Your Appeal Rights Before the IRS

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SECTION ONE - EXAMINATIONS

I. Examination of Returns

A. In General

1. A tax return may be examined for a variety of reasons, and the examination may take place in any one of several ways.

2. After the examination, if any changes to the tax return are proposed, the taxpayer can either agree with those changes and pay any additional tax the taxpayer may owe, or the taxpayer can disagree with the changes and appeal the decision.

B. Examination Selection Criteria

1. DIF System

a. A tax return may be selected for examination on the basis of computer scoring. A computer program called the Discriminate Inventory Function System ("DIF") assigns a numeric score to each individual and some corporate tax returns after they have been processed.

b. If the tax return is selected because of a high score under the DIF system, the potential is high that an examination of the tax return will result in a change to the taxpayer income tax liability.

2. Third Party Communication

a. The tax return may also be selected for examination on the basis of information received from third-party documentation, such as Forms 1099 and W-2, that does not match the information reported on the tax return.

b. The tax return may also be selected to address both the questionable treatment of an item and to study the behavior of similar taxpayers (a market segment) in handling a tax issue.

3. Other Sources

a. In addition, the tax return may be selected as a result of information received from other sources on potential noncompliance with the tax laws or inaccurate filing.

b. This information can come from a number of sources, including newspapers, public records, and individuals.

c. The information is evaluated for reliability and accuracy before it is used as the basis of an examination or investigation.

C. Notice of IRS Contact of Third Parties

1. The IRS must give the taxpayer reasonable notice before contacting other persons about the taxpayer's tax matters.

2. The taxpayer must be given reasonable notice in advance that, in examining or collecting the taxpayer's tax liability, the IRS may contact third parties such as the taxpayer's neighbors, banks, employers, or employees.

3. The IRS must also give the taxpayer notice of specific contacts by providing the taxpayer with a record of persons contacted on both a periodic basis and upon the taxpayer request.

4. This provision does not apply:

a. To any pending criminal investigation,

b. When providing notice would jeopardize collection of any tax liability,

c. Where providing notice may result in reprisal against any person, or

d. When the taxpayer authorized the contact.

II. If a Tax Return Is Examined

A. Examination Process

1. Some examinations are handled entirely by mail. Examinations not handled by mail can take place in the taxpayer's home, the taxpayer's place of business, an Internal Revenue office, or the office of the taxpayer's attorney, accountant, or enrolled agent.

2. If the time, place, or method is not convenient for the taxpayer, the examiner will try to work out something more suitable.

3. However, the IRS makes the final determination of when, where, and how the examination will take place.

B. Representation.

1. In General

a. Throughout the examination, the taxpayer can act on the taxpayer's own behalf or have someone represent the taxpayer or accompany the taxpayer.

b. If the taxpayer filed a joint return, either the taxpayer or the taxpayer's spouse, or both, can meet with the IRS.

c. The taxpayer can have someone represent or accompany the taxpayer.

d. This person can be any federally authorized practitioner, including an attorney, a certified public accountant, an enrolled agent (a person enrolled to practice before the IRS), an enrolled actuary, or the person who prepared the return and signed it as the preparer.

2. Form 2848

a. If the taxpayer wants someone to represent the taxpayer in the taxpayer's absence, the taxpayer must furnish that person with proper written authorization.

b. The taxpayer can use Form 2848 or any other properly written authorization.

c. If the taxpayer wants to consult with an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, the taxpayer should make arrangements with that person to be available for the interview.

d. In most cases, the IRS must suspend the interview and reschedule it. The IRS cannot suspend the interview if the taxpayer is there because of an administrative summons.

3. Third party authorization

a. If the taxpayer checked the box in the signature area of the taxpayer income tax return (Form 1040, Form 1040A, or Form 1040EZ) to allow the IRS to discuss the tax return with another person (a third party designee), this authorization does not replace Form 2848.

b. The box the taxpayer checked on the tax return only authorizes the other person to receive information about the processing of the tax return and the status of the taxpayer refund during the period the tax return is being processed. For more information, see the instructions for the tax return.

C. Confidentiality privilege

1. Generally, the same confidentiality protection that the taxpayer has with an attorney also applies to certain communications that the taxpayer has with federally authorized practitioners.

2. Confidential communications are those that:

a. Advise the taxpayer on tax matters within the scope of the practitioner's authority to practice before the IRS,

b. Would be confidential between an attorney and the taxpayer, and

c. Relate to noncriminal tax matters before the IRS, or

d. Relate to noncriminal tax proceedings brought in federal court by or against the United States.

3. In the case of communications in connection with the promotion of a person's participation in a tax shelter, the confidentiality privilege does not apply to written communications between a federally authorized practitioner and that person, any director, officer, employee, agent, or representative of that person, or any other person holding a capital or profits interest in that person.

4. A tax shelter is any entity, plan, or arrangement, a significant purpose of which is the avoidance or evasion of income tax.

D. Recordings

1. The taxpayer can make an audio recording of the examination interview. The taxpayer request to record the interview should be made in writing. The taxpayer must notify the examiner 10 days in advance and bring the taxpayer's own recording equipment.

2. The IRS also can record an interview. If the IRS initiates the recording, the taxpayer must be notified 10 days in advance and the taxpayer can get a copy of the recording at the taxpayer's expense.

E. Transfers to another Area

1. Generally, the tax return is examined in the area where the taxpayer lives.

2. But if the tax return can be examined more quickly and conveniently in another area, such as where the taxpayer's books and records are located, the taxpayer can ask to have the case transferred to that area.

F. Repeat examinations.

1. The IRS tries to avoid repeat examinations of the same items, but sometimes this happens.

2. If the taxpayer tax return was examined for the same items in either of the two previous years and no change was proposed to the taxpayer tax liability, contact the IRS as soon as possible to see if the examination should be discontinued.

III. The Examination Process

A. Overview

1. An examination usually begins when the taxpayer is notified that the tax return has been selected.

2. The IRS will tell the taxpayer which records the taxpayer will need.

3. The examination can proceed more easily if the taxpayer gathers the taxpayer's records before any interview.

4. Any proposed changes to the tax return will be explained to the taxpayer or the taxpayer authorized representative.

5. It is important that the taxpayer understand the reasons for any proposed changes.

6. The taxpayer should not hesitate to ask about anything that is unclear to the taxpayer.

B. IRS Must Follow

1. The IRS must follow the tax laws set forth by Congress in the Internal Revenue Code.

2. The IRS also follows Treasury Regulations, other rules, and procedures that were written to administer the tax laws.

3. The IRS also follows court decisions.

4. However, the IRS can lose cases that involve taxpayers with the same issue and still apply its interpretation of the law to the taxpayer situation.

5. Most taxpayers agree to changes proposed by examiners, and the examinations are closed at this level.

6. If the taxpayer does not agree, the taxpayer can appeal any proposed change by following the procedures provided to the taxpayer by the IRS.

7. A more complete discussion of appeal rights is found later under Appeal Rights.

C. If Taxpayer Agrees

1. If the taxpayer agrees with the proposed changes, the taxpayer can sign an agreement form and pay any additional tax the taxpayer may owe.

2. The taxpayer must pay interest on any additional tax.

3. If the taxpayer pays when the taxpayer signs the agreement, the interest is generally figured from the due date of the tax return to the date of the taxpayer's payment.

4. If the taxpayer does not pay the additional tax when the taxpayer signs the agreement, the taxpayer will receive a bill that includes interest.

5. If the taxpayer pays the amount due within 10 business days of the billing date, the taxpayer will not have to pay more interest or penalties. This period is extended to 21 calendar days if the amount due is less than $100,000.

6. If the taxpayer is due a refund, the taxpayer will receive it sooner if the taxpayer signs the agreement form. The taxpayer will be paid interest on the refund.

7. If the IRS accepts the taxpayer's tax return as filed, the taxpayer will receive a letter in a few weeks stating that the examiner proposed no changes to the tax return. The taxpayer should keep this letter with the taxpayer's tax records.

D. If Taxpayer Does Not Agree

1. If the taxpayer does not agree with the proposed changes, the examiner will explain the taxpayer's appeal rights.

2. If the taxpayer examination takes place in an IRS office, the taxpayer can request an immediate meeting with the examiner's supervisor to explain the taxpayer position. If an agreement is reached, the taxpayer's case will be closed.

3. If the taxpayer cannot reach an agreement with the supervisor at this meeting, or if the examination took place outside of an IRS office, the examiner will write up the taxpayer's case explaining the taxpayer's position and the IRS's position. The examiner will forward the taxpayer's case for processing.

SECTION TWO
APPEALS PROCEDURES WITHIN THE IRS

I. In General

A. The taxpayer can appeal an IRS tax decision to a local Appeals Office, which is separate from and independent of the IRS office taking the action the taxpayer disagrees with.

B. The Appeals Office is the only level of appeal within the IRS.

C. Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone, or at a personal conference.

D. If the taxpayer wants an appeals conference, follow the instructions in the letter the taxpayer received. The taxpayer's request will be sent to the Appeals Office to arrange a conference at a convenient time and place.

E. The taxpayer or the taxpayer's representative should be prepared to discuss all disputed issues at the conference. Most differences are settled at this level.

F. If agreement is not reached at the taxpayer's appeals conference, the taxpayer may be eligible to take the taxpayer's case to court. See Appeals to the Courts, later.

II. Protests and Small Case Requests

A. In General

1. When the taxpayer requests an Appeals conference, the taxpayer may also need to file either a formal written protest or a small case request with the office named in the letter the taxpayer received.

2. In addition, for the appeal procedures for a spouse or former spouse of a taxpayer seeking relief from joint and several liability on a joint return, see Rev. Proc. 2003-19, which is on page 371 of the Internal Revenue Bulletin 2003-5 at www.irs.gov/pub/irs-irbs/irb03-05.pdf.

B. Protest - 30-day letter

1. Within a few weeks after the taxpayer's closing conference with the examiner and/or supervisor, the taxpayer will receive a package with:

2. A letter (known as a 30 day letter) notifying you of your rights to appeal the proposed changes within 30 days;

a. A copy of the examination report explaining the examiner's proposed changes;

b. An agreement or waiver form; and

A copy of IRS Publication 5.

3. The taxpayer generally has 30 days from the date of the 30-day letter to tell the IRS whether the taxpayer will accept or appeal the proposed changes.

The letter will explain what steps the taxpayer should take, depending on which action the taxpayer choose. Appeal Rights are explained later.

III. Written protest

A. The taxpayer needs to file a written protest in the following cases.

1. All employee plan and exempt organization cases without regard to the dollar amount at issue.

2. All partnership and S corporation cases without regard to the dollar amount at issue.

3. All other cases, unless the taxpayer qualifies for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements.

B. If the taxpayer must submit a written protest, see the instructions in Publication 5 about the information the taxpayer needs to provide.

1. The IRS urges the taxpayer to provide as much information as the taxpayer can, as it will help speed up the taxpayer's appeal. That will save the taxpayer both time and money.

2. Be sure to send the protest within the time limit specified in the letter the taxpayer received.

IV. Small Case Request

A. If the total amount for any tax period is not more than $25,000, the taxpayer may make a small case request instead of filing a formal written protest. In figuring the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. If the taxpayer is making an offer in compromise, include total unpaid tax, penalties, and interest due.

B. For a small case request, follow the instructions in the letter to the taxpayer by sending a letter:

1. Requesting Appeals consideration,

2. Indicating the changes the taxpayer does not agree with, and

3. Indicating the reasons why the taxpayer does not agree.

SECTION THREE – ALTERNATIVE RESOLUTION PROCEDURES

I. In General

A. IRC §7123 -

1. The IRS is required to develop appeals dispute resolution procedures under IRC §7123. Accordingly the IRS has established procedures under which any taxpayer may request early referral of issues from the examination or collection division to the Office of Appeals (see Early Referral Procedure, following).

2. Additionally, procedures under which either the taxpayer or the Office of Appeals may request nonbinding mediation of any unresolved issues at the conclusion of the appeals procedure, or an unsuccessful attempt to enter into closing agreement, or an offer in compromise.

3. Also, an appeals arbitration process under which the Office of Appeals and the taxpayer may jointly enter into binding arbitration has been established.

4. The Office of the Taxpayer Advocate, also called the Taxpayer Advocate Service, is an independent office within the Internal Revenue Service. The TAS assists taxpayers in resolving problems with the IRS and has authority to issue a taxpayer assistance order where the taxpayer is suffering or is about to suffer significant hardship as the result of the IRS's action.

B. Fast Track Mediation

1. Qualifications -

a. The Internal Revenue Service now offers fast track mediation services to help taxpayers resolve many disputes resulting from:

(1) Examinations (audits)

(2) Offers in compromise

(3) Trust fund recovery penalties

(4) Other collection actions (for example, certain qualifying collection due process cases)

b. Most cases that are not docketed in any court qualify for fast track mediation.

2. Advantages

a. Fast Track Mediation offers:

(1) An expedited process

(2) A trained mediator

(3) A neutral setting

b. The taxpayer doesn't have to file a written protest to request fast track mediation.

3. Excluded Cases / Issues Certain cases are excluded from fast track mediation; they include:

a. Issues for which there is no legal precedent;

b. Issues where the courts have rendered opposing or differing decisions in different jurisdictions;

c. Industry Specialization Program issues;

d. An issue for which the taxpayer has filed a request or competent authority assistance;

e. Service Center penalty appeals cases;

f. Service Center Offer in Compromise cases;

g. Collection Appeals Program cases;

h. Automated Collection;

i. System cases; and

j. Constitutional issues.

4. Starting the Process

a. If the taxpayer doesn't agree with any or all of the IRS findings, the taxpayer has the right to request a conference with the manager of the person who issued the findings.

b. In order to avail the taxpayer of the mediation process, all documentation needed to consider the taxpayer's case must be provided to Compliance. On collection cases, the taxpayer must be current with filing requirements and current with deposits.

c. Mediation can take place at the conference with the manager or afterwards.

d. In either situation, the taxpayer and the IRS representative must sign an agreement to mediate prior to attending the mediation session.

e. Generally within a week of receiving the signed agreement to mediate, the mediator will contact the taxpayer and the IRS representative to schedule the meeting. The mediator will provide a brief explanation of the process and discuss with the taxpayer when and where to hold the mediation session.

5. Mediation Process

a. The process involves an Appeals Officer who has been trained in mediation. The goal of mediation is to help the taxpayer and the IRS resolve the dispute.

b. The mediator's role is to facilitate communication. The mediator will work with the taxpayer and the IRS to obtain the information necessary to understand the nature of the dispute.

c. This includes the issues involved and the positions of both parties.

d. The mediator may conduct both separate and joint discussions with the taxpayer and the Internal Revenue Service representative. The purpose is to help the two reach a mutually satisfactory resolution that is consistent with the applicable law.

e. The mediator has no authority to require either party to accept any resolution.

6. Representation

a. The taxpayer may represent himself during the mediation session, or someone else can act as the taxpayer representative.

b. For mediation to succeed, those who have the authority to make a decision must be present. If the taxpayer decides to have someone represent the taxpayer, that person must have the proper authorization to act on the taxpayer behalf and to receive confidential information.

c. The taxpayer may use Form 2848, Power of Attorney and Declaration of Representative for this purpose.

d. The taxpayer can bring anyone else the taxpayer chooses with the taxpayer to support the taxpayer position.

7. Appeals

a. The taxpayer may withdraw from the mediation process anytime.

b. If any issues remain unresolved, the taxpayer will retain all the usual appeal rights.

C. Early Referral Procedure

1. Rev. Procedure 99-28, 1999-129 IRB 1

a. This revenue procedure describes the method by which a taxpayer may request an early referral of one or more unresolved issues from the Examination or Collection Division to the Office of Appeals (Appeals).

b. This process is optional and may be requested by any taxpayer.

2. Early Referral Procedures

a. In general.

(1) Except otherwise provided in Rev. Procedure 99-28, 1999-129 IRB 1, a taxpayer may request early referral to Appeals of any developed, unagreed issue arising from an audit.

(2) Examinations will continue to develop issues that have not been referred to Appeals.

b. Appropriate issues for early referral

Appropriate issues for early referral are limited to those that:

(1) If resolved, can reasonably be expected to result in a quicker resolution of the entire case;

(2) Both the taxpayer and Examinations agree should be referred to Appeals early;

(3) Are fully developed; and

(4) Are part of a case where the remaining issues are not expected to be completed before Appeals could resolve the early referral issue.

c. Issues excluded from early referral

Early referral does not include an issue:

(1) With respect to which a 30-day letter has been issued;

(2) That is not fully developed;

(3) When the remaining issues in the case are expected to be completed before Appeals could resolve the early referral issue;

(4) That is designated for litigation by the Office of Chief Counsel;

(5) For which the taxpayer has filed a request for Competent Authority assistance, or issues for which the taxpayer intends to seek Competent Authority assistance; or,

(6) That is part of a whipsaw transaction. The term "whipsaw" refers to the situation produced when the government is subjected to conflicting claims of taxpayers. A potential whipsaw situation exists whenever there is a transaction between two parties and differing characteristics of transactions will benefit one and hurt the other for tax purposes.

3. Initiating the early referral request

a. A request for early referral must be submitted in writing by the taxpayer to the case/group manager.

b. The case/group manager may suggest that a taxpayer make such a request.

4. Statement of issues and position

The taxpayer's early referral request must:

a. Identify the taxpayer (and, where applicable, all related persons involved in the issues) and the tax periods to which those issues relate;

b. State each issue for which early referral is requested; and

c. Describe the taxpayer's position with regard to the relevant early referral issues. This statement must contain a brief discussion of the material facts and an analysis of the facts and law as they apply to each early referral issue.

5. Perjury Statement

a. The early referral request, and any supplemental submission (including additional documents), must include a declaration in the following form:

> *Under penalties of perjury, I declare that I have examined this request [or submission], including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.*

b. This declaration must be signed by any person currently authorized to sign the taxpayer's federal income tax returns.

6. Signatures

a. The early referral request must be signed by the taxpayer or the taxpayer's authorized representative.

b. It is preferred that Form 2848, Power of Attorney and Declaration of Representative, be used to designate an authorized representative, with regard to an early referral request under this revenue procedure.

7. Notification of action

a. The case/group manager will, where feasible, notify the taxpayer of the decision to accept or reject an issue in the early referral request within 14 days of receiving the request.

8. Appeal of denial of early referral request

a. There is no formal taxpayer appeal if the early referral request is denied in whole or in part; however, the taxpayer can request a conference with the Internal Revenue Service supervisor of the case/group manager who denied the early referral request.

b. If the case/group manager does not approve the early referral request with respect to any issue, the taxpayer retains the right to pursue the administrative appeal of any proposed deficiency related to that issue at a later time.

9. Issuance of notice of proposed adjustment or explanation of adjustment

a. Examination will complete a Form 5701, Notice of Proposed Adjustment, or an equivalent form (the Notification Form) for each early referral issue approved pursuant to this revenue procedure.

b. Examination will send the Notification Form to the taxpayer generally within 30 days from the date the early referral request was accepted.

c. The Notification Form will describe the issue and explain the Examination's proposed adjustment.

10. Taxpayer response to Notification Form

a. The taxpayer must respond in writing to each of Examination's proposed adjustments set forth in the Notification Form.

b. The response must contain an explanation of the taxpayer's position regarding the issues.

c. The response shall be submitted to the case/group manager within 30 days (unless extended by the case/group manager) from the date that the proposed adjustment (the Notification Form) is sent to the taxpayer.

d. If a response is not received for any issue within the time provided, the taxpayer's early referral request will be considered withdrawn regarding that particular issue without prejudice to the taxpayer's right to an administrative appeal at a later date..

11. Early referral file sent to Appeals

a. Once the taxpayer has responded to the Notification Form, Examination will send the early referral file to Appeals.

b. Appeals will then take jurisdiction over the issues accepted for early referral.

c. All other issues in the case remain in Examination's jurisdiction.

d. The early referral file should include copies of:

(1) Applicable portions of tax returns and workpapers;

(2) The approved early referral request;

(3) The Notification Form;

(4) The taxpayer's written response to the Notification Form;

(5) Examination's response to the taxpayer's position, if any; and

(6) An estimate of the potential tax effect of the proposed adjustment.

12. Resolving the early referral issues

The taxpayer's written response to the Notification Form generally serves the same purpose as an Appeals protest. Established Appeals procedures, including those governing submissions and taxpayer conferences, apply to early referral issues.

13. Agreement reached

a. If an agreement is reached with respect to an early referral issue generally, a Form 906, Closing Agreement is needed.

b. The closing agreement is used to compute the corrected tax as a partial agreement prior to or concurrently with the resolution of any other issues in the case.

14. Agreement not reached.

a. If early referral negotiations are unsuccessful and an agreement is not reached with respect to an early referral issue:

(1). Taxpayers may then request mediation for the issue, provided the early referral issue meets the requirements for mediation.

(2). If mediation is not requested, Appeals will close the early referral file and return jurisdiction over the issue to Examination. Appeals will send a copy of the Appeals Case Memorandum for the issue to the case/group manager.

(3). Appeals will not reconsider an unagreed early referral issue if the entire case is later protested to Appeals, unless there has been a substantial change in the circumstances regarding the early referral issue.

15. Effect of conclusion of examination.

a. If Examination concludes its examination of any issues not referred as part of the early referral process, it will issue a preliminary notice of deficiency ("30-day letter") with respect to unagreed issues.

b. The letter will include any issues referred under the early referral process that are still pending in Appeals at the time the examination is concluded.

c. If the only unagreed issues present in the case at the time the examination is concluded are issues that were considered by Appeals under the early referral process and returned to Examination unagreed, no 30-day letter will be issued.

d. Instead a statutory notice of deficiency ("90-day letter") will be issued. If a 90-day letter is issued instead of the 30-day letter, the 90-day letter will constitute the first letter of proposed deficiency for purposes of §§ 6621(c) and 7430(c).

16. Appeals consideration after 30-day letter.

If Appeals takes jurisdiction of the remaining issues in the case following the issuance of a 30-day letter, all issues including all early referral issues that have not yet been settled by Appeals will be considered under established Appeals procedures.

17. Withdrawal from the early referral process.

a. If the taxpayer withdraws an early referral request with respect to one or more of the early referral issues after Appeals has taken jurisdiction over the issues, such withdrawal will be treated in the same manner as if no agreement of those early referral issues was reached.

b. The withdrawal request must be communicated in writing to the Appeals Officer assigned the early referral.

D. Binding Arbitration

1. Rev. Proc. 2006-44 - This revenue procedure formally establishes the Appeals arbitration program, which is designed to improve tax administration, provide customer service and reduce taxpayer burden. Arbitration is available for cases within Appeals jurisdiction that meet the operational requirements of the program. Generally, this program is available for cases in which a limited number of factual issues remain unresolved following settlement discussions in Appeals. Within Appeals, the Office of Tax Policy and Procedure will be responsible for the management of the Appeals arbitration program.

2. Background

a. Section 7123(b)(2) of the Internal Revenue Code, as enacted by § 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, provides that the Secretary shall establish a pilot program under which a taxpayer and Appeals may jointly request binding arbitration on certain unresolved issues.

b. On January 18, 2000, Appeals began a two-year test of an initial arbitration procedure. *See* Announcement 2000-4, 2000-1 COB. 317. On July 1, 2003, Appeals completed an additional one-year test of its arbitration procedure. *See* Announcement 2002-60, 2002-2 C.B. 28.

c. During these test periods, the IRS allowed taxpayers to request arbitration for certain factual issues that were already subject to the Appeals administrative process.

3. Scope of the Arbitration

a. The arbitration procedure may be used to resolve issues while a case is in Appeals, after settlement discussions are unsuccessful and, generally, when all other issues are resolved but for the specific factual issue(s) for which arbitration is being requested.

b. The arbitration procedure does not create any special authority for settlement by Appeals. During the arbitration process, Appeals is still subject to the procedures that would be applicable if the issue were being considered by Appeals, including procedures in the Internal Revenue Manual and existing published guidance.

c. Arbitration is available:

(1) Only for factual issues;

(2) For factual issues for which a request for competent authority assistance has not yet been filed; and

(3) For factual issues unresolved at the conclusion of unsuccessful attempts to enter into a closing agreement under I.R.C. § 7121.

d. Arbitration will not be available for:

(1) Legal issues;

(2) Cases in which arbitration is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575, which provide the general authority and guidelines for the use of alternative of dispute resolution in the administrative process;

(3) Issues docketed in any court;

(4) Issues in a taxpayer's case designated for litigation;

(5) Compliance Coordinated (formerly Industry Specialization Program) Issues (CCI) or Appeals Coordinated Issues (ACI) listed at *http://www.irs.gov/individuals/article/0,,id=128327,00.html*; *see* §§ 8.7.3.2.1 and 8.7.3.2.2 of the Internal Revenue Manual, found at *http://www.irs.gov/irm/index.html*;

(6) Issues for which a request for competent authority assistance has been filed under the provisions of Rev. Proc. 2002-52, or any successor guidance, including issues in cases submitted to the competent authority under the simultaneous appeals procedure. If the competent authority declines assistance, the competent authorities fail to agree, or if the taxpayer does not accept the mutual agreement reached by the competent authorities, the taxpayer is permitted to refer the unresolved issues to Appeals for further consideration and may submit a request to arbitrate unresolved factual issues under this revenue procedure;

(7) Collection cases, except for those involving: (i) an unsuccessful attempt to enter into a compromise under I.R.C. § 7122; and (ii) trust fund recovery penalty (TFRP) cases that involve whether a person: (a) was required to collect, truthfully account for, and pay over income, employment, or excise taxes; (b) was willful in attempting in any manner to evade or defeat any aforementioned tax or the payment thereof; and (c) is liable for the TFRP under I.R.C. § 6672; as provided for in any subsequent guidance issued by the Service;

(8) Issues for which arbitration would not be consistent with sound tax administration, *e.g.*, issues governed by closing agreements, by *res judicata*, or controlling Supreme Court precedent;

(9) "Whipsaw" issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party;

(10) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2001-41, 2001-2 C.B. 173, which defines frivolous issues and sets forth the Service's policy against making technical rulings on such issues.

(11) Cases in which the taxpayer did not act in good faith during Appeals settlement negotiations, *e.g.*, failure to respond to document requests, failure to respond timely to offers to settle, failure to address arguments and precedents raised by Appeals; or

(12) Issues that have been otherwise identified as excluded from the arbitration program.

4. Application Process

a. Arbitration is optional for both the taxpayer and Appeals. Either the taxpayer or Appeals may submit a request to arbitrate after consulting with the other party.

b. A taxpayer may submit a request to arbitrate by sending a written request to the appropriate Appeals Team Manager and a copy to the Chief, Appeals, 1099 14th Street, NW, Suite 4200 East, Washington, DC 20005, Attn: Office of Tax Policy and Procedure. The request to arbitrate should:

(1) Provide the taxpayer's name, TIN, address, and the name, title, address and telephone number of a person to contact;

(2) Provide the Appeals Team Case Leader's, Appeals Officer's, or Settlement Officer's name;

(3) Identify the taxable period(s) involved;

(4) Describe the issue for which the taxpayer is requesting arbitration, including the dollar amount of the adjustment in dispute; and

(5) Contain a representation that the issue is not an excluded issue listed above.

c. The Appeals Team Manager will respond to the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer, generally, within two weeks after the Appeals Team Manager receives the taxpayer's request for arbitration.

d. The Appeals Team Manager will secure the concurrence of the Chief, Appeals — Office of Tax Policy and Procedure, prior to notifying the taxpayer and the Appeals Team Case Leader, Appeals Officer, or Settlement Officer of the decision.

(1) If Appeals approves the request to arbitrate, the Appeals Team Manager will schedule a conference or conference call that will include a representative from the Chief, Appeals — Office of Tax Policy and Procedure.

(2) This representative will act as the Administrator to manage and supervise the arbitration proceeding and to act as liaison between the taxpayer and Appeals (the Parties) and between the Parties and the Arbitrator. At a later date, the Parties may select another Administrator, including non-IRS persons.

(3) Although no formal appeal procedure exists for the denial of a request to arbitrate, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a request to arbitrate is not subject to judicial review.

5. Agreement to Arbitrate

Upon approval of the request to arbitrate, the Parties will enter into a written agreement to arbitrate.

6. The Arbitration Process

a. A Party must notify the other Party and the Administrator, in a signed writing, not later than thirty (30) days before the arbitration session, of any change to the initial list of Participants contained in the agreement to arbitrate.

b. The Parties, by mutual agreement, may modify the list of Participants at any time up to and including the date of the arbitration session. The Administrator will forward each Party's list(s) to the Arbitrator. Appeals reserves the right to have an observer attend any arbitration.

c. If a taxpayer does not accept observers, the taxpayer's request for arbitration may be denied. Taxpayers may also have an observer attend any arbitration session.

d. The identity and affiliation of all observers will be established in the agreement to arbitrate signed prior to the arbitration session.

e. All observers affiliated with Appeals will be bound by the confidentiality provisions of the Internal Revenue Code.

f. Appeals also reserves the right to have the Office of Chief Counsel assist and participate in the arbitration proceeding.

g. The Parties, by mutual agreement, may select an Arbitrator from Appeals, or from any local or national organization that provides a roster of neutrals.

h. In the event such local or national organization provides an Arbitrator, this organization may also provide the Administrator for the arbitration, in lieu of the Administrator from the Chief, Appeals — Office of Tax Policy and Procedure.

i. In obtaining the services of a non-IRS Arbitrator, the IRS will follow all applicable provisions of the Federal Acquisition Regulation.

j. An Arbitrator shall have no official, financial, or personal conflict of interest with respect to the Parties, unless such interest is fully disclosed in writing to the taxpayer and the Appeals Team Manager and they agree that the Arbitrator may serve. *See* 5 U.S.C. § 573.

k. If the Parties select a non-IRS Arbitrator, the Parties will share equally the compensation, expenses, and related fees and costs of the Arbitrator, as well as any reasonable costs for the services of a non-IRS Administrator subject to applicable rules and regulations for Government procurement.

l. The non-IRS Arbitrator and non-IRS Administrator will be contractors subject to the disclosure restrictions of I.R.C. § 6103(n).

m. If the Parties select an Appeals Arbitrator, the Arbitrator shall be from

another Appeals office, or from the office of the Chief, Appeals. Appeals will pay all expenses associated with an Appeals Arbitrator.

n. Due to the inherent conflict that results because the Appeals Arbitrator is an employee of the IRS, the Appeals Arbitrator will provide to the taxpayer a statement confirming the proposed service as an Arbitrator and status as a current employee of the IRS, and that a conflict results from the continued status as an IRS employee.

o. Criteria for selecting an Arbitrator may include some or all of the following: completion of arbitration training, previous arbitration experience, a substantive knowledge of tax law and knowledge of industry practices.

p. The Arbitrator's qualifications and potential conflicts of interest should be thoroughly reviewed prior to selection.

q. The projected travel costs, hourly fees and other expenses of a non-IRS Arbitrator are subject to the applicable rules and regulations for Government procurement.

r. The non-IRS Arbitrator shall look solely to each Party for one-half of the compensation, expenses and related reasonable fees and costs.

7. Arbitration Session

a. Each Party will prepare a summary of its position for consideration by the Arbitrator. The Parties should submit their summaries to the Administrator no later than thirty (30) days before the scheduled arbitration session.

b. The Arbitrator will look solely to the legal guidance identified by the Parties. If the Arbitrator desires further legal guidance, both Parties must agree to provide the guidance and the manner in which it is to be communicated to the Arbitrator.

c. The arbitration process is confidential. Therefore, all information concerning any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any Party, Participant, or Arbitrator, except as provided under 5 U.S.C § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

d. The Parties agree that there shall be no *ex parte* communications between the Arbitrator and either Party or agent for a Party. In addition, the Arbitrator may not have contact with any other individuals, including Participants, outside the arbitration session, concerning the arbitration matter without the express approval of the Parties.

e. Any contact with the Arbitrator by either Party must be in the presence of the other Party and the Administrator. Written submissions should be sent simultaneously to the Administrator and the other Party.

f. The Administrator will in turn send the submissions to the Arbitrator. *See* section 6 of Exhibit 1. Should the Parties require additional information or clarification regarding the arbitration process, they shall contact the Administrator.

g. By mutual agreement, the Parties may withdraw from the arbitration process to reach a final Appeals settlement at any time prior to the date of the arbitration session. Postponements for good cause shall be determined by agreement between the Parties.

8. Post Arbitration

a. Generally, no later than thirty (30) days after completion of the arbitration proceeding, the Arbitrator will prepare a written report and submit a copy to the Administrator. Because the Arbitrator is limited to the task of finding facts, the report will not provide any decision or reasoning that represents an interpretation of the law. Neither Party may appeal the decision of the Arbitrator or contest the decision in any judicial proceeding, including, but not limited to, the Tax Court, United States Court of Federal Claims or a federal district or appellate court.

b. Once the Arbitrator renders a decision on all or some issues through the arbitration process, Appeals will use established procedures to close the case, including preparation of a specific matters closing agreement (Form 906). Delegation Order 236 (Rev. 3), or any successor delegation order, may apply to settlements resulting from the arbitration process.

c. If applicable, Appeals will report a settlement reached as a result of the arbitration process to the Joint Committee on Taxation in accordance with I.R.C. § 6405.

II. The National Tax Advocate

A. The National Taxpayer Advocate assists taxpayers in resolving problems with the IRS and has the authority to issue a taxpayer assistance order where the taxpayer is suffering, or is about to suffer, significant hardship as a result of the IRS's actions (Code Secs. 7803(c) and 7811; Reg. §301.7811-1).

B. "Significant hardship" means any serious privation caused to the taxpayer as the result of the IRS's administration of revenue laws. Mere economic or personal inconvenience to the taxpayer does not constitute significant hardship.

C. The following four specific factors, among other things, must be considered by the Advocate when determining whether there is a significant hardship:

1. Whether there is an immediate threat of adverse action,

2. Where there has been a delay or more than 30 days in resolving the taxpayer's account problems,

3. Whether the taxpayer will have to pay significant costs (including fees for professional representation) if relief is not granted, or

4. Whether the taxpayer will suffer irreparable injury, or a long-term adverse impact, if relief is not granted.

SECTION FOUR – SETTLEMENT AGREEMENTS

I. In General

A. Appeals uses four types of agreement forms: (a) the usual waiver of restrictions on assessment, Form 870; (b) the special-purpose waiver form used in the Appeals Office, Form 870-AD; (c) a closing agreement; and (d) a collateral agreement.

B. Settlement of a docketed Tax Court case is reflected not on an IRS form but in a stipulated decision, which, when signed and filed by the presiding judge, becomes the judgment of the Tax Court. The stipulated decision generally states that a taxpayer owes a deficiency in a specific amount or that the taxpayer is entitled to an overpayment in some specific amount.

II. Forms 870 and 870-AD

A. Overview

1. In nondocketed cases, the settlement of the parties is reflected in agreement forms of the 870 and 870-AD series. The Form 870 and Form 870-AD series differ in a number of important respects.

2. The AD agreement contains pledges against reopening, whereas the usual 870 agreement does not.

3. In general, this means that once an AD agreement is executed, the Service may not make an additional assessment, and the taxpayer may not sue for refund.

4. If the normal Form 870 is executed, the Service may make a further assessment, and the taxpayer may sue for refund.

5. Another difference between the two forms is that the 870 agreement becomes effective as a waiver of restrictions on assessment when the Service receives it, but the special AD agreement form becomes effective only on acceptance by or on behalf of the Commissioner. The suspension of interest provided by Section 6601(d) is controlled by the date the special AD agreement becomes effective. The date the form is received is controlling for an 870 agreement.

6. In general, Form 870 series agreement forms are used when a mutual concession settlement is not involved or when the amount of tax involved in a mutual concession settlement is not material enough to require the finality of the Form 870-AD. The AD form is usually employed in mutual concession types of settlements.

7. Both the Form 870 and the Form 870-AD may be modified, for example, when agreement can be reached on some but not all issues.

8. If there are mutual concessions, a Form 870-AD is required, but modifications limiting the pledges against reopening are limited to the settled issues, and those issues are identified on the back of the form.

9. The agreement form, Form 870-AD, is used when there is a settlement with reservations, a term that applies to a nondocketed case when settlement is reached but the

taxpayer or the Service wishes to reserve one or more issues, and no weight was given to the reserved issue in arriving at the settlement.

10. For example, the back of the Form 870-AD might provide, “The taxpayer reserves the right to timely file a claim for or credit or prosecute a timely claim solely on the grounds,” which are then described; however, the Service Manual instructs Appeals officers to add to the reservation the following language, “This offer of restrictions is not to be construed as a claim for refund or credit, formal or informal, concerning the matters for which the right to file a claim is reserved.” The Form 870-AD is also modified to reflect carrybacks given effect in the settlement, overpayments used to offset deficiencies in related cases, prepayment credit adjustments, and unverified estate tax credits.

B. Finality of Forms 870 and 870-AD

1. As noted previously, the execution of a Form 870 by a taxpayer does not preclude the taxpayer from later filing a claim for refund of the paid deficiency after the statutory period of assessment has run.

2. The Form 870 is merely a waiver of the restrictions on assessment and states: “Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are so entitled.”

3. The form does note that by signing the waiver, the taxpayer will not be able to contest the deficiencies in the Tax Court. In addition to leaving open the possibility of a taxpayer's filing a refund claim, the form also states in cautionary terms that execution of the waiver does not prevent the Service “from later determining, if necessary, that (the taxpayer) owe(s) additional tax....”

4. However, Form 870 does not extend the assessment period. Because the language of the form permits reopening of the issues, a taxpayer's request to sign a Form 870 puts the Appeals Office on notice that finality is not contemplated.

C. Appeals Office Preference

1. The Appeals Office prefers to use Form 870-AD, which states that “no claim for refund or credit shall be filed or prosecuted” for the years involved.

2. For its part, the Service promises in the Form 870-AD that the case will not be reopened by the Commissioner “in the absence of fraud, malfeasance, concealment or misrepresentation of a material fact, an important mistake in mathematical calculation, or excessive tentative allowances of (net operating loss) carrybacks.” Even in such instances, the case will not be reopened without high-level approval.

D. Closing and Collateral Agreements

1. The only statutorily authorized method for entering into an agreement binding on both the Service and a taxpayer is a closing agreement. Because these agreements are final, they require careful consideration by the Service.

2. For this reason, the Service's practice is to discourage the use of a closing agreement in the settlement of an Appeals Office case. The Service Manual instructs Appeals officers to explain the Service's policy on reopening to a taxpayer who requests greater finality and to persuade the taxpayer that a Form 870 or Form 870-AD type of agreement is adequate.

3. However, a closing agreement may be used if the taxpayer still insists on finality and the government will sustain no disadvantage.

4. The Appeals officer may request a closing agreement when there is doubt that a taxpayer or taxpayer's representative will abide by the finality provisions of the Form 870-AD agreement.

5. A closing agreement is also used in (1) certain settlements of fraud cases if the period for assessment of the tax might be barred except for fraud; (2) related cases if there is a risk that the government might be whipsawed to its disadvantage; and (3) continuing-issue cases if the basis of property or similar issues are involved.

6. The parties may enter into collateral agreements while trying to settle a case. A collateral agreement has the finality of neither a closing agreement nor a compromise.

7. This type of agreement may be used in gift and estate tax cases to express, for example, the agreement of the parties as to the basis of assets received by beneficiaries of an estate or the fair market value of a gift for basis purposes.

SECTION FIVE – PAYMENT ALTERNATIVES

I. Overview

A. Installment Agreement Request

1. The taxpayer can request a monthly installment plan if the taxpayer cannot pay the full amount the taxpayer owes.

2. To be valid, the taxpayer's request must be approved by the IRS.

3. However, if the taxpayer owes $10,000 or less in tax and the taxpayer meets certain other criteria, the IRS must accept the taxpayer's request.

4. Before the taxpayer requests an installment agreement, the taxpayer should consider other less costly alternatives, such as a bank loan.

5. The taxpayer will continue to be charged interest and penalties on the amount the taxpayer owes until it is paid in full.

6. Unless the taxpayer's income is below a certain level, the fee for an approved installment agreement has increased to $105 ($52 if the taxpayer makes the taxpayer payments by electronic funds withdrawal).

7. If the taxpayer's income is below a certain level, the taxpayer may qualify to pay a reduced fee of $43.

8. For more information about installment agreements, see Form 9465, Installment Agreement Request.

B. Offer in Compromise

1. In certain circumstances, the IRS will allow the taxpayer to pay less than the full amount the taxpayer owes.

2. If the taxpayer thinks the taxpayer may qualify, the taxpayer should submit the taxpayer's offer by filing Form 656, Offer in Compromise.

3. The IRS may accept the taxpayer's offer for any of the following reasons.

a. There is doubt about the amount the taxpayer owes (or whether the taxpayer owes it).

b. There is doubt as to whether the taxpayer can pay the amount the taxpayer owes based on the taxpayer's financial situation.

c. An economic hardship would result if the taxpayer had to pay the full amount owed.

d. The taxpayer's case presents compelling reasons that the IRS determines are a sufficient basis for compromise.

4. If the taxpayer's offer is rejected, the taxpayer has 30 days to ask the Appeals Office of the IRS to reconsider the taxpayer's offer.

5. The IRS offers fast track mediation services to help taxpayers resolve many issues including a dispute regarding an offer in compromise. For more information, see Publication 3605.

6. Generally, if the taxpayer submits an offer in compromise, the IRS will delay certain collection activities. The IRS usually will not levy (take) the taxpayer's property to settle the taxpayer's tax bill during the following periods:

a. While the IRS is evaluating the taxpayer's offer in compromise.

b. The 30 days immediately after the offer is rejected.

c. While the taxpayer's timely-filed appeal is being considered by Appeals.

7. Also, if the IRS rejects the taxpayer's original offer and the taxpayer submits a revised offer within 30 days of the rejection, the IRS generally will not levy the taxpayer's property while it considers the taxpayer's revised offer.

8. For more information about submitting an offer in compromise, see Form 656.

C. Periods of financial disability.

1. If the taxpayer is an individual (not a corporation or other taxpaying entity), the period of limitations on credits and refunds can be suspended during periods when the taxpayer cannot manage the taxpayer's financial affairs because of physical or mental impairment that is medically determinable and either:

a. Has lasted or can be expected to last continuously for at least 12 months, or

b. Can be expected to result in death.

2. The period for filing a claim for refund will not be suspended for any time that someone else, such as the taxpayer's spouse or guardian, was authorized to act for the taxpayer in financial matters.

3. To claim financial disability, the taxpayer generally must submit the following statements with the taxpayer's claim for credit or refund:

a. A written statement signed by a physician, qualified to make the determination, that sets forth:

(1) The name and a description of the taxpayer's physical or mental impairment,

(2) The physician's medical opinion that the taxpayer's physical or mental impairment prevented the taxpayer from managing the taxpayer's financial affairs,

(3) The physician's medical opinion that the taxpayer's physical or mental impairment was or can be expected to result in death, or that it has lasted

(or can be expected to last) for a continuous period of not less than 12 months, and

(4) To the best of the physician's knowledge, the specific time period during which the taxpayer was prevented by such physical or mental impairment from managing the taxpayer's financial affairs, and

(5) A written statement by the person signing the claim for credit or refund that no person, including the taxpayer's spouse, was authorized to act on the taxpayer's behalf in financial matters during the period described in paragraph (1)(d) of the physician's statement. Alternatively, if a person was authorized to act on the taxpayer's behalf in financial matters during any part of the period described in that paragraph, the beginning and ending dates of the period of time the person was so authorized.

b. The period of limitations will not be suspended on any claim for refund that (without regard to this provision) was barred as of July 22, 1998.

II. Suspension of Interest and Penalties

A. In General

1. Generally, the IRS has 3 years from the date the taxpayer filed the tax return (or the date the return was due, if later) to assess any additional tax.

2. However, if the taxpayer files the tax return timely (including extensions), interest and certain penalties will be suspended if the IRS does not mail a notice to the taxpayer, stating the taxpayer's liability and the basis for that liability, within a 36-month period beginning on the later of:

a. The date on which the taxpayer filed the taxpayer tax return, or

b. The due date (without extensions) of the taxpayer tax return.

3. If the IRS mails a notice after the 36-month period, interest and certain penalties applicable to the suspension period will be suspended.

4. The suspension period begins the day after the close of the 36-month period and ends 21 days after the IRS mails a notice to the taxpayer stating the taxpayer's liability and the basis for that liability.

5. Also, the suspension period applies separately to each notice stating the taxpayer liability and the basis for that liability received by the taxpayer.

B. Suspension Does Not Apply To.

The suspension does not apply to a:

1. Failure-to-pay penalty,

2. Fraudulent tax return,

3. Penalty, interest, addition to tax, or additional amount with respect to any tax liability shown on the tax return or with respect to any gross misstatement,

4. Penalty, interest, addition to tax, or additional amount with respect to any reportable transaction that is not adequately disclosed or any listed transaction, or

5. Criminal penalty.

C. Seeking relief from improperly assessed interest.

1. The taxpayer can seek relief if interest is assessed for periods during which interest should have been suspended because the IRS did not mail a notice to the taxpayer in a timely manner.

2. If the taxpayer believes that interest was assessed with respect to a period during which interest should have been suspended, submit Form 843, writing "Section 6404(g) Notification" at the top of the form, with the IRS Service Center where the taxpayer filed the tax return.

3. The IRS will review the Form 843 and notify the taxpayer whether interest will be abated.

4. If the IRS does not abate interest, the taxpayer can pay the disputed interest assessment and file a claim for refund.

5. If the taxpayer claim is denied or not acted upon within 6 months from the date the taxpayer filed it, the taxpayer can file suit for a refund in the taxpayer United States District Court or in the United States Court of Federal Claims.

D. Unreasonable Error of Delay

1. If the taxpayer believes that an IRS officer or employee has made an unreasonable error or delay in performing a ministerial or managerial act (discussed later under Abatement of Interest Due to Error or Delay by the IRS), file Form 843 with the IRS Service Center where the taxpayer filed the tax return.

2. If the Service denies the taxpayer's claim, the Tax Court may be able to review that determination.

3. See Tax Court can review failure to abate interest, later under Abatement of Interest Due to Error or Delay by the IRS.

4. If the taxpayer later agrees.

a. If the taxpayer agrees with the examiner's changes after receiving the examination report or the 30-day letter, sign and return either the examination report or the waiver form. Keep a copy for the taxpayer records.

b. The taxpayer can pay any additional amount the taxpayer owes without waiting for a bill. Include interest on the additional tax at the applicable rate. This interest rate is usually for the period from the due date of the return to the date of payment.

c. The examiner can tell the taxpayer the interest rate(s) or help the taxpayer figure the amount.

3. The taxpayer must pay interest on penalties and additional tax for failing to file returns, for overstating valuations, for understating valuations on estate and gift tax returns, and for substantially understating tax liability. Interest is generally figured from the date (including extensions) the tax return is required to be filed to the date the taxpayer pays the penalty and/or additional tax.

4. If the taxpayer pays the amount due within 10 business days after the date of notice and demand for immediate payment, the taxpayer will not have to pay any additional penalties and interest. This period is extended to 21 calendar days if the amount due is less than $100,000.

E. How to Stop Interest From Accruing

1. If the Taxpayer Owes Additional Tax

a. If the taxpayer thinks that the taxpayer will owe additional tax at the end of the examination, the taxpayer can stop the further accrual of interest by sending money to the IRS to cover all or part of the amount the taxpayer thinks the taxpayer will owe. Interest on part or all of any amount the taxpayer owes will stop accruing on the date the IRS receives the taxpayer's money.

b. The taxpayer can send an amount either in the form of a deposit in the nature of a cash bond or as a payment of tax.

c. Both a deposit and a payment stop any further accrual of interest.

d. However, making a deposit or payment will stop the accrual of interest on only the amount the taxpayer sent. Because of compounding rules, interest will continue to accrue on accrued interest, even though the taxpayer has paid the underlying tax.

e. To stop the accrual of interest on both tax and interest, the taxpayer must make a deposit or payment for both the tax and interest that has accrued as of the date of deposit or payment.

2. Payment or Deposit.

a. Deposits differ from payments in two ways:

The taxpayer can have all or part of the taxpayer deposit returned to the taxpayer without filing for a refund. However, if the taxpayer requests and receives the taxpayer's deposit and the IRS later assesses a deficiency for that period and type of tax, interest will be figured as if the funds were never on deposit.

b. Also, the taxpayer deposit will not be returned if one of the following situations applies:

(1) The IRS assesses a tax liability.

(2) The IRS determines that, by returning the deposit, it may not be able to collect a future deficiency.

(3) The IRS determines that the deposit should be applied against another tax liability.

c. Deposits returned to the taxpayer will include interest based on the Federal short-term rate determined under section 6621(b).

d. The deposit returned will be treated as a tax payment to the extent of the disputed tax.

A disputed tax means the amount of tax specified at the time of deposit as a reasonable estimate of the maximum amount of any tax owed by the taxpayer, such as the deficiency proposed in the 30-day letter.

e. Notice not mailed.

(1) If the taxpayer sends money before the IRS mails the taxpayer a notice of deficiency, the taxpayer can ask the IRS to treat it as a deposit. The taxpayer must make the request in writing.

(2) If, after being notified of a proposed liability but before the IRS mails the taxpayer a notice of deficiency, the taxpayer sends an amount large enough to cover the proposed liability, it will be considered a payment unless the taxpayer requests in writing that it be treated as a deposit.

(3) If the amount the taxpayer sends is at least as much as the proposed liability and the taxpayer does not request that it be treated as a deposit, the IRS will not send the taxpayer a notice of deficiency. If the taxpayer does not receive a notice of deficiency, the taxpayer cannot take the taxpayer's case to the Tax Court. See Tax Court, later under Appeals to the Courts.

f. Appeal Rights.

(1) Notice mailed.

If, after the IRS mails the notice of deficiency, the taxpayer sends money without written instructions, it will be treated as a payment. The taxpayer will still be able to petition the Tax Court.

(2) Money Sent.

If the taxpayer sends money after receiving a notice of deficiency and the taxpayer has specified in writing that it is a "deposit in the nature of a cash bond," the IRS will treat it as a deposit if the taxpayer sends it before either:

(a) The close of the 90-day or 150-day period for filing a petition with the Tax Court to appeal the deficiency, or

(b) The date the Tax Court decision is final, if the taxpayer has filed a petition.

3. Using a Deposit To Pay the Tax.

a. If the taxpayer agrees with the examiner's proposed changes after the examination, the taxpayer deposit will be applied against any amount the taxpayer may owe. The IRS will not mail the taxpayer a notice of deficiency and the taxpayer will not have the right to take the taxpayer case to the Tax Court.

b. If the taxpayer does not agree to the full amount of the deficiency after the examination, the IRS will mail the taxpayer a notice of deficiency. The taxpayer's deposit will be applied against the proposed deficiency unless the taxpayer writes to the IRS before the end of the 90-day or 150-day period stating that the taxpayer still wants the money to be treated as a deposit. The taxpayer will still have the right to take the taxpayer's case to the Tax Court.

III. Reduction of Interest

A. Interest Netting.

1. If the taxpayer owes interest to the IRS on an underpayment for the same period the IRS owes the taxpayer interest on an overpayment, the IRS will figure interest on the underpayment and overpayment at the same interest rate (up to the amount of the overpayment).

2. As a result, the net rate is zero for that period.

B. Abatement of Interest Due to Error or Delay by the IRS.

1. The IRS may abate (reduce) the amount of interest the taxpayer owes if the interest is due to an unreasonable error or delay by an IRS officer or employee in performing a ministerial or managerial act (discussed later).

2. Only the amount of interest on income, estate, gift, generation-skipping, and certain excise taxes can be reduced.

3. The amount of interest will not be reduced if the taxpayer or anyone related to the taxpayer contributed significantly to the error or delay.

4. Also, the interest will be reduced only if the error or delay happened after the IRS contacted the taxpayer in writing about the deficiency or payment on which the interest is based.

5. An audit notification letter is such a contact.

6. The IRS cannot reduce the amount of interest due to a general administrative decision, such as a decision on how to organize the processing of tax returns.

C. Ministerial Act.

1. This is a procedural or mechanical act, not involving the exercise of judgment or discretion, during the processing of a case after all prerequisites (for example, conferences and review by supervisors) have taken place.

2. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

Example 1.

The taxpayer moves from one state to another before the IRS selects the taxpayer's tax return for examination. A letter stating that the tax return has been selected is sent to the taxpayer's old address and then forwarded to the taxpayer's new address. When the taxpayer gets the letter, the taxpayer responds with a request that the examination be transferred to the area office closest to the taxpayer's new address. The examination group manager approves the taxpayer's request. After the taxpayer's request has been approved, the transfer is a ministerial act. The IRS can reduce the interest because of any unreasonable delay in transferring the case.

Example 2.

An examination of the tax return reveals tax due for which a notice of deficiency (90-day letter) will be issued. After the taxpayer and the IRS discuss the issues, the notice is prepared and reviewed. After the review process, issuing the notice of deficiency is a ministerial act. If there is an unreasonable delay in sending the notice of deficiency to the taxpayer, the IRS can reduce the interest resulting from the delay.

D. Managerial Act.

This is an administrative act during the processing of a case that involves the loss of records or the exercise of judgment or discretion concerning the management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

Example 3.

A revenue agent is examining the taxpayer's tax return. During the middle of the examination, the agent is sent to an extended training course. The agent's supervisor decides not to reassign the taxpayer's case, so the work is unreasonably delayed until the agent returns. Interest from the unreasonable delay can be abated since both the decision to send the agent to the training class and not to reassign the case are managerial acts.

E. How to Request Abatement of Interest.

1. The taxpayer requests an abatement (reduction) of interest on Form 843. The taxpayer should file the claim with the IRS service center where the taxpayer filed the tax return that was affected by the error or delay.

2. If the taxpayer has already paid the interest and the taxpayer would like a credit or refund of interest paid, the taxpayer must file Form 843 within 3 years from the date the taxpayer filed the taxpayer's original return or 2 years from the date the taxpayer paid the interest, whichever is later.

a. If the taxpayer has not paid any of the interest, these time limitations for filing Form 843 do not apply.

b. Generally, the taxpayer should file a separate Form 843 for each tax period and each type of tax.

3. However, complete only one Form 843 if the interest is from an IRS error or delay that affected the taxpayer's tax for more than one tax period or for more than one type of tax (for example, where 2 or more tax years were being examined).

4. If the taxpayer's request for abatement of interest is denied, the taxpayer can appeal the decision to the IRS Appeals Office.

a. Tax Court can review failure to abate interest.

b. The Tax Court can review the IRS's refusal to abate (reduce) interest if all of the following requirements are met.

(1) The taxpayer filed a request for abatement of interest (Form 843) with the IRS after July 30, 1996.

(2) The IRS mailed the taxpayer a notice of final determination or a notice of disallowance.

(3) The taxpayer filed a petition with the Tax Court within 180 days of the mailing of the notice of final determination or the notice of disallowance.

c. The following requirements must also be met:

(1) For individual and estate taxpayers — the taxpayer's net worth must not exceed $2 million as of the filing date of the taxpayer's petition for review. For this purpose, individuals filing a joint return shall be treated as separate individuals.

(2) For charities and certain cooperatives — the taxpayer must not have more than 500 employees as of the filing date of the taxpayer's petition for review.

(3) For all other taxpayers — the taxpayer's net worth must not exceed $7 million, and the taxpayer must not have more than 500 employees as of the filing date of the taxpayer's petition for review.

F. Abatement of Interest for Individuals Affected by Presidentially Declared Disasters or Military or Terrorist Actions

1. If the taxpayer is (or was) affected by a Presidentially declared disaster occurring after 1996 or a terrorist or military action occurring after September 10, 2001, the IRS may abate (reduce) the amount of interest the taxpayer owes on certain taxes.

2. The IRS may abate interest for the period of any additional time to file or pay that the IRS provides on account of the disaster or the terrorist or military action. The IRS will issue a notice or news release indicating who are affected taxpayers and stating the period of relief.

3. If the taxpayer is eligible for relief from interest, but was charged interest for the period of relief, the IRS may retroactively abate the taxpayer interest. To the extent possible, the IRS can take the following actions.

   a. Make appropriate adjustments to the taxpayer account.

   b. Notify the taxpayer when the adjustments are made.

   c. Refund any interest paid by the taxpayer where appropriate.

4. For more information on disaster area losses, see Disaster Area Losses in Publication 547. For more information on other tax relief for victims of terrorist attacks, see Publication 3920.

SECTION SIX – APPEAL TO THE COURTS

I. Appeal to the Courts

A. Overview

1. Several different trial-level courts hear federal civil tax cases in the United States:

a. The Tax Court,

b. District courts,

c. The Court of Federal Claims, and

d. The Bankruptcy Courts.

By a large margin, most tax cases are filed in Tax Court, but the thoughtful advocate planning tax litigation carefully considers all available options.

2. The Tax Court - The Tax Court is a court of nationwide jurisdiction based in Washington, D.C. The Tax Court conducts trials and hearings in 74 cities around the nation.

3. The Court Of Federal Claims

a. The Court of Federal Claims is also based in Washington, D.C., and also may hear trials in cities around the nation. All the cases before the Tax Court have a tax nexus.

b. All the cases before the Court of Federal Claims involve a monetary dispute between the plaintiff and the United States; tax cases make up a substantial subset of those cases. The Court of Federal Claims was formerly called the U.S. Court of Claims, and is successor to the Court of Claims.

4. The District Court

a. District courts are located throughout the nation.

b. There are 94 judicial districts, including at least one in each state. District courts are called "Article III" courts, since their judicial power is derived from Article III of the Constitution, together with Acts of Congress.

c. District courts have jurisdiction, in law and equity, over cases under the laws of the United States—including most tax cases. District court judges enjoy lifetime appointments.

5. Bankruptcy Courts

a. 11 U.S.C. §505(a)(1) provides permissive jurisdiction to determine "amount or legality of any tax whether or not paid".

b. Bankruptcy courts are separate units of district courts; bankruptcy court judges serve limited terms.

c. Bear in mind that bankruptcy court jurisdiction to hear tax disputes is permissive, not mandatory.

B. Jurisdictional Issues

1. Tax Cases for all Forums

a. Tax Cases – The Tax Court has exclusive prepayment jurisdiction authority for the following cases; refund jurisdiction authority is in the Tax Court, the Court of Federal Claims, and the Bankruptcy Courts.

(1) Income, estate, and gift taxes;

(2) Public charity excess lobbying taxes;

(3) Private foundation taxes;

(4) Qualified plan taxes; and

(5) Excise taxes on RICs and REITs.

b. Exempt Status And Classification Declaratory Judgment Actions

The Tax Court, District Courts, and the Court of Federal Claims each has original jurisdiction over exempt organization status and classification declaratory judgment actions.

c. Disclosure Actions

Although they are not tax disputes per se, disclosure actions arising under section 6110 of the Internal Revenue Code may be heard by either the Tax Court or the District Court for the District of Columbia.

2. Actions Where Choice of Forum is Unavailable

a. Cases Which Can Only be Heard by the Tax Court

(1) Some tax disputes must be heard by the Tax Court. Although the exclusivity of the jurisdiction of the Tax Court has not been tested with respect to all of these provisions, the careful advocate should not plumb the limits of jurisdiction if it can be helped.

(2) Cases over which the Tax Court has exclusive jurisdiction:

(a) Appeal from collection due process determination (lien or levy case) §6330(d)(1);

(b) Review of IRS refusal to abate interest §6404(h);

(c) Review of a decision granting or denying (in whole or in part) an award for reasonable administrative costs under §7430(a);

(d) Declaratory action (qualified plans) §7476(a);

(e) Declaratory action (gift valuation) §7477(a);

(f) Declaratory action (tax-exempt bonds) §7478(a);

(g) Declaratory action (estate-tax installment payment eligibility under §6166) §7479(a). *But see* §7422(j), allowing refund suits where estate tax has not been fully paid solely because of section 6166 election);

(h) Redetermination of Informant Awards §7623;

(i) Liabilities before raising section 6015 claims, declining to find jurisdiction.

b. Cases Which Can Only be Heard by the District Court

(1) Summons enforcement actions, filed by United States §§ 7402(b), 7609(f) (John Doe summons).

(2) Petition to quash third-party summons, filed by taxpayer §7609(b)(2)-(h)(1).

(3) Quiet title actions brought by United States §7402(e).

(4) Action to enforce or discharge liens in favor of the United States §7403(a); 28 U.S.C. §2410.

(5) Judicial approval of principal residence levy, filed by United States §6334(e)(1)(B).

(6) Erroneous refund suit, filed by United States *United States v. Wurts*, 303 U.S. 414, 415 (1938); §7405(a).

(7) Tax return preparer and tax shelter injunction suits, filed by United States §§ 7407(a), 7408(a).

(8) Actions to quiet title, foreclose, partition, condemn, or interpleader with respect to real property on which the United States claims a lien 28 U.S.C. §2410.

(9) Wrongful levy actions §7426; *EC Term of Years Trust v. United States*, 550 U.S. 429 (2007).

(10) Review of jeopardy levy or jeopardy assessment, filed by taxpayer §7429(b)(2)(A). *But see* §7429(b)(2)(B) (providing Tax Court jurisdiction in limited circumstances).

(11) Civil disclosure damages actions, filed by taxpayer §7431(a).

(12) Civil damages actions against United States for IRS failure to release lien or certain unauthorized collection actions §7433(a). *See* §7433(e)(1) (providing jurisdiction for bankruptcy court to hear damages claims for Title 11 violations by IRS).

(13) Claims for refund of trust fund recovery penalty.

3. Other Unique Actions

a. TEFRA Partnership

(1) In 1982, Congress unified partnership tax proceedings, instead of forcing each partner to litigate with the IRS one-by-one. Accordingly, TEFRA partnership items are determined at a single, partnership-level proceeding.

(2) For our purposes, it is enough to note that the Tax Matters Partner may petition the Tax Court, a district court, or the Court of Federal Claims within 90 days of receiving a final partnership administrative adjustment from the IRS. §6226(a).

(3) So the Tax Matters Partner enjoys a full choice of forums to litigate TEFRA partnership proceedings.

(4) If the Tax Matters Partner does not timely file a petition in one of those three forums, other "notice" partners may file an action in any of the three courts listed above within the next 60 days. §6226(b)(1).

b. Claims For Relief From Joint And Several Liabilities

(1) Oversight of IRS determinations to grant or deny relief from joint and several liability under section 6015 of the Code rests primarily with the Tax Court.

(2) The Code emphatically grants the Tax Court jurisdiction to review such determinations. §6015(e)(1)(A).

(3) In considering whether other courts have jurisdiction to consider section 6015 claims, it is important to consider that a section 6015 claim with respect to an assessed joint liability is in the nature of an equitable defense.

(4) Accordingly, in collection cases, district courts typically look with a jaundiced eye on taxpayers who wait until the IRS seeks to collect assessed liabilities before raising 6015 claims, declining to find jurisdiction.

4. Unreviewable Cases

Some tax disputes cannot be reviewed by any court.

a. Abatement Of Certain Unpaid Tax

A refusal by the IRS to abate unpaid portions of assessed income, gift, or estate tax under section 6404(a) is not susceptible to judicial review, see, e.g., Krugman v. Commissioner, 112 T.C. 230, 237 (1999)(no jurisdiction to abate additions to tax), in contrast to interest abatement decisions, which may be reviewed by the Tax Court under section 6404(h) of the Code.

b. Overpayment Offsets

Overpayment offsets are unreviewable. §6402(f)(barring judicial review of Treasury offsets applied against other-agency debts); Kalb v. United States, 505 F.2d 506, 509 (2d Cir. 1974), cert. denied, 421 U.S. 979 (1975)(dismissing claim for judicial review of overpayment offset applied to federal tax liability); In re Lybrand, 338 B.R. 402, 407 (Bankr. W.D.Ark. 2006). But see Oatman v. Dep't of Treasury, 34 F.3d 787, 789 (9th Cir. 1994) (holding district court has jurisdiction under 28 U.S.C. §1346(a)(1) to review Treasury's refusal to allow taxpayer's claim to one-half community property interest in offset tax overpayment).

II. Choice of Forum

A. Money

1. Prepayment Versus Refund

a. Only the Tax Court and bankruptcy courts usually are prepayment forums.

b. Alternatively, the statutes and case law demand full payment of tax liabilities before a district court or the Court of Federal Claims may take jurisdiction over a refund suit.

2. Interest

a. The interest provisions are found in sections 6601 to 6631 of the Code.

b. At least three concepts must be mastered: underpayment interest, overpayment interest, and deposits in the nature of cash bonds.

c. The underpayment and overpayment interest rate is the same for non-corporate taxpayers: the Federal short-term rate plus three percentage points. §6621(a).

d. For corporate taxpayers, the spread between the overpayment interest rate and the large corporate underpayment (a "large corporate under payment" is more than $100,000) interest rate is 4.5 percent - that is, the large corporate underpayment rate is the Federal short-term rate plus five percentage points (also known as "hot interest"), §6621(c), and the corporate overpayment rate is the Federal short-term rate plus 0.5 percent. §6621(a)(1)(B).

e. Properly submitted deposits in the nature of cash bonds stop the running of underpayment interest, but such deposits, insofar as they become overpayments, earn interest only at the Federal short-term rate.

3. Weigh Financial Implications

With the concepts of prepayment versus refund litigation and interest in mind, a taxpayer facing a choice-of-forum decision may be able to weigh the relevant cost-of-money factors along with other cash needs, the merits of the case, and market interest rates compared to the underpayment and overpayment rates.

B. Timing

Timing is another major jurisdictional factor in the choice-of-forum analysis. Different jurisdictional time limits sometimes foreclose options.

1. Tax Court

a. Most importantly, failure to petition Tax Court in a timely fashion after the IRS issues the notice of deficiency is fatal to the Tax Court's jurisdiction. §6213(a).

b. If the IRS cannot establish that the notice of deficiency was sent to the last known address or received by the taxpayer in time to petition the Tax Court, then the Tax Court's dismissal of a late-filed petition on the ground that the notice was invalid vitiates the notice and any assessment of tax related to it. *Shelton v. Commissioner*, 63 T.C. 193 (1974).

c. Missing the 90-day deadline by even one day (150 days if the notice is addressed to a person outside the United States) will inevitably draw a motion to dismiss from the IRS Office of Chief Counsel, and the motion to dismiss, if well taken, will be granted. The Tax Court has no authority to extend its jurisdictional deadline.

2. Refund Jurisdiction

a. The time limits on filing refund claims and refund suits are no less forgiving than the deadlines governing Tax Court jurisdiction; they just run longer.

b. In all refund cases, a taxpayer must file a timely administrative claim before bringing suit against the government. *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1 (2008) (unconstitutional tax).

c. Generally, a claim must be filed within three years of filing a return or within two years of payment, whichever comes later. §6511(a).

d. A refund claim is timely under section 6511(a) if it is filed within three years of the filing of the original return, regardless of when the original return is filed. *Omohundro v. United States*, 300 F.3d 1065 (9th Cir.2002); *Weisbart v. U.S. Dep't of Treasury*, 222 F.3d 93 (2d Cir. 2000); Rev. Rul. 76-511, 1976-2 C.B. 428.

e. Section 6511(b) provides additional "look-back" periods in certain fact-specific circumstances. Thereafter, a refund suit may be filed within the window of time beginning six months after the claim is filed and ending two years after the denial of the claim by the IRS. §6532(a).

f. The Bankruptcy Code effectively forces the IRS to allow or deny the refund claim of a debtor in bankruptcy within 120 days. *See* 11 U.S.C. §505(a)(2)(B).

C. Raising New Issues After Docketing Case

1. Docketing in Tax Court Tolls Assessment

a. The statute of limitation on assessment—that otherwise would bring the IRS's claims to rest—is tolled while a Tax Court case is pending. §6503(a)(1).

b. The Tax Court has plenary jurisdiction to redetermine all items in the taxable period at issue in a deficiency or TEFRA partnership case, so the Tax Court may exercise its jurisdiction to consider an IRS claim for an increased deficiency or TEFRA

partnership adjustment (or penalties, for that matter) asserted anytime before the entry of a final decision. *Estate of Quick v. Commissioner*, 110 T.C. 172,180 (1998).

c. The Tax Court's discretion in these matters is guided by whether allowing the IRS to claim an increased deficiency would surprise or unfairly disadvantage the taxpayer. *Id*.

d. The Tax Court rarely enters comprehensive scheduling orders except in the most complex cases, and even then, few Tax Court scheduling orders set a deadline for amending pleadings over the objection of the IRS.

e. Especially in cases where the IRS did not unearth all material issues in examination, this factor should be considered, in light of the necessity of the IRS to bear the burden of proof on new issues, if allowed. Tax Court Rules of Practice, and Procedure, Rule 142(a).

2. Variance

a. This relative flexibility in the Tax Court's willingness to entertain new issues cuts both ways, and it stands in marked contrast to the "variance doctrine" that circumscribes refund suit jurisdiction.

b. The variance doctrine bars a taxpayer from presenting claims in a refund suit that substantially vary from the legal theories and factual bases set forth in the administrative refund claim presented to the IRS.

c. The variance doctrine rests on the specific statutory and regulatory requirements governing claims. §7422(a); Treas. Reg. §301.6402-2(b)(1).

d. There are limitations on a taxpayer's ability to amend claims after the statute of limitation has expired.

D. Erroneous or Invalid Statutory Notice of Deficiency

1. Tax Court

a. A notice of deficiency is a pre-requisite to filing suit in the Tax Court. *Stamm International Corp. v. Commissioner*, 84 T.C. 248, 252 (1985) ("A statutory notice of deficiency is a jurisdictional prerequisite to a taxpayer's suit seeking the Tax Court's redetermination of respondent's determination of the tax liability").

b. To the extent the Commissioner issues an invalid notice, the taxpayer may file suit in the Tax Court and then seek to dismiss the suit on the grounds the court lacks jurisdiction.

c. Note, however, that unless the statute of limitations for issuing a notice has expired, the Commissioner may re-issue a valid notice of deficiency.

2. Refund Forums

a. If a notice of deficiency is invalid, a taxpayer may pay the deficiency, file an action in a refund forum and dispute the validity of any assessment based on such notice.

b. Similar to the Tax Court, if the taxpayer is successful in contesting the validity of the Notice, the Commissioner may issue a new notice provided the statute of limitations for doing so remains open.

c. If the IRS assesses the tax asserted in the notice of deficiency, a taxpayer may file an action in District Court, pursuant to section 6213(a), to enjoin collection of the assessed tax. *See*, *e.g.*, *Mann v. United States*, 82 AFTR2d 98-5503, 98-2 U.S.T.C. ¶50,608 (D.N.M. 1998), *aff 'd*, 204 F.3d 1012 (10th Cir. 2000)(IRS collection activity enjoined where no notice of deficiency had been issued).

3. Liberal Interpretation of Requirements

a. "The essential purpose of a deficiency notice is to provide a formal notification that a deficiency in taxes has been determined." *Pietz v. Commissioner*, 59 T.C. 207, 213–14 (1972); *Olsen v. Helvering*, 88 F2d 650, 651 (2d Cir. 1937) ("the notice is only to advise the person who is to pay the deficiency that the Commissioner means to assess him; anything that does this unequivocally is good enough").

b. Provided this requirement is met, errors in the Notice are generally ignored. *Hart v. Commissioner*, 44 T.C.M.(CCH) 1203, (1982) ("An error in a notice of deficiency, which otherwise fulfills its purpose, will be ignored where the taxpayer is not misled there by and is provided by it with information sufficient for the preparation of his case for trial.")

c. A notice may be invalid only in part. To the extent this is the case, a court will not lack jurisdiction or dismiss an action with respect to the valid parts of the notice simply because the notice contains invalid portions.

E. Other Considerations

1. Payments After Tax Statute Expires

a. If the statute of limitations on assessment—which typically runs three years after the return is due or filed, whichever comes later (§6501(a))—with respect to a given taxable period has arguably expired before the IRS issued a notice of deficiency, it may be a bad idea to pay the liability and claim a refund. First, the Tax Court will consider a statute-of-limitations defense to an otherwise valid deficiency.

b. A successful statute-of-limitations defense in Tax Court would yield a decision that would bar the IRS from collecting any underpayment.

c. Second, the *sine qua non* of a valid refund claim is an *overpayment* of tax. *Lewis v. Reynolds*, 284 U.S. 281(1932). *See also Jones v. Liberty Glass Co.*, 332 U.S. 524,531 (1947) (defining overpayment).

d. A taxpayer may always volunteer to pay an uncollectible tax, but the IRS need not (and will not) allow a refund unless and until the taxpayer proves an overpayment, regardless of whether the IRS could have assessed and collected the tax in the first place.

2. Setoff and Equitable Recoupmentt

a. The government may assert a set off to an otherwise time-barred adjustment as a defense in refund litigation, but not in deficiency causes in TaxCourt.

b. The doctrine of equitable recoupment extends the setoff principle to cover different taxes. See, e.g., *Wilmington Trust Co. v. United States*, 221 Ct. Cl. 686,701 (1979) (discussing Supreme Court equitable recoupment cases). See also *United States v. Dalm*, 494 U.S. 596 (1990).

c. Historically, the IRS took the position that the Tax Court lacked jurisdiction to consider a plea of equitable recoupment. Rev. Rul. 71-56, 1971-1 C.B. 404.

d. Accordingly, the Tax Court has rarely – if ever – applied equitable recoupment in favor of the IRS. But the Tax Court has asserted jurisdiction to grant equitable recoupment claims in favor of taxpayers, see, e.g. *Estate of Mueller v. Commissioner*, 101 T.C. 551 (1993), and Congress explicitly granted the Tax Court jurisdiction to hear such claims. Pension Protection Act of 2006, Pub. L. 109-280, Title VIII, §858(a), 120Stat. 1020, codified at §6214(b); Menard Inc. v. Commissioner, 130 T.C. 54 (2008).

e. In refund litigation the taxpayer must prove an overpayment of tax. Lewis, 284 U.S. at 283. A setoff defense allows the government to reduce or eliminate an otherwise valid refund claim using time-barred underpayments. *Kingston Prods. Corp. v. United States*, 177 Ct. Cl. 471 (1966).

SECTION SEVEN – COLLECTION APPEALS

I. Overview

A. Collection Due Process (CDP)

1. The purpose of a Collection Due Process hearing is to review collection actions that were taken or have been proposed.

2. A taxpayer can request a Collection Due Process hearing if he or she receives any of the following notices:

a. Notice of Federal Tax Lien Filing and Taxpayer's Right to a Hearing;

b. Final Notice—Notice of Intent to Levy and Notice of Taxpayer's Right to a Hearing;

c. Notice of Jeopardy Levy and Right of Appeal;

d. Notice of Levy on Taxpayer's State Tax Refund—Notice of Taxpayer's Right to a Hearing;

e. Notice of Levy and of Taxpayer's Right to a Hearing;

3. To request a Collection Due Process hearing, complete Form 12153, Request for a Collection Due Process or Equivalent Hearing, and send it to the address on the notice.

a. The taxpayer has 30 days from the date of the notice to request a Collection Due Process hearing.

b. A taxpayer can also request an Equivalent Hearing within one year from the date of the notice.

B. Collection Appeals Program (CAP)

1. Under the Collections Appeals Program, if the taxpayer disagrees with an IRS employee's decision and want to appeal it, the taxpayer can ask their manager to review the case.

2. If the taxpayer disagrees with the manager's decision, the taxpayer can continue with the Collection Appeals Program as outlined in Publication 1660.

3. Instances in which the taxpayer can pursue the Collection Appeals Program include, but aren't limited to:

a. Before or after the IRS file a Notice of Federal Tax Lien;

b. Before or after the IRS seize ("levy") property;

c. After the IRS reject, terminate, or propose to terminate an Installment Agreement (a conference with the manager is recommended, but not required).

4. For more information about the Collection Due Process and Collection Appeals Program, please see Publication 1660, Collection Appeal Rights.

II. Collection Actions

A. Understanding collection actions

1. There are several words and phrases particular to the collection process.

2. Here are definitions of some of the most commonly used collection terms:

a. *Federal tax lien*: A legal claim against all current and future property, such as a house or car, and rights to property, such as wages and bank accounts. The lien automatically comes into existence if the taxpayer doesn't pay taxpayer's amount due after receiving taxpayer's first bill.

b. *Notice of Federal Tax Lien (NFTL):* A public notice to creditors. It notifies them that there is a federal tax lien that attaches to all the taxpayer's current and future property and rights to property.

c. *Levy:* A legal seizure of property or rights to property to satisfy a tax debt. When property is seized ("levied"), it will be sold to help pay a taxpayer's tax debt. If wages or bank accounts are seized, the money will be applied to the tax debt.

d. *Seizure:* There is no legal difference between a seizure and a levy. The IRS will use both terms interchangeably.

B. Notice of Intent to Levy and Notice of Taxpayer's Right to a Hearing:

Generally, before property is seized, the IRS has to send the taxpayer a Notice of Intent to Levy and Notice of Taxpayer's Right to a Hearing.

1. If the taxpayer doesn't pay the overdue taxes, make other arrangements to satisfy the tax debt, or request a hearing within 30 days of the date of this notice, the IRS may seize taxpayer's property.

2. The taxpayer may also receive a summons that legally compels the taxpayer or a third party to meet with the IRS and provide information, documents, or testimony.

C. Collection Actions in Detail

1. Federal Tax Liens In General:

a. A federal tax lien is legal claim against property.

b. It is a legal claim against all current and future property.

c. When a taxpayer doesn't pay the first bill for taxes due, a lien is created by law and attaches to the taxpayer's property. It applies to property (such as the taxpayer's home and car) and to any current and future rights the taxpayer may have to that property.

2. A Notice of Federal Tax Lien:

a. A Notice of Federal Tax Lien provides public notice to creditors that a lien exists.

b. The IRS files the Notice of Federal Tax Lien so the IRS can establish the priority of the IRS's claim versus the claims of other creditors.

c. The Notice of Federal Tax Lien is filed with local or state authorities, such as county registers of deeds or the Secretary of State offices.

d. If a Notice of Federal Tax Lien is filed, it's often reported by consumer credit reporting agencies.

3. What to do if a Notice of Federal Tax Lien is filed

a. The taxpayer can pay the full amount owed immediately.

b. The Notice of Federal Tax Lien only shows taxpayer's assessed balance as of the date of the notice. It doesn't show taxpayer's payoff balance or include the IRS's charges for filing and releasing the lien.

c. To find out the full amount the taxpayer must pay to have the lien released, call the number on taxpayer's lien notice.

D. How to Appeal a Notice of Federal Tax Lien

1. Collection Due Process Hearing

a. Within 5 business days of filing the Notice of Federal Tax Lien, the IRS will send the taxpayer a Notice of Taxpayer's Right to a Collection Due Process Hearing.

(1) The taxpayer will have until the date shown on the notice to request a Collection Due Process hearing with the Office of Appeals.

(2) Send a Collection Due Process hearing request to the address on the notice.

(3) For more information, see Form 12153, Request for a Collection Due Process or Equivalent Hearing.

b. After the Collection Due Process hearing, the Office of Appeals will issue a determination on whether the Notice of Federal Tax Lien should remain filed, or whether it should be withdrawn, released, discharged, or subordinated. If the taxpayer disagrees with the determination, the taxpayer will have 30 days after it's made to seek a review in the U.S. Tax Court.

c. If the taxpayer doesn't file a hearing request within 30 days, the taxpayer will not be entitled to a Collection Due Process hearing, but may be entitled to an equivalent hearing.

d. The request for an equivalent hearing, however, doesn't prohibit the IRS from seizing and doesn't suspend the 10-year period for collecting tax.

e. In addition, a taxpayer is not entitled to a judicial review of the decision from the Equivalent Hearing.

2. Collection Appeals Program

In addition to any Collection Due Process rights the taxpayer may have, the taxpayer may also appeal a proposed or actual filing of a Notice of Federal Tax Lien under the Collection Appeals Program.

E. Reasons the IRS will "release" a federal tax lien

1. A "release" of a federal tax lien means that the IRS has cleared both the lien for the tax debt and the public Notice of Federal Tax Lien.

2. The IRS will do this by filing a Certificate of Release of Federal Tax Lien with the same state and local authorities with whom the IRS filed taxpayer's Notice of Federal Tax Lien.

3. The IRS will release a lien if:

a. The tax debt is fully paid,

b. Payment of the tax debt is guaranteed by a bond, or

c. The period for collection has ended. (In this case, the release is automatic.)

4. For more information, see Publication 1450, Instructions on How to Request a Certificate of Release of Federal Tax Lien.

F. Reasons the IRS may "withdraw" a Notice of Federal Tax Lien

1. A "withdrawal" removes the Notice of Federal Tax Lien from public record.

2. The withdrawal tells other creditors that the IRS is abandoning its lien priority.

3. This doesn't mean that the federal tax lien is released, or that the taxpayer is no longer liable for the amount due.

4. The IRS may withdraw a Notice of Federal Tax Lien if:

a. The taxpayer entered into an Installment Agreement to satisfy the tax liability, unless the Agreement provides otherwise. For certain types of taxes, the IRS will routinely withdraw a Notice of Federal Tax Lien if the taxpayer entered into a direct debit installment agreement and meet certain other conditions:

b. It will help the taxpayer pay taxpayer's taxes more quickly;

c. The IRS didn't follow IRS procedures;

d. It was filed during a bankruptcy automatic stay period; or

e. It's in taxpayer's best interest (as determined by the Taxpayer Advocate) and in the best interest of the government. For example, this could include when taxpayer's debt has been satisfied and the taxpayer requests a withdrawal.

For more information, see Form 12277, Application for Withdrawal of Filed Notice of Federal Tax Lien.

G. How to apply for a "discharge" of a federal tax lien from property

1. A "discharge" removes the lien from specific property.

2. There are several circumstances under which the federal tax lien can be discharged.

a. For example, the IRS may issue a Certificate of Discharge if the taxpayer is selling property and a Notice of Federal Tax Lien has been filed; the taxpayer may be able to remove or discharge the lien from that property through the sale.

b. For more information on whether the taxpayer qualifies for a discharge, see Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien.

H. How to make the federal tax lien secondary to other creditors ("subordination")

1. A "subordination" is where a creditor is allowed to move ahead of the government's priority position.

2. For example, if the taxpayer is trying to refinance a mortgage on taxpayer's home, but aren't able to because the federal tax lien has priority over the new mortgage, the taxpayer may request that the IRS subordinate the IRS's lien to the new mortgage.

3. For more information on whether the taxpayer qualify for a subordination, see Publication 784, How to Prepare an Application for a Certificate of Subordination of Federal Tax Lien.

I. Appeal rights for withdrawal, discharge, or subordination

If the IRS deny taxpayer's request for a withdrawal, discharge, or subordination, the taxpayer may appeal under Collections Appeals Program.

J. Levy: A seizure of property

1. In General

a. While a federal tax lien is a legal claim against taxpayer's property, a levy is a legal seizure that actually takes taxpayer's property (such as taxpayer's house or car) or taxpayer's rights to property (such as taxpayer's income, bank account, or Social Security payments) to satisfy taxpayer's tax debt.

b. Keep in mind that the IRS can't seize taxpayer's property if the taxpayer have a current or pending Installment Agreement, Offer in Compromise, or if the IRS agree that the taxpayer is unable to pay due to economic hardship, meaning seizing taxpayer's property would result in taxpayer's inability to meet basic, reasonable living expenses.

2. Reasons the IRS may seize ("levy") taxpayer's property or rights to property

a. If the taxpayer doesn't pay the taxes due (or make arrangements to settle taxpayer's debt), the IRS could seize and sell the taxpayer's property. The IRS usually seizes only after the following things have occurred:

(1) The IRS assessed the tax and sent the taxpayer a bill,

(2) The taxpayer neglected or refused to pay the tax, and

(3) The IRS sent the taxpayer a Final Notice of Intent to Levy and Notice of Taxpayer's Right to a Hearing at least 30 days before the seizure.

b. However, there are exceptions for when the IRS doesn't have to provide a 30 day notice before seizing taxpayer's property. These include situations when:

(1) The collection of the tax is in jeopardy,

(2) A levy is served to collect tax from a state tax refund,

(3) A levy is served to collect the tax debt of a federal contractor, or

(4) A Disqualified Employment Tax Levy (DETL) is served. A Disqualified Employment Tax Levy is the seizure of unpaid employment taxes and can be served when a taxpayer previously requested a Collection Due Process appeal on employment taxes for other periods within the past 2 years.

c. If the IRS serves a levy under one of these exceptions, the IRS will send the taxpayer a letter explaining the seizure and taxpayer's appeal rights after the levy is issued.

3. <u>What the taxpayer should do if taxpayer's property is seized ("levied")</u>

a. If taxpayer's property or federal payments are seized, call the number on taxpayer's levy notice. If the taxpayer is already working with an IRS employee, call him or her for assistance.

b. Examples of property the IRS can seize ("levy")

(1) <u>Wages, salary, or commission held by someone else</u>

(a) If the IRS seizes taxpayer's rights to wages, salary, commissions, or similar payments that are held by someone else, the IRS will serve a levy once, not each time the taxpayer is paid.

(b) The one levy continues until taxpayer's debt is fully paid, other arrangements are made, or the collection period ends.

(c) Other payments the taxpayer receive, such as dividends and payments on promissory notes, are also subject to seizure.

(d) However, the seizure only reaches the payments due or the right to future payments as of the date of the levy.

(2) <u>Taxpayer's bank account</u>

(a) Seizure of the funds in taxpayer's bank account will include funds available for withdrawal up to the amount of the seizure.

(b) After the levy is issued, the bank will hold the available funds and give the taxpayer 21 days to resolve any disputes about who owns the account.

(c) After 21 days, the bank will send the IRS the taxpayer's money, plus any interest earned on that amount, unless the taxpayer has resolved the issue in another way.

(3) Taxpayer's federal payments

(a) As an alternative to the levy procedure used for other payments such as dividends and promissory notes, certain federal payments may be systemically seized through the Federal Payment Levy Program in order to pay taxpayer's tax debt.

(b) Under this program, the IRS can generally seize up to 15% of taxpayer's federal payments (up to 100% of payments due to a vendor for goods or services sold or leased to the federal government). The IRS will serve the levy once, not each time the taxpayer are paid.

(c) The one levy continues until taxpayer's debt is fully paid, other arrangements are made, the collection period ends, or the IRS releases the levy.

(d) The federal payments that can be seized in this program include, but aren't limited to, federal retirement annuity income from the Office of Personnel Management, Social Security benefits under Title II of the Social Security Act (OASDI), and federal contractor/vendor payments.

(4) Taxpayer's house, car, or other property

(a) If the IRS seizes taxpayer's house or other property, the IRS will sell taxpayer's interest in the property and apply the proceeds (after the costs of the sale) to taxpayer's tax debt. Prior to selling taxpayer's property, the IRS will calculate a minimum bid price. The IRS will also provide the taxpayer with a copy of the calculation and give the taxpayer an opportunity to challenge the fair market value determination.

(b) The IRS will then provide the taxpayer with the notice of sale and announce the pending sale to the public, usually through local newspapers or flyers posted in public places.

(c) After giving public notice, the IRS will generally wait 10 days before selling taxpayer's property.

(d) Money from the sale pays for the cost of seizing and selling the property and, finally, taxpayer's tax debt. If there's money left over from the sale after paying off taxpayer's tax debt, the IRS will tell the taxpayer how to get a refund.

c. Property that can't be seized ("levied")

(1) Certain property is exempt from seizure. For example, the IRS can't seize the following: unemployment benefits, certain annuity and pension benefits, certain service-connected disability payments, workers compensation, certain public assistance payments, minimum weekly exempt income, assistance under the Job Training Partnership Act, and income for court-ordered child support payments.

(2) The IRS also can't seize necessary schoolbooks and clothing, undelivered mail, certain amounts worth of fuel, provisions, furniture, personal effects for a household, and certain amounts worth of books and tools for trade, business, or professions. There are also limitations on the IRS's ability to seize a primary residence and certain business assets.

(3) Lastly, the IRS can't seize taxpayer's property unless the IRS expect net proceeds to help pay off taxpayer's tax debt.

4. How to appeal a proposed seizure ("levy")

a. The taxpayer can request a Collection Due Process hearing within 30 days from the date of taxpayer's Notice of Intent to Levy and Notice of Taxpayer's Right to a Hearing. The taxpayer's request should be sent to the address on taxpayer's notice.

b. For more information, see Form 12153, Request for a Collection Due Process or Equivalent Hearing.

c. At the conclusion of taxpayer's hearing, the Office of Appeals will provide a determination. The taxpayer will have 30 days after the determination to challenge it in the U.S. Tax Court.

d. If the taxpayer doesn't file a hearing request within 30 days, the taxpayer is not entitled to a Collection Due Process hearing, but the taxpayer may be entitled to an Equivalent Hearing.

e. The request for an Equivalent Hearing, however, doesn't prohibit the IRS from seizing and doesn't suspend the 10-year period for collecting tax.

f. In addition, the taxpayer is not entitled to a judicial review of the decision from the Equivalent Hearing.

g. If Collection Due Process rights aren't available for taxpayer's case, the taxpayer may have other appeal options, such as the Collection Appeals Program.

5. Reasons the IRS "release" a levy

a. The IRC specifically provides that the IRS must release a levy if the IRS determines that:

(1) The taxpayer paid the amount the taxpayer owed;

(2) The period for collection ended prior to the levy being issued;

(3) It will help the taxpayer pay taxpayer's taxes;

(4) The taxpayer entered into an Installment Agreement and the terms of the agreement don't allow for the levy to continue;

(5) The levy creates an economic hardship on the taxpayer, meaning the IRS has determined that the taxpayer is unable to meet basic, reasonable living expenses; or

(6) The value of the property is more than the amount owed and releasing the levy won't hinder the IRS's ability to collect the amount owed.

b. In addition, a levy on wages or salary must be released as soon as possible if the IRS determines that taxpayer's tax isn't collectible.

c. The IRS will also release a levy if it was issued improperly. For example, the IRS will release a levy if it was issued:

(1) Against property exempt from seizure;

(2) Prematurely;

(3) Before the IRS sent the taxpayer the required notice;

(4) While the taxpayer is in bankruptcy and an automatic stay is in effect;

(5) Where the expenses of seizing and selling the levied property would be greater than the fair market value of the property;

(6) While an Installment Agreement request, Innocent Spouse Relief request, or Offer in Compromise is being considered or had been accepted and is in effect; or

(7) While the Office of Appeals or Tax Court is considering certain appeals and the levy wasn't a Disqualified Employment Tax Levy to collect employment taxes, a state refund, or jeopardy levy.

6. <u>Reasons the IRS may return seized ("levied") property</u>

a. The IRS may return taxpayer's property if:

(1) Its seizure was premature;

(2) Its seizure was in violation of the law;

(3) Returning the seized property will help the IRS's collection of taxpayer's debt;

(4) The taxpayer enter into an Installment Agreement that doesn't allow a levy;

(5) The IRS didn't follow IRS procedures; or

(6) It's in taxpayer's best interest (as determined by the Taxpayer Advocate) and in the best interest of the government.

b. If the IRS decide to return taxpayer's property but it's already been sold, the IRS will give the taxpayer the money the IRS received from the sale. The taxpayer can file a request for seized property to be returned, or the IRS can return seized property on the IRS's own initiative, generally up to 9 months after the seizure.

7. How to recover seized ("levied") property that's been sold

a. To recover taxpayer's real estate, the taxpayer (and anyone with interest in the property) may recoup it within 180 days of the sale by paying the purchaser what they paid, plus interest at 20% annually.

b. If taxpayer's property has been seized ("levied") to collect tax owed by someone else, the taxpayer may appeal under the Collection Appeals Program or (within the time prescribed by law), file a claim under Internal Revenue Code section 6343(b), or the taxpayer may (within the time prescribed by law) file a suit under Internal Revenue Code section 7426 for the return of the wrongfully seized property.

c. For more information, see Publication 4528, Making an Administrative Wrongful Levy Claim under Internal Revenue Code section 6343(b).

8. How to recover economic damages

a. If the IRS seizure was in error, taxpayer's payment was lost or misplaced, or there was a direct debit Installment Agreement processing error and the taxpayer incurred bank charges, the IRS may reimburse the taxpayer for charges the taxpayer paid.

b. For more information, see Form 8546, Claim for Reimbursement of Bank Charges. If taxpayer's claim is denied, the taxpayer can sue the federal government for economic damages.

c. If the IRS intentionally or negligently didn't follow Internal Revenue law while collecting taxpayer's taxes, or the IRS wrongfully seized taxpayer's property, the taxpayer may be entitled to recover economic damages.

d. Mail taxpayer's written administrative claim to the attention of the Advisory Group Manager for taxpayer's area at the address listed in Publication 4235, Collection Advisory Group Addresses.

e. If the taxpayer filed a claim and taxpayer's claim is denied, the taxpayer can sue the federal government, but not the IRS employee, for economic damages.

K. Summons: Used to secure information

1. If the IRS is having trouble gathering information to determine or collect taxes the taxpayer owes, the IRS may serve a summons. A summons legally compels the taxpayer or a third party to meet with an officer of the IRS and provide information, documents, and/or testimony.

2. If the taxpayer is responsible for a tax liability and the IRS serve a summons on the taxpayer, the taxpayer may be required to:

a. Testify,

b. Bring books and records to prepare a tax return, and/or

c. Produce documents to prepare a Collection Information Statement, Form 433-A or Form 433-B.

3. If the IRS serves a third-party summons to determine tax liability, the taxpayer will receive a notice indicating that the IRS's contacting a third party. Third parties can be financial institutions, record keepers, or people with relevant information to taxpayer's case. The IRS won't review their information or receive testimony until the end of the 23rd day after the notice was given. The taxpayer also has the right to:

a. Petition to reject ("quash") the summons before the end of the 20th day after the date of the notice; or

b. Petition to intervene in a suit to enforce a summons to which the third party didn't comply.

4. If the IRS issues a third-party summons to collect taxes the taxpayer already owe, the taxpayer won't receive notice or be able to petition to reject or intervene in a suit to enforce the summons.

III. Collection of employment tax

A. About employment taxes

1. Employment taxes are the amount the taxpayer must withhold from taxpayer's employees for their income tax and Social Security/Medicare tax, plus the amount of Social Security/Medicare tax the taxpayer pays for each employee.

2. Federal unemployment taxes are also considered employment taxes.

3. If the taxpayer does not pay taxpayer's employment taxes, the IRS will:

a. Assess a failure to deposit penalty, up to 15% of the amount not deposited in a timely manner; and

b. The IRS may propose a Trust Fund Recovery Penalty assessment against the individuals responsible for failing to pay the trust fund taxes.

B. About trust fund taxes

1. Trust fund taxes are the income tax, Social Security tax, and Medicare tax withheld from the employee's wages.

2. They are called trust fund taxes because the employer holds these funds "in trust" for the government until it submits them in a federal tax deposit.

3. Certain excise taxes are also considered trust fund taxes because they are collected and held in trust for the government until submitted in a federal tax deposit. For more information, see Publication 510, Excise Taxes.

4. To encourage prompt payment of withheld employment taxes and collected excise taxes, Congress has passed a law that provides for the Trust Fund Recovery Penalty. For more information, see Publication 15, Circular E, Employer's Tax Guide.

C. Trust Fund Recovery Penalty

1. The Trust Fund Recovery Penalty is a penalty that is assessed personally against the individual or individuals who are responsible for paying the trust fund taxes but willfully did not do so.

2. The amount of the penalty is equal to the amount of the unpaid trust fund taxes.

3. If the Trust Fund Recovery Penalty is proposed against the taxpayer, the taxpayer will receive a letter and Form 2751, Proposed Assessment of Trust Fund Recovery Penalty.

4. If the taxpayer agrees with the penalty, the taxpayer must sign and return Form 2751 within 60 days from the date of the letter. To avoid the assessment of the Trust Fund Recovery Penalty, the taxpayer may also pay the trust fund taxes personally.

5. If the taxpayer disagrees with the penalty, the taxpayer has 10 days from the date of the letter to inform the IRS that (i) the taxpayer does not agree with the proposed assessment, (ii) has additional information to support taxpayer's case, or (iii) wants to try to resolve the matter informally.

6. If the taxpayer can't resolve the disagreement with IRS, the taxpayer has 60 days from the date of the letter to appeal with the Office of Appeals.

7. If the taxpayer doesn't respond to the letter, the IRS will assess the penalty amount against the taxpayer personally and begin the collection process to collect it. The IRS may assess this penalty against a responsible person regardless of whether the company is still in business.

D. Additional information

1. Innocent Spouse Relief

a. Generally, both the taxpayer and taxpayer's spouse are responsible, jointly and individually, for paying any tax, interest, or penalties on taxpayer's joint return.

b. If the taxpayer believes taxpayer's current or former spouse should be solely responsible for an incorrect item or an underpayment of tax on taxpayer's joint tax return, the taxpayer may be eligible for Innocent Spouse Relief.

c. This could change the amount the taxpayer owes, or the taxpayer may be entitled to a refund. Keep in mind the taxpayer generally must submit Form 8857, Request for Innocent Spouse Relief, no later than two years from the date of the IRS first attempts

to collect the outstanding debt, except for requests for equitable relief under Internal Revenue Code section 6015(f).

d. For additional information, see Publication 971, Innocent Spouse Relief.

2. Representation during the collection process

a. During the collection process, a hearing, or an appeal, the taxpayer can be represented by the taxpayer, an attorney, a certified public accountant, an enrolled agent, an immediate family member, or any person enrolled to practice before the IRS. If the taxpayer is a business, the taxpayer can also be represented by full-time employees, general partners, or bona fide officers.

b. To have taxpayer's representative appear before the IRS, contact the IRS on taxpayer's behalf, and/or receive taxpayer's confidential material, Form 2848, Power of Attorney and Declaration of Representative, must be filed with the IRS.

c. To authorize someone to receive or inspect confidential material, Form 8821, Tax Information Authorization must be filed with the IRS.

3. Sharing taxpayer's tax information

During the collection process, the IRS is authorized to share taxpayer's tax information in some cases with city and state tax agencies, the Department of Justice, federal agencies, people the taxpayer authorize to represent the taxpayer, and certain foreign governments (under tax treaty provisions).

4. The IRS may contact a third party

a. The law allows the IRS to contact others (such as neighbors, banks, employers, or employees) to investigate taxpayer's case.

b. The taxpayer has the right to request a list of third parties contacted about taxpayer's case.