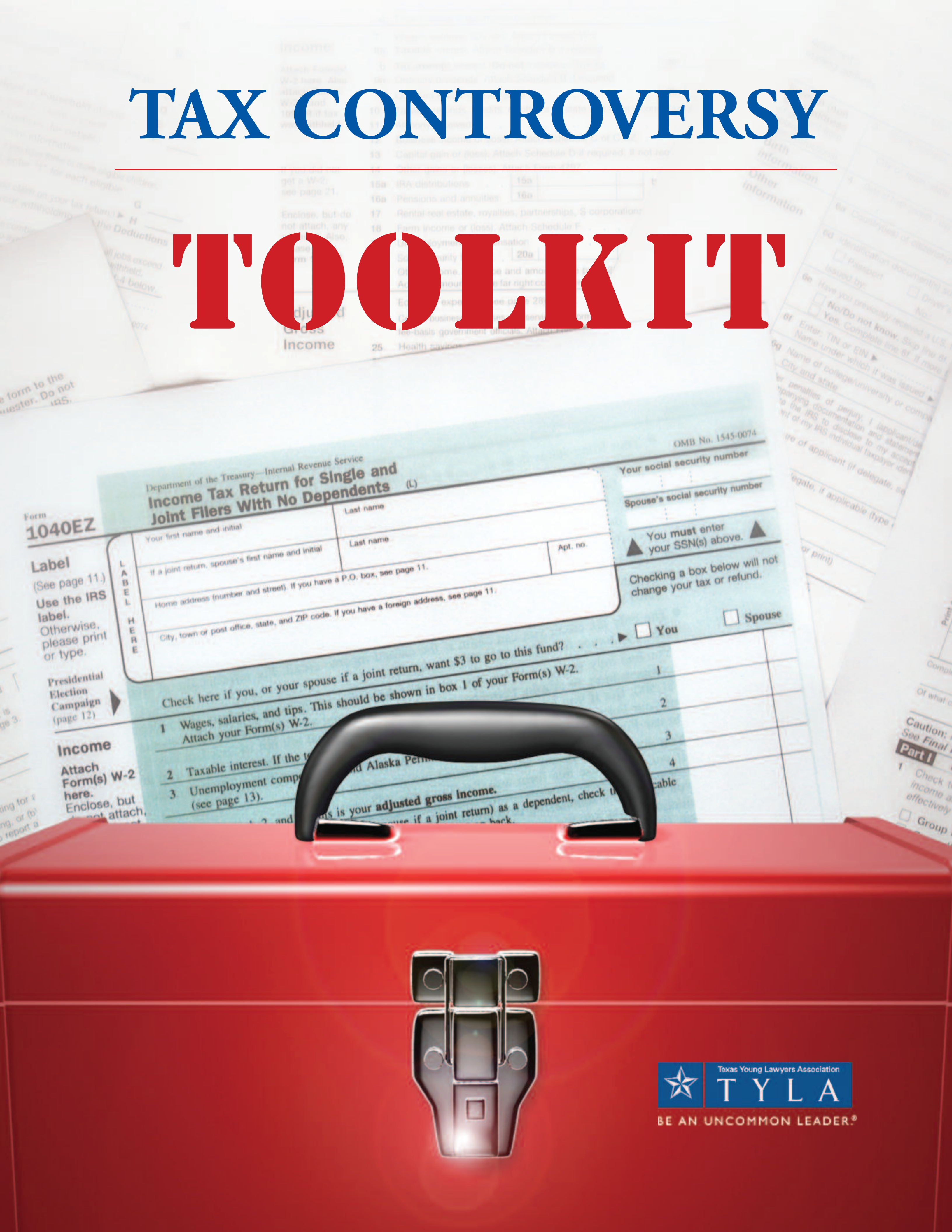
TAX CONTROVERSY

TOOLKIT



Texas Young Lawyers Association

TYLA

BE AN UNCOMMON LEADER®

Toolkit for Handling a Pro Bono Tax Controversy
Texas Young Lawyers Association
2014 Edition

Disclaimer: This publication is intended to provide lawyers with current and accurate information about handling and resolving tax controversies. However, it is not a substitute for independent research or verification of authority. It is merely intended as an aid to lawyers. No warranty express or implied is made.

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I. Getting Started: Meet with the Client

1. **Schedule an initial consultation with the Client.** Ask him or her to bring tax returns for the years at issue. If Client knows they owes the tax but cannot pay it, have Client bring the following income and expense documents to the initial consultation as well:

   - Most recent paystubs for all household members (showing current pay, year to date income and deductions).
   - Current year social security statements for all household members.
   - Statements or documents regarding any other income you or other household members receive each month (child support, alimony, public benefits, gambling income, etc.).
   - Most recent 3 months of bank statements from ALL accounts, checking and savings (you can also ask the bank for a transaction history for past 90 days).
   - Current statement showing balance of any retirement or pension accounts.
   - Current mortgage statement (showing balance due on loan and monthly payment amount) and property tax statement.
   - Current rental lease.
   - Car payment statement (showing balance due, payoff date and monthly payment).
   - Car insurance bill.
   - Most recent utility bills (gas, electric, water/sewer).
   - Most recent phone bill (cell and/or landline).
   - Medical insurance premium bill.
   - Receipts for monthly out of pocket medical expenses (prescription copays, office copays, hospital bill payment plans).
   - Documents showing any court ordered payments (child support, wage levy, alimony, etc.).
   - Bills or statements for other necessary living expenses not mentioned above.

2. **Prepare a Power of Attorney (POA) form for Internal Revenue Service (Form 2848). A Power of Attorney** form signed by the client will allow you to gain access to your client's tax information for the years specified in the form. If your case includes a joint return, each spouse must complete one.

   - The IRS power of attorney form lists a place for a CAF number. If you have not worked with the IRS before you will send in your first power of attorney form with nothing listed in this section. The IRS will then assign you a CAF number <u>which you will use on *all* future Power of Attorney forms *and* to identify yourself to IRS agents over the phone</u>.

3. **Prepare a retainer agreement.** Note that if your engagement in a tax controversy is through your local legal aid organization, many legal aid organizations have standard engagement agreements that they prefer you use.

4. **Meet with Client.** Use the questionnaire below as a guide for the interview:

TAX CASE CLIENT QUESTIONNAIRE

Taxpayer(s) Name and Address (for previous 10 years):

Social Security Number(s):

Birth Date:

The following questions will assist you in determining the nature of your client's tax problem.

1. **What is your goal in seeking help with your tax problem?**
   What do you want to happen?

2. **Family information:**

   (a) Are you currently married?

   (b) Spouse's name:

   (c) Have you ever been married?

   (d) Ex-Spouse's Name:

   (e) Do you have children?

   (f) Names, birthdates and SSN of children under age 18:

   (g) Do you claim any of these children as dependents on your tax return?

3. Employment and Benefits History (client and spouse)

(a) Are you currently employed? ______

(b) Name of current employer: ______

(c) How long have you worked there? ______

(d) How are you paid? ______

(e) How much do you make per month? ______

(f) Where did you work before this? ______

(g) Have you ever been self employed? ______

(h) If yes, during what years: ______

(i) Are you currently receiving government assistance? If so, what type and how much? ______

(j) Have you ever received government assistance? If so, when, what type and how much? ______

4. Banking Information

(a) Do you have a checking account? ______

(b) Name of bank(s): ______

(c) Do you have a savings account? ______

(d) Name of bank(s): ______

5. Tax Questions

(a) Have you filed all required tax returns? ______

(b) If not which ones have not been filed: ______

(c) Why haven't you filed them: ______

(d) When did you first learn about the tax problem ______

(e) What do you believe is the problem: ______

______

______

______

______

______

(f) Did the IRS send you any letters?

______

______

(g) Do you have the letters? Can you provide them?

______

(h) Have you communicated with the IRS regarding the tax issue? ______

______

(i) Have you provided them with any records or documents? ______

(j) Do you agree with the amount of tax the IRS says that you owe? ______

6. **If client believes it is an issue regarding the <u>earned income tax credit, child tax credit, dependency exemptions</u>, or <u>filing status</u> continue with question 6. If not skip to question 7.**

   (a) What filing status did you claim?

   (b) Who was living with you during the year in question?

   (c) Were there children living with you related to you? How?

   (d) How old was the child(ren)?

   (e) How long did the child(ren) live with you?

   (f) Is there anyone else that might claim the child(ren)?

   (g) Did you provide financial support for an adult or unrelated child who lived with you?

7. **Does the tax problem have to do with a schedule C business (self-employed)? If no skip to question 8.**

   (a) Did the IRS letters indicate that there might be problems with your business expense deductions?

   (b) Do you have proof of your business expenses (receipts, bills, bank records?)

   (c) How do you keep track of business income?

8. **Does the tax issue have to do with your current or former spouse's income? If no skip to question 9.**

   (a) Why do you think the tax debt is related to your current or former spouse's income?

   (b) What kind of work did you spouse/former spouse do?

(c) Was your spouse/former spouse self-employed?

____

____

(d) Were you involved with your spouse's/former spouse's business?

____

(e) Did you and your spouse/former spouse file a joint tax return?

____

(f) Did you participate in the preparation of the taxes?

____

____

(g) When did you first find out there was a problem?

____

____

____

(h) Have you been the victim of domestic violence, including physical or emotional abuse, by your spouse? _______________

(i) Have you recently had any significant mental or physical health issues? _______________

9. Do you agree that the amount that the IRS says you owe is correct, but you cannot currently afford to pay the amount?

(a) What is your monthly income? _______________

(b) Do you pay rent, how much? _______________

(c) Do you have a mortgage? _______ How much is it? _______________

(d) Do have any of the following monthly expenses? How much do you typically pay per month?

- Utilities _______________
- Phone _______________
- Cable _______________
- Internet _______________
- Car payment _______________
- Car insurance _______________
- Health insurance _______________
- Property taxes _______________
- House insurance _______________
- Child support _______________
- Other required monthly expenses _______________

____

(e) Do you want to set up payment plan to pay the taxes? _______________

____

(f) If you are not working, do you think you will be working in the future?

____

____

5. **Fax the IRS Power of Attorney form, signed by you and the client, to the IRS CAF Unit.** The CAF unit will make note of the power of attorney in the client's tax record and you will be able to call the IRS, identify yourself, and obtain information about your client's tax account.

   - IRS CAF UNIT FAX NUMBER: (801) 620-4249.

   - IRS CAF UNIT HELPLINE: (801) 620-4254.

II. Assess the Controversy

A. Obtain Transcripts

After your POA is in the system, call and request records from the IRS. You will typically want records for all the years with a balance owing, or that are at issue. **The fastest way to get information about your client's account is to *call Practitioner Priority Service* at (866) 860-4259.** They can help you obtain automated tax records for your client's account. Have your client's name, address, birth date and phone number ready. Also have your CAF number. You may also submit your request by faxing Form 4506-T to the IRS. A faxed request typically takes 30 days. Finally, the Taxpayer can obtain his or her transcripts by going to the IRS office in your region and obtaining the transcripts in person.

- Types of Transcripts
  - Return Transcript – the line items of a tax return as *filed*. Current year and prior 3 processing years.
  - Account Transcript – the financial status of an account, including payment, penalty assessments, and adjustments. Return information limited to liability and estimated tax.
  - Record of Account – the most detailed transcript. Includes information from both Return and Account transcripts. Current year and prior 3 processing years.
  - Verification of Nonfiling – proof that a return was not filed with the IRS. No year restrictions. Wage and 1099 statements are also useful if you need to reconstruct your client's tax return for the year in question.

Once you have these records you will be better able to put the case together. From this point you will need to determine what type of case your client has and proceed from there.

B. Determine Whether Taxes were Timely Assessed or Collected

In general, the IRS has 3 years to assess a tax. Internal Revenue Code § 6501 sets out the rule:

- If return is filed, 3 years of the later of the due date of the return (if timely filed) or date of return filing (if return is late-filed).
- If return is filed and there is a substantial omission (more than 25% of gross income shown on return), 6 years of the later of the due date of the return or date of return filing.
- If no return is filed, indefinitely.
- If fraudulent return is filed, indefinitely.

In general, the IRS has 10 years to collect a tax debt from the date it is assessed. The term for this date is the Collection Statute Expiration Date (CSED). If you believe that the CSED is close you will want to determine the ***exact date*** before you advise your client. If the CSED is about to expire you may not want to do anything to extend the CSED, like filing an Offer in Compromise, filing for bankruptcy, or requesting an installment agreement.

Important Internal Revenue Code (IRC) sections regarding the Collection Statute of Limitations:

- <u>Section 6502</u> – 10 year statute of limitations on collections.

- <u>Section 6015(e)(2)</u> – Suspension of collection statute relative to raising an innocent spouse defense.

- <u>Section 6330(e)</u> – Suspension of the collection statute relative to a request for collection due process.

- Section 6331(k)(3)(B) – Suspension of the collection statute relative to installment agreements (suspending while pending and while agreement is in effect), and requests for offers in compromise (suspended while pending + 30 days).

III. Handling an Emergency Situation

A. Lien or Levy

- Types (IRC § 6331):
- Continuous levy on salary and wages, including fees, bonuses, and commission.
- Bank levy on the monies in the account when the levy is served.
- Continuous levy of up to 15% of specific federal payments: Emphasis addedSocial Security and Railroad benefits. If the levy is served before the collection statute expiring, the levy will continue on payment made until the debt is paid in full.
- Property Exempt From Levy (IRC § 6334(a)). Emphasis added.
- Personal effects, tools of the trade, unemployment benefits, worker's compensation, child support payments, certain service-minded disability payments, certain public assistance payments, assistance payments under the Job Training Partnership Act, the Taxpayer's principal residence, and a minimum subsistence allowance, including "arms for personal use."
- Collection Due Process (CDP) Rights (IRC § 6320 – Lien, § 6330 – Levy).
- Before levying, IRS must provide notice of the levy.
- Taxpayer will have 30 days to request a CDP hearing. After 30 days, Taxpayer can request an equivalent hearing. The difference in hearing type is the CDP ruling may be appealed to the Tax Court.
- See Part IV below for further information on CDP matters.

B. Economic Hardship

- Economic hardship exists where a levy will result in the Taxpayer being "unable to pay his or her reasonable basic living expenses." (IRC § 6343j).
- If it is determined that a levy will create an economic hardship, the levy "shall" be released. (IRC § 6343(a)(1)(D)).
- Determinations:
  - Taxpayer is incapable of earning a living;
  - Taxpayer has a set income which is exhausted monthly;
  - Taxpayer has assets, but lacks liquidity.
- The IRS will determine whether the levy will result in actual hardship, as distinguished from mere inconvenience.
- Substantiation required only when:
  - The income cannot be validated through internal or external IRS sources.
  - The expenses exceed any standard and they will be allowed if substantiated.

C. Currently Not Collectible Status

Sometimes Taxpayers are not in a financial position to pay off their debt, even under an installment agreement. If this is the situation, the Taxpayer can ask that his or her account be placed into Currently Not Collectable Status. This will place a hold on collection activity until the Taxpayer's financial situation improves or the statute of limitations on collections expires. <u>Currently not collectable status will NOT stop interest from accruing on the account or stop penalties from being applied</u>. It will also not prevent the IRS from placing a lien on the Taxpayer if the debt exceeds $10,000. A Taxpayer can make voluntary payments to keep the debt under $10,000 while in non-collectable status.

To request Currently Not Collectable Status, a Taxpayer must show that his or her necessary living expenses are higher than his or her income. The Taxpayer will need to fill out either IRS Form 433-F, or IRS Form 433-A.

- Steps for Requesting Currently Not Collectable (CNC) Status:
  1. Discuss all the options and consequences of currently not collectable status with Taxpayer.
  2. Fill out form 433-F (433-A if debt exceeds $25,000). (Note a 433-F is not necessary if the Taxpayer's only income is through Social Security, Supplemental Security Income, or Social Security Disability Insurance. In such cases, you can arrange for a CNC over the phone).
  3. If the Taxpayer's necessary expenses exceed their income they may be eligible for CNC status.
  4. If the Taxpayer has equity in real property the IRS may require that the Taxpayer be turned down for a home equity loan before they will place the Taxpayer in CNC status.
  5. Once the 433-F is filled out and you have any required documentation, you can call the IRS collections line (phone number listed on most recent collection notice OR call the Practitioner Priority Line (866-860-4259) and press "3" for Automated Collections).
  6. Tell the agent you would like to request your client's account be placed in CNC status and then go through the financial statement.
  7. Call within two weeks after the phone call to confirm the account has been placed in CNC status.

IMPORTANT INFORMATION REGARDING UNFILED TAX RETURNS AND CURRENTLY NOT COLLECTABLE STATUS/LEVY RELEASE:

The IRS used to require that ALL outstanding tax returns be filed before it would consider releasing a levy or placing the account into currently not collectables status. The United States Tax Court case *Vinatieri v. Commissioner of Internal Revenue*, 133 T.C. 392 (2009) changed that procedure. The Court in *Vinatieri* held that the IRS could not pursue collection action against a Taxpayer if a financial hardship was proven. The IRS has been slow to disseminate the information to its agents and many agents still refuse to place the account into currently not collectable or block the levy if the Taxpayer is not compliant with filing. If you run into this situation with an agent refer to the *Vinatieri* decision as well as Internal Revenue Manual Section 5.16.1.2.9 (04-29-2011). The Revenue Manual now states that a Taxpayer who has proved a financial hardship may be placed in currently not collectable status even with unfiled returns and the IRS CANNOT issue a levy or leave a levy in place if hardship is shown regardless of unfiled returns.

D. Release of Lien or Levy

- The IRS **shal**l release a lien or levy in the following situations (IRC § 6343):
  - Economic Hardship;
  - Installment Agreement entered into unless the agreement provides otherwise;
  - Tax assessment satisfied/unenforceable;
  - Facilitates the collection of liability;
  - If the IRS determines that the FMV of the property exceeds the liability, and release can be made without hindering the collection of the liability;
  - In the case of levy on salary and wages, if IRS and Taxpayer agree the tax is not collectible;
  - Civil Damages. IRC § 7432;
  - Monetary damages in district court when IRS employee knowingly, or by reason of negligence, fails to release lien.
- Return Levied Property – Specific Circumstances. IRC § 6343(d):
  - Levy was premature or not in accordance with administrative procedures;
  - Taxpayer has entered into an Installment Agreement under IRC § 6159 to satisfy the tax liability;
  - Return of such property will facilitate the collection of the tax liability;
  - With consent of Taxpayer or National Taxpayer Advocate, return of property would be best interest of the Taxpayer (as determined by National Taxpayer Advocate) and U.S.
- Taxpayer may get specific property returned or an amount of money equal to the property levied upon.

IV. Resolve the Controversy

There are several ways to resolve your tax controversy, including seeking reconsideration of an audit, requesting a collections due process hearing, entering an installment agreement, entering an offer in compromise, or in certain situations, obtaining relief for an innocent spouse.

A. Audit Reconsideration

<u>IRS process to review an audit of a tax return (or substitute for return)</u>

- Reasons for reconsideration:
  - Taxpayer did not appear for audit;
  - Taxpayer moved residences and missed correspondence;
  - To present additional information that was not included in original audit;
  - Disagree with original audit.
- Requirements:
  - New information (not just information not supplied during the original audit);
  - Return on file (must replace any substitute for returns with actual returns);
  - IRS made a computational/processing error;
  - Liability is unpaid.
- Must not have agreed to the liability via one of the following:
  - Form 906 Closing Agreement;
  - Compromise Agreement;
  - Form 870-AD Appeals office agreement;
  - US Tax Court or another court issued a final determination.
- No specific form required. Cover letter and additional documentation sufficient.
- Can be made any time after examination while the tax remains unpaid.
  - See <u>http://law.gsu.edu/taxclinic/3508.html</u> for an example.
- Takes a long time to process, so be sure to place Taxpayer into Currently Not Collectible status.

B. Collections Due Process

<u>CDP Hearing Eligibility</u>

- Taxpayer May Request CDP hearing before IRS Office of Appeals when she receives:
  - Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC § 6320;
  - Notice of Intent to Levy and Notice of Your Right to a Hearing;
  - Notice of Jeopardy Levy and Right of Appeal;
  - Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing;
  - Final Notice – Notice of Levy and Notice of Your Right to a Hearing.
- Taxpayer must request CDP hearing within 30 days.
- Taxpayer may appeal CDP ruling (called a "Notice of Determination") to the U.S. Tax Court within 30 days.
  - The court will apply a de novo review standard if the amount of the liability is at issue. All other issues are reviewed under an abuse of discretion standard.

<u>Hearing</u>

- A CDP hearing is conducted by an impartial employee of the IRS Office of Appeals. The Appeals Officer should have no prior involvement in the issue that resulted in the collection of the unpaid liability. CDP hearings are conducted informally at the Appeals office. No transcript is taken of the conference and no oath or affirmation is taken. At the conference, the Appeals Officer will consider:
  - The validity, sufficiency, and timeliness of the CDP Notice and the request of the CDP hearing;

    - Any relevant issue relating to the unpaid tax raised by the Taxpayer at the hearing;
    - Any appropriate spousal defenses raised by the Taxpayer at the hearing;
    - Any challenges by the Taxpayer to the appropriateness of the collection action;
    - Any offers for collection alternatives made by the Taxpayer; and
    - Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the Taxpayer that the collection action be no more intrusive than necessary.
  - At the hearing, the Taxpayer may also challenge the existence of the liability or the amount of the liability only if he (1) did not receive a Statutory Notice of Deficiency, (2) did not receive it in time to file a Tax Court petition or (3) did not have any opportunity to dispute the liability. The Taxpayer may not raise an issue that was raised and considered at a prior administrative or judicial hearing.

- Complete Form 12153 to Request a CDP Hearing.

<u>Equivalent Hearing</u>

- If Taxpayer has missed deadline to seek CDP hearing, he may request "equivalent hearing."
- No appeal to Tax Court – only appeal to IRS appellate division.

C. Installment Agreement

- One way to resolve an IRS controversy is by entering an installment agreement, in which the Taxpayer agrees to pay his or her tax debt over a period of time. There is a fee to enter into an installment agreement.
- Forms: IRS Form 9465 *Installment Agreement Request* and IRS Form 433-F: *Collection Information Statement*. For debts under $25,000, the Online Payment Agreement Tool on the IRS website may also be used. If the debt is between $25,000 and $50,000, the IRS may require that you fill out the longer financial statement IRS Form 433-A: *Collection Information Statement for Wage Earners and Self-Employed Individuals*.
- <u>Filing a request for an installment agreement will extend the statute of limitations on collection while the request is pending and during the duration of the installment agreement</u>.
- A non-refundable fee and initial installment payment must also be made at the time of the Installment Agreement Request in order to enter into an installment agreement.

To determine if your client is a good candidate for an installment agreement:

1. Find out how much the Taxpayer owes;
2. Determine if the Taxpayer qualifies for a streamline plan:
   a. Debt less than $50,000 (note that if the debt is more than $50,000, the Taxpayer can pay down the debt to that amount to qualify);
   b. Taxpayer can pay off the debt by monthly payment in 72 months or less;
   c. Taxpayer has been tax compliant for past 5 years-Filed on time, paid on time, has not entered an installment agreement.
3. If the Taxpayer qualifies for streamline plan no collection information statement (CIS) is needed;
4. If the Taxpayer does not qualify, ask the Taxpayer how much s/he thinks s/he can pay each month;
5. Fill out the form 433-F (or 433-A if the debt is greater than $25,000 or the Taxpayer is self-employed). Note: You will need to collect documents to prove the income and expenses claimed by the Taxpayer on the form 433-F or 433-A;
6. Determine the Taxpayer's excess income after necessary expenses are deducted;
7. The excess income will be the amount the IRS will request for a monthly installment payment;
8. Consult client about how they want to make the payment: direct debit from bank account, by check, or by credit card online (additional fee applies for this option) AND what day of the month they want payment due;

9. Call the IRS collections line to set up either the streamline agreement or the non-streamline agreement;
10. Agent will take information from CIS over the phone and may ask for supporting documentation, such as paystubs, bills, bank statements.

D. Offer in Compromise (OIC)

- The Offer in Compromise is a process by which the Taxpayer agrees to a settlement of the debt owed for less than it is worth. The process can be lengthy and involves the collection of a lot of documentation.
- <u>Filing an Offer in Compromise will EXTEND the statute of limitations on collections for the length of time the offer is being processed</u>.
- Grounds for OIC include (1) doubt as to liability, (2) doubt as to collectability, and (3) effective tax administration.
- Doubt as to Liability:
    - o The examiner made a mistake in interpreting the law;
    - o The examiner failed to consider Taxpayer's evidence;
    - o The Taxpayer has new evidence;
    - o File Form 656-L.
- Doubt as to Collectability:
    - o When genuine doubt exists that the IRS will be able to collect the full liability amount within the collections period.
    - o Most cases, IRS will not accept OIC on Doubt as to Collectability unless the amount offered by the Taxpayer is equal to or greater than the reasonable collection potential.
- Effective Tax Administration:
    - o When Taxpayer's reasonable collection potential is greater than liability, but there are economic or public policy/equity circumstances that would justify accepting the offer for an amount less than full payment. Example: Taxpayer's business needs more liquidity to work with providers and by removing the lien, it has better credit and can generate more income.
    - o Must demonstrate an economic hardship, or would otherwise be unfair.

To determine if your client is a good candidate for an Offer in Compromise:

1. All Required Tax Returns Must be Filed: The Taxpayer must have filed **all** necessary tax returns prior to submitting an offer in compromise (typically, last 7 years returns). Also, if the OIC is accepted, Taxpayer must file tax returns for subsequent 5 years or risk withdrawal of OIC.
2. Current Income and Expenses: Do the Taxpayer's expenses currently exceed his or her income? The offer amount formula will require a Taxpayer to include in the offer amount any income left after necessary expenses are deducted for each month, times 48 or 60 (depending on the length of time needed to make all payments). This may disqualify a Taxpayer who has even a little money left over after expenses each month.
3. Taxpayer's Assets: The IRS will typically want 80% of the equity of any assets the Taxpayer owns, **including cars and houses**.
4. Taxpayer's Future Earning Potential: If the client is currently unemployed or underemployed but has the potential to earn more in the future, the IRS will be less likely to accept a request for an Offer in Compromise.
5. Is the Amount of the Debt Correct?: There is an offer option called "doubt as to liability," which allows you to make an offer even if the Taxpayer may have the ability to pay the debt, if there is evidence that the debt is incorrect. However, *you can only choose this option if you did not have the chance to contest the amount previously*.

E. Innocent Spouse Relief

When a Taxpayer files a joint income tax return, the law makes both the Taxpayer and his spouse responsible for the entire tax liability. This is called joint and several liability. If a Taxpayer's spouse has acted in a manner that resulted in an understatement of tax and an additional tax bill from the Internal Revenue Service, the Taxpayer may qualify for federal Innocent Spouse Relief if that person did not know and had no reason to know of the misstatement by his or her former spouse. Even where Innocent Spouse Relief is not available, there may be a potential for allocation of liability or other equitable remedies for the injured spouse.

- Three avenues of relief:
  - IRC § 6015(b): "Traditional" innocent spouse relief – lack of knowledge;
  - IRC § 6015(c): "Separation of Liability";
  - IRC § 6015(f) and § 66(c): "Equitable Relief".

- Complete IRS Form 8857, "Request for Innocent Spouse Relief".

- Lack of Knowledge – "Traditional" Innocent Spouse (IRC § 6015(b)):
  - A requesting spouse may elect relief from joint and several liability for an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse filed the return if the requesting spouse did not know, or had no reason to know of the understatement and it would be inequitable to hold the requesting spouse liable.
  - Understatement of tax on return due to erroneous items of non-requesting spouse. Requesting spouse had no knowledge or reason to know and it would be inequitable to hold requesting spouse liable.
  - Does not address underpayment of tax reported on original return.
  - Relief must be requested within 2 years from date IRS commences collections activity.

- No Longer Married (IRC § 6015(c)):
  - A requesting spouse may elect to allocate a deficiency if the requesting spouse is no longer married to; is legally separated from; or is no longer living with, the other spouse filing the joint return.
  - Relief from portion of deficiency allocable to erroneous items of non-requesting spouse, unless actual knowledge.
  - Does not address underpayment of tax reported on original return or community property laws.
  - Relief must be requested within two years from date IRS commences collection activity.

- Equitable Relief (IRC § 6015(f)):
  - If the requesting spouse does not qualify for relief under section 6015(b) or (c), the Commissioner may grant relief from any unpaid tax or any deficiency if it is inequitable to hold the requesting spouse liable.
  - A Taxpayer can seek relief from liability for an understatement of tax or a deficiency under any subsection of section 6015. In contrast, section 6015(f) allows relief from either an understatement or an underpayment of tax (i.e., tax correctly shown on a return, but not paid with the return).
  - The IRS will consider all of the facts and circumstances in order to determine whether it is unfair to hold the Taxpayer responsible for the understatement or underpayment of tax. In doing so, it will examine both positive and negative factors.
  - See Factors in Rev. Proc. 2013-34 (Sept. 16, 2013).
  - Equitable relief must be requested within 10 years after the tax at issue was originally assessed, or if a claim for refund is involved, within the later of the three-year period since the return was filed or the two-year period in which the tax was paid.

- Injured Spouse (different from Innocent Spouse) – Occurs where the current spouse is injured when the anticipated refund is applied to the other spouse's past-due obligations.
  - File Form 8379 to request a share of the refund returned.
  - Can file proactively (with the tax return) or retroactively.
  - 14 week turn around.

V. Other Useful Resources

1. Internal Revenue Service Forms and Publications: www.irs.gov

The following is a list of some particularly useful IRS Publications (all can be found on the IRS website):

- Publication 17: Your Federal Income Tax: Gives an overview and explanation of the items found on the 1040 tax return. This publication is a good starting point if you have a question about a tax return item.
- Publication 501: Exemptions, Standard Deduction, and Filing Information: This publication will help you to determine whether the Taxpayer is allowed to claim certain dependents, and what filing status they should use on their return.
- Publication 519: U.S. Tax Guide For Aliens: This publication can be useful if you are dealing with a Taxpayer who is not a U.S. Citizen.
- Publication 525: Taxable and Non-Taxable Income: This publication will assist you with a Taxpayer who has income beyond standard wage income. It discusses key topics such as: disability pension income, cancelations of debt income, life insurance proceeds, and worker's compensation.
- Publication 554: Tax Guide for Seniors: This publication provides a lot of information about tax issues that are of particular importance to senior citizen Taxpayers. Included are sections on: retirement plan distributions, sale of home, reverse mortgages and special tax credits, and deductions for seniors, among others.
- Publication 594: The Collection Process: This publication gives an overview of the IRS collection process and is included in this manual under the Collections section.
- Publication 596: Earned Income Credit: This publication gives very detailed information about the rules for claiming the earned income credit.
- Publication 971: Innocent Spouse Relief: This publication provides information on separation of liability relief for married or divorced Taxpayers.
- IRS Internal Revenue Manual (I.R.M.): This is the manual that guides IRS agents when dealing with Taxpayer issues. It can be found on the IRS website by clicking on the "Freedom of Information Act" link at the bottom of the home page, and then clicking on the "IRS Reading Room" link. The manual is useful because it can tell you what the IRS will be looking for in a particular tax issue, and it can be cited if you believe that the agent is not following the rules. Taking some time to familiarize yourself with the manual and its organization is very helpful.

- **Examination Issues Involving Children:** There are several tax code provisions that are specifically aimed at providing credits and deductions for Taxpayers who have children. Some of the most often claimed credits and deductions, their relevant code sections, and critical IRS Publications are as follows:
  (1) Dependency Exemption: I.R.C. §§ 151, 152; IRS Publication 501;
  (2) Head of Household Filing Status: I.R.C. § 2(b); IRS Publication 501;
  (3) Child Tax Credit: I.R.C. § 24; IRS Publication 972;
  (4) Additional Child Tax Credit: § 24(d); IRS Publication 972;
  (5) Earned Income Credit: I.R.C. § 32; IRS Publication 596.

- **Examination Issues Involving Cancellation of Debt (COD):**

  (1) Includable in Gross Income: I.R.C. § 61(a)(12);
  (2) What is Excluded from Gross Income: I.R.C. § 108; IRS Publication 4681;
  (3) Mortgage Related Cancelled Debt: IRS Publication 4702; IRS Publication 4705;
  (4) COD Exclusion: IRS Form 982.

- **Examination Issues Involving Small Business/Schedule C:**

    (1) Schedule C Businesses: IRS Publication 334.

2. United States Tax Court: www.ustaxcourt.gov

Use this website to find information about Tax Court decisions, tax court rules, and tax court procedure.

3. State Bar of Texas, Tax Section: http://www.texastaxsection.org/

The Tax Section of the State Bar of Texas has many useful resources, including Helpful Links, an Article Library, and a Practitioners' Corner.

4. Georgia State University College of Law's Phillip C. Cook Low-Income Taxpayer Clinic publishes a useful guide to handling pro-bono Taxpayer controversies: **http://law.gsu.edu/taxclinic/3434.html**.

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