc., in Olean until 2002, when the IRS assessed over $48,000 in unpaid federal payroll taxes. Upon shutting down that entity, Renaud opened Southern Tier Moving and Storage, LLC, where from 2002 until 2006, Renaud similarly failed to pay over $86,000 in federal payroll taxes. Renaud provided false information to the IRS about bank accounts and other assets, including a truck he had gotten as a result of accumulating "comp" credits at a casino. Renaud also provided false

information to the IRS in connection with filing an Offer in Compromise, including false claims that the company was out of business, failure to identify bank accounts and failure to disclose company assets.

Massachusetts Doctor Sentenced for Multiple Tax-Related Crimes

On Feb. 12, 2014, in Boston, Mass., Richard C. McGinn was sentenced to 30 months in prison and two years of supervised release. In 2013, a jury convicted McGinn, a doctor, of tax evasion, five counts of failing to pay over employment taxes and failure to file a tax return. According to court documents, from 2007 until 2009, McGinn owned and operated a medical practice in Greenfield, Mass. During that time, he evaded the payment of a tax liability of over $1 million which he had accumulated from 1987 to 2003. Among other things, McGinn paid personal expenses with corporate funds, and he used the bank account of a family member to conceal the income from the medical practice. During this time, McGinn also withheld employment taxes from the paychecks of his employees, and he kept the money for himself, rather than paying the money to the IRS as he was required to do. Additionally, McGinn failed to file corporate income tax returns for his medical practice.

New York Business Owner Sentenced for Failing to Pay Payroll Taxes

On January 29, 2014, in Buffalo, NY, John Creighton, of Bemus Point, N.Y., was sentenced to 12 months in prison and ordered to pay $663,627 in restitution for failing to pay payroll taxes. According to court documents, Creighton is the president and owner of Classic Brass Inc. (CBI) in Lakewood, N.Y. In 2010 and 2011, Creighton withheld payroll taxes from CBI employees. However, Creighton failed to make payroll tax payments to the IRS, and failed to file Forms 941.

North Carolina Woman Sentenced for Tax and Mortgage Fraud

On January 14, 2014, in Charlotte, N.C., Tega Burns, aka Tega Foy, was sentenced to 24 months in prison, two years of supervised release and ordered to pay $201,039 in restitution to IRS, $57,450 in restitution to Bank of America, and $48,483 in restitution to CIT Group Consumer Finance. In July 2012, Burns pleaded guilty to one count of failure to account for and pay over employment tax and one count of making a false statement on a loan application. According to court records, Burns was the owner of Family Homecare Services, a Charlotte-based company that provided in-home care services in the area from 2007 through 2011. Burns failed to pay a large part of the employment taxes her company owed for the relevant tax years. Burns had an outstanding employment tax liability of more than $200,000. To hide funds from the IRS and to evade payment of the outstanding taxes, Burns utilized nominees, including her son and her step-father. In addition, in May 2007, Burns obtained mortgage loans using false information, including

fake employment documentation from her company, to purchase two homes in the name of another individual. Both of these homes were eventually foreclosed on, with losses to the banks.

Michigan Resident Sentenced for Filing False Tax Return

On November 4, 2013, in Detroit, Mich., Jason Syrek, of Adrian, Mich., was sentenced to 72 months in prison and ordered to pay $17,659,561 in restitution for healthcare fraud and filing false tax returns. According to court documents, from May 2008 to December 2010, Syrek operated a human resource company, CAS Resources of Adrian, Michigan. CAS Resources provided outsourcing of human resource services, such as payroll, taxes and employee benefits administration, including health care coverage. CAS collected $1.75 million in premiums from client companies in November and December 2010, but never paid the premiums to Blue Cross Blue Shield of Michigan. Syrek, as the Director of CAS Resources, filed a form with the IRS stating that CAS Resources paid $1,862,902 in payroll taxes. Syrek knew he had diverted these funds for his own personal use and only paid $633,332 in payroll taxes. In addition to this form for the third quarter of 2010, Syrek filed seven other forms with the IRS reporting payroll taxes that he did not pay. In total, from 2010 through 2011, Syrek's tax due was $13.4 million. He admitted diverting these funds for personal use to buy beach front properties, several cars, a boat and investment properties.

Iowa Man Sentenced for Failing to Pay Withheld Taxes

On October 22, 2013, in Cedar Rapids, Iowa, Eric Holub, of Clarence, Iowa, was sentenced to 30 months in prison, three years of supervised release and ordered to pay $438,426 in restitution to the IRS. On July 12, 2013, Holub pleaded guilty to one count of failing to pay over to the IRS money he had withheld from his employees' paychecks. According to court documents, Holub was the owner of Premier Security, a private security business previously located in Cedar Rapids, and had served as the President and Treasurer of the business from 2003 through 2011. Holub admitted that from January 2008 through December 2009, he was responsible for withholding income taxes and Federal Insurance Contributions Act (FICA) taxes from the pay of Premier Security employees and was responsible for forwarding those withholdings to the IRS. However, for six calendar quarters in 2008 and 2009, Holub failed to forward the money he withheld from his employees' pay to the IRS. In the plea agreement, Holub admitted he also failed to pay to the IRS other taxes owed by Premier Security from 2008 through 2011.

Nebraska Man Sentenced for Employment Tax Fraud

On October 21, 2013, in Lincoln, Neb., John Stanley Clabaugh, Jr. was sentenced to 6 months in prison, three years of supervised release of which 6 months will be served as home confinement, and ordered to pay $135,109 in restitution. Clabaugh was the owner/operator of an insurance

agency located in Crete, Nebraska. He and a secretary were the only full time employees, although there have been occasional part time employees. Clabaugh always withheld the federal income taxes and FICA taxes from his and his employees' paychecks, until 2001 when he stopped paying these withheld funds over to the IRS and stopped filing the required quarterly forms. The total 'trust fund' taxes withheld from employee paychecks for the period of time covered by the indictment was $135,330.

Delaware Man Sentenced for Failing to Pay Over Payroll Taxes

On October 4, 2013, in Wilmington, Del., Charles Smith, of Bear, Del., was sentenced to 30 months in prison, three years of supervised release and ordered to pay $300,171 in restitution to the IRS. Smith pleaded guilty to ten counts of failure to truthfully account for and pay over payroll taxes. According to court documents, Smith was the Chief Executive Officer of eShowings, a company which provides online and telephone appointment services for real estate professionals. As the founder and CEO of eShowings, Smith was responsible for ensuring that employees' payroll tax withholdings were paid over to the government. Instead, Smith took money deducted from employees' paychecks and spent it personal items for himself and his family.

President of Virginia-Based Connection Newspapers Sentenced to Six Months In Prison for Failing to Pay Employment Taxes

On September 27, 2011, in Alexandria, Va., Peter Labovitz was sentenced to six months in prison, one year of supervised release of home confinement and ordered to pay $647,510 in restitution to the IRS as a result of failing to pay employment taxes to the Internal Revenue Service (IRS). Labovitz pleaded guilty on July 19, 2011, to willfully failing to pay over to the IRS the federal income taxes and Federal Insurance Contributions Act (FICA) taxes due and owing to the United States for Connections Newspapers LLC for the quarters ending September 30, 2007, and December 31, 2007. According to court records, Labovitz was the president of Connection Newspapers, a Northern Virginia newspaper publisher that currently publishes approximately 15 community newspapers throughout Northern Virginia and Maryland. Between 2002 and 2008, Labovitz ran Connection Newspapers' day-to-day operations, directed employees, approved payments and made financial decisions on behalf of the company. Labovitz admitted that between 2002 and 2008, he caused to be deducted and collected from the total taxable wages of his employees' federal income taxes and FICA taxes. However, Labovitz failed to timely pay over to the IRS more than $940,000 in federal income taxes and FICA taxes withheld and due and owing to the United States, despite the fact that he was required to do so by law.

Oklahoma Businesswoman Jailed for Failure to Pay Employment Taxes

On September 14, 2011, in Muskogee, Okla., Janet Christine Whelan, of Eufaula, Oklahoma, was sentenced to 24 months in prison, two years of supervised release and ordered to pay $1,000,016 to the Internal Revenue Service. According to her plea agreement, between 2002 and 2006

Whelan was owner and operator of a temporary employment agency in McAlester, Oklahoma. The temporary agency would provide businesses needing employees with the employees. The temporary agency had a duty to account for, and a duty to pay, the employees' employment taxes, including their state and federal withholding taxes. Whelan collected the taxes and willfully failed to remit them to the United States Treasury. She collected taxes due from her clients. Of the total taxes due, Whelan withheld $678,563 from her employee's payroll checks and kept the employee withholdings in the agency's business bank accounts. Her duty as an employer to pay her portion of the payroll taxes was $372,547, which was not paid. Whelan pleaded guilty to the charges in December 2010.

Owner of Temporary Services Employment Agency Sentenced for Not Paying Employee Taxes

On September 13, 2011, in Minneapolis, Minn., Neng Vang, the owner of SPTS, a temporary services employment agency, was sentenced to 12 months in prison on one count of tax evasion. Vang was charged on April 20, 2011, and pleaded guilty on May 9, 2011. In his plea agreement Vang admitted that between 2004 and 2007, he paid a large group of employees "off the books" in cash without recording or reporting their wages. That action resulted in a tax loss to the Internal Revenue Service of $342,240. In addition, Vang admitted omitting significant gross receipts earned by SPTS from the company's corporate tax returns for the years 2004 through 2007. The unreported gross receipts resulted in a tax loss of more than $60,000. In entering his plea, Vang admitted the total tax loss resulting from his tax evasion was more than $400,000.

Florida Owner of Construction Business Sentenced for Employment Tax Fraud

On August 26, 2011, in Miami, Fla., Richard Rosaire Routhier, of Lake Worth, Florida, was sentenced to 60 months in prison and ordered to pay $1,243,574 in restitution to the Internal Revenue Service (IRS). On April 25, 2011, Routhier pleaded guilty to a one-count information charging him with conspiring to defraud the IRS. According to the information, Routhier and others conspired to defraud the United States and unlawfully enrich themselves by paying employees in cash and not withholding and paying over employment taxes to the U.S. Treasury. According to court documents, Routhier owned and operated Drymension Inc., a custom drywall installation and framing contracting company in Lake Worth. From 2002 through 2008, the defendant caused Drymension checks to be issued to several shell corporations. These entities, while purporting to be legitimate subcontractors, existed only on paper and did not do any work for Drymension. The checks written to shell corporations totaled approximately $9,132,516. The checks were cashed at local check cashing stores and Routhier used the cash to pay Drymension employees. Routhier neither withheld from the cash wages nor paid over to the IRS the employment and income taxes as required by law.

Ohio Man Sentenced on Tax Charges

On August 10, 2011, in Cleveland, Ohio, Scott E. Carter, owner of Advanced Health Systems,

was sentenced to 25 months in prison. Carter pleaded guilty in April 2011 to charges of failure to account for and pay over to the Internal Revenue Service (IRS) withholding taxes for 2004, 2005, 2006, and 2007 for his now defunct company, Advanced Health Systems, Inc. of Hudson, Ohio. According to court documents, Carter failed to account for and pay over to the government more than $800,000 in payroll taxes. Because other payroll taxes (employer portion) were due from Advance Health, the total amount of taxes owed by Carter and his company was more than 31 million. Carter was also pleaded guilty to two counts of tax evasion regarding the payment of taxes on his personal returns for the years 2003 and 2004.

Owner of Electrical Firms Sentenced to Prison for Employment Tax Fraud

On July 15, 2011, in Seattle, Wash., Deborah Ann Guenthner, of Arlington, Washington, was sentenced to six months in prison to be followed by six months of home electronic monitoring. Guenthner will be placed on 3 years of supervised release following her release from custody and must pay $377,667 in restitution to the Internal Revenue Service (IRS). According to court documents, Guenthner owned and operated two corporations, WRG Electric, Inc. and Electrical Construction, Inc., located In Arlington, Washington. Between October 2004 and December 2006, Guenthner withheld $377,687 from employee wages for Social Security, Medicare and federal income taxes as part of her normal responsibilities. However, she failed to pay that money over to the federal government. Instead, Guenthner used the funds for either her personal benefit or for the benefit of the companies she owned.

Former Owner of Health Care Business Sentenced for Tax Evasion

On July 14, 2011, in Hartford, Conn., John Durante, of Hope Valley, Rhode Island, formerly of Old Say brook, was sentenced to 30 months of prison, followed by two years of supervised release and ordered to pay all of his outstanding tax liabilities. Durante was sentenced for engaging in a multi-year scheme to evade payment of employee withholdings and other payroll taxes to the IRS. According to court documents and statements made in court, between 1994 and 2001, Durante was involved in the operation of several small health care businesses In Connecticut which repeatedly failed to pay corporate income and payroll taxes. Durante was liable, as the responsible person, for outstanding withholding and other tax obligations and additional penalties and interest of approximately $1.121 million. After the IRS provided Durante with notice of his legal obligation, Durante set up additional companies using nominee owners who were unaware of the existence of the companies. Then, while operating the new companies, Durante took significant funds from the companies for his personal use, including funds to support a longstanding gambling habit For approximately three years. Durante sought to evade payment of the taxes he owed by continuing to hide his interest in the health care businesses, failing to disclose his ownership interest on his personal income tax return and making false representations to the IRS. Durante's illegal conduct has resulted in a tax loss to the government, Including penalties and interest, of more than $1.3 million.

Florida Contractor Sentenced for Employment Tax Fraud

On July 6.2011, in Miami, Fla., Reynaldo Orozco was sentenced to 18 months in prison and ordered to pay $504,047 In restitution to the United States. Orozco pleaded guilty to one count of filing a false employment tax return on March 22, 2011. According to court documents, from 2004 through 2007, Orozco owned and operated Rock Construction Builders Inc. (RCB), a construction business located in Miami-Dade County. Orozco admitted that he issued RCB corporate checks to various other corporations holding them out to be legitimate subcontractors. In truth, these corporations did not perform work for RCB. Orozco cashed the checks at local check cashing stores and used the bulk of the cash to pay RCB employees. Orozco failed to report the cash wages on quarterly employment tax returns and failed to withhold and pay over employment taxes on the wages. From 2004 through 2007, RCB failed to report approximately $3,294,426 in cash wages to the IRS. Based on the conduct described above, the United States Treasury suffered an employment tax loss of approximately $504,047.

North Carolina Couple Sentenced for Health Care Fraud and Tax Offenses

On June 29, 2011, in Greensboro, N.C., Ruben D. McLain and Michelle Judge McLain, both of Winston-Salem, North Carolina, were each sentenced to 24 months in prison, followed by three years of supervised release. They were also ordered to pay restitution of $1,313,671 jointly and severally to the Internal Revenue Service. The McLains did business in Winston-Salem as Universal Services, Inc., Reynolds Home Care, and Triage Behavioral Health Systems. According to their plea agreement, the McLains admitted they established a bank account for Universal Services, Inc. using a false tax identification number. They also admitted to using business bank accounts to purchase personal items for their home, to pay school tuition for their children, and to purchase jewelry. The McLains also admitted that, from 2004 through 2007, they either failed to file tax returns or filed false tax returns that did not declare their true income. The McLain companies provided personal care and mental health services to qualified recipients, paid for by the Medicaid program. The McLains admitted that they submitted a false enrollment application to the North Carolina Division of Medical Assistance that concealed their Involvement In the companies through the use of a nominee and a fictitious person. The McLains also admitted to withholding Income, social security, and Medicare taxes from their employees' wages without paying over those withholdings to the Internal Revenue Service.

Williamsville Couple Sentenced On Money Laundering and Tax Fraud Charge

On June 27, 2011, in Buffalo, N.Y., Ralph S. Guastaferro, Jr. was sentenced to 24 months in prison and fined $100,000 after being convicted of money laundering. Karen Guastaferro, his wife, was sentenced to three years probation, including six months home confinement and ordered to pay $56,670 in restitution to the IRS following her conviction of failing to collect and pay over taxes. Ralph Guastaferro operated a business called Eclipse Processing, Inc. As part of a money laundering scheme, Guastaferro opened accounts with two payment processing companies in California and Ohio. Those accounts were used by certain unscrupulous telemarketers, many of whom were located in Canada, to process alleged sales of some product or service. Many of the

victims whose checking accounts were debited had never purchased any product or service. After the victims accounts were debited, the payment processing companies transferred the funds to bank accounts controlled by the defendant in Buffalo, New York. Guastaferro then wire transferred the funds, less a percentage, to the telemarketers in Canada. This was done in an attempt to conceal the nature and source of the funds. The defendant admitted that the total amount of the funds involved in his criminal conduct was $1.2 million. Karen Guastaferro owned and operated Eclipse Glass Tinting, Inc. From 2004 through 2008, Mrs. Guastaferro employed between five and seven people at the business. Although Guastaferro had a duty to collect and truthfully account for and pay over federal employment taxes for each of her employees, she was convicted of lying to the IRS about how many employees she had and how much she paid them, thus intentionally failing to account for and pay over the required federal employment taxes for those employees.

New York Man Sentenced for Failing to Pay Employment Taxes

On June 14, 2011, in Long Island, N.Y., George Dimou was sentenced to 12 months in prison, followed by three years supervised release and ordered to pay $459,119 in restitution after pleading guilty to one count of failure to collect and pay over taxes. According to the Information, Dimou owned and operated GLIG, Inc., Evia One Enterprises, Inc. and Gutters of Long Island Inc. These companies provided gutter fabrication and installation services to homeowners and building contractors on Long Island. During 2003-2007, GLIG, Evia One and Long Island Inc. did not file Forms 941 Employer's Quarterly Federal Tax Returns for the second quarter 2003 through the fourth quarter 2007. Dimou willfully failed to collect and/or truthfully account for and pay over almost $460,000 in FICA taxes, which he had a duty to pay.

Wisconsin Businessman Sentenced To Federal Prison

On June 14, 2011, in Madison, Wis., Donald Penniston, of Brodhead, Wisconsin, was sentenced to 24 months in prison for failing to pay employment taxes and stealing funds from an employee retirement plan. Penniston was also ordered to pay restitution to the retirement plan. According to court documents, Penniston was the President of Canton Promotions, LTD, a graphic design and screen printing business in Monroe, Wis. At his plea hearing in February, Penniston admitted he withheld employment taxes from his employees' payroll checks, but willfully failed to pay over those taxes to the IRS. Penniston also admitted he stole approximately $11,000 in funds belonging to Canton Promotion's employee retirement plan, which was a simple IRA fund. Penniston further admitted he withheld employee contributions for the IRA fund from his employees' payroll checks, but then willfully failed to pay that money over to the fund. The money withheld from Penniston's employees that was not paid over to the IRS or to the IRA fund remained in the company's bank accounts, where it was used by Penniston to pay for, among other things, his own personal living expenses.

North Carolina Dermatologist Sentenced on Tax Charges

On June 13, 2011, in Greensboro, N.C., Clyde Nolan was sentenced to 24 months in prison,

followed by two years of supervised release and ordered to pay $585,835 in restitution to the Internal Revenue Service. Nolan operated a dermatology practice as a sole proprietorship in Greensboro, North Carolina. Nolan employed a staff in this office and withheld taxes from his employees' paychecks. According to his plea agreement, Nolan admitted that he failed to account for and pay over $42,596 he withheld in taxes from his employees' paychecks from 2003 and 2006. Nolan used that money for his own personal use. Nolan also willfully failed to file a personal income tax return for calendar year 2004, a year in which he was required to file a return.

Wisconsin Family Sentenced In Income Tax Fraud

On June 1, 2011, in Milwaukee, Wis., James Wierzbicki, of Kenosha, and two of his children, Eric Wierzbicki and Erin Morton, were sentenced for federal tax violations. James Wierzbicki was sentenced to 32 months in prison, to be followed by three years of supervised release, and ordered to pay $418,522 in restitution to the Internal Revenue Service (IRS). Eric Wierzbicki was sentenced to four months in jail, five years probation, and ordered to pay $300,922 in restitution to the IRS. Erin Morton was sentenced to 60 days in jail, five years probation, and ordered to pay $96,000 in restitution. James Wierzbicki pleaded guilty to conspiring to defraud the United States for the purpose of Impeding the IRS. Eric pleaded guilty to two counts of failing to pay payroll taxes. Erin Morton pleaded guilty to conspiring with her family to fail to pay payroll taxes. According to court documents, the Wierzbickis were involved in one or more of a series of commercial painting and dry walling businesses operated In the Kenosha area, including Southport Remodeling and Construction, SRC Painting, and PBN, LLC. The Wierzbickis failed to file quarterly payroll tax returns, filed false payroll tax returns, and paid employees in cash to avoid payroll taxes. In addition, after accumulating substantial payroll tax liabilities, the Wierzbickis would abandon one business, transfer the business operation to a successor business, and recruit someone to act as the nominee owner for the new business. The Wierzbickis also deposited business receipts from one business into their personal accounts, as well as to accounts for successor businesses. In addition, James Wierzbicki's other son, Edmund Wierzbicki, previously pleaded guilty to failing to file a federal Income tax return for the year 2003, when he was being paid by his family's painting businesses. Edmund was sentenced on April 27, 2011, to 14 days in jail, four years probation, and ordered to pay a $3,275 fine.

Former State Delegate Sentenced to Two Years in Prison on Racketeering Charge

On June 1, 2011, in Charleston, W. Va., Joseph Cleveland Ferrell, a Logan, West Virginia business owner and former state delegate, was sentenced to two years in prison after pleading guilty in October 2010 to racketeering and failure to pay employment taxes. Ferrell was also fined $250,000, ordered to forfeit $527,540 and pay the Internal Revenue Service $75,000 in unpaid employment taxes. At his plea hearing in October, Ferrell admitted his association with Southern Amusement and White Amusement, corporations which conducted legal and illegal gambling operations in Logan County and other locations in West Virginia and Kentucky. To protect his gambling operations, Ferrell admitted he gave cash bribes to an inspector with the West Virginia Lottery Commission from approximately the summer of 2004 until the summer of 2007. Ferrell admitted his motive for the

payments was to insure that she continue to be immediately available to him when he needed access to the sealed areas of his video lottery machines and to insure her continuing favorable treatment during her inspections. Ferrell also admitted that from approximately the fall of 2003 until April of 2008, Ferrell conducted, financed and managed an illegal gambling business in Kentucky. This operation consisted in large part of several video poker machines owned by White Amusement. These machines paid cash jackpots to winning players and were operating in violation of Kentucky state law. White Amusement then shared the proceeds from the operation of these machines with the owner/operator of the establishment. Ferrell traveled or had others to travel to Kentucky from West Virginia to collect White Amusement's share of the proceeds, to disburse money from the operation of the machines, and to perform repairs and maintenance on the machines. The gambling operation Ferrell led involved five or more persons who conducted, managed, and supervised the gambling business.

Florida Man Sentenced on Tax Charges

On June 1, 2011, in Tampa, Fla., Stuart M. Register, of Brandon, Florida, was sentenced to 27 months in prison. In February 2011, Register pleaded guilty to 13 counts of failure to pay over federal income tax and four counts of filing false income tax returns. According to court documents, from 2003 through 2007, Register owned and operated Criminal Research Bureau Inc., in Brandon, Florida. He employed individuals and had a duty to withhold and pay over federal employment taxes from those employees to the Internal Revenue Service (IRS). From the first quarter of 2003, through the fourth quarter of 2007, Register withheld federal employment taxes from his employees totaling $316.220, but failed to pay it over to the IRS. In addition, for the tax years 2003 to 2006, Register failed to pay personal income tax, filed false individual income tax returns with the IRS, and collected federal income tax refunds to which he was not entitled. Register's failure to pay over taxes he withheld from his employees, together with his filing of false income tax returns resulting in undue refunds, resulted in a total tax loss to the IRS of $345,612.

Illinois Contractor Sentenced to Prison on Fraud and Tax Charges

On May 9, 2011, in Rockford, Ill., John M. Volpentesta, formerly of Marengo, Illinois, was sentenced to 133 months in prison, five years of supervised release, and was ordered to pay $1,378,127 in restitution to the victims of his fraud scheme. Volpentesta was convicted in July 2010 of various charges, including failure to pay over to the IRS taxes he withheld from the wages of his employees, failure to file unemployment tax returns, and failure to file personal income tax returns. According to the indictment, Volpentesta operated a residential construction business, known as Volpentesta Construction, Inc. (VCI). He defrauded his construction company customers and investors out of more than $1 million. In addition, from the second quarter of 2003 through the fourth quarter of 2005, Volpentesta collected federal income tax, Medicare, and Social Security taxes from the wages of VCI's employees but failed to pay those monies to the IRS. He also failed to file Form 940, Federal Unemployment Tax returns, on behalf of VCI for the years 2003, 2004, and 2005; and, he failed to file personal income tax returns on behalf of himself and his wife for the same years.

California Payroll Company CEO Sentenced in $20 Million Tax Fraud Scheme

On May 6, 2011, in Sacramento, Calif., Albert Cipoletti, of Northport, N.Y., was sentenced to 78 months in prison, three years of supervised release, and ordered to pay $19,141,618 in restitution. Cipoletti was sentenced in connection with a scheme to divert more than $20 million from Sacramento County as well as two other businesses: SanDisk Corporation (SanDisk) and The Stanley Works and Stanley Solutions Inc. (Stanley). According to court documents, Cipoletti was the Chief Executive Officer (CEO) of Ingentra HR Services Inc., a payroll services corporation in Hauppauge, N.Y. As part of the payroll services, Ingentra calculated the tax payments for the clients and the clients' employees and then transmitted the payments to the state and federal tax authorities. As stated in Cipoletti's plea agreement, from 2005 until April 2010, he and co-defendant Kerry Seaman, comptroller for Ingentra, devised a scheme to defraud the County of Sacramento, SanDisk, and Stanley of the tax withholdings intended to be paid to the Internal Revenue Service (IRS) by collecting the correct amount from the clients but under-reporting to the IRS the amount owed. They diverted the difference to Ingentra's operating account for Ingentra's use. Cipoletti and Seaman sent funding letters to the clients that correctly calculated payroll and federal tax withholdings for the clients' employees, and these clients wire transferred funds to Ingentra for the purposes of paying both the payroll and taxes. Cipoletti and Seaman then filed false Forms 941, Employer's Quarterly Federal Tax Form, to the IRS, understating the true employee tax withholdings for these clients. Cipoletti and Seaman wrongfully diverted in excess of $20 million in tax withholdings from clients Stanley, SanDisk, and Sacramento County that should have been remitted to the IRS on behalf of these clients and these clients' employees. Seaman is awaiting sentencing.

Owner of Community Support Service Corporation Sentenced

On April 26, 2011, in Raleigh, N.C., Shirlene Reese Boone, of Murfreesboro, North Carolina, was sentenced to 144 months in prison, followed by three years of supervised release, and was ordered to pay restitution of $3,550,840 to the Medicaid Investigations Unit, $1,061,820 to the Internal Revenue Service, and $46,059 to the North Carolina Employment Security Commission. Boone previously pleaded guilty to multiple charges including conspiracy to commit health care fraud, aggravated identity theft, and failure to collect and pay over payroll taxes. Boone was the principal owner, manager, and registered agent for Metropolitan Counseling Services, Inc. (MCS), a registered non-profit North Carolina corporation that provided community support services and HIV case management. From 1997 to May 2010, Boone, through MCS, routinely submitted claims for reimbursement to the Medicaid program for community support services and HIV case management. Community support and HIV case management services were designed to assist the state's disabled and economically disadvantaged individuals diagnosed with certain medical conditions. Many of the claims Boone submitted to Medicaid were false in that they demanded payment for services that never happened. As the president of the corporation, Boone held back federal withholding taxes and FICA taxes from employee wages. While Boone filed quarterly payroll tax reports for all of the quarters during the period July 1, 2005, through September 30, 2006, she did not pay any of these taxes.

Final Defendant Sentenced In Illegal Worker Scheme

On April 25, 2011, in Pittsburgh, Pa, Alexander Litt, the sixth and final defendant of an illegal worker scheme was sentenced to 56 months in prison, followed by three years supervised release, on his conviction of conspiracy to harbor illegal aliens for commercial gain and money laundering conspiracy. The court also ordered the forfeiture of cash and property to the United States. According to information presented to the court, Litt, through his company, ARRA Corporation, of Cincinnati, Ohio, conspired to furnish out-of-status alien employees to various hotels in the Cincinnati, Cleveland, Columbus, and Pittsburgh areas as housekeeping personnel between 1998 and 2006. Litt, along with a co-conspirator, received a kickback of $1.50 per hour per employee for hours worked. Agents estimate that over 100 such out-of-status aliens were employed in the Pittsburgh area alone by the Pittsburgh franchise of the company, Citiwide Management Group (CMG) and that, during peak season, the aliens worked up to 20 hours per day. While working for CMG, the aliens, typically from former Soviet countries, were forced to live together in rented housing chosen by CMG, for which they were required to pay the rent. The aliens were transported to and from the hotels in a company van, for which they paid a transportation fee. Five other defendants pleaded guilty to their roles in the conspiracy and have received prison terms ranging from 33 to 56 months.

Former Illinois City Councilman Sentenced for Tax Evasion, Failure to File Income Tax Returns, and Election Fraud

On April 13, 2011, in Fairview Heights, Ill., Michael V. Collins, of Swansea, Illinois, was sentenced to 50 months in prison, followed by three years supervised release, and ordered to pay $342,375 in restitution to the Internal Revenue Service (IRS). Collins was convicted by a trial jury of tax evasion, failure to file federal income tax returns, and election fraud. According to evidence submitted at trial, Collins had not filed a federal tax return in 13 years at the time he became aware of the federal investigation. He attempted to conceal his income by commingling business and personal assets. Collins also failed to provide his correct social security number, operated a business under an Invalid Employer's Identification Number, and submitted false certified payrolls which falsely reflected that his employees' federal income tax withholdings and FICA taxes were withheld and paid. He operated through the receipt and expenditure of cash, without record keeping, and failed to maintain accurate books and records. At trial, evidence showed that Collins knowingly and willfully gave false information as to his address for the purpose of establishing his eligibility to vote in a voting district In East St. Louis and during that same period of time, he was elected to be a precinct committeeman in East St Louis when he was living in Swansea.

Owner of Superior Protection Inc., Sentenced to Prison for Conspiracy, Tax Fraud, Bankruptcy Fraud, Bribery and Other Charges

On April 8, 2011, in Houston, Texas, John Heard, Jr., was sentenced to 151 months in prison and ordered to pay more than $8.7 million in restitution. According to court documents, Heard, the owner of Superior Protection, Inc (SPI), was convicted of conspiring to defraud the United States of millions in employment taxes as well as income tax evasion in 2001 and 2003, willfully making

and subscribing to a false income tax return in 2007, bribery and corrupt interference with the tax laws. Heard operated and controlled several security companies, including SPI since 1987 and failed to pay employment taxes totaling more than $5.7 million. In the scheme, Heard opened and closed numerous corporations and used fictitious names for numerous documents, including tax returns, corporate documents, bank documents and payroll checks. He also named lower-level employees as company officials in corporate documents in an effort to impede the Internal Revenue Service (IRS) by concealing the true individuals who operated and controlled the security guard companies. Heard failed to file numerous IRS Forms 941, and when he did, they were often false. He did not report funds on his personal income tax returns in 2001 and 2003 that he pulled out of SPI for his personal use. He also did not report any of the income that he earned in 2007 on his personal income tax return. He also provided airline tickets, lodging and access to two celebrity golf tournaments to a government contracting official who oversaw a federal security guard contract in exchange for a favorable reference, on behalf of SPI, to a contracting official and for pre-signed security-guard forms from the General Services Administration.

Owner of Arizona Auto Body Repair Shop Sentenced for Employment Tax Fraud

On April 4, 2011, in Tucson, Ariz., Daniel Enrique Paz, Jr., was sentenced to 27 months in prison, followed by three years of supervised release, and ordered to pay a $100 special assessment. In addition, Paz was ordered to cooperate with the Internal Revenue Service (IRS) in filing correct income tax returns for tax years 2003 through 2009 and pay all taxes, interest and penalties. Paz must also pay ail federal income and FICA taxes owed by his business and its employees for tax years 2003 through 2005. Paz pleaded guilty in February 2011 to failure to account for and pay over to the IRS federal income taxes and FICA taxes. According to court documents, Paz was the owner of Spectrum Auto Collision an auto body repair shop. Paz willfully failed to pay over approximately $340,724 in employment taxes for three tax years.

Owner of Drywall Business Sentenced for Failure to Remit More Than $1 Million in Taxes

On March 29, 2011, in Sacramento, Calif., William Roseberry was sentenced to 28 months in prison for evading and failing to remit over $1 million in taxes to the Internal Revenue Service (IRS). In addition, Roseberry was ordered to pay $1,040,500 in restitution to the IRS. Roseberry pleaded guilty in September 2009 to willfully attempting to evade or defeat taxes. According to court documents, between October 2003 and September 2006, Roseberry owned and operated a drywall business in Rocklin as a sole proprietorship under the name of Western Wallboard and/or Bustos Drywall. During this time period, Roseberry evaded or failed to remit more than $1 million in employment and income taxes owed to the IRS in connection with the 350-plus employees of the drywall business. Roseberry falsely reported to the IRS that the total wages paid to employees by the drywall business were approximately $229,972 and that the total amount of Social Security taxes and Medicare taxes due thereon were approximately $35,185 when, in fact, the total wages subject to taxation were approximately $5,638,917, and the corresponding taxes owed were $862,754. In addition, Roseberry collected income taxes from employees in the

approximate amount of $236,379, but did not remit the same to the Internal Revenue Service.

California Trucking Company Owners Sentenced for Tax and Bribery Conspiracy

On March 21, 2011, in Fresno, Calif., Kulwant and Tarlochan Lasher, owners of Lasher Brothers Trucking Company Inc., based in Los Baños, were sentenced to 57 months and 12 months in prison, respectively. The brothers were each sentenced to three years of supervised release following their prison terms and ordered to pay no less than $739,787 in restitution, with the final amount to be determined by the IRS. Kulwant and Tarlochan pleaded guilty In October 2010 to conspiring to failing to account for and pay employee withholding and FICA taxes for tax years 2003 through 2007. Kulwant Lasher also admitted that he had offered to pay an undercover IRS Revenue Officer $600,000 in cash to eliminate the Lasher Brothers Trucking Company's $2.4 million tax liability. In meetings at a restaurant and gas station, Kulwant Lasher gave the Revenue Officer $56,500 in cash, handed over his 2003 BMW 745L, and gave him a quitclaim deed for his residence in Los Baños. Immediately, after delivering his BMW to the Revenue Officer, Kulwant Lasher called a BMW dealership in Fresno and asked to be picked up, because he wanted to buy a new BMW. When the dealership asked about a $747,000 tax lien on his credit record, Kulwant Lasher, knowing of his tax liability to the IRS, told the salesman that he had already paid it. Kulwant Lasher then purchased a new 745 BMW for approximately $95,000.

Brooklyn Man Sentenced to Prison for Harboring Aliens, Money Laundering and Tax Evasion

On March 3, 2011, in Pittsburgh, Pa., Yaroslav Rochniak was sentenced to 51 months in prison, followed by three years supervised release on his conviction of conspiracy to harbor aliens, money laundering, and tax evasion. According to information presented to the court, Rochniak was the President of Citiwide Management Group (Citiwide), the Pittsburgh subsidiary of a company which supplied housekeeping staff to Pittsburgh-area hotels. Over 100 of the employees provided were out - of-status aliens who had initially entered the United States legally, but had either overstayed the term limits of their visas or were not authorized to work in the United States under the terms of their visas. Thus, they had illegally remained in the United States. Most of the aliens were citizens of former Soviet bloc countries. Rochniak and his co-conspirators made kickbacks of $1.50 per hour per employee to ARRA Corporation, the parent company in Cincinnati. Citiwide housed the employees in company-leased apartments. They also transported the employees to and from the hotels, charging them both rent and transportation fees. The employees' first two weeks' wages were retained by the company as a security deposit, which the company kept as a penalty if the employees did not work at least six months. Citiwide paid no overtime or benefits and failed to pay taxes on the employees' wages, resulting in a tax loss of $1.5 million. In addition, the parent company maintained offices in Cleveland and Columbus, Ohio. Rochniak was also in charge of the Cleveland branch of the company during part of the conspiracy.

Health Services Entrepreneur Sentenced for Not Paying Taxes

On March 3, 2011, in Kansas City, Kan., Jeffrey Phillips was sentenced to 42 months in prison and

ordered to pay $5.8 million in restitution. According to court documents, Phillips pleaded guilty to one count of failure to pay employment taxes. In his plea, Phillips admitted that from 2001 to 2005 his companies withheld tax payments from employee's paychecks including federal income taxes, Medicare, and Social Security taxes totaling about $4 million, but failed to make payments to the IRS.

Brothers Sentenced for Conspiring to Evade Employment Taxes

On February 17, 2011, in Minneapolis, Minn., brothers Joseph and John Riley were each sentenced to 42 months in prison and each received a $250,000 fine and were ordered to pay all taxes and penalties owed to the Internal Revenue Service (IRS) for a tax evasion scheme that involved concealing income they and many of their employees received from their road construction business. According to court documents, the brothers own Riley Bros. Companies, Inc., a holding company that owns 100 percent of Riley Bros. Construction as well as a number of other companies in whole or in part. Between 1984 and 2003, the Riley's conspired to defraud the U.S. by concealing income earned by Riley Bros. Companies, Inc. and evaded paying income taxes, social security taxes, Medicare taxes, and unemployment taxes. The Riley's also used unreported company income to pay for their personal expenses.

Colorado Man Sentenced on Charges of Tax Evasion and Harboring Illegal Aliens

On February 10, 2011, in Denver, Colo., Opas Sinprasong was sentenced to 12 months and a day in prison and ordered to pay a $4,000 fine and $754.975 in restitution. In addition, Sinprasong was ordered to forfeit $766,000 and two residential properties in Boulder. As part of his plea agreement, following his incarceration, Sinprasong, a Thai national, will be deported. According to court documents, Sinprasong, while in the United States on an E2 Non-Immigrant Principal Investor status Visa, ran Thai and Japanese restaurants in Boulder, Louisville, and Broomfield. From 2001 through 2008, Sinprasong sponsored Thai nationals' admission to the United States as specialty workers for his restaurants. He claimed these workers possessed specialized skills that were essential to the efficient operation of his businesses. Sinprasong required all Thai employees to enter into a two-year employment contract. The terms of employment per the contract included that employees pay Sinprasong a "bond" of approximately $1,500; a payment of approximately $18,000 if the employee violated a term of the contract or caused damage to Sinprasong; and a payment of $3,000 for a "visa preparation fee." Sinprasong paid employees "under-the-table" while deducting portions of the $3,000 "visa preparation fee" and other fees from their paycheck. Once these fees had been fully paid, which typically took between three and four months, the defendant helped the Thai employees obtain Social Security numbers and then started to report a portion of their wages and placed them on the official payroll of the restaurants. Court documents showed that Sinprasong used a dual payroll system whereby he concealed from his payroll records the substantial overtime hours he directed the Thai employees to work, which was typically between 26 and 32 hours of overtime each week. As a result, Sinprasong failed to report all of the wages paid to the Thai employees and failed to pay the Thai employees the overtime wages required by federal law. He filed employer's quarterly federal tax returns with the Internal Revenue Service (IRS) as required, but the returns were materially false in

that they failed to report the total wages paid to the Thai employees. By failing to report all of the wages paid to the Thai employees, Sinprasong evaded paying the employer's portion of the Social Security and Medicare taxes due and owing on the unreported wages.

Florida Contractor Sentenced for Employment Tax Fraud

On January 13, 2011, in Miami, Fla., Axel Rafael Mercado, owner of Mercado Enterprises, Inc., was sentenced to 24 months in prison and ordered to pay $352,605 in restitution to the United States. According to court documents, from 2005 through 2007, Mercado attempted to evade a large part of his company's federal employment taxes. Mercado caused the company's checks to be written to shell companies, which were supposedly legitimate subcontractors, but did not work for Mercado Enterprises. Mercado would then direct those checks to be cashed at a local check-cashing store, which was aware of the scheme, and use the cash to pay his workers. Mercado never reported the existence of the employees, never reported the cash wages of the employees, never filed employment tax returns and never paid the required employment tax.

Former Owner of Illinois Payroll Processing Company Sentenced for Employment Tax Evasion

On December 22, 2010, in Urbana, Ill., Gary A. Gerberding, former owner of Premier Data Solutions, was sentenced to 60 months in prison, followed by three years of supervised release, and ordered to pay $1,585,009 in restitution. Gerberding pleaded guilty in June 2010 to defrauding former clients of his payroll processing company. According to court documents, Gerberding, of Kankakee, Illinois, admitted that from January 2007 to April 2008, he failed to pay payroll taxes due to the Internal Revenue Service (IRS) and the Illinois Department of Revenue on behalf of clients who had contracted with Premier Data Solutions to process weekly and bi-weekly payrolls. As part of their arrangement, clients provided Premier Data Solutions with the funds necessary to cover both the payroll and payroll taxes. Premier Data Solutions then provided clients with a payroll package consisting of several reports and payroll checks. Gerberding admitted that he manipulated the payment of clients' payroll tax liabilities using one client's payroll tax monies to pay another client's outstanding payroll tax liabilities. Gerberding further admitted that he provided false check reconciliation journals to clients to cover the fraud. The journals falsely indicated that Premier Data Solutions was remitting payroll taxes to the IRS and the Illinois Department of Revenue, when in fact, it was not.

Ohio Woman Sentenced on Conspiracy and Taxes Charges

On December 17, 2010, in Columbus, Ohio, Maria Terechina, a national of the Russian Federation, was sentenced to 12 months in prison, followed by three years of supervised release, and ordered to pay nearly $250,000 in restitution to her victims. During her guilty plea hearing in April 2010, Terechina admitted that she engaged in the harboring and transporting of dozens of illegal aliens from Russia, Estonia, Belarus, Ukraine, and other Eastern European nations. The illegal aliens worked for Terechina in various hotels in and around Columbus. Terechina admitted that she agreed to hold some of the workers' passports and immigration documents in order to prevent them

from leaving their employment. Terechina also defrauded the United States of approximately $185,000 in employment taxes.

Texas Restaurant Owner Sentenced for Filing False Income Tax Returns

On December 13, 2010, in Houston, Texas, Maria F. Argueta, the owner of Taqueria Arandas No. 13 Inc., was sentenced to 12 months and one day in prison, one year of supervised release, and ordered to pay $237,561 in restitution to the IRS. According to court documents, Argueta owned Taqueria Arandas No. 13 Inc., through which she operated a restaurant in Houston. In a plea agreement executed on May 17, 2010, Argueta admitted she had helped file Corporate Income Tax Returns for Taqueria Arandas No. 13 Inc., for tax years 2000 through 2004 that under-reported sales by approximately $1,432,236 and taxable wages to employees by approximately $343,782. She further admitted that because of the false filings, the corporation underpaid income taxes by approximately 3184,962 and underpaid employment taxes by approximately $52,599. Argueta is one of 13 local Taqueria Arandas Restaurant owners charged with filing false federal income and employment tax returns for their restaurants. To date, these defendants have paid the IRS almost $5.5 million in delinquent taxes, penalties and interest and all remain subject to audit and further assessment of taxes, penalties and interest.

Texas Man Sentenced for Failure to Pay More Than $2 Million in Employment Taxes

On December 9, 2010, in Houston, Texas, Gary Quintinsky was sentenced to 42 months in prison and ordered to pay nearly $2.28 million in restitution for failing to pay federal income taxes, Social Security taxes, and Medicare taxes withheld from employees. According to court documents, Quintinsky admitted that he operated a group of r elated crane corporations, including United Crane and United Payroll Services. He ran the financial affairs of the corporations even though Ellynn Ogilvie appeared as the sole shareholder and president of the corporations and the sole signatory on all corporate bank accounts. Quintinsky admitted that he signed numerous letters as president of United Crane and signed title documents as president of the corporation in the related group owning the cranes. Quintinsky further admitted that he signed Ogilvie's name on numerous other important corporate documents, including signing her name on the false employer's federal quarterly tax return, IRS Form 941, for United Crane's third quarter of 2003. Quintinsky also admitted to using Ogilvie's signature stamp to disburse funds from corporate bank accounts.

Owner of Payroll and Tax Services Company Sentenced on Tax Evasion and Embezzlement Charges

On November 23, 2010, in Memphis, Tenn., Venetia Smith was sentenced to 14 months in prison, to be followed by three years of supervised release and ordered to pay $61,291.97 to the Internal Revenue Service (IRS) and $24,948 in restitution to The Regional Medical Center at Memphis (The MED). Smith pleaded guilty in June 2010 to willful failure to collect or pay over tax and embezzlement charges. According to court documents, Smith owned VS Payroll and Tax Service, which was contracted by The MED to handle payroll services for the Health Loop, including the

preparation and filing of federal employment tax returns and payment of employment taxes to the IRS on a regular basis. As part of this contract, Smith was responsible for preparing employee payroll checks and withholding federal income tax, as well as Federal Insurance Contribution Act (FICA) taxes. Smith was also supposed to pay to the IRS the amount of federal income tax withheld and the total FICA taxes owed, file quarterly Forms 941 with the IRS for The Health Loop, and issue annual Forms W-2 to the employees of The Health Loop. Additionally, Smith admitted that she embezzled more than 384,000 belonging to The MED.

New York Man Sentenced on Charges of Tax Evasion, Money Laundering and Harboring Aliens

On November 18, 2010, in Pittsburgh, Pa., Gregory Kucher, a resident of Brooklyn, New York, was sentenced to 51 months in prison to be followed by two years of supervised release. Kucher pleaded guilty in February 2010 to charges of alien harboring, money laundering conspiracy, and tax evasion. According to court documents, Kucher employed and contracted out to client businesses in Western Pennsylvania more than 100 "out of status aliens" between approximately 2002 and 2006. The term "out of status aliens" refers to individuals who may have lawfully entered the United States, but have either overstayed the terms of their visas or were not permitted to be employed while in the United States under the terms of their visas. Kucher failed to declare and pay taxes on the wages earned by the out of status workers contracted to various businesses in the Greater Pittsburgh area. The total tax loss was approximately $1.5 million. He also laundered the profits generated through the wages of these out of status workers.

South Dakota Business Owner Sentenced for Failing to Pay Employment Taxes

On November 15, 2010, in Sioux Falls, S.D., Michael Hoppe was sentenced to 21 months in prison, three years of supervised release and ordered to pay more than $670,000 in restitution to the Internal Revenue Service (IRS). According to court documents, from July 2005 through January 2009, he owned and operated ABM Manufacturing and Mad Dog Haulers in Brookings, S.D. During those years, he collected federal withholding income taxes and FICA taxes from his employees' paychecks. However, he failed to report and remit the taxes withheld from employees' wages, and he failed to pay the employer's share of FICA taxes. Over a period of approximately four and a half years, Hoppe failed to remit and pay more than $670,000.

Northern Virginia Business Owner Sentenced for Failing to Pay Over $200,000 In Employment Taxes

On November 12, 2010, in Alexandria, Va., Eric Jon Eisenhower, a resident of Fairfax Station, Va. was sentenced to 19 months in prison and ordered to pay $88,826 in restitution to the Internal Revenue Service (IRS). According to court documents, Eisenhower was the president of CoManage Inc., a computer software development company. From December 2004 through June 2008, Eisenhower failed to pay over to the IRS more than $200,000 in withholding taxes from employees' paychecks. The monies included withholdings for Social Security, Medicare and federal income taxes.

Dallas Realtor Sentenced for Failing to Pay Federal Income Taxes

On November 5, 2010, in Dallas, Texas, Eleanor Sheets was sentenced to 12 months in prison which will be served in strict home confinement to include electronic monitoring. In addition, Sheets was sentenced to three years of supervised release and ordered to pay more than $1.37 million in back taxes. She pleaded guilty in July 2010 to four counts of failure to pay income taxes. According to the plea documents, Sheets admitted that she willfully failed to pay both individual income and corporate taxes during tax years 2003 through 2007. Since 1996, Eleanor and her husband, John Nicholas "Nicky" Sheets successfully worked as real estate agents and established multiple closely-held corporations, including, EMS, Inc., E-Residential, LLC and Dallas EMS, LLC. In court hearings, Eleanor Sheets stipulated that they failed to pay personal and/or employments taxes for tax years 1997 through 1999 and 2003 through 2007 which totaled approximately $1.3 million. Nicky Sheets was sentenced to 40 months for tax evasion in August 2010.

Florida Contractor Sentenced for Employment Tax Fraud

On November 3, 2010, in Miami, Fla., Victor Manuel Amaya, owner of Amaya Contracting and Stucco Inc. (ACS), was sentenced to 24 months in prison and ordered to pay $319,585 in restitution to the Internal Revenue Service (IRS). According to court documents, from 2004 through 2007, Amaya filed fraudulent employment tax returns with the IRS and caused his company to underpay its federal employment taxes. To avoid having to report all of ACS's employment tax obligations, Amaya regularly cashed checks made out to ACS at a local check cashing store instead of depositing them into the company's account. Additionally, Amaya wrote ACS checks to fictitious companies and cashed them at local check cashing stores. Amaya then used the cash to pay his workers, which allowed him to report lower wages and lower employment taxes due on ACS's employment tax returns. Amaya also used the cash for materials and personal expenses. Amaya failed to report to the IRS approximately $2,130,568 in wages, which resulted in a tax loss of approximately $319,585.

Father and Son Sentenced for Employment Tax Fraud; Ordered to Pay Over $500,000 in Restitution

On November 2, 2010, in Columbus, Ga., Edward Griffin, Sr. and Edward Griffin, Jr., were sentenced for their roles in an employment tax fraud investigation. Edward Griffin, Sr. was sentenced to 18 months in prison, three years of supervised release, and ordered to pay $367,526 in restitution to the Internal Revenue Service (IRS). Edward Griffin, Jr. was sentenced to 12 months and one day in prison, three years of supervised release, and ordered to pay $148,705 in restitution to the IRS. On July 28, 2010, both Edward Griffin, Sr. and his son, Edward Griffin, Jr., pleaded guilty to failure to pay over withholding and F.I.C.A. taxes.

Owner of Rhode Island Temporary Employment Agency Sentenced for Failing to Pay Millions of Dollars in Withholding Taxes

On October 7, 2010, in Providence, R.I., Cheang Chea, owner of S&P Temporary Help Service, Inc., was sentenced to 24 months in prison and ordered to pay the government $14 million in workers' taxes. According to court documents, since 2003, Chea operated S&P Temporary Help Service, a Providence based company which has supplied hundreds of workers to approximately 30 Rhode Island companies. Chea's workforce is made up of primarily East Asian, non-English speaking immigrants. S&P Temporary Help Service agreed to be responsible for all payroll and employment tax withholdings and carry workers compensation insurance coverage for its employees. Chea underreported substantial amounts of wages and failed to pay millions of dollars in federal withholding, social security and Medicare taxes.

South Jersey Business Owner Sentenced for Evading Employment Taxes

On September 28, 2012, in Trenton, N.J., Vanna Kem, of Sicklerville, N.J. was sentenced to 18 months in prison, three years of supervised release and ordered to pay $163,838 in restitution to the IRS for evading employment taxes. Kem plead guilty to an Information charging her with one count of tax evasion. According to court documents and statements made in court, Kem was the owner and operator of the New Jersey-based temporary employment agency Tri State Labor Services Inc. (Tri State). Despite being the true owner of Tri State, Kem incorporated the business and maintained the corporate bank account in a nominee's name. From the first quarter of 2006 through the last quarter of 2008, Kem paid Tri State employees more than $1 million in cash wages without withholding employment taxes. She also failed to file IRS 941 forms - Employer's Quarterly Federal Tax Returns - in which she was required to report the wages she paid her employees.

Former Flagstaff Tax Preparer Sentenced for Filing False Payroll Tax Returns

On September 26, 2012, in Phoenix, Ariz., Devon M. Scott was sentenced to 15 months in prison, one year of supervised release, and ordered to pay $107,775 in restitution. On February 6, 2012, Scott pleaded guilty to aiding and assisting in the preparation of false and fraudulent tax returns. According to court documents, Scott, aka Roland J. Rojas, owned and operated the now defunct Devero Premier Services Group, a payroll tax service in Flagstaff, Arizona with approximately 40 clients. Among the services Devero performed for its clients was collecting and paying its clients' payroll taxes to the IRS. From January to July 2005, in eleven specific instances, Scott filed tax returns that fraudulently and falsely stated the amount of payroll taxes that Devero had deposited with the IRS on behalf of clients.

Texas Man Sentenced for Failing to File and Pay Employment Tax

On September 20, 2012, in Oklahoma City, Okla., James Davis from Edmond, Okla., was sentenced to 20 months in prison, three years of supervised release, and ordered to pay $476,493 in restitution. Davis pleaded guilty in November 2011 to failure to collect and pay federal employment tax to the IRS. According to court documents, Davis was the owner of Hardcore Management, LLC which served other businesses owned and operated by Davis in Oklahoma City, Oklahoma, including an ice vending company and several gentlemen's clubs. From September of 2004 through January of

2008, Davis failed to collect and pay the IRS federal employment payroll taxes owed by Hardcore.

Massachusetts Tax Fraud Promoters Sentenced for Conspiracy to Obstruct and Impede the IRS

On September 27, 2012, in Boston, Mass., Charles Adams, of Norwood, Mass., was sentenced to 48 months in prison and ordered to pay $401,000 in restitution. On April 2, 2012, a federal jury convicted Adams, Catherine Floyd and William Scott Dion, both of Sanbornville, N.H., for conspiracies to defraud the United States through the promotion and use of multiple tax fraud schemes. The jury convicted all three of conspiracy to defraud the IRS by promoting an "under the table" payroll scheme. Dion and Floyd were also convicted for conspiracy to defraud the IRS through the use of an "underground warehouse banking" scheme designed to conceal customer income and assets from the IRS. Floyd and Dion were also convicted separately for corruptly endeavoring to obstruct the IRS's ability to determine their own income. Adams was separately convicted of tax evasion with respect to his own taxes. On September 21, 2012, in Worcester, Mass., Catherine June Floyd was sentenced to 60 months in prison and ordered to pay $3 million in restitution. According to the evidence presented at trial, Floyd, Dion and Adams ran a payroll tax scheme to pay employees "under the table" without properly accounting for, withholding, and paying over to the IRS the payroll taxes required by law. The three promoted the payroll scheme to employers and individuals who wanted to avoid paying employer and individual payroll taxes. They ran the payroll scheme under three different names: Contract America, Talent Management and New Way Enterprises. Approximately 150 individuals subscribed to the payroll scheme and more than S2.5 million in unreported wages and compensation were paid through the system. The evidence at trial also established that Floyd and Dion were promoting and operating an "underground warehouse banking" scheme which helped subscribers conceal income and assets from the IRS. The warehouse scheme operated under three different names: Your Virtual Office, Office Services and Calico Management. Under the warehouse banking scheme, the defendants maintained accounts at several banks and used the accounts to deposit and commingle business receipts and other funds received from subscribers to mask the true ownership of the funds. More than $28 million was deposited into the various bank accounts. Four other defendants in this case have previously pleaded guilty and await sentencing. On September 6, 2012, Dion was sentenced to 84 months in prison and ordered to pay $3 million in restitution.

Defendant Sentenced in Scheme to Defraud the IRS

On September 18, 2012, in Cincinnati, Ohio, Larry Lough, of West Chester, Ohio, was sentenced to 24 months in prison, three years of supervised release, and ordered to pay $757,751 in restitution to defrauded investors and $145,175 in restitution to the IRS. Lough pleaded guilty on February 15, 2012, to conspiracy to commit mail and wire fraud, conspiracy to commit employment tax fraud and income tax evasion. According to court documents, during 2005, Lough and another individual operated a research and development company known as Tri E Technologies (TET). As an employer, Lough was required to file Forms 941, Quarterly Employment Tax Forms, and to collect and pay over federal employment taxes on the employees. Lough issued checks to the employees

and himself, and withheld the employee's share of the payroll taxes, but failed to remit the employment taxes collected along with the appropriate employer's matching contributions to the IRS. Lough filed false quarterly employment tax returns with the IRS for 2005 and 2006 under-reporting wages by over $750,000. In addition, through the false accounting records and the false partnership returns, Lough evaded the assessment, reporting, and payment of taxes, including those associated with Medicare, Social Security, and personal income taxes, which he had an obligation as employers to pay.

Landscaping Executive Sentenced for Evading Employment Taxes

On September 6, 2012, in Richmond, Va., Mark S. Holpe, of Midlothian, Va., was sentenced to 18 months in prison and fined $40,000 for evading the payment of employment taxes on unreported cash wages he paid employees of Nature's Way Landscaping, Inc. Holpe pleaded guilty to evading the assessment of $326,196 of employment taxes. Holpe worked for Nature's Way, a business that did residential and commercial landscaping in the Richmond metro area. He was originally the president, but became the treasurer in 2007 when he sold a portion of the business. In entering his plea, Holpe acknowledged that the company had two groups of employees during tax years 2006 through 2009. Holpe admitted that he paid one group of approximately 30 employees $2,132,000 in cash wages during that period, without withholding social security taxes. He did not issue them Forms W-2 or 1099, or file Employer's Quarterly Tax Returns for them. He further admitted that, when supplying expense information to the company's tax preparer for years 2006 through 2009, he did not identify the employees who were paid in cash.

Massachusetts Tax Fraud Promoter Sentenced

On September 6, 2012, in Worcester, Mass., William Scott Dion was sentenced to 84 months in prison and ordered to pay $3 million in restitution. A federal jury convicted Dion on April 2, 2012, for conspiring to defraud the United States by promoting and using multiple tax fraud schemes. According to the evidence presented at trial, Dion and others ran a payroll tax scheme to pay employees "under the table" without properly accounting for withholdings or paying the payroll taxes to the IRS. He promoted the payroll scheme to employers and individuals who wanted to avoid paying employer and individual payroll taxes. The payroll scheme operated under three different names: Contract America, Talent Management and New Way Enterprises. Approximately 150 individuals subscribed to the payroll scheme and more than $2.5 million in unreported wages and compensation were paid through the system. Dion and others also conspired to defraud the United States by promoting and operating an "underground warehouse banking" scheme, which helped subscribers conceal income and assets from the IRS. The warehouse scheme operated under three different names: Your Virtual Office, Office Services and Calico Management. As part of the warehouse banking scheme, the defendants maintained accounts at several banks and used the accounts to deposit and commingle business receipts and other funds received from subscribers to mask the true ownership of the funds. More than $28 million in deposits were made into the various bank accounts used in the scheme.

North Carolina Businessman Sentenced for Payroll Tax Fraud

On September 5, 2012, in Charlotte, N.C., Bruce Harrison, III, of Greensboro, was sentenced to 144 months in prison and ordered to pay more than $43 million in restitution for payroll tax fraud and failure to file individual income tax returns. According to court documents, Harrison owned or controlled temporary staffing companies operating in at least nine states under various corporate names. Harrison's staffing companies were headquartered in Guilford County, N.C., and contracted with client businesses to provide temporary workers. Harrison's companies promised to assume full responsibility for paying wages and withholding and transmitting taxes to the IRS for those employees. Instead, Harrison failed to account for and pay over in excess of $40 million in federal payroll taxes for the employees. Harrison created false bank statements for auditors to conceal the nonpayment of the payroll taxes. Harrison was also convicted of corruptly endeavoring to obstruct the IRS by means of false statements to IRS revenue officers. He used company funds to purchase personal residences, buy a yacht and finance commercial motion pictures. Harrison was also convicted of failing to timely file his own income tax returns for 2004, 2005 and 2006.

Florida Man Sentenced for Tax Fraud

On August 16, 2012, in Orlando, Fla., Daniel Thomas, Jr., of Ocala, Fla., was sentenced to 30 months in prison and three years of supervised release for attempting to evade federal income tax. The court also ordered him to pay $334,742 in restitution. According to court documents, Thomas operated Key Business Solutions and Payroll Advisors in Ocala, under "Dan Thomas, Inc." Between 2007 and 2009, Thomas defrauded his clients of funds they owed to the IRS as payroll taxes. Thomas embezzled these funds to pay business expenses and to pay his own personal expenses. In total, Thomas diverted $852,036 from seven different Ocala companies. He also failed to file personal income tax returns for 2007, 2008, and 2009, resulting in a tax loss of $45,533.

Former Nursing Home Operator Sentenced for Health Care Fraud and Tax Fraud

On August 13, 2012, in Rome, Ga., George D. Houser, of Sandy Springs, Ga., was sentenced to 240 months in prison and three years of supervised release on charges of conspiring with his wife to defraud the Medicare and Georgia Medicaid programs by billing them for "worthless services" in the operation of three nursing homes. Houser was also ordered to pay $6,742,807 in restitution to Medicaid and Medicare and $872,515 in restitution to the IRS. According to court documents, Medicare and Medicaid paid Houser more than $32.9 million between July 2004 and September 2007 for food, medical care, and other services for nursing home residents. Evidence presented at trial showed that instead of providing sufficient care for the nursing home residents, Houser diverted more than $8 million of Medicare and Medicaid funds to his personal use. In addition to the health care fraud count, Houser was convicted of eight counts of deducting $806,305 in federal payroll taxes from his employees' paychecks, but not paying that money over to the IRS. Houser was also convicted of failing to file personal income tax returns for 2004 and 2005.

President of Oakland Roofing Company Sentenced for Tax Evasion Scheme

On August 8, 2012, in Oakland, Calif., Tae Son Lee, aka Mike Lee, the president of Westco Roofing Inc. was sentenced to 24 months in prison, three years of supervised release, ordered to pay $367,656 in restitution, and ordered to cooperate with the IRS to pay any outstanding tax liability, including interest and penalties. Lee pleaded guilty on April 4, 2012, to conspiracy to defraud the United States of tax revenue. According to the plea agreement and evidence presented in court at sentencing, Lee was the sole shareholder and corporate officer of Oakland based Westco Roofing Company Inc. Lee established a series of shell companies to defraud the United States for tax years 2003 through 2008 by impeding the IRS in its assessment and collection of Social Security and FICA taxes. To accomplish his scheme, Lee made "subcontractor" payments to conspiracy-controlled shell companies that had no real employees and performed no real work. Cash was withdrawn from the shell companies' bank accounts and Westco employees received cash wages. Westco failed to report, withhold and pay the FICA taxes on these cash wages.

Connecticut Man Sentenced for Operating Decade-Long Tax Evasion Scheme

On July 30, 2012, in New Haven, Conn., Sherwood Schaub, aka Andy Sherwood, was sentenced to 30 months in prison and two years of supervised release for operating a decade-long tax evasion scheme. He also agreed to cooperate with the IRS and to pay all back taxes, penalties and interest. On February 28, 2012, Schaub waived his right to indictment and pleaded guilty to two counts of tax evasion. According to court documents and statements made in court, Schaub has owned and operated an executive search business and other businesses that have used a variety of names, including Goodrich & Sherwood Company, Goodrich & Sherwood Associates, Inc., Whittenwood Associates, Inc., Whittenwood International, Inc., GSA International, Inc., Stanton Chase of New York and G&S Holding Limited Partnership. From approximately 1994 through 2006, Schaub's business entities repeatedly failed to pay federal taxes that had been withheld from employees' paychecks. During these years, the IRS assessed Schaub penalties for not paying the withholding taxes, but he did not pay these penalties. As part of the scheme, Schaub willfully attempted to avoid paying taxes by causing his business entities to operate under various names and his income to be paid in his wife's name, rather than his own, in the form of checks and wire transfers to her bank account. Through this scheme, Schaub evaded paying $1,314,146 in taxes, interest and penalties. In addition, in 2005, Schaub received taxable income of $164,100 in the form of checks deposited into his wife's bank account. He did not pay taxes on this income and did not file an income tax return for tax year 2005.

Minnesota Woman Sentenced for Failing to Pay Employment Taxes Withheld from Employee Paychecks

On July 19, 2012, in Minneapolis, Minn., Doris Ruiz was sentenced to 12 months and one day in prison on one count of failure to pay over federal employment taxes. Ruiz was indicted on October 4, 2011, and pleaded guilty on January 17, 2012. According to court records, between 2005 and 2007, Ruiz, the owner of Olen Staff Company, a temporary work agency in Minneapolis, deducted and collected federal employment taxes, including certain federal income taxes, such as Federal

Insurance Contribution Act (FICA) taxes, from her employees' wages. Under the law, she was required to pay those withholdings to the IRS. However, Ruiz failed to do so and, instead, used more than $150,292.00 in employee withholdings for her own personal benefit,

Kansas Business Man Sentenced for Tax Evasion and Bank Fraud

On July 16, 2012, in Kansas City, Kan., James Clark, Overland Park, Kan., a former owner of the Kansas City Knights basketball team, was sentenced to 51 months in prison and ordered to pay more than $1.3 million in restitution. Clark pleaded guilty to one count of tax fraud and one count of bank fraud. According to court documents, Clark withheld payroll taxes from employees of his company, SWISH Holding Corp., while failing to pay more than $502,000 to the IRS. He diverted the funds and used them for his own purposes, including the operation of the basketball franchise. Clark also admitted submitting false information to a bank when he applied for a line of credit. He overstated the income, profits and assets of SWISH. He gave the bank purported copies of federal income tax returns for SWISH for 2002 and 2003. The returns had not actually been filed with the IRS and falsely overstated SWISH's income. Additionally, as a personal guarantor of the loan, Clark gave the bank statements that over-stated the value of the Kansas City Knights and misrepresented that he had an ownership interest in the American Basketball Association.

President of Florida Employer Solutions, Inc. Sentenced on Tax Charges

On July 12, 2012, in Orlando, Fla., Luis Armando Ferrer, of Pembroke Pines, was sentenced to 24 months in prison and ordered to pay $640,707 in restitution. According to court documents, Ferrer was the President of Florida Employer Solutions, Inc. (FES). FES's business included performing payroll services for client companies and collecting, accounting for, and paying over social security, Medicare taxes, and federal incomes taxes to the IRS on behalf of those companies. Instead of paying this money over to IRS, Ferrer diverted it to his own personal bank account. He used it, in part, to start a landscaping business, Florida Outdoor Impressions, Inc.

Employee Sentenced on Tax Charges

On July 11, 2012, in Memphis, Tenn., Christopher Jones was sentenced to 24 months in prison, three years of supervised release and ordered to pay $287,000 in restitution to the IRS. According to court documents, Jones pleaded guilty on February 1, 2012, to obstructing or impeding the administration of Internal Revenue laws and making false statements to federal agents. Jones admitted that he collected $146,458 in employee withholding taxes from Rippee Rehab, Inc.; Rippee Rehab; Rippee Rehab, LLC; and Dental Connection East, PC, and then converted the funds for his personal use rather than sending the funds to the IRS.

Owner of Virginia Business Sentenced for $1.1 Million Tax Fraud

On June 29, 2012, in Alexandria, Va., Willard Douglas Kerr, of Phoenix, Ariz., was sentenced to 24 months in prison, three years of supervised release, and ordered to pay $1,111,352 in restitution.

According to court records, from 2003 through 2009, Kerr operated DK Coatings LLC, a painting and wall covering company in Manassas, Va. He was responsible for collecting, accounting for, and paying over employment taxes on behalf of DK Coatings employees to the Internal Revenue Service. From at least September 30, 2004, through December 31, 2009, Kerr withheld trust fund taxes from his employees' paychecks but did not pay over those taxes to the IRS. From 2003 through 2009, Kerr also failed to pay the employer matching portion of FICA taxes. Kerr failed to pay over more than 31.1 million in taxes. Kerr admitted that he spent the money he withheld from his employees' paychecks on other aspects of the business and on personal expenses, including purchasing multiple vehicles and repairing his swimming pool.

Former Operators of Texas Medical Center are Sentenced Following Tax Convictions

On June 15, 2012, in Lubbock, Texas, Herschel A. Breig and James Cheek, both of Springfield, Mo., were each sentenced to 60 months in prison and ordered to pay a $10,000 fine and $5,049,875 in restitution. In addition, Breig and Cheek have paid a total of $120,000 in restitution to the individual victims identified by the U.S. Department of Labor. Breig and Cheek each pleaded guilty in February 2012 to one count of failure to pay over payroll taxes and aiding and abetting. According to court documents, in March 2006, Breig and Cheek acquired control of the Highland Medical Center (HMC), located in Lubbock, Texas, after Shiloh Health Services purchased the clinic. From March 2006 to May 2008, Cheek controlled every aspect of HMC's business affairs and Breig controlled HMC's financial business affairs, including paying HMC's payroll taxes, federal income taxes, Federal Insurance Contributions Act (FICA) taxes and Medicare taxes. During 2006, 2007 and 2008, HMC withheld payroll taxes from employees' paychecks, but from December 2006 through May 2008, HMC made no payments to the Internal Revenue Service.

New York Certified Public Accountant (CPA) Sentenced for Failing to Pay Employment Taxes

On June 12, 2012, in New York, NY, Silford Warren, of Queens, N.Y., was sentenced to 24 months in prison and ordered to pay S184.263 in restitution to the IRS. Warren pleaded guilty on December 9, 2011, to willful failure to pay over employment taxes on behalf of his accounting business, Silford Warren, CPA PC. According to court documents, from 2006 through 2008, Warren under-reported his employees' salaries on tax filings with the IRS. The court ordered restitution includes the employment taxes he failed to pay over from his employees and his obligation, as an employer, to pay over a matching portion of those employment taxes, as well as the tax loss resulting from his filing false corporate income tax returns for 2005 through 2008.

Ohio Man Sentenced on Tax Conviction

On June 7, 2012, in Cleveland, Ohio, Michael R. Tucker, of Canton, Ohio, was sentenced to 15 months in prison and three years of supervised release. Tucker pleaded guilty on March 27, 2012, to charges of willful failure to pay withheld federal income and FICA taxes to the Internal Revenue Service and filing a false individual income tax return. According to the Indictment, from 2004

through 2008, Tucker operated and was the majority partner and general manager of Computology, LLC. In that capacity, Tucker was required to pay over federal income taxes and Federal Insurance Contributions Act (FICA) taxes that the business withheld from the wages of its employees. From December 2005 through March 2008, Tucker willfully failed to pay over taxes totaling $263,188 that had been withheld from the employees. The indictment also charged Tucker with filing false individual income tax returns for 2005, 2006, and 2007. The indictment alleged that on those returns, Tucker claimed federal income tax withholding totaling $34,775, which he knew had not been paid over to the Internal Revenue Service and, as a result, he received tax refunds to which he was not entitled.

Maryland Business Owner Sentenced for Failing to Pay Employment Taxes

On June 1, 2012, in Greenbelt, Md., Richard Stewart, of Mitchellville, Md., was sentenced to 24 months in prison and ordered to pay $5,414,647 in restitution to the Internal Revenue Service (IRS). According to the plea agreement and criminal information, from at least 2003 through 2008, Stewart owned and operated Montgomery Mechanical Services, a company that installed plumbing, heating, and air conditioning in commercial buildings. From 2003 through at least 2008, Stewart did not collect, truthfully account for and pay over approximately $3,969,337 in employment taxes from his employees' wages.

California Restaurant Owners Sentenced on Tax Fraud and Other Federal Charges

On April 24, 2012, in Oakland, Calif., Marino Sandoval and his wife, Nicole Sandoval, were sentenced on various immigration, Social Security and tax charges related to the operation of their San Francisco Bay area restaurant chain, El Balazo. Marino Sandoval was sentenced to 41 months in prison. Nicole Sandoval was sentenced to five years probation and 12 months of community confinement. They were ordered to pay $2,216,010 in restitution to the Internal Revenue Service (IRS). According to court documents, the Sandovals owned and operated the El Balazo Restaurants with Marino Sandoval's brother, Francisco Sandoval. Marino and Nicole Sandoval acknowledged that they were responsible for withholding federal taxes, including employment and unemployment taxes, from their employees' pay. Nicole Sandoval admitted that she under-reported the employees correct wages to the payroll company that the defendants used to prepare the tax returns. Marino and Nicole Sandoval admitted that, based upon their actions, the amount of employment taxes paid to the Internal Revenue Service was understated. In addition, Marino Sandoval also admitted to hiring employees he knew were not legally authorized to work in this country. Nicole Sandoval also pleaded guilty to misusing El Balazo employees' social security numbers that were provided to the Social Security Administration and the IRS. Between 2002 and 2007, Nicole Sandoval submitted, on behalf of El Balazo, the employer's quarterly contribution and wage reports to the Social Security Administration. The reports included the names of undocumented alien employees receiving wages from their employment. In court, Nicole Sandoval admitted that she was aware that the social security numbers she submitted were false and were not the social security numbers assigned to the employees as reported. Francisco Sandoval, of Alameda, Calif., was sentenced on December 8, 2010, to three years probation for failure to account and pay over payroll taxes and for harboring

illegal aliens for financial gain. He was also ordered to pay $50,000 in restitution to the IRS.

Missouri Business Owner Sentenced for Failing to Pay $1.1 Million in Payroll Taxes

On April 18, 2012, in Springfield, Mo., Gregory Crocker was sentenced to 30 months in prison and ordered to pay $1,586,024 in restitution. According to court documents, Crocker pleaded guilty to failing to account for and pay over to the Internal Revenue Service (IRS) the federal income taxes and Social Security and Medicare taxes deducted from employee paychecks. Crocker was an owner and the executive officer of a cemetery and marketer of pre-need funeral services in Joplin, Mo. Crocker admitted that for the quarters ending March 31, 2002, through March 31, 2010, he failed to pay over payroll taxes to the IRS, and to file employers' federal quarterly income tax returns. The total tax harm Crocker caused was $1,152,550.

Extradited Defendant Sentenced for Tax Fraud in Employee Leasing Scheme

On April 18, 2012, in Miami, Fla., Lucia Kanis was sentenced to 27 months in prison and ordered to pay $1,973,266 in restitution. On the same day, Kanis pleaded guilty to one count of conspiring to impede and obstruct the Internal Revenue Service in the collection of payroll taxes as a part of an alien employee leasing scheme. Kanis, who previously lived in Coral Springs, Florida, fled the United States to avoid prosecution. She was extradited from Italy to the United States to face the federal charges filed against her in 2005 for her role in a nationwide employee leasing conspiracy. According to the indictment, Kanis and her co-defendants conspired to provide unauthorized workers, mostly Eastern Europeans who had entered the United States on tourist visas, to American companies with whom the defendants had contracted to provide legally authorized foreign workers. The co-defendants brought more than 550 illegal aliens into the United States. The alien workers obtained tourist visas to enter the United States and were employed illegally in the Midwest and Southeastern United States on farms, dairies and factories. The defendants contracted with American employers to provide workers, for whom the defendants were to pay payroll taxes and workers' compensation deductions. The defendants did not pay the taxes or workers' compensation deductions. During her plea hearing, Kanis admitted that from 2000 to 2002, she participated in a scheme through which she failed to pay more than $1,973,266 in payroll taxes.

Two Former Executives of Payroll Services Company Sentenced for Conspiracy on Wire and Tax Fraud Charges

On April 11, 2012, in Newark, N.J., the former vice president of operations and the former director of sales for a payroll services company based in Hoboken, N.J., were both sentenced to prison for defrauding clients of almost $1 million and failing to pay $400,000 in taxes. Jose Figueroa, of Northampton County, Pa., was sentenced to 41 months in prison and Carlos Chorro, also of Northampton, was sentenced to 12 months in prison. Both men previously pleaded guilty to Informations charging them with one count each of conspiracy to commit wire fraud and one count each of subscribing to false tax returns. According to court documents and statements made in court, from January 2008 through November 2009, Figueroa and Chorro conspired to enrich

themselves by manipulating the company computer system to divert clients' payroll tax funds to bank accounts and monetary devices controlled by Figueroa and Chorro. Specifically, Figueroa, who was responsible for setting up the computer files that allowed money to be transferred from clients' bank accounts to the company's tax accounts and thereafter to the IRS, manipulated the company computer files to divert clients' tax funds onto prepaid debit cards controlled by Figueroa and Chorro. Both Figueroa and Chorro then used the diverted funds for personal expenditures. About 128 cash transactions totaling $306,140 were deposited into bank accounts controlled by Figueroa, and 200 transactions totaling $278,125 were deposited into bank accounts controlled by Chorro. From July 2009 through November 2009, Figueroa caused 24 wire transfers totaling $588,366 to be transferred from clients' bank accounts to a bank account controlled by Figueroa. Around September 25, 2009, Figueroa transferred $95,000 by bank check from a bank account controlled by Figueroa to Chorro. For the tax years 2008 and 2009, Figueroa and Chorro did not disclose to the IRS the income they received in connection with their conspiracy. Figueroa failed to disclose $894,477, resulting in a tax loss to the United States of $278,477. Chorro failed to disclose $373,125, resulting in a tax loss of $107,184. In addition to their prison terms, Figueroa and Chorro were ordered to serve three years each of supervised release, Figueroa has agreed to pay $469,737 in restitution to victims, $278,133 to the IRS and forfeit S438.000. Chorro was ordered to pay $373,125 in restitution and forfeit $184,000.

Colorado Man Sentenced for Failure to Pay Over $1.3 Million to the IRS and Theft from 401(k) Plan

On April 4, 2012, in Denver, Colo., John C. Walshe was sentenced to 46 months in prison, three years of supervised release, and ordered to pay $1,330,333 in restitution to the Internal Revenue Service (IRS). Walshe was convicted by trial jury on November 14, 2011, for failure to pay taxes and theft from an employee benefit plan. According to court records, as well as evidence presented at trial, Walshe was the owner and principal officer of Finzer Business Systems of Colorado, Inc., dba Finzer Imaging Systems, located in Denver. Walshe was required to withhold from payroll checks issued to his employee’s federal income taxes on their taxable wages and salaries, Social Security taxes and Medicare taxes. Walshe and his company, Finzer, were required to pay the employer's matching portion of Social Security and Medicare taxes which he failed to pay to the IRS. During the period of quarters ending June 30, 2005, through December 31, 2007, Walshe deducted and collected from Finzer employees, federal income taxes, Social Security taxes, and Medicare taxes totaling over $900,000. However, Walshe willfully failed to pay the IRS the money due to the federal government. Furthermore, Walshe did unlawfully and willfully abstract and convert to his own use money in the approximate amount of $18,853 of Finzer Business Systems of Colorado, Inc. 401(k) Plan and a fund connected with such plan. Specifically, from June 15, 2006 through December 31, 2006, Walshe withheld money from employees' pay checks that the employees elected to be paid to their 401 (k) plan; however, Walshe failed to pay this money over to the plan.

Wisconsin Woman Sentenced for Tax Fraud

On March 16, 2012, in Milwaukee, Wis., Connie Sax was sentenced to six months in prison and six

months home confinement and ordered to pay $168,091 in restitution to the IRS for tax fraud. According to court documents, Sax was the owner and former operator of Connie's Day Care, a child care center that she had operated in Kenosha. From the third quarter of 2005 through the first quarter of 2009, Sax withheld more than $168,000 from her employees but failed to pay the money to the Internal Revenue Service. She used these funds for her own benefit.

Florida Man Sentenced for Tax Fraud

On February 22, 2012, in Miami, Fla., Osvaldo Martinez, of Hollywood, Fla., was sentenced to 24 months in prison. According to the plea agreement, Martinez operated Clinicas Finlay, Inc., a medical services company in Miami-Dade County until 2007. Although Martinez withheld employee payroll taxes from his employees' salaries, he failed to pay $1,781,294 to the IRS, as required by law. In November 2011, Martinez pleaded guilty to one count of willfully failing to pay to the Internal Revenue Service federal income taxes.

New York Man Sentenced on Tax Fraud Charges

On February 21, 2012, in Rochester, N.Y., Jeffrey Sykes, of Canandaigua, N.Y., was sentenced to 96 months in prison, three years of supervised release, and ordered to pay $3,714,649 in restitution. According to the plea agreement, Sykes owned and operated Paybooks, Inc., a payroll servicing company that serviced approximately 1,100 clients in Western New York area. Between January 1, 2008, and June 30, 2009, Sykes received from Paybooks' clients proceeds that were to be used to pay employment taxes on behalf of the clients. However, Sykes failed to remit the funds to the appropriate taxing agencies. In addition to not paying over employment tax liabilities, Sykes failed to file Forms 941 on behalf of the clients. In an effort to conceal his fraudulent conduct, Sykes falsely represented to his clients that Paybooks had filed the Forms 941, and paid the employment taxes by mailing to the client's letters, stating that the returns and all tax payments had been filed.

Business Owner and Employee Sentenced for Conspiring to Defraud the IRS

On February 3, 2012, in Pittsburgh, Pa., Richard Swartz and Richard J. Connell were sentenced in federal court on their convictions of conspiracy to defraud the Internal Revenue Service. Swartz, of Coraopolis, Pa., was sentenced to 15 months in prison, three years of supervised release and pay a $30,000 fine. Connell, of Pittsburgh, Pa., was sentenced to 12 months and one day in prison and three years of supervised release. According to information presented to the court, Swartz owned and controlled Ace Tire and Parts, Inc., a retail auto parts and repair business, and Mariclare of Pa., doing business as Installer's Supply, a wholesale automobile supply and parts business. Connell was an employee and the controller of Ace Tire and Parts, Inc., and also performed financial services for Mariclare of Pa. From January 2000 through January 2006, Swartz and Connell conspired to defraud the Internal Revenue Service (IRS), by defeating and obstructing the IRS in the collection of income and employment taxes, as well as filing false tax returns.

Arkansas Man Sentenced on Bank Fraud and Failure to Pay Payroll Tax

On February 1, 2012, in Little Rock, Ark., Scott Keith Voss, of Jonesboro, Ark., was sentenced to 33 months in prison, five years of supervised release and ordered to pay restitution of $450,000 to a bank and $148,564 to the Internal Revenue Service (IRS). Voss, who served as pastor and president of a church in Jonesboro, pleaded guilty to one count of bank fraud and one count of willful failure to pay over tax in November 2011. Voss admitted during his plea hearing that from September 2007 until June 26, 2010, he devised a scheme to defraud a bank. As part of the scheme, Voss applied for a loan from the bank, pledging as collateral the Jonesboro worship center real estate where he served as pastor. Voss then failed to obtain appropriate board of directors' authorization to so encumber the church real estate. Additionally, Voss admitted that from 2006 through 2010, the church withheld tax payments from its employees' paychecks. However, through this same period, the church failed to make any payments to IRS of these withholdings.

Former Owner of Temporary Labor Firm Sentenced for Bribery and Tax Scheme

On January 26, 2012. in Camden, N. J., Channavel "Danny" Kong, of Philadelphia, Pa., was sentenced to 24 months in prison, three years of supervised release and ordered to cooperate fully with the IRS in paying his outstanding federal tax obligations and pay the state of New Jersey S15.000 in restitution. According to court documents and statements made in court, from 2006 to 2009, Kong owned and operated Sunrise Labor, which was in the business of providing temporary employees to client businesses, including businesses located in New Jersey. During this time period, Kong admitted that he made illegal cash payments to Joseph Rivera, a senior investigator with the New Jersey Department of Labor & Workforce Development's Division of Wage and Hour Compliance. Kong admitted he paid Rivera bribes totaling approximately S55.281 with the intent to influence Rivera not to conduct audits and inspections, including inspections and audits examining Sunrise's compliance with state payroll tax obligations. Kong also admitted that he was responsible, as the operator of Sunrise, for withholding, collecting, and accounting for and paying to the U.S. all employment taxes imposed by the Internal Revenue Code and that he willfully failed to collect and truthfully account for these taxes, which caused a tax loss to the IRS of between $80,000 and $200,000.

Missouri Business Owner Sentenced for Failing to Pay Employment Taxes

On January 24, 2012, in Springfield, Mo., Robert Landis was sentenced to 37 months in prison and ordered to pay $6.26 million in restitution for failing to pay employment taxes. According to court documents, from December 2003 until June 2007, Landis was the owner of Priority Personnel of Missouri and Priority Personnel of Kansas, temporary employment agencies. Landis was also the owner of Loma Landis LLC, which managed residential structures known as villas and operated nearby golf courses. Landis operated Loma Landis from 2005 to 2009. Each of those firms deducted payroll taxes from employees' pay, however, he failed to truthfully account for or pay to the IRS payroll taxes that were deducted and withheld from the paychecks of Priority Personnel of Missouri employees.

Virginia Businessman Sentenced for Tax Evasion Scheme

On January 20, 2012, in Alexandria, Va., Russell Foumier, of Stafford, Va., was sentenced to 25 months in prison and three years of supervised release for failing to pay more than $700,000 in employment taxes from 2000 to 2008. According to court documents, Foumier was a co-owner of Virginia Mobile Homes, Inc. (VMH), a Virginia corporation that sold mobile home trailers. In that capacity, Foumier was responsible for VMH's tax and financial affairs, including the filing of VMH's quarterly employment tax returns and paying over to the IRS the Federal Insurance Contributions Act and federal income taxes that were withheld from VMH employees. For nearly a decade, Fournier failed to file his company's tax returns and pay to the IRS his company's taxes. As a result, Fournier deprived the federal government of $722,485 between 2000 and 2008. In that time, Fournier used company funds to purchase for himself and his family luxury cars and trips abroad.

Virginia Woman Sentenced for Tax Evasion

On December 22, 2011, in Richmond, Va., Kim Jenkins Brandveen, of Petersburg, Va., was sentenced to 60 months in prison and three years of supervised release on her conviction for tax evasion. According to court documents, Brandveen admitted being the owner of Healthcare Solutions Medical Supply, LLC, a business that sold durable medical equipment and provided home health services. Brandveen directed the withholding of federal employment taxes from the paychecks of that business's employees, but regularly and systematically failed to pay those taxes over to the Internal Revenue Service (IRS), instead using those funds for other business ventures and personal expenses. When the IRS undertook collection efforts, Brandveen shut down that business and abandoned its bank accounts. She then operated as Healthcare Solutions Service Corporation, a virtually identical business performing largely the same functions from the same location with the same employees. Healthcare Solutions Service Corporation also failed to pay over employees' withheld employment taxes to the IRS, again using them for Brandveen's other business ventures and personal expenses.

Connecticut Accountant Sentenced for Stealing from Clients and Failing to Pay Employment Taxes

On December 20, 2011, in Hartford, Conn., Felix Robert LaSaracina, of Norwich, was sentenced to 63 months in prison and three years of supervised release for defrauding clients of approximately $4.1 million and for failing to pay more than $700,000 in employment taxes. According to court documents and statements made in court, LaSaracina, the owner and operator of F. Robert LaSaracina CPA, LLC, provided accounting and tax preparation services to clients in the New London and Norwich areas and served as the trustee for a series of trusts set up by a family for the benefit of their three children. As part of a scheme to defraud, LaSaracina falsely represented to numerous individuals and clients that he had investment opportunities in which their money would be invested in real estate, that the investment would pay 8 percent interest and other false promises. There were no actual investment opportunities and LaSaracina used the invested funds for his own

benefit. To create the appearance of legitimacy to prospective investors, he prepared official-looking documents or investment contracts termed "Promissory Note(s)". As a trustee, LaSaracina controlled and was responsible for managing the assets of the trusts, including the real estate holdings owned by the trusts, LaSaracina took out a series of mortgages using the real estate that was owned by the trusts as collateral. Through this scheme, LaSaracina diverted more than $1.2 million in mortgage funds for his own personal use. In addition, between 2005 and 2010, LaSaracina failed to remit to the Internal Revenue Service approximately $734,359 in federal income taxes and Federal Insurance Contributions Act (FICA) taxes that he had collected from the wages of employees of his business.

Ohio Man Sentenced for Failing to Pay Employment Taxes

On December 14, 2011, in Cleveland, Ohio, Charles J. Matthews, of Shaker Heights, Ohio, was sentenced to 15 months in prison after pleading guilty to six counts of willful failure to collect or pay over taxes. According to court documents, Matthews was the senior pastor at Mt. Sinai Baptist Church, located in Cleveland, as well as chief executive officer of the council overseeing the financial affairs. Matthews failed to pay Federal Insurance Contributions Act (FICA) taxes that were withheld from employees at Mount Sinai Baptist Church and Ministries over six quarters between October 2005 and January 2007. The taxes were collected and withheld from Mt. Sinai employees, but Matthews willfully failed to report and pay over the monies to the IRS. Instead, Matthews caused those funds to be used for other purposes, including transfers to the Pastor's account for his own personal use. He also failed to report and pay over the employer's share of the FICA taxes.

Owner of Maryland-Based Dental Corporation Sentenced for Failing to Pay Employment Taxes

On December 7, 2011, in Baltimore, Md., Jay Wayne Hustead, of Annapolis, Md., was sentenced to 24 months in prison, three years of supervised release and ordered to perform 200 hours of community service for failure to pay employment taxes related to his corporation, Hustead Dental and Orthodontics, PA. Hustead was also ordered to pay $65,913 in restitution and enter into a closing agreement with the IRS to pay the full amount of taxes due. According to his plea agreement, Jay Hustead and his wife, Susan K. Hustead, operated Hustead Dental and Orthodontics, PA, which employed several dentists, technicians and office employees and, from 2001 to 2006, had annual payrolls exceeding $1 million. From 2001 to 2006, Hustead Dental paid $25,000 in employment taxes and owed an additional $1.9 million. For the tax quarter that ended on December 31, 2003, the period charged in the criminal information, the tax loss associated with the Husteads' failure to pay to the IRS the employment taxes was $65,913. Susan K. Hustead also pleaded guilty to her role in the scheme and awaits sentencing.

Kansas Lawyer Sentenced on Employment Tax Evasion Charges

On November 18, 2011, in Kansas City, Kan., Rosie Quinn, a lawyer, was sentenced to 36 months in prison for failing to pay employment and personal taxes. According to court documents, Quinn was

the sole proprietor of Rosie M, Quinn Attorney At Law, where she usually employed three to five people to assist with her practice. For calendar years 1995 through 2008, Quinn withheld more than $235,600 in payroll taxes from employees while submitting only $10,232 in payroll taxes to the IRS. In addition, Quinn failed to pay $8,435 in personal income taxes in 2002 and $19,905 in personal income taxes in 2003. Altogether, Quinn failed to pay more than $1 million including interest and penalties, for payroll and personal income taxes since 1995.

Virginia Man Sentenced for Failing to Pay Over $1.7 Million In Taxes

On November 18, 2011, in Alexandria, Va., James Miller, of Lorton, Va., was sentenced to 18 months in prison, three years of supervised release and ordered to pay $965,006 in restitution for willful failure to collect, account for, and pay over withholdings from employees' paychecks to the Internal Revenue Service. Miller pleaded guilty in August 2011. According to court documents, Miller served as the President and CEO of Team, Inc., a janitorial company located in Virginia from 1997 through 2008. Team provided janitorial services for organizations and businesses located throughout the Washington, D.C., area. Due to the positions he held at Team, Miller had a duty to collect, account for, and pay over federal taxes withheld from his employees' paychecks. According to court documents, beginning with the first quarter of 2003 and continuing through the fourth quarter of 2008, Team withheld federal taxes from employees' paychecks, including Federal Insurance Contribution Act taxes, but Miller willfully and knowingly failed to pay over any of the withheld taxes to the government. As a result of Miller's conduct, the total federal tax loss was approximately $1.7 million.

New York Contractor Sentenced in Payroll Tax Evasion Scheme

On November 15, 2011, in Manhattan, N.Y., Michael Mahoney was sentenced to 24 months home confinement, two years of supervised release and ordered to pay $306,765 in restitution. According to the information, from 2004 through 2006, Mahoney, owner and operator of a construction company known as EMC of New York, took checks that represented receipts of EMC and, rather than depositing them in the corporate bank accounts, cashed them at a check-cashing establishment in New York City. The cash that Mahoney received was used, in part, to pay employees all or a portion of their wages avoiding federal tax reporting and withholding requirements and defrauding the IRS of taxes owed under FICA.

Internet Communications Firm Owners Sentenced

On November 9, 2011, in Washington, D.C., Frank G. Bivings and Isabelle Blanco, of Washington, D.C., husband and wife, and co-owners of The Bivings Group, Inc, were sentenced on charges stemming from the failure to pay more than $2 million in employment taxes to the Internal Revenue Service (IRS). Bivings was sentenced to 30 months in prison, three years of supervised release and required to perform 100 hours of community service. Blanco was sentenced to 10 months in prison, one year of supervised release and required to perform 100 hours of community service. Under terms of their plea agreements, both agreed to pay $2,420,927 in restitution. The Bivings Group, Inc.

was a full service Internet communications business. In their plea agreements, Bivings and Blanco both admitted that between January 1, 2002, and June 30, 2008, The Bivings Group, Inc., failed to pay over to the IRS a total of $2,420,927 in employment taxes, which includes withholding and FICA taxes. Of this amount, $1,813,488 represented the money that was withheld from employees for taxes but was not paid over to the IRS.

Kentucky Man Placed On House Arrest for Tax Crimes

On November 8, 2011, in Cincinnati, Ohio, Andrew E. Williams, of Villa Hills, Kentucky, was sentenced to 15 months of home confinement and ordered to pay $49,991 in restitution to the Internal Revenue Service (IRS). Williams pleaded guilty on August 11, 2011, to one count of failure to collect and pay over employment taxes to the IRS. According to court records, Williams was the owner of Club Aqua, Inc., which at the time was doing business under the name Club Ritz, withheld federal income tax, social security tax and Medicare tax from club employees' paychecks but failed to pay the taxes to the IRS or file quarterly federal income tax returns as required. Williams also admitted that he did not pay his employer's portion of these taxes. The total loss to the IRS from Williams' conduct was $81,712, with the unpaid portion of this loss being the restitution ordered at sentencing. Williams' plea agreement also obligates him to file complete and accurate tax returns with the IRS for all tax years and periods up to and including the date of sentencing, which were required to be filed under U.S. tax laws but have not yet been filed. He also agreed to file with the IRS complete and accurate amended returns for all previously filed incomplete or inaccurate tax returns, and pay all taxes, penalties, and interest due and owing to the IRS.

Florida Owner of Construction Business Sentenced

On November 3, 2011, in Miami, Fla., Braynert Marquez, of Miami, Fla., was sentenced to 30 months in prison, one year of supervised release and ordered to pay restitution of $280,362 to the IRS. Marquez pleaded guilty on July 21, 2011, to a one-count information charging him with aiding or assisting in the preparation of a false employment tax return. Specifically, the information charged that on or about January 31, 2008, Braynert Marquez willfully aided and assisted in and caused the preparation and presentation of a fraudulent Employer's Quarterly Federal Tax Return, IRS Form 941, for Bema Group for the calendar quarter ending December 31, 2007. The return was fraudulent in that it underreported wages, tips, and other compensation paid to employees. According to court documents, Marquez operated and at least partly owned two construction companies known as Bema Block Corp. and Bern a Group Corp. From 2004 through 2007, Marquez paid employees of Bema Block and Bema Group "off-the-books" wages. Marquez failed to report these wages on quarterly employment tax returns and failed to withhold and pay over employment taxes on the wages.

Oregon Woman Sentenced for Evading Employment Taxes

On October 28, 2011, in Oklahoma City, Okla., Skoshi Farr, of Grants Pass, Oregon, was sentenced to 33 months in prison, three years of supervised release and ordered to pay $72,076 in restitution for tax evasion. According to court documents, Farr’s deceased husband owned and operated an

alternative medicine practice, Genesis Medical Center, in southwest Oklahoma City from 1984 until his death in December 1998. In 1999, Farr owned and operated the clinic with the assistance of other medical personnel. The clinic had collected, but failed to pay to the IRS, the quarterly employment taxes at the clinic for three quarters in 1999. As the Administrator of the clinic, Farr was personally obligated to pay those taxes through the trust fund recovery penalty. Farr evaded her obligation to pay these taxes by hiding assets from the IRS and using a nominee bank account in the name of a corporation controlled by her adult children.

Former Owner of Massachusetts Temporary Employment Agency Sentenced for Under-the-Table Scheme

On October 26, 2011, in Boston, Mass., Michael Powers, the former owner of a Stoughton temporary employment agency, was sentenced to 84 months in prison, two years of supervised release, and ordered to pay more than $9 million in restitution to the Internal Revenue Service (IRS), the Massachusetts Department of Unemployment Assistance, and two insurers. Powers and John Mahan, of Stoughton, were convicted in July 2011 of one count of conspiracy to defraud the IRS and various workers' compensation insurers, one count of mail fraud and two counts of filing false tax returns. According to court documents, between 2000 and 2004, Powers and Mahan owned and operated Commonwealth Temporary Services, Inc., which supplied hundreds of temporary laborers to businesses throughout Eastern Massachusetts. To avoid paying employment taxes, such as social security and Medicare, and to fraudulently reduce the businesses' insurance premiums, Powers and Mahan under-reported their payrolls. To hide their fraud, they arranged to pay more than $30 million of their payroll in cash, under the table. The scheme avoided more than $9 million in federal and state payroll taxes and workers' compensation insurance premiums.

Glossary of Terms

Amended Tax Return
This is a tax return that is created to replace an already filed return. This type of return is prepared to indicate a change in information from the originally filed return. There are limitations as to what information can be amended. The taxpayer has up to three years from the due date of the original return to file an amended return if it was filed timely. If the return was filed late, the taxpayer has up to three years from the date of filing.

Appeals
This is a process that allows taxpayers to contest assessments and other findings by governmental taxing agencies. The IRS offers several methods to appeal including Collections Appeal Procedures ("CAP"), Collection Due Process ("CDP"), Fast Track Appeals, Fast Track Mediation and tax court.

Audit
This is a procedure that the governmental taxing agencies use to verify the accuracy of income, deductions or other information that was reported in a filed tax return. Audits may be conducted in person (usually with a representative of the taxpayer), by phone, by email, or by correspondence.

Automated Collections ("ACS")
This is a department that uses computer driven automation in combination with live representatives to collect from delinquent taxpayers via telephone and correspondence.

Back Taxes
This is the sum of liabilities stemming from assessments of previously filed tax returns that remain unpaid, and assessments made for returns that have not yet been filed. See **Substitute for Return ("SFR")**

Bankruptcy
If certain rules are met, income taxes may be discharged via this type of legal proceeding. In order to qualify, among other requirements, the liabilities must meet the Three Year Rule, The Two Year Rule and the 240 Day Rule.

Cancellation of Debt
Typically, debt that is forgiven is considered taxable. In certain cases, income may be excluded. One such example includes if a taxpayer was insolvent at the time the debt was forgiven.

Collateral Agreement
This is an addendum to the terms agreed upon in an offer in compromise. The taxing agencies will require this type of agreement if believe a taxpayer's income may increase significantly in the near future. Typically this type of agreement requires the taxpayer to pay more than the terms agreed upon in the offer if their income reaches certain thresholds.

Collection Information Statement (CIS)
This document is what the taxing agencies require, if a taxpayer wants to claim financial hardship as it relates to paying delinquent taxes. In addition to other information, the taxing agencies want to see what income, expenses, assets and liabilities the taxpayer has.

Collection Statute of Limitations
This is the period of time a taxing agency has to collect from a taxpayer once tax has been assessed. The IRS period is 10 years. Some States have periods spanning much longer. Certain actions including filing appeals, submitting an offer in compromise and residing out of the country for more than 6 consecutive months can extend ("toll") the statue.

Correspondence Audit
This is an audit by the government in which the taxpayer provides the requested information via mail and once a determination is made, the results are also send to the taxpayer via mail. Some audits begin as correspondence audits and become face-to-face audits if (1) the government wants to expand the scope or (2) the taxpayer does not agree with an additional assessment.

Currently-Non-Collectible ("CNC") Status
This is when the government places a hold on collection for a set period of time based upon the taxpayer's inability to pay. In essence, CNC status is equivalent to a zero-dollar installment agreement. CNC status is temporary. Typically, the government will revisit the taxpayer's ability to pay within a 2-year period.

Delinquent Tax Return
This is a tax return that is filed after the prescribed deadline. Those filing Federal and most State income tax returns may apply for a 6-month extension of time to file. If this is done, the amount due with the return is still due by the original filing date. If a tax return is placed on extension and subsequently filed one day later than the extension deadline, it is by definition 6 months and one day late.

Enrolled Agent
An Enrolled Agent ("EA") is approved by the IRS to practice in several areas of taxation. These areas include preparing taxes, representing clients in collection matters and some levels of appeal. An EA cannot represent a taxpayer in tax court.

Federal Tax Deposit
This is a payment employers make to the taxing agencies comprised of Social Security, Medicare and income taxes withheld from pay. The frequency at which these payments must be made vary anywhere from weekly to quarterly depending on number of employees and amounts being withheld.

Garnishment
This is a collection tool taxing agencies use to seize assets including wages, bank accounts, retirement funds, investment funds and pay from clients to self-employed individuals.

Innocent Spouse Relief
This is a program taxing agencies offer to relieve an injured spouse from liability assessed to their corresponding spouse. Based upon certain criteria, the injured spouse must prove that the meet the standards set by the taxing agency. The IRS recently eased the requirements necessary for an injured spouse to obtain relief.

Installment Agreements
An installment agreement is enacted when a taxing agency allows a taxpayer to make payment over a prescribed period of time. The payment amounts will either be based upon full-paying the liability over a given period of time or making payments that equate to less than the full amount owed including penalties and interest based upon hardship.

IRS Collections
This department that assigned to collect from people and businesses that have unpaid taxes. These collectors are called Revenue Officers as opposed to Revenue Agents who conduct tax audits.

Notice of Federal Tax Lien
In order to protect their interest, the IRS will file a tax lien against a person's or business's real or personal property. This notice is recorded in the county where the above-mentioned property resides to let the public (including creditors) know the IRS's position.

Levy
Used interchangeably with garnishment, a levy occurs when assets such as wages, bank accounts, retirement funds, investment funds and pay from clients to self-employed individuals are seized.

Certificate of Discharge of Federal Tax Lien
This is the removal of a Federal tax lien against specific property. This type of discharge is often issued in order to allow for the sale of said property.

Notice of Deficiency
This is a formal notice provide by the IRS when a taxpayer fails to pay or respond within a prescribed period of time. The recipient has 90 days from the date of notice to provide a response or file a petition in tax court.

Notice of Levy
This is a formal notice given to a taxpayer by the taxing agency, employer, third party payer or financial institution shortly after a levy has been issued. In the case of a bank levy, prior to remitting said assets to the taxing agency, the taxpayer has a prescribed period of time to request that the assets be returned. The IRS provides 21 days from the date of levy for the taxpayer to request that assets be returned.

Offers in Compromise
An offer in compromise ("OIC") is an agreement between the IRS and taxpayer that allows unpaid taxes to be settled for an amount less than owed. The IRS bases the offer amount on 12 times (24 in some cases) one's monthly disposable income plus their quick sale value of assets. The three types of IRS offers are Doubt as to Liability, Doubt as to Collectability and Effective Tax Administration.

Partial Pay Installment Agreement
This is an installment agreement that a delinquent taxpayer enters into in which the will end up paying a lower amount they owe. This occurs because the statute of limitations on collection will expire prior to the tax being fully paid. The IRS will only allow this type of installment agreement if (1) the taxpayer qualifies for hardship and (2) the IRS believes that the taxpayer's income will not increase substantially within the collection statute.

Penalty
The amount/s assessed by taxing agencies for things such as failure to pay, failure to file, or failure to respond. Penalties and interest are added one's principle tax liability and continue to grow as allowed by law. Penalties accrue interest.

Penalty Abatement
This happens when a taxing agency removes penalties based upon a request from the taxpayer or their representative. To request penalty abatement, one must provide a reason. There are numerous reasons which include accountant error, illness and family emergency. The IRS offers a first time abatement program ("FTA") to tax taxpayers that meet certain requirements. While penalties may be abated, interest most often cannot.

Power of Attorney
This is a form used by the taxing agencies which allow a designated representative to obtain information and discuss matters pertaining to a client's tax concerns. The IRS allows CPA's, attorneys and enrolled agents to be included in power of attorney.

Refund Statute Expiration Date
If a taxpayer is due a refund more than three years from the time a tax return was due or two years from the time the tax was paid, they will (1) not receive the refund and (2) the refund will not be applied to their account.

Self-Employment Tax
This type of tax is comprised of social security and Medicare (FICA) tax that is calculated for people who work for themselves and do not have these amounts taken out of their pay.

Subordination (of Federal Tax Lien)
This process allows the IRS to set aside their tax lien (temporarily) so that a delinquent taxpayer may proceed with the sale or refinance of their property. This may be done so someone can put themselves in a better financial positon. A condition of this process sometimes requires that a portion of the money gained by the delinquent taxpayer be given over to the IRS.

Substitute for Return ("SFR")
The IRS prepares interim tax returns for the purpose of assessing liability for years a taxpayer failed to file. This return the IRS prepares is based upon income information and limited expense information reported to the IRS. An SFR includes basic deductions and exemptions which may less than what a taxpayer can actually take. An SFR may also preclude a taxpayer from including the liability for the year of the SFR from being discharged in bankruptcy.

Tax Returns
A form used by governments to report income, deductions, withholding, payroll, sales, and other items in order to determine what amount of tax should be levied. Types of tax returns include individual income tax returns, corporate income tax returns, partnership income tax returns, payroll tax returns, sales tax returns, estate tax returns and gift tax returns.

Taxes
These are assessments that governments (federal, state and local) levy against its constituents to pay for public services.

Trust Fund Recovery Penalty (TFRP)
Assessed as a civil penalty to companies as well as personally to anyone deemed responsible for not making payroll tax deposits, this penalty equates to the amount of income tax withheld from employees pay combined with the employee's portion of Medicare and social security tax withheld.

Wage Garnishment
This is one of several ways in which the taxing agencies collect unpaid tax. In this instance, the taxing agencies require that an employer withhold and remit a portion of the delinquent taxpayer's wages. In some cases, the IRS will take all of an employee's earnings with the exception of what amounts to minimum wage.

Index

T

V

End Notes

[i] http://www.irs.gov/Individuals/Understanding-Your-IRS-Notice-or-Letter
[ii] IRC section 6672
[iii] www.irs.gov
[iv] See www.irs.gov/taxtopics/tc757.html
[v] Courtesy of the Franchise Tax Board (FTB") Use this chart for reference purposes only. We list penalty codes by Revenue and Taxation Code (R&TC) sections and reference comparable Internal Revenue Code (IRC) sections. These penalties reflect the law as enacted on September 21, 2011, for taxable years beginning on or after January 1, 2011.
[vi] See www.irs.gov
[vii] http://www.irs.gov/uac/Form-8857,-Request-for-Innocent-Spouse-Relief
[viii] http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Understanding-a-Federal-Tax-Lien
[ix] Criminal Investigation (CI) At-a-Glance *US Department of Treasury*
[x] History of IRS Criminal Investigation (CI) *US Department of Treasury*
[xi] Criminal Investigation (CI) At-a-Glance *US Department of Treasury*
[xii] Cornell University Law School *www.law.cornell.edu/uscode/text/26/7206*
[xiii] www.irs.gov
[xiv] https://www.irs.gov/uac/statistical-data-for-three-fiscal-years-criminal-investigation-ci
[xv] IRM 5.1.19.3.1 (03-01-2006) The collection statute of limitations, in a case under the Bankruptcy Code, is suspended while the Service is prohibited by reason of the case from collecting, and for 6 months thereafter. For more information see IRC 6503(h)(2). Thus, the collection statute of limitations is generally suspended while the automatic stay imposed by the bankruptcy is in effect. Even if the suspension of the collection statute under IRC 6503(h) no longer applies, the collection statute still may be suspended when substantially all the debtor's assets remain in the custody or control of the bankruptcy court under IRC 6503(b). For more information see IRM 5.9.4.2
[xvi] IRS Publication 216 (Rev. 3-92) U.S. GOVERNMENT PRINTING OFFICE: 1998 615-015/61844
[xvii] IRS Publication 470 (Rev. 1-82)
[xviii] www.irs.gov (Internal Revenue Service – Criminal Investigation 2011-2015 Annual Report