

Welcome!

The 6th Annual IRS Representation Conference

Housekeeping Items

- u CPE Certificates – will be handed out at the end of the program. Online Audience will receive a link if they do the online attendance checks
- u Questions during the program? Please walk up to the Mic stands so the on-line audience can hear you. Online, please use the chat box
- u Government Speakers – will be providing their own opinion and not the formal opinion of the government
- u Facilities immediately outside, online stick to schedule
- u Break-Out Sessions
- u Visit the Exhibitors for the drawing

Housekeeping Items - Webcast

- u On-Screen attendance checks
- u Please keep to our schedule
- u Use the chat room for questions
- u Link for certificate will be emailed to you after the on-screen attendance checks are tallied
- u Issues? Please contact BeaconLive at

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Criminal Tax Program

- u May 15, 2020
- u Quinnipiac Law School
- u 8 cpe/ce/cle credits



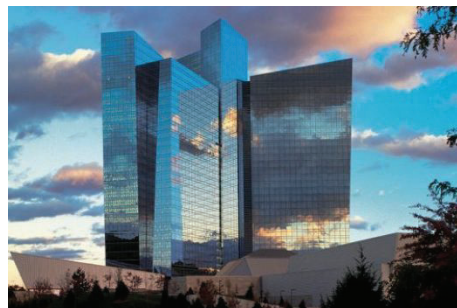
Connecticut 2nd Annual High Net Worth Conference

- u Friday June 26, 2020
- u Sacred Heart West Campus



Next Year's Conference...

- u Mohegan Sun
- u November 19th & 20th, 2020



Today's Agenda

Time	Agenda Item	
8:40 - 10:20	IRS Compliance & Enforcement Update	
10:20 - 10:35	Break	
10:35 - 11:25	Ethical Obligations to Report Misconduct	
11:25 - 12:15	IRC § 199A Implementation and Examination	
12:15 - 1:30	Lunch & Nina Olson Interview	
1:30 - 2:30	OICs & Installment Agreements	Examinations of Restaurants
2:30 - 3:30	The Abused Spouse	Summons Enforcement
3:30 - 3:45	Break	
3:45 - 4:35	IRS-CI Selection of Cases	IRS & Insolvency Issues
4:35 - 5:30	Rise of the Machines	Business Breakups
5:30	Frank Agostino's Drawing	
5:35 - 6:30	Cocktail Reception	

IRS Update

Donna Hansberry
Chief of Appeals
Internal Revenue Service

Interviewed by Eric Green
Green & Sklarz LLC

IRS Update

Paul Mamo
Director of Collections
Internal Revenue Service

Interviewed by Frank Agostino
Agostino & Associates

IRS Update

John “Don” Fort
Chief of Criminal Investigations
Internal Revenue Service

Interviewed by Sharon Mccarthy
Kostelanetz & Fink, LLP

IRS Update

IRS Priorities

- Jeffrey Sklarz, Moderator
- Donna Hansberry
- Paul Mamo
- Don Fort

Break!



The Obligation to Report Tax-Related Misconduct

New England IRS Representation Conference

November 22, 2019

Panelists:

Zhanna A. Ziering, Caplin & Drysdale, New York, NY

G. Michelle Ferreira, Greenberg Traurig, LLP, San Francisco, CA

Guinevere Moore, Johnson Moore, Chicago, IL

Moderator:

Michael Sardar, Kostelanetz & Fink, LLP

Part 1: Applicable Standards

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ABA Model Rule 8.3

Rule 8.3: Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

- u Legal profession is largely self-regulated
 - u Applies from lawyer-to-lawyer, lawyer-to-judge, and judge-to-lawyer
 - u Report generally made to State bar disciplinary agency

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ABA Model Rule 8.4

ABA Model Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

* * * * *

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ABA Model Rule 8.4 (con't)

ABA Model Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

* * * * *

- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

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ABA Model Rules 1.6 Confidentiality of Information

- u (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- u (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - u (1) to prevent reasonably certain death or substantial bodily harm;
 - u (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - u (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

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Con't

- u (4) to secure legal advice about the lawyer's compliance with these Rules;
- u (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- u (6) to comply with other law or a court order; or
- u (7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- u (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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ABA Model Rules 3.3 Candor Toward the Tribunal

- u (a) A lawyer shall not knowingly:
 - u (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - u (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - u (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- u (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- u (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- u (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

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ABA Model Rule 3.9 Advocate in Nonadjudicative Proceedings

- u *Advocate*
- u A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

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Circular 230, § 10.50

u Section 10.50 of Circular 230 provides:

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of §10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of §10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

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Circular 230, § 10.53(a) - IRS Employee's Duty to Report

u Section 10.53 of Circular 230 provides:

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

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Circular 230, § 10.53(b) - Other Person's Duty to Report

u Section 10.53 of Circular 230 further provides:

* * * * *

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

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Administration of Government Ethics Rules

- u State Licensing Boards
 - u Disciplinary board, agency, or committee that enforces lawyers' ethics rules
 - u ABA Directory of State Disciplinary Agencies, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/directory_disciplinary_agencies_online.pdf
- u IRS Office of Professional Responsibility (IRS-OPR)
 - u Responsible for all matters related to professional misconduct, discipline, and practice before the IRS
- u Treasury Inspector General for Tax Administration (TIGTA)
 - u Conducts investigations of IRS employees
 - u Has sole jurisdiction and responsibility to enforce criminal laws as it pertains to IRS operations
 - u IRS employee misconduct
 - u External attempts to corrupt tax administration

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Administration of Government Ethics Rules

- u IRS Criminal Investigation Division (CID)
 - u Investigates potential criminal violations of the Code, including violations allegedly conducted by IRS employees
- u DOJ Office of Professional Responsibility (DOJ-OPR)
 - u Investigates allegations of misconduct
 - u DOJ attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice
 - u DOJ law enforcement personnel when related to allegations of attorney misconduct within the jurisdiction of the DOJ-OPR
- u DOJ Professional Misconduct Review Unit (PMRU)
 - u Evaluates any findings of professional misconduct by the DOJ-OPR and, where appropriate, issues disciplinary decisions
- u DAEO
 - u An agency's government ethics rules are administered by a Designated Agency Ethics Official (DAEO)

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Part 2: Reporting Client or Taxpayer Misconduct

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Client or Taxpayer Misconduct

- u Is there an ethical duty to affirmatively report client/taxpayer misconduct?
- u ABA Model Rules:
 - u (b) “A lawyer *may* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary...”
- u Circular 230
 - u § 10.21 Knowledge of client’s omission. A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

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Con’t

- u AICPA Standards For Tax Services No. 6:
- u A member should inform the taxpayer promptly upon becoming aware of an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, or a taxpayer’s failure to file a required return. A member also should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken. Such advice and recommendation may be given orally. The member is not allowed to inform the taxing authority without the taxpayer’s permission, except when required by law.
- u If a member is requested to prepare the current year’s return and the taxpayer has not taken appropriate action to correct an error in a prior year’s return, the member should consider whether to withdraw from preparing the return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare such current year’s return, the member should take reasonable steps to ensure that the error is not repeated.
- u If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should request the taxpayer’s agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer

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Part 2: Reporting Misconduct by and Against Government Employees

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Tenets of Public Service

u Public service is a public trust

5 C.F.R. § 2635.101(a)

Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

Principles Governing Public Service

5 C.F.R. § 2635.101(b)

The following general principles apply to every employee...

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall [generally] not... solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

* * * * *

Principles Governing Public Service (con't)

5 C.F.R. § 2635.101(b)

The following general principles apply to every employee...

* * * * *

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

* * * * *

Principles Governing Public Service (con't)

5 C.F.R. § 2635.101(b)

The following general principles apply to every employee...

* * * * *

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those - such as Federal, State, or local taxes - that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

- u Objective standard applied

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Misconduct by Government Employees

- u Basic rules governing disciplinary actions against federal civilian employees set forth in 5 U.S.C. § 7501, et seq. (Adverse Action Rules)
- u Broad discretion left to agencies

Agencies generally have discretion as to whether to impose disciplinary action and as to the form and severity of the action to be imposed, based upon the facts and circumstances of the situation. Most agency decisions concerning the imposition of discipline are subject to review by parties outside the agency, e.g., in arbitration or by an appeal to the Merit Systems Protection Board. [Notice 99-27, 1999-21 I.R.B. 4]

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Part 3: Reporting Misconduct by IRS Employees

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Misconduct by IRS Employees - RRA § 1203(a)

- u Section 1203 of the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685 (RRA) altered the application of the Adverse Action Rules as applied to IRS employees
 - u RRA § 1203 created a statutory provision requiring termination of IRS employees for certain types of specified misconduct
- u RRA § 1203(a) generally provides:

the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed any act or omission described in [RRA § 1203(b)] in the performance of the employee's official duties. Such termination shall be a removal for cause on charges of misconduct. [RRA, § 1203(a), 112 Stat. at 720-721]
- u The Commissioner of the IRS may decide to take a personnel action other than removal if certain mitigating factors are present
 - u This discretion is vested in the Commissioner alone

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Misconduct by IRS Employees - RRA § 1203(b)

- u Under RRA § 1203(b), the following offenses can lead to termination of an IRS employee:
 - (1) signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;
 - (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;
 - (3) with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of [any right under the Constitution of the United States or certain specified legislation that affords additional protections to certain classes];
 - (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

* * * * *

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Misconduct by IRS Employees - RRA § 1203(b)

- u Under RRA § 1203(b), the following offenses can lead to termination of an IRS employee:
 - (5) assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;
 - (6) violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;
 - (7) willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;

* * * * *

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Misconduct by IRS Employees - RRA § 1203(b)

- u Under RRA § 1203(b), the following offenses can lead to termination of an IRS employee:

* * * * *

(8) willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;

(9) willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and

(10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

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TIGTA's April 15, 2019 Report

- u April 15, 2019: TIGTA released a report advising that IRS management does not always follow its own procedures for reviewing compliance with the tax laws, which results in inaccurate and inconsistent determinations
- u TIGTA's review of 1,250 closes cases found that in 21 cases, IRS management did not make a proper determination of willfulness, as required.
- u TIGTA estimates that IRS management did not properly determine willfulness in 530 (42%) of the 1,250 cases closed in FY 2017.
- u IRS management agreed with all of TIGTA's recommendations and plans to take appropriate corrective action.
- u See TIGTA, [Improvements Are Needed to Ensure That Employee Tax Compliance Cases Are Adjudicated Consistently](#), Ref. No. 2019-10-021 (Apr. 15, 2019).

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Evaluating IRS Employees - RRA § 1204

- u RRA § 1204(a) specifies certain standards by which IRS employees should be evaluated
 - u Emphasizes importance of "taxpayer service" and eliminates the relevance of tax enforcement results, when evaluating employees

The statute provides:

(a) In General.--The Internal Revenue Service shall not use records of tax enforcement results--

(1) to evaluate employees; or

(2) to impose or suggest production quotas or goals with respect to such employees.

(b) Taxpayer Service. The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

* * * * *

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Misconduct by Chief Counsel Attorneys

- u Background investigations and re-investigations
- u Reporting misconduct by on-boarded Chief Counsel attorneys
 - u Observe the chain of command
 - u Report to the offender's direct supervisor
 - u Contact TIGTA

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Reporting IRS Employee Misconduct to TIGTA

- u Report complaints to TIGTA
 - u Confidential
 - u By telephone to (800) 366-4484
 - u By mail to
 - Treasury Inspector General for Tax Administration Hotline
 - P.O. Box 589
 - Ben Franklin Station
 - Washington, DC 20044-0589
 - u In-person
 - u Not necessarily confidential
 - u By online form at https://www.treasury.gov/tigta/contact_report.shtml#theform
 - u By email to Complaints@tigta.treas.gov

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Reporting IRS Employee Misconduct Through the Taxpayer Advocate Service

- u National Taxpayer Advocate report systemic misconduct to Congress in her annual report
- u TAS employees are responsible for reporting allegations involving potential RRA § 1203 violations to their manager
 - u TAS employees are familiar with RRA § 1203(b)
 - u TAS employee's manager completes Form 12217, *§ 1203 Allegation Referral Form*
 - u Manager determines whether case should be referred to TIGTA or management
- u TAS will process complaints referred directly, but the better course of action is to refer directly to TIGTA
 - u Form 911, *Request for Taxpayer Advocate Service Assistance*

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Part 4: Reporting Misconduct and TIGTA

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TIGTA Investigations

- u Standard investigative techniques
 - u Interview with complaining party
 - u Interview with third-parties
 - u Interview with IRS employee
 - u Interview with other IRS employees
 - u *Ex parte* communications prohibited

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TIGTA Interviews

- u TIGTA's interviews of IRS employees as subjects
 - u Employee will be advised of general nature of the matter and whether it concerns criminal or administrative misconduct
 - u Manager contacted
 - u Request to complete Form 8111, *Employee Notification Regarding Union Representation*
 - u Testimony given under oath
 - u Criminal setting
 - u Delays generally not permitted
 - u *Miranda* warnings
 - u Non-criminal setting
 - u Delays permitted
 - u *Kalkines* warnings
 - u Right to record interview
 - u Questionnaire as supplement to interview

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Part 5: Reporting Misconduct by Private Practitioners

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Reporting Misconduct by Private Practitioners

- u ABA Model Rule 8.3 requires reporting of misconduct by private practitioners
- u Circular 230, § 10.53(a) and (b), respectively, require:
 - u IRS employees to report misconduct by private practitioners
 - u Private practitioners to report misconduct by other private practitioners
- u Justice Manual, § 1-4.340 requires DOJ attorneys to report to DOJ-OPR any allegation of misconduct by a non-DOJ attorneys or judge
 - u Individual DOJ employees are not authorized to refer non-DOJ attorneys or judicial officers to appropriate disciplinary authority
 - u DOJ-OPR will determine whether to refer the allegations to appropriate disciplinary authorities

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Reporting CPA Misconduct

The AICPA has the authority to investigate complaints against its members and those of certain state CPA societies that involve potential violations of their respective codes of professional conduct. However, the AICPA does not have the authority to resolve fee disputes, award damages, prosecute in a criminal action, settle claims between parties, or decide on matters involving litigation that have not been adjudicated by a court of law.

All letters of complaint should be mailed to :

AICPA
220 Leigh Farm Road
Durham, NC 27707
Attn: Professional Ethics Division

You may also email your complaint to ProfessionalEthicsSubmissions@aicpa.org.

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Part 6: Reporting Misconduct by DOJ Employees

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Overview of Reporting Misconduct by DOJ Attorneys

- u DOJ attorneys must report:
 - u To DOJ-OPR allegations of professional misconduct by DOJ attorneys and related law-enforcement personnel;
 - u To the Office of Inspector General (OIG) allegations of criminal wrongdoing or administrative misconduct by DOJ employees and related law-enforcement personnel; and
 - u To their supervisor any evidence or non-frivolous allegations that a DOJ attorney engaged in professional misconduct.
- u “Misconduct”
 - u Misconduct constitutes professional misconduct when it relates to an attorney’s responsibility to investigate, litigate, or provide legal advice
- u DOJ attorneys must cooperate with DOJ-OPR or OIG in connection with investigations
 - u The failure to cooperate is grounds for termination

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How to Report Misconduct

- u Allegations of misconduct by DOJ attorneys may be reported to the DOJ-OPR as follows:

Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 3266
Washington, DC 20530

Telephone: (202) 514-3365 (request to speak to the “duty attorney”)
- u Allegations of misconduct by Assistant United States Attorneys may be reported to the attorney’s supervisor who must notify the General Counsel’s Office for the Executive Office for United States Attorneys

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Adjudicating Claims of Attorney Misconduct

- u Where the DOJ-OPR finds attorney professional misconduct, DOJ-OPR's findings are referred to the DOJ's Professional Misconduct Review Unit (PMRU)
 - u PMRU evaluates any findings of professional misconduct by the DOJ-OPR and, where appropriate, issues disciplinary decisions
- u PMRU may refer to State licensing board cases in which DOJ-OPR concludes that a current or former DOJ attorney violated a rule of professional conduct during his or her tenure with DOJ
 - u Closely coordinated with DOJ-OPR
- u Litigation
 - u A DOJ attorney who is found to have engaged in professional misconduct on a particular case may not continue to represent the United States in that case unless approvals are obtained from the Assistant Attorney General

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Judicial Statements Concerning Misconduct

- u Judicial statements concerning misconduct
 - u DOJ attorneys must report to their supervisors any statement by a judge or magistrate indicating a belief that misconduct by a DOJ attorney has occurred
 - u Supervisors must report to the DOJ-OPR immediately any evidence or non-frivolous allegation of misconduct that is of a serious nature
- u Judicial finding of misconduct by a DOJ attorney or requests for inquiry concerning a possible misconduct
 - u The DOJ attorney must immediately report the finding or request to the employee's supervisor and to the DOJ-OPR, regardless of whether the matter is regarded as serious or is the subject of additional litigations of misconduct

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Thank you:

- u Thank you to Frank Agostino and Lawrence A. Sannicandro for allowing use their materials!

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§IRC 199A IMPLEMENTATION AND EXAMINATION:

WHAT TO EXPECT FROM THE IRS WHEN IT COMES TO THE
CLIENT'S USE OF THE 199A DEDUCTION

OUR MODERATOR

Jason A. Marsh, Esq., Green & Sklarz LLC, New Haven, CT

OUR PANEL

Philip J. Wilson, CPA, Marcum, LLP, Costa Mesa, CA

James R. Grimaldi, Esq., CPA, Citrin Cooperman, New York, NY

Gillian Dalton, CPA, IRS Section 199A Subject Matter Expert, Internal Revenue Service

INCOME THRESHOLDS

How the deduction is computed is based on the taxpayer's taxable income
(before the deduction):

For Married Filing Joint:

Income threshold range is from \$321,400 to \$421,400 for 2019
(\$315,000 to \$415,000 for 2018)

For all other taxpayers:

Income threshold range is from \$160,700 to \$210,700 for 2019
(\$157,000 to \$207,500 for 2018)

THE CALCULATION

If under the income threshold, the deduction is the lesser of:

- 1) 20% of QBI (Qualified business income) plus 20% of qualified REIT (Real Estate Investment Trust) dividends and qualified PTP (Publically Traded Partnership) income
- 2) 20% of the amount by which the individual's taxable income exceeds net capital gain (before the deduction)

If over the income threshold, the deduction is the same as above but the first part is now limited as follows:

20% of QBI in Part #1 is the lesser of:

- 1) 20% of QBI (qualified business income) (not including SSTB QBI)
- 2) The greater of
 - a) 50% of W-2 wages attributable to the trade or business, or
 - b) 25% of those W-2 wages plus 2.5% of UBIA (Unadjusted basis immediately after acquisition) of qualified property for that trade or business

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QUALIFIED TRADE OR BUSINESS

A qualified trade or business means any trade or business **other than**:

- ❖ A specified service trade or business (SSTB), or
- ❖ The trade or business performing services as an employee.

A "specified service trade or business" is:

- ❖ Any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees or owners.
- ❖ Also includes investing and investing management, trading, or dealing in securities, partnership interests, or commodities.

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QUALIFIED BUSINESS INCOME

What is QBI?

QBI is generally defined as the net amount of qualified items of income, gain, deduction, and loss with respect to a qualified trade or business of the taxpayer. These items are qualified to the extent that they are included or allowed in determining taxable income for the year.

Items not included in QBI are:

- ❖ Capital gains/losses
- ❖ Dividends
- ❖ Interest Income
- ❖ Reasonable compensation paid to the taxpayer for services
- ❖ Guaranteed payments paid to a partner for services

The business of performing services as an employee is not a qualified trade or business.

66

W-2 WAGES

- ❖ “Wages” means all money paid for work or services performed by an employee for his employer (including the cash value of all benefits or amounts paid in any medium other than cash).
- ❖ Taxpayers may take into account wages reported on Forms W-2 issued by other parties provided that the wages reported on the Forms W-2 were paid to employees of the taxpayer for employment by the taxpayer.
- ❖ The associated wages expense is taken into account in computing QBI.
- ❖ Rev. Proc. 2019-11 was issued with the final regulations which provides methods for calculating W-2 wages.
 - ❖ W-2 wages do not include wages paid to statutory employees.

67

UBIA OF QUALIFIED PROPERTY

Qualified property is tangible property of a character subject to depreciation that is held by, and available for use in, a trade or business at the close of the taxable year, and which is used in the production of QBI, and for which the depreciable period has not ended before the close of the taxable year.

Depreciable period means the period beginning on the date the property is first placed in service by the taxpayer and ending on the later of

- ❖ The date 10 years after that date or
- ❖ The last day of the last full year in the applicable recovery period that would apply to the property (additional first-year depreciation deductions do not affect the applicable recovery period)

UBIA (Unadjusted basis immediately after acquisition) generally will be its cost as of the date the property is placed in service.

68

RENTAL PROPERTY

- ❖ According to Rev. Rul. 73-522, triple net lease is not a trade or business.
- ❖ Rev. Proc. 2019-38 provides a safe harbor – if the following requirements are met, the “real estate enterprise” is treated as a Section 162 trade or business for purposes of Section 199A:
 - ❖ Separate books and records are maintained for each rental real estate enterprise.
 - ❖ For enterprises in existence less than 4 years, 250 or more hours of “rental services” are performed during the year.
 - ❖ Contemporaneous records regarding hours, description, and date all services performed, including who performed the services.
- ❖ You must attach a statement to your return claiming that you meet the requirements and sign under penalty of perjury.

69

1031 EXCHANGES

- ❖ 1031 exchanges use the relinquished property's date placed in service for purposes of calculating the "Depreciable Period."
- ❖ 1031 exchanges use the relinquished property's adjusted basis at the time of the exchange to calculate the new unadjusted basis.
- ❖ If an election is made under §1.168(i)-6(i)(1) – the taxpayer uses the date the replacement property was first used by the trade or business.

70

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$100,000 of QBI
- ❖ The taxpayer's total taxable income is \$80,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is below the income threshold of \$157,500.

20% of QBI from business ($\$100,000 * 20\% = \$20,000$)

20% of taxable income ($\$80,000 * 20\% = \$16,000$)

Deduction is lesser of the two, so \$16,000

71

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$80,000 of QBI
- ❖ The taxpayer's total taxable income is \$79,000 which includes \$9,000 of capital gains
- ❖ No REIT dividends and no qualified PTP income

What is his Section 199A deduction?

Taxable income is below the income threshold of \$157,500.

20% of QBI from business ($\$80,000 * 20\% = \$16,000$)

Taxable income minus net capital gain ($\$79,000 - \$9,000 = \$70,000$)

20% of taxable income minus net capital gain ($\$70,000 * 20\% = \$14,000$)

Deduction is lesser of the two so \$14,000

72

EXAMPLE

- ❖ The taxpayers are a married couple who receive a K-1 with \$100,000 of QBI, \$50,000 of W-2 wages, and \$0 UBIA (The K-1 is from an SSTB)
- ❖ The taxpayers' total taxable income is \$300,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is their Section 199A deduction?

Taxable income is below the income threshold of \$315,000.

20% of QBI from business ($\$100,000 * 20\% = \$20,000$)

20% of taxable income ($\$300,000 * 20\% = \$60,000$)

Deduction is lesser of the two so \$20,000

73

EXAMPLE

- ❖ The taxpayers are a married couple who receive a K-1 with \$70,000 of QBI, \$30,000 of W-2 wages, and \$0 UBIA (not an SSTB)
- ❖ The taxpayers' total taxable income is \$275,000 which includes \$1,000 of qualified PTP income
- ❖ No capital gains and no REIT dividends

What is their Section 199A deduction?

Taxable income is below the income threshold of \$315,000.

20% of QBI from business ($\$70,000 * 20\% = \$14,000$) plus 20% of qualified PTP income ($\$1,000 * 20\% = \200) = \$14,200

20% of taxable income ($\$275,000 * 20\% = \$55,000$)

Deduction is lesser of the two so \$14,200

74

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$100,000 of QBI, \$0 of W-2 wages, and \$0 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayer's total taxable income is \$500,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

50% of W-2 wages = \$0

25% of W-2 wages plus 2.5% of UBIA = \$0

Greater is \$0

20% of QBI from business ($\$100,000 * 20\% = \$20,000$)

Lesser is \$0

20% of taxable income ($\$500,000 * 20\% = \$100,000$)

Deduction is lesser of the two so \$0

75

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$800,000 of QBI, \$0 of W-2 wages, and \$4,000,000 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayer's total taxable income is \$1,000,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

50% of W-2 wages = \$0

25% of W-2 wages plus 2.5% of UBIA = ($\$4,000,000 * 2.5\%$ = \$100,000)

Greater is \$100,000

20% of QBI from business ($\$800,000 * 20\%$ = \$160,000)

Lesser is \$100,000

20% of taxable income ($\$1,000,000 * 20\%$ = \$200,000)

Deduction is lesser of the two so \$100,000

76

EXAMPLE

Same example as before except:

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$800,000 of QBI, \$0 of W-2 wages, and \$4,000,000 of UBIA of qualified property (is a SSTB)
- ❖ The taxpayer's total taxable income is \$1,000,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

20% of QBI not including SSTB QBI \$0

- ❖ So no deduction

77

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$900,000 of QBI, \$300,000 of W-2 wages, and \$100,000 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayer's total taxable income is \$800,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

50% of W-2 wages = $\$300,000 * 50\%$ = \$150,000

25% of W-2 wages plus 2.5% of UBIA = ($\$300,000 * 25\%$ = \$75,000) + ($\$100,000 * 2.5\%$ = \$2,500) = \$77,500

Greater of limitation is \$150,000

20% of QBI from business ($\$900,000 * 20\%$ = \$180,000)

Lesser of the 2 is \$150,000

20% of taxable income ($\$800,000 * 20\%$ = \$160,000)

Deduction is lesser of the two so \$150,000

78

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$1,800,000 of QBI, \$1,000,000 of W-2 wages, and \$ 100,000 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayer's total taxable income is \$2,000,000 which includes \$10,000 of qualified PTP loss
- ❖ No capital gains and no REIT dividends

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

50% of W-2 wages = $\$1,000,000 * 50\% = \$500,000$

25% of W-2 wages plus 2.5% of UBIA = $(\$1,000,000 * 25\% = \$250,000) + (\$100,000 * 2.5\% = \$2,500) = \$252,500$

Greater of limitation is \$500,000

20% of QBI from business $(\$1,800,000 * 20\% = \$360,000)$

Lesser of the 2 is \$360,000

plus 20% of qualified PTP income (qualified PTP loss so PTP income is zero and loss is carried forward to net against qualified PTP income in the succeeding taxable year) = \$360,000

20% of taxable income $(\$2,000,000 * 20\% = \$400,000)$

Deduction is lesser of the two so \$360,000

79

EXAMPLE

- ❖ The taxpayers are a married couple who receive a K-1 with \$400,000 of QBI, \$40,000 of W-2 wages, and \$0 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayers' total taxable income is \$395,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is their Section 199A deduction?

Taxable income is between the income threshold of \$315,000 to \$415,000 so limitations will be phased in.

20% of QBI from business $(\$400,000 * 20\% = \$80,000)$

50% of W-2 wages = $(\$40,000 * 50\% = \$20,000)$

Since limited by W-2 wages, need to figure out the reduction amount

$395,000 - 315,000 = 80,000$ of \$100,000 range = 80%

Would be limited by \$60,000 $(\$80,000 - 20,000)$. 80% of \$60,000 = \$48,000

20% QBI $(\$80,000)$ minus the reduction amount $(\$48,000) = \$32,000$

20% of taxable income $(\$395,000 * 20\% = \$79,000)$

Deduction is lesser of the two so \$32,000

80

EXAMPLE

Same example as before except:

- ❖ The taxpayers are a married couple who receive a K-1 with \$400,000 of QBI, \$40,000 of W-2 wages and \$ 0 of UBIA of qualified property (**Is a SSTB**)
- ❖ The taxpayers' total taxable income is \$395,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is their Section 199A deduction?

Taxable income is between the income threshold of \$315,000 to \$415,000 so limitations will be phased in, and because it is a SSTB, the 20% deduction will be phased out.

$395,000 - 315,000 = 80,000$ of \$100,000 range = 80% Their applicable percentage is 20%.

20% of QBI from business $(\$400,000 * 20\% * 20\% = \$16,000)$

50% of W-2 wages = $(\$40,000 * 20\% * 50\% = \$4,000)$

Would be limited by \$12,000 $(\$16,000 - 4,000)$. 80% of \$12,000 = \$9,600

20% QBI $(\$16,000)$ minus the reduction amount $(\$9,600) = \$6,400$

20% of taxable income $(\$395,000 * 20\% = \$79,000)$

Deduction is lesser of the two so \$6,400

81

EXAMPLE

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$200,000 of QBI, \$30,000 of W-2 wages, and \$ 0 of UBIA of qualified property (not a SSTB)
- ❖ The taxpayer's total taxable income is \$165,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is between the income threshold of \$157,500 to \$207,500 so limitations will be phased in.

20% of QBI from business ($\$200,000 * 20\% = \$40,000$)

50% of W-2 wages = ($\$30,000 * 50\% = \$15,000$)

Since limited by W-2 wages, need to figure out the reduction amount

$165,000 - 157,500 = 7,500$ of \$50,000 range = 15%

Would be limited by \$25,000 ($\$40,000 - 15,000$). 15% of \$25,000 = \$3,750

20% QBI (\$40,000) minus the reduction amount (\$3,750) = \$36,250

20% of taxable income ($\$165,000 * 20\% = \$33,000$)

Deduction is lesser of the two so \$33,000

82

EXAMPLE

Same example as before except:

- ❖ The taxpayer is an unmarried individual who receives a K-1 with \$200,000 of QBI, \$30,000 of W-2 wages, and \$ 0 of UBIA of qualified property (**is a SSTB**)
- ❖ The taxpayer's total taxable income is \$165,000
- ❖ No capital gains, no REIT dividends, and no qualified PTP income

What is his Section 199A deduction?

Taxable income is between the income threshold of \$157,500 to \$207,500 so limitations will be phased in, and because it is a SSTB, the 20% deduction will be phased out.

$165,000 - 157,500 = 7,500$ of \$50,000 range = 15% His applicable percentage is 85%.

20% of QBI from business ($\$200,000 * 85\% * 20\% = \$34,000$)

50% of W-2 wages = ($\$30,000 * 85\% * 50\% = \$12,750$)

Would be limited by \$21,250 ($\$34,000 - 12,750$). 15% of \$21,250 = \$3,187.50

20% QBI (\$34,000) minus the reduction amount (\$3,187.50) = \$30,812.50

20% of taxable income ($\$165,000 * 20\% = \$33,000$)

Deduction is lesser of the two so \$30,812.50

83

EXAMPLE – MULTIPLE K-1S

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs)
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has \$20,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$3,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Business A: 20% of QBI (\$200,000) or 50% of W-2 (\$250,000) = \$200,000

Business B: 20% of QBI (\$200,000) or 50% of W-2 (\$0) = \$0

Business C: 20% of QBI (\$4,000) or 50% of W-2 (250,000) = \$4,000

Total = \$204,000

20% of taxable income ($\$3,000,000 * 20\% = \$600,000$)

Deduction is lesser of the two so \$204,000

84

QUALIFIED BUSINESS LOSS

- ❖ If the individual has QBI of less than zero from one business but has overall QBI greater than zero when all of the individual's businesses are taken together, then the individual must offset the net income in each business that produced net income with the net loss from each business that produced net loss. The individual must apportion the net loss among the businesses with positive QBI in proportion to the relative amounts of QBI in such businesses.
- ❖ If the net amount of QBI is less than zero, the QBI component is zero for the taxable year and amount is carried over as a loss to the succeeding tax year and will be treated as a separate business for computing the deduction in the next taxable year.
- ❖ The W-2 and UBIA of qualified property from businesses which produced negative QBI are not taken into account and not carried over into the subsequent year.

85

EXAMPLE – QUALIFIED BUSINESS LOSS

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs)
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has (\$600,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$2,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Apportion \$600,000 loss to the positive QBIs (since both have \$1m, apportioned evenly - \$300,000 each) Business A and B both have adjusted QBI of \$700,000 (\$1,000,000 - \$300,000)

Business A: 20% of QBI (\$140,000) or 50% of W-2 (\$250,000) = \$140,000

Business B: 20% of QBI (\$140,000) or 50% of W-2 (\$0) = \$0

Business C: adjusted QBI is \$0 (because negative QBI has been apportioned) = \$0

Total = \$140,000

20% of taxable income (\$2,000,000 * 20% = \$400,000)

Deduction is lesser of the two so \$140,000

86

EXAMPLE

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs)
- ❖ Business A has \$500,000 of QBI, \$100,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$30,000 of W-2 wages, and \$2,000,000 UBIA
- ❖ Business C has (\$900,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$1,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500. Apportion \$900,000 loss to positive QBIs:

Business A has adjusted QBI of \$200,000 (\$500,000 - \$300,000 (one third))

Business B has adjusted QBI of \$400,000 (\$1,000,000 - \$600,000 (two thirds))

Business A: 20% of QBI (\$40,000) or 50% of W-2 (\$50,000) = \$40,000

Business B: 20% of QBI (\$80,000) or greater of: 50% of W-2 (\$15,000) or 25% of W-2 (\$7,500) plus 2.5% of UBIA (\$50,000) = \$57,500 = \$57,500

Business C: adjusted QBI is \$0 (because negative QBI has been apportioned) = \$0

Total = \$97,500

20% of taxable income (\$1,000,000 * 20% = \$200,000)

Deduction is lesser of the two so \$97,500

87

EXAMPLE – QUALIFIED BUSINESS LOSS

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs)
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has (\$2,150,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$2,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

The taxpayer has a combined QBI of (\$150,000). Therefore, there is no deduction for the current year and the \$150,000 carries forward and will be treated as a separate business for computing the deduction in the next taxable year. None of the W-2 wages or UBIA carryforward.

88

EXAMPLE – QUALIFIED BUSINESS LOSS

In the following year: (remember the \$150,000 carryforward from the prior year)

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs)
- ❖ Business A has \$450,000 of QBI, \$100,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$150,000 of QBI, \$1,000 of W-2 wages, and \$0 UBIA
- ❖ Business C has (\$120,000) of negative QBI, \$500 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$1,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Positive combined QBI of \$330,000. Apportion \$270,000 loss to positive QBIs:

Business A has adjusted QBI of \$247,500 (\$450,000 - \$202,500 (75%))

Business B has adjusted QBI of \$82,500 (\$150,000 - \$67,500 (25%))

Business A: 20% of QBI (\$49,500) or 50% of W-2 (\$50,000) = \$49,500

Business B: 20% of QBI (\$16,500) or 50% of W-2 (\$500) = \$500

Business C: adjusted QBI is \$0 (because negative QBI has been apportioned) = \$0

Total = \$50,000

20% of taxable income (\$1,000,000 * 20% = \$200,000)

Deduction is lesser of the two so \$50,000

89

AGGREGATION

If the entities meet certain requirements, the taxpayer can choose to aggregate the businesses.

- ❖ The same person or group of persons, directly or indirectly, owns 50% or more of each trade or business. (Family attribution rules)
- ❖ Each trade or business to be aggregated have the same tax year.
- ❖ None of the trades or business to be aggregated is an SSTB.
- ❖ Must satisfy TWO of the following factors
 - The trades or businesses provide products and services that are the same or customarily offered together
 - The trade or business share facilities or share significant centralized business elements
 - The trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group

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AGGREGATION

- ❖ Aggregation is not mandatory, and multiple owners of an entity do not need to aggregate in the same manner.
- ❖ Once the taxpayer chooses to aggregate two or more trades or business, the taxpayer must consistently report the aggregated trades or businesses in all subsequent taxable years.
- ❖ If a new trade or business is newly created or newly acquired, it can be added to existing aggregated trades or businesses if the requirements are satisfied.
- ❖ If in a future year, there is a change in facts and circumstances such that a taxpayer's prior aggregation of trades or businesses no longer qualifies for aggregation, then the trades or businesses will no longer be aggregated and the taxpayer must reapply the aggregation rules to determine a new permissible aggregation.
- ❖ For each taxable year, the taxpayer must attach a statement to their return identifying each trade or business aggregated that contains a description of each trade or business, the name and EIN of each entity, and information identifying any trade or business added or removed.

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AGGREGATION

- ❖ Final regulations provide that aggregation can now happen at the entity level.
- ❖ If an entity aggregates, the owners have no choice but to respect that aggregation. An owner can, however, add his or her own business to the aggregation as long as the owner's business meets the aggregation requirements for ALL of the businesses in the aggregation.
- ❖ A pass-through business that aggregates must disclose to its owners on a Schedule K-1 attachment identifying:
 - ❖ Each business aggregated
 - ❖ A description of each business
 - ❖ The name and EIN of each entity
- ❖ For 2018 only, you can elect to aggregate on an amended return.

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EXAMPLE

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs) Business A, B, and C qualify for aggregation.
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has \$20,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$3,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Because the business are aggregated, the limitations are applied on an aggregated basis.

Combined QBI = \$2,020,000 Combined W-2 = \$1,000,000

50% of W-2 wages = \$500,000

20% of QBI = \$404,000

Lesser of the 2 is \$404,000

20% of taxable income (\$3,000,000 * 20% = \$600,000)

Deduction is lesser of the two so \$404,000

93

EXAMPLE

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs) Business A, B, and C qualify for aggregation.
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has (\$600,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$2,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Because the business are aggregated, the limitations are applied on an aggregated basis.

Combined QBI = \$1,400,000 Combined W-2 = \$1,000,000

50% of W-2 wages = \$500,000

20% of QBI = \$280,000

Lesser of the 2 is \$280,000

20% of taxable income (\$2,000,000 * 20% = \$400,000)

Deduction is lesser of the two so \$280,000

94

EXAMPLE

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs) Business A, B, and C qualify for aggregation.
- ❖ Business A has \$500,000 of QBI, \$100,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$30,000 of W-2 wages, and \$2,000,000 UBIA
- ❖ Business C has (\$900,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$1,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Because the business are aggregated, the limitations are applied on an aggregated basis.

Combined QBI = \$600,000 Combined W-2 = \$630,000 Combine UBIA = \$2,000,000

50% of W-2 wages = \$315,000

25% of W-2 (\$157,500) plus 2.5% of UBIA (\$50,000) = \$207,500

Great of the 2 is \$315,000

20% of QBI = \$120,000

Lesser of the 2 is \$120,000

20% of taxable income (\$1,000,000 * 20% = \$200,000)

Deduction is lesser of the two so \$120,000

95

EXAMPLE

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs) Business A, B, and C qualify for aggregation.
- ❖ Business A has \$1,000,000 of QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ Business B has \$1,000,000 of QBI, \$0 of W-2 wages, and \$0 UBIA
- ❖ Business C has (\$2,150,000) of negative QBI, \$500,000 of W-2 wages, and \$0 UBIA
- ❖ The taxpayer's total taxable income is \$2,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

The taxpayer has a combined QBI of (\$150,000). Therefore, there is no deduction for the current year and the \$150,000 carries forward and will be treated as a separate business for computing the deduction in the next taxable year. None of the W-2 wages or UBIA carryforward.

96

EXAMPLE

In the following year: (remember the \$150,000 carryforward from the prior year)

- ❖ The taxpayer is an unmarried individual and receives 3 K-1s. (none are SSTBs) Business A, B, and C qualify for aggregation.
- ❖ Business A has \$450,000 of QBI, \$100,000 of W-2 wages, and \$0 UBI
- ❖ Business B has \$150,000 of QBI, \$1,000 of W-2 wages, and \$0 UBI
- ❖ Business C has (\$120,000) of negative QBI, \$500 of W-2 wages, and \$0 UBI
- ❖ The taxpayer's total taxable income is \$1,000,000 (no capital gains, REIT dividends, or PTP income)

What is his Section 199A deduction?

Taxable income is above the income threshold of \$207,500.

Because the business are aggregated, the limitations are applied on an aggregated basis.

Combined QBI = \$330,000 Combined W-2 = \$101,500

50% of W-2 wages = \$50,750

20% of QBI = \$66,000

Lesser of the 2 is \$50,750

20% of taxable income ($\$1,000,000 \times 20\% = \$200,000$)

Deduction is lesser of the two so \$50,750

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REFERENCES

- ❖ Proposed Regulation issued August 16, 2018.
- ❖ Final Regulations issued January 18, 2019.
- ❖ Rev. Proc. 2019-11 - Determination of W-2 Wages.
- ❖ Revenue Procedure 2019-38 - Trade or Business.
- ❖ 2019 Form 8995 - Qualified Business Income Deduction Simplified Computation – draft issued July 25, 2019.

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Lunch



**Nine Olson,
Former IRS National Taxpayer
Advocate**

IRS REPRESENTATION
Conference
November 21 & 22, 2019

**Interviewed by:
Caroline D. Ciruolo, Esq.
Kostelanetz & Fink LLP, Washington, DC**

**Offers & Installment Agreements:
What to Do With the Business
Assets?**

IRS REPRESENTATION
Conference
November 21 & 22, 2019

Moderator: Amanda Evans, EA, Green & Sklarz LLC, New Haven, CT
Panelists: Caren Zahn, EA, Agostino & Associates PC, Hackensack, NJ
Roger Nemeth, EA, Audit Detective, Jacksonville, FL
Fran Obeid, Esq., MFO Law, PC, New York, NY

Caren Zahn, EA



Caren has been with Agostino & Associates P.C., for 27 years where she represents individual and businesses at all administrative levels of the Internal Revenue Service, State, and local taxing authorities.

Expertise: offers-in-compromise, installment agreements, innocent spouse, penalty abatements, tax returns, tax return compliance, non-filers, audits, and voluntary disclosures.

Co-Director and Administrator of Taxpayers Assistance Center, Inc. (TAC) www.tacnj.org. TAC provides pro bono representation to low income taxpayers before all administrative levels of the IRS and State taxing authorities.

REASONABLE COLLECTION POTENTIAL (RCP)

- The Offer must reflect the RCP which includes the “net realizable value” (NRV) of the assets and the future income.
- Future income is determined by analyzing monthly gross income, less allowable living expenses, and multiplying the difference by the number of months applicable to the terms of the offer (Future Income - IRM 5.8.5.20 (03-23-2018)).
- For a non-liable spouse (i.e. TRFP offer) their income is not listed on the 4330IC. The total household income is used to determine the percentage of income attributable to the liable party. The expenses are reduced by the percentage. (\$95,000 + non-liable party \$75,000 = \$170,000/\$95,000 = 56%).
- The IRS National Standards are used to calculate allowable expenses (IRM 5.8.5.22 (10-22-2010)), unless extenuating circumstances exist, substantiation is required. (i.e. medical costs, prescription costs above the allowable National Standards).
- **Necessary Expenses 5.8.5.22.1 (10-22-2010)**
- A necessary expense is one that is necessary for the production of income or for the health and welfare of the taxpayer's family. If an expense is more than the total allowed by the National Standards, the taxpayer must provide documentation to substantiate and justify that the allowed expenses are inadequate to provide basic living expenses.

REASONABLE COLLECTION POTENTIAL (RCP)

- The first component in determining the offer amount is to calculate the Reasonable Collection Potential (RCP). RCP is determined by evaluating equity in assets (Asset/Equity Table - AET) and income and expenses (Income/Expense Table - IET) IRM 5.8.5.4 (03-23-2018).
- Assets are valued at their Net Realizable Equity (NRE). (IRM 5.8.5.4.1 (09-30-2013)). NRE is defined as the quick sale value (QSV) less amounts owed to secured lien holders with priority over the federal tax lien. QSV is an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the owner to sell in a short period of time, usually 90 calendar days or less. QSV is calculated at 80% of the fair market value.
- Examples of assets included in the RCP:
 - Any property owned – (value the property at Zillow.com using the low-end value). The FMV minus and mortgage(s) and reduced by 80%.
 - Automobiles owned and used for work, the production of income, and/or the welfare of the taxpayer's family (valued at KBB.com using the “fair” value) and reduced by \$3,450 per car.
 - Retirement accounts balance (minus loans), brokerage accounts, cash value life insurance (minus loans).
 - Bank accounts and Savings account balances minus \$1,000 or the amount equal to pay the monthly basic living expenses.

REASONABLE COLLECTION POTENTIAL (RCP)

ASSET AND EQUITY TABLE – AET
TO DETERMINE NET REALIZABLE EQUITY (NRE) IN ASSETS

Residence

\$349,000 (Zillow.com)

\$279,360 80% QSV

\$280,000 Less Mortgage

NRE - \$0

REASONABLE COLLECTION POTENTIAL (RCP)

- ASSET AND EQUITY TABLE (AET) Continued

- Checking \$500 \$0 Exempt
- (\$1,000 Exemption) and/or amount equal to monthly living expenses
- Savings \$400 \$0 Exempt
- Annuity/Retirement \$15,000 \$12,000 (80%)
- Real Estate - \$0
- Vehicles (owned) \$2,000 Exempt up to \$3,450 \$0 (Value from KBB)
- Personal Assets \$1,000 Exempt up to \$9,250 \$0
- **TOTAL NRE \$12,000**
- Dissipated assets should not be included in the RCP – If it is appropriate to include a dissipated asset in RCP, a three-year time frame is used (include the year of submission). IRM 5.8.5.18 (-3-23-2018).

REASONABLE COLLECTION POTENTIAL (RCP)

- **INCOME AND EXPENSE TABLE (IET)**
- **HOUSEHOLD GROSS INCOME - \$9,167**
- **FAMILY OF 2 - IRS NATIONAL STANDARD EXPENSES**
- Food Clothing Misc \$1,288
- Housing and Utilities \$3,216
- Vehicle Lease Pmts \$800 (2 cars)
- Vehicle Operating (NY) \$1016 \$508
- Health Insurance Premiums \$300
- Out of Pocket Healthcare \$110 \$55 under 65, \$114 65 and Older
- Current Taxes \$2,750 (Fed, State, Local)
- **TOTAL EXPENSES \$8,857**
- **FUTURE INCOME - \$310**

REASONABLE COLLECTION POTENTIAL (RCP)

- **LIABILITY OWED - \$50,000**
- Two Types of Offers - Lump Sum and Periodic Payment
- Lump Sum (Paid in up to 5 payments beginning 30 days after acceptance)
- Periodic Payment (Paid over 24 months)
- **INCOME CALCULATION LUMP SUM OFFER**
- $\$310 \times 12 = \$3,720$ Future Income
- $\$3,750 + \$12,000$ From AET = \$15,750
- 20% downpayment must be paid with application (\$3,150)
- At acceptance \$12,600 over 5 months = \$2,520 per month beginning 30 days after acceptance
- **INCOME CALCULATION PERIODIC PAYMENT OFFER (Paid over 24 months)**
- $\$310 \times 24 = \$7,440 + \$12,000$ From AET = \$19,440
- 24 Monthly payments of \$810.00

REASONABLE COLLECTION POTENTIAL (RCP)

- If TP does not currently qualify for an OIC, determine if he can qualify in the future
 - Request Currently Not Collectible (CNC) or low installment agreement in the meantime.
 - Taxpayer anticipates losing his job or will earn less money.
- OIC is deemed accepted if the IRS does not make a decision within 2 years.
- Submitting an Offer through IRS Appeals allows a "2nd bite" if the OIC Unit rejects the offer.
- Do not shy away from negotiating with the Offer Specialist.
 - Ask for additional time if needed.
 - Use Affidavits.
 - Research the IRM to support your position.

Offers in Compromise and Installment Agreements

Ms. Obeid represents clients in civil and criminal tax matters involving the IRS, New York State, the Department of Justice, and New York State Attorney General.



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November 22, 2019
IRS Representation
Conference

*The information contained in this PowerPoint is general in nature and based on authorities that are subject to change. It is not intended to be, nor should it be construed as legal or tax advice. Readers should consult a tax professional of their own choosing to discuss how these matters may relate to their particular circumstances.

Allowable Expenses:

- Explain to the client that not all expenses are allowable in determining the amount of an offer or monthly installment agreement payments. For example, the cost of private school is generally not an allowable expense.
- Explain to the client that there are:
 - National Standards for food, clothing and miscellaneous.
 - National Standards for out-of-pocket medical costs.
 - Regional Standards for transportation.
 - Local Standards for housing.
- **Tips for Allowable Expenses:**
 - Does the housing accommodate a special needs child or elderly person? Is it close to the client's doctors (or client's dependent's doctors? i.e., if a client or client's dependent has serious debilitating disease), is it rent stabilized and subject to the Senior Rent Increase Exemption?

Allowable Expenses:

- **More Tips for Allowable Expenses:**

- Vehicles: are there needs for transportation to a doctor? Does the client live where there is no nearby public transportation?
- Medical expenses: get letters from the client's doctors and health insurance carrier regarding client's current and projected out of pocket medical expenses, anticipated surgeries, and expected time out of work due to medical issues.
- Accounting and fees for representation before the IRS: an allowable other expense. IRM 5.15.1.11 (08-29-2018).
- Current year taxes: current federal, FICA, Medicare, state and local taxes are allowable expenses regardless of whether the taxpayer made those payments in the past. IRM 5.15.1.11 (08-29-2018).

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Practitioner Points

- All required tax returns must be filed prior to making an offer. To prevent an offer from being returned, enclose copies of returns filed less than 60 days before submission of the offer with proof of filing to OIC.
- What do you lose if your offer goes through? All of your non-operating losses and your refund which will not be applied to your offer amount. You will also lose your refund for subsequent years.
- If the value of your home is upside down (i.e., you owe more on your home than your home is worth) or you are in foreclosure, the asset will be valued at 0 and not a negative number.
- Let the client know there is a good probability that the offer will have to be appealed, taking more time and more fees.
- A good alternative if an offer fails is a partial pay installment agreement ("PPIA"). PPIA is appropriate if full payment cannot be achieved by the collection statute expiration date and there is some ability to pay until the statute expires on a tax year. Complete utilization of equity is not always required for a PPIA. IRM 5.14.2.2 (04-26-2019).

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Roger Nemeth, EA, CTRS, NTPI Fellow

- Started managing tax franchises in 2006.
- Developed Audit Detective in 2010.
- Qualified as an N.T.P.I. Fellow in 2015.
- Worked as a programmer for the largest Tax Resolution Company integrating automated transcript systems into workflow programs.
- Assisted in the downloading and research of over 30 million transcripts.
- To date our software has been used to download just under one-fifth of a billion transcripts.



IRS 3rd Party Data Sources For Verification

The IRS uses third party data sources to verify Offers In Compromises (OIC).

- Credit Reports – IRS has access to the client’s credit report. Both secured and unsecured debt is available for review.
- Asset Reports – Nexis Lexis/Accurint (and other companies) offer public information database reports that include property associated with the taxpayer. Examples of property include but are not limited to:
 - Land
 - Properties (homes and commercial property)
 - Airplanes
 - Watercraft
- Possibly insurance policies – I am aware of a couple of cases where the IRS asked for insurance policies to look for riders on jewelry, firearms, etc. The IRS does not have direct access. These need to be provided by the taxpayer or through a subpoena.

IRS Internal Verification

5.8.5.3.1.1 (03-23-2018) Verification through Internal Research

- 1) Verify as much of the CIS as possible through internal sources.
- 2) The following internal and external information sources may be considered. Discuss any major discrepancies with the taxpayer/POA and document the history. This list is not all inclusive.

Internal Sources	Review to
EMFCD and BOCLES	Identify/research cross reference TINs for related business activity not declared on the CIS.
SUMRY, MFCL and BMFCL	Verify full compliance and determine if there are any open control bases or freeze codes.
RTVUE (MFY) BRTVUE (BMF), TRDBV, or TDS	Compare the amount of reported income and expenses declared on the CIS to verify the amounts are within reason.
RPTRO	<p>Compare real estate tax and mortgage interest deductions to the amounts declared on the CIS. Discuss any difference with the taxpayer to determine the reason for the increase or decrease.</p> <p>Identify accounts not reported on the CIS, such as certificates of deposit or investment accounts.</p> <p>Verify sources of income, such as employers, bank accounts, and retirement accounts.</p> <p>Identify recent transferred or disposed of assets, such as stocks and bonds.</p> <p>Review W-2 information to determine if taxable wages are less than FICA wages, which may indicate the taxpayer has an employer sponsored retirement account (401k or 403b).</p>
State Motor Vehicle Records	Identify motor vehicles currently registered to the taxpayer but not declared on the CIS. Also check for ownership in business names.
Real Estate Records	Identify real property titled to the taxpayer but not declared on the CIS.
Account	Identify property held by transferee, nominee, or alter ego. Also check for ownership in business names.
Credit Bureau Report	<p>Identify other aliases, related business entities, UCC filings, properties, judgments, and vehicle registrations. In most instances, the OIC/S should only be using current information to verify the taxpayer's ownership or interest in assets.</p> <p>Identify past residences and employers.</p> <p>Verify competing lien holders, balances due and payment history.</p> <p>Identify property not listed on CIS.</p>

Obtaining 3rd Party Data

- Credit Reports
 - The taxpayer can provide you their free copy they are allowed access to once a year. These are available instantly with online verification.
 - annualcreditreport.com
 - These can be purchased through the credit reporting agencies for approximately \$15. The taxpayer needs to provide authorization.
- Asset Reports
 - Asset reports can be obtained by individuals for free once a year through Nexis Lexis. These are mailed to the individual and can take a couple of weeks.
 - personalreports.lexisnexis.com/
 - Pricing is elusive. Possibly \$20 per report.

Most Recent Tax Return

This is obvious but often overlooked by the tax professional. Compare the income on the 433 to the most recent tax return. The IRS will almost certainly use this to validate the 433.

- Income will be compared.
- Retirement accounts.
- Dependents/members of household.

The tax professional can access prior tax return data from the tax payers originals or IRS Tax Return Transcripts.

The Offer Amount Is Independent Of Tax Debt Amount

Tax professionals somehow believe that the amount owed impacts the offer amount. The offer amount is independent of what is owed. If a tax professional calculates the offer amount on the 433 as being \$3,000 then the offer amount should be \$3,000 if the tax debt is \$10,000 or \$1 million dollars.

The IRS does usually scrutinize OICs with higher tax debt. The OIC process is also a negotiation. The tax payer and the IRS can come to an agreement different then the 433 calculations.

Reverification Of 433 Data After Initial Filing

With OIC processing times averaging 6-8 months often times the IRS requests refreshed information which can significantly change the offer amount. I often get asked can the IRS ask for the financial data multiple times. IRS IRM 5.8.5.3 (03-23-2018) Taxpayer Submitted Documents addresses this.

It is common for the IRS to ask for updated P&L's on pass through entities (S-Corp, Partnership, ect...). It is easy to hide assets in these pass through entities and the IRS wants to check.

CIS Reverification

IRS IRM 5.8.5.3 (03-23-2018) Taxpayer Submitted Documents

- 2) If during the investigation, the financial information becomes older than 12 months and it appears significant changes have occurred, a request for updated information may be appropriate. Prior to contacting the taxpayer, attempt to secure the necessary verification through internal sources. If taxpayer contact is required, contact via telephone is preferred to expedite case processing.
- 3) In certain situations, information may become outdated due to significant processing delays caused by the Service and through no fault of the taxpayer. In those cases, it may be appropriate to rely on the outdated information if there is no indication the taxpayer's overall situation has significantly changed. Judgment should be exercised to determine whether, and to what extent, updated information is necessary. If there is any reason to believe the taxpayer's situation may have significantly changed (i.e. change of employment, loss of job, etc.), and substantiation cannot be secured via internal research, secure a new CIS or update the CIS through taxpayer contact.

Pass Through Entities

Pass through entities have been used in the past to hide assets and cash while completing CIS. Expect more scrutiny when a pass through is involved whether it is single member or multi-member.

Reminder:

- Single member pass through entities are included on the 433-A (OIC).
- Multi-member pass through entities require a separate 433-B (OIC).

Example:

- Taxpayer has \$50,000 in cash in their single member S-Corp.
- Monthly expenses are \$10,000.
- Taxpayer does not do a distribution hoping the IRS will not include the extra cash in the OIC.

With the onset of the “Fresh Start Initiative” in May of 2012, the IRS allowed businesses to deem any assets “necessary for the production of income” as exempt from the Offer calculation.

IRM 5.8.5.15 (03-23-2018)

Income-Producing Assets

When investigating the RCP for an offer that includes business assets, an analysis is necessary to determine if certain assets are essential for the production of income. When it has been identified that an asset or a portion of an asset is necessary for the production of income, it is appropriate to adjust the income or expense calculation for that taxpayer to account for the loss of income stream if the asset was either liquidated or used as collateral to secure a loan to fund the offer.

When valuing income-producing assets:

If...	Then...
There is no equity in the assets	There is no adjustment necessary to the income stream.
There is equity and no available income stream (i.e. profit) produced by those assets	There is no adjustment necessary to the income stream. Consider including the equity in the asset in the RCP.
There are both equity in assets that are determined to be necessary for the production of income and an available income stream produced by those assets	<ul style="list-style-type: none">• Compare the value of the income stream produced by the income producing asset(s) to the equity that is available.• Determine if an adjustment to income or expenses is appropriate.
An asset used in the production of income will be liquidated to help fund an offer	Adjusting the income to account for the loss of the asset may be appropriate.
A taxpayer borrows against an asset that is necessary for the production of income, and devotes the proceeds to the payment of the offer	Allow the loan payment as an expense and consider the effect that loan will have on the future income stream.

As a general rule, equity in income producing assets will not be added to the RCP of a viable, ongoing business; unless it is determined the assets are not critical to business operations.

EXCEPTION:

Include equity in real property in the calculation of RCP.

Note:

Even though rental property, owned by the taxpayer, may produce income, the equity should be included in RCP. An adjustment to the taxpayer's future income value may be appropriate, if the taxpayer will be borrowing against or selling the property to fund the offer.

IRM 5.8.5.16 (10-22-2010)

Inventory, Machinery, Equipment, and Tools of the Trade

Inventory, machinery, and equipment may be considered income producing assets. IRM 5.8.5.15, Income Producing Assets, when it is determined that liquidation of these assets would be detrimental to the continued operation of an otherwise profitable business.

IRM 5.8.5.17 (03-23-2018)

Business as a Going Concern

1) Evaluation of a business as a going concern is sometimes necessary when determining RCP of an operating business owned individually or by a corporation, partnership, or LLC. This analysis recognizes that a business may be worth more than the sum of its parts, when sold as a going concern.

2) To determine the value of a business as a going concern consider the value of assets, future income, and intangible assets such as:

- Ability or reputation of a professional.
- Established customer base.
- Prominent location.
- Well known trade name, trademark, or telephone number.
- Possession of government licenses, copyrights, or patents.

Generally, the difference between what an ongoing business would realize if sold on the open market as a going concern and the traditional RCP analysis is attributable to the value of these intangibles.

IRM 5.8.5.7 (03-23-2018)

Cash

Use the amount listed on the Form 433-B(OIC) for the amount of cash in the taxpayer's bank account.

Note:

The \$1,000 reduction only applies to individual bank accounts.

Practice Tip – What can you argue to exclude?

Have a conversation with the Taxpayer – are there funds held in trust for state sales tax deposits. If it is a rental property, are there funds held in trust for security deposits, etc.?

IRM 5.15.1.16 (10-02-2012)

Cash Flow Analysis

Cash flow projections are used by a business to forecast future income to meet upcoming expenses. They are based on comparing **money owed** to expected revenues. ... Generally speaking, cash flow is the best measure of a company's profits. (emphasis added).

Practice Tip – we have used this IRM to argue for loan payments on business equipment and vehicles.

THE ABUSED SPOUSE: A REVIEW OF INNOCENT SPOUSE PROCEDURES AND DEVELOPING CRITICAL FACTS TO SUPPORT YOUR CLIENT'S CASE

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VALID JOINT RETURN

JOINT RETURN

- Spouses may file a joint return under IRC §6013.
- Both spouses are individually liable for the taxes due on a joint tax return regardless of who earned the income and the IRS can collect from both spouses. IRC §6013(d)(3)

26 U.S.C. §6013

- If you file a joint return, both spouses must sign the return. If your spouse cannot sign because of a medical condition and requests you sign the return, sign your spouse's name in the proper place, followed by the word "by" then your signature, followed by your signature, followed by the word "husband" or "wife".
- You must elect into a joint return; it is not automatic.

WAS THERE A VALID JOINT RETURN?

- General Rule: The most important factor in deciding whether a return qualifies as a joint return is whether the couple intended to file a joint return.
- Electronically Filed Returns:
 - Determining Intent: For electronically filed returns, whether a Requesting Spouse ("RS") signed a return is determined by examining whether he or she signed the Form 8879, IRS e-file Signature Authorization.

WAS THERE A VALID JOINT RETURN?

- As a tax professional, what is ethically required for you to prepare a return?
- Circular 230 states that a tax professional shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.
- This, however, does not mean that you are required to audit your client, you are required to do what is consistent with industry standard.

AFTER RECEIVING A SIGNED 8879...

- What should a tax professional do next?
- They should meet with **BOTH** parties who have signed the documents.

STEP 1: WAS THERE A VALID JOINT RETURN?

- Paper Returns Not Signed by Spouse: In general, a return must be signed by both spouses to be a valid joint return. There are two exceptions:
 - Exception 1: Express Consent to File Joint Return: Where one spouse expressly authorizes the other spouse to sign the return, courts have found the requisite intent for a joint return. See, e.g., Moran v. Commissioner, T.C. Memo. 2005-66.

DURESS

- Returns Signed Under Duress: A return signed under duress is not a joint return.
- Proving Duress: To prove duress, the spouse must show he or she (1) was unable to resist the demands to sign the return, and (2) would not have signed the return but for the constraint applied to his or her will.
- Duress relates to the moment the return is signed and exists when one spouse forces another spouse to sign the return.

STEP 1: WAS THERE A VALID JOINT RETURN?

- Exception 2: Tacit Consent to File Joint Return: Where one spouse tacitly consents to the filing of a joint return, courts have found the requisite intent for a joint return. See e.g., Hennen v. Commissioner, 35 T.C. 747 (1961); Reifler v. Commissioner, T.C. Memo. 2013-248; Jacobsen v. Commissioner, T.C. Memo. 2018-115.

TACIT CONSENT

- The IRS considers the following factors:
 - Did the RS have a filing requirement?
 - Did the RS file a joint return for prior years?
 - Did the RS participate in preparation of return?
 - Did the RS receive a tax benefit?
 - Did the RS have a non-tax reason to file a joint tax return?

TACIT CONSENT

- The IRS will disallow innocent spouse based on a forgery claim if the RS provided tacit consent to the forged signature.
- The taxpayer has the burden of proof to prove forgery and no intent to file a joint tax return.

TYPES OF INVALID RETURNS

- Forgery – RS did not sign the return and there was no tacit consent. There is no Assessment Statute of Expiration Date (“ASED”) for the RS, unless the RS filed their own return. The ASED for the Non-Requesting Spouse (“NRS”) begins when the joint return was due to be filed, or was filed, whichever occurred later. If the signature was forged, but the return is also unlawful or invalid, process as a forgery.
- Unlawful – Taxpayers had no legal right to file jointly. Any previously issued refunds must be considered. The ASED begins when the joint return was due to be filed, or was actually filed, whichever occurred later.

IDENTITY THEFT

- By contrast, where there is no consent given, a taxpayer has a claim of identity theft.
- Just because they are married, does not give them the legal right to sign the other spouse’s name without their consent.
- A taxpayer must file Form 14039.

TYPES OF INVALID RETURNS

- **Invalid** – An amended return changing to separate filing status filed prior to the due date of the return. The ASED begins when the joint return was due to be filed, or was actually filed, whichever occurred later. All previously issued refunds must be taken into consideration.
- When it has been determined that the joint election was invalid—for example, the taxpayers were not married—determine each taxpayer’s separate liability. If the RS has a filing requirement, advise the RS to file a return and send it to you within 30 days.

THREE TYPES OF INNOCENT SPOUSE RELIEF

Classic Innocent Spouse (§6015(b))	Separation of Liability (§6015(c))	Equitable Relief (§6015(f))
Deficiency	Deficiency	Deficiency, Underpayment.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- **Full or apportioned relief under I.R.C. § 6015(b)**: To qualify for relief under I.R.C. § 6015(b), the RS must establish that the following elements are met:
 - A joint return was filed for the year for which the RS seeks relief from joint and several liability;
 - On such return there is an understatement of tax attributable to erroneous items of the NRS;
 - At the time the joint return was signed, the RS **did not know and did not have reason to know** that there was an understatement of tax; and
 - The RS sought relief under I.R.C. § 6015(b) within two years of the first collection activity with respect to the liability giving rise to the deficiency or understatement.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Proportionate relief under I.R.C. § 6015(c): To qualify for relief under I.R.C. § 6015(c), the RS must show that the following elements are met:
 - The spouses filed a joint return for the year at issue;
 - At the time the election for relief was made the spouses were legally separated or divorced or had not been members of the same household at any time during the previous 12 months; and
 - The election for relief was made after a deficiency was asserted but no later than two years after the Commissioner began collection activities.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- What Does it Mean to Not be a Member of the Same Household?
 - A husband and wife who reside in the same house are generally presumed to be members of the same household. Treas. Reg. § 1.6015-3(b)(3)(ii). However, legal separations may be recognized under State law that can overcome this presumption:

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- New York: A New York RS can obtain a *decree of divorce* or enter into a *legal separation by agreement of the parties*, which should each be regarded as sufficient to satisfy the legal separation or divorce requirements.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- New Jersey: A New Jersey RS can obtain a *judgment of divorce* or a *judgment of divorce from bed and board*, which should each be regarded as sufficient to satisfy the legal separation or divorce requirements.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- No Relief if RS Had Actual Knowledge of the Item Giving Rise to the Deficiency: Relief under I.R.C. § 6015(c) is not available if the **Commissioner can prove** that, at the time the return was signed, the RS had actual knowledge of any item giving rise to a deficiency which is not allocable to the RS. I.R.C. § 6015(c)(3)(C).

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Equitable relief under I.R.C. § 6015(f):
 - Standard of Review: The Court's statutory charge under I.R.C. § 6015(d) is to determine whether a taxpayer is entitled to equitable relief based upon all the surrounding facts and circumstances. Thus, the Tax Court reviews de novo whether a RS is entitled to equitable relief.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Guidelines Established and Generally Followed: The IRS has prescribed guidelines for determining whether an individual qualifies for equitable relief. The Tax Court generally considers these guidelines in the light of the surrounding facts and circumstances but is not bound by them.
- These guidelines are set forth in Rev. Proc. 2013-34, which modified and superseded Rev. Proc. 2003-61.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Overview of Guidelines and Approach:
 - Step 1: Determine if threshold conditions are met (relief cannot be granted if they are not).
 - Step 2: Determine if streamlined determination available. If not, proceed to Step 3.
 - Step 3: Balance equitable factors to determine whether equitable relief is available.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Threshold Factors Under Rev. Proc. 2013-34, § 4.01: To be eligible for relief under I.R.C. § 6015(f), the RS must satisfy each of the following threshold conditions:
 - The RS filed a joint return for the taxable year for which he or she seeks relief;
 - Relief is not available to the RS under I.R.C. § 6015(b) or (c);
 - The claim for relief is made on or before the date the period of limitations on collection of the income tax liability expires as provided in I.R.C. § 6502 (generally, ten years);

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Threshold Factors Under Rev. Proc. 2013-34, § 4.01: To be eligible for relief under I.R.C. § 6015(f), the RS must satisfy each of the following threshold conditions:
 - No assets were transferred between spouses as part of a fraudulent scheme by the spouses;
 - The NRS did not transfer disqualified assets to the RS (i.e., assets were not transfer to avoid tax or the payment of tax);
 - The RS did not knowingly participate in the filing of a fraudulent return; and
 - The income tax liability from which the RS seeks relief is attributable (either in full or in part) to an item of the NRS or an underpayment resulting from the NRS's income. Rev. Proc. 2013-34, § 4.01.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Streamlined Determination Under Rev. Proc. 2013-34, § 4.02:
 - Overview: Where a RS who filed a joint return or a RS who did not file a joint return in a community property state satisfies the threshold conditions, the IRS will consider whether a RS is entitled to a streamlined determination under Rev. Proc. 2013-34.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Elements for Streamlined Determination: The IRS will make a streamlined determination as to whether a RS is entitled to relief if the following elements are met:
 - The RS is no longer married to the NRS;
 - The RS would suffer economic hardship if relief were not granted; and
 - The RS did not know and did not have reason to know that there was an understatement or deficiency on the joint return or did not know or have reason to know that the NRS would not pay the underpayment of tax reported on the joint return. Rev. Proc. 2013-34, § 4.02.

STEP 2: DOES THE CLAIMING SPOUSE QUALIFY FOR RELIEF?

- Balance of Equitable Factors Under Rev. Proc. 2013-34, § 4.03:
- Overview: Where a RS meets the threshold conditions, but does not qualify for a streamlined determination, courts and the IRS balance various factors to determine if the equities favor a grant of equitable relief.

FACTORS FOR A STREAMLINED DETERMINATION

- Martial Status
- Economic Hardship
- Knowledge or reason to know
- Significant Benefit
- Legal Obligation
- Compliance with tax laws
- Mental or physical health

REPRESENTING THE INNOCENT SPOUSE IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST

- Sources of Law to Identify Conflicts of Interest Between Spouses:
- Lawyers: Rule 1.7 of the Model Rules of Professional Conduct, Conflict of Interest, provides as follows:
 - “[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or by a personal interest of the lawyer.”

REPRESENTING THE INNOCENT SPOUSE IDENTIFYING AND RESOLVING CONFLICTS OF INTEREST

- Sources of Law to Identify Conflicts of Interest Between Spouses:
 - Practitioners Generally: Circular 230 forbids a tax practitioner from representing a client before the IRS if the representation involves a conflict of interest. 31 C.F.R. §10.29(a). A conflict of interest exists if, among other situations, the representation of one client will be directly adverse to another. Id.

CONFLICTS OF INTEREST

- Strategies to Resolve Conflicts of Interest Between Spouses:
 - A practitioner may represent a client despite the conflict of interest if the practitioner obtains the ***informed consent*** of each affected client. Model R. Prof'l Conduct, 1.7(b); 31 C.F.R. § 10.29(b); Tax Ct. R. Prac. & Proc. R. 24(g).

BASIC RULES FOR INNOCENT SPOUSE

- I.R.C. § 6015
- Rev. Proc. 2013-34 for evaluating claims for equitable relief under I.R.C. § 6015 (f)
- Rev. Proc. 2013-34 superseded Rev. Proc. 2003-61.

ABUSE

- Separate factor in Rev. Proc. 2003-61
- Not a separate factor in Rev. Proc. 2013-34, but abuse can affect multiple factors
 - Knowledge
 - Significant benefit (neutral, even if lavish lifestyle)

AN ABUSE VICTIM

- An Abuse Victim
 - Women are Primarily RS's seeking relief under § 6015.
 - The National Coalition Against Domestic Violence (NCADV):
 - An average of 20 million people experience domestic violence every minute.
 - 1 in 4 women and 1 in 9 men experience domestic violence.
 - Domestic Violence is not just a low income family issue.

EFFECT OF ABUSE

- If
 - NRS abused RS or maintained control over the household finances by restricting the RS's access to financial information, and
 - Because of the abuse of financial control, the RS was not able to:
 - Challenge the treatment of any items on the joint return,
 - Question the payment of the taxes reported as due
 - Challenge the NRS's assurance regarding payment of the taxes, for fear of NRS's retaliation

EFFECT OF ABUSE, CONT.

- Then,
 - Knowledge factor weights in favor of relief even if the RS **knew or had reason to know** of the items giving rise to the deficiency.
 - Significant benefit factor will be neutral despite lavish lifestyle.

ABUSE: STIGMA & UNCERTAINTY SURROUNDING ABUSE ALLEGATIONS

- Judge Holmes expressed how the courts handle allegations of domestic abuse, stating that “this is not a terribly well developed corner of tax law, and it is not one in which we can really get much help by looking at detailed regulations or the ordinary canons of construction.” Nihiser v. Commissioner, T.C. Memo 2008-135.

MENTAL IMPACT OF SUSTAINED ABUSE

- The APA explains that psychological trauma is “an emotional response to a terrible event...” which interferes with an individual’s ability to function as he or she would under normal circumstances.
- Fear of retaliation often prevent victims from seeking assistance, as well as feelings of shame and embarrassment, furthering the victim’s isolation, which leads to heightened fear, anxiety, depression, anger, posttraumatic stress, social withdrawal, use of illicit drugs, alcohol dependence and suicide. GoodTherapy.org Staff. “The Psychological Wounds of Domestic Violence,” (2014).

ESTABLISHING ABUSE

- Rev. Proc. 2013-34:
 - Does not provide guidance to a RS on how a RS can establish his or her abuse allegations.
 - Relief will be granted if a RS can establish that he or she was a victim of abuse prior to the time the return was filed, and that, as result of the prior abuse, the RS was not able to challenge the treatment of any times on the return, or was not able to question the payment of any balance due reported on the return, for fear of retaliation.
- Documentary Evidence:
 - NCADV reports domestic violence is grossly under-reported; therefore, no documentary evidence exists to prove abuse in many instances.

ESTABLISHING ABUSE, CONT.

- Nondocumentary Evidence.
 - In most cases there is a lack of evidence documenting years of mental and physical abuse and, subsequently, the courts have failed to establish cohesive guidance on how non-documentary evidence is weighed in establishing abuse.
- Two Types of Testimony:
 - Lay Witness; and
 - Expert.

ESTABLISHING ABUSE: NONDOCUMENTARY EVIDENCE

- Lay Witness:
 - Witness testimony from the RS's friend who witnessed the verbal abuse, as well as testimony from a psychologist who treated the RS for depression did not establish abuse. Collier v. Commissioner, 83 T.C. Memo. 2002-144 (2002).
 - Conversely, the Court upheld a claim of abuse that was corroborated by the RS's children and family friends, even though no other evidence was presented. Thomassen v. Commissioner, 101 T.C.M. (CCH) 1397, 1409 (2011).
 - The RS's testimony corroborated with orders of protection against both the RS and NRS was enough to satisfy her claim of abuse. Hollimon v. Commissioner, T.C. Memo. 2015-157 (2015).

ESTABLISHING ABUSE: NONDOCUMENTARY EVIDENCE

- Expert Testimony:
 - Federal Rules of Evidence 702.
 - If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ESTABLISHING ABUSE: NONDOCUMENTARY EVIDENCE, CONT.

- The Courts recommended a set of criteria, the *Daubert Test* that a judge should refer to when determining whether expert testimony is admissible under FRE 702. Daubert v. Merrell Dow Pharms., 516 U.S. 869 (U.S. 1995).
 - Whether the expert's theory can be or has been tested;
 - Whether the theory has been subject to peer review and publication;
 - The known or potential rate of error of a technique or theory when applied;
 - The existence and maintenance of standards and controls; and
 - The degree to which the technique or theory has been generally accepted in the scientific community.

ESTABLISHING ABUSE: EXPERT TESTIMONY

- Expert Testimony Did Not Establish Abuse.
 - In *Collier v. Commissioner*, the Court found that the RS's psychiatrist testimony makes no reference to abuse and that the RS failed to carry her burden that in the years in question abuse was present. Collier v. Commissioner, T.C. Memo. 2012-144 (2002).

EXPERT TESTIMONY: ESTABLISHES MENTAL DISORDER

- The Court found expert testimony credible to prove petitioner's mental disorder even though the expert witness did not observe petitioner's symptoms while they were occurring. The Court found that even if the expert witness had assessed petitioner's condition at the time he was experiencing symptoms, most or all of his symptoms would have been self-reported. Trimmer v. Commissioner, 148 T.C. No. 14 (2017).

ESTABLISHING ABUSE: EXPERT TESTIMONY

- The **Daubert Test**, a set of criteria that a judge should refer to when determining whether expert testimony is admissible under FRE 702. Daubert v. Merrell Dow Pharms., 516 U.S. 869 (U.S. 1995).
 - Whether the expert's theory can be or has been tested;
 - Whether the theory has been subject to peer review and publication;
 - The known or potential rate of error of a technique or theory when applied;
 - The existence and maintenance of standards and controls; and
 - The degree to which the technique or theory has been generally accepted in the scientific community.

ESTABLISHING ABUSE: EXPERT TESTIMONY

- **Tax Court Rule 143. Governs the admittance of expert testimony.**
 - An expert witness must prepare a written report for the Court and the opposing party.
 - The report must state the witness's qualifications, opinion, facts or data on which the opinion is based and a detail reasons for the conclusion.
 - The report will be marked as an exhibit and received in evidence as direct testimony of the witness unless the court deems the witness is not qualified.
 - Additional direct testimony with respect to the report may be allowed at the discretion of the Court.
 - Each party who calls an expert witness must submit a copy of the report to the Court and serve on the opposing party no later than 30 days before the call of the trial calendar.

ESTABLISHING ABUSE

- Documentary Evidence:
 - NCADV reports domestic violence is grossly under-reported; therefore, no documentary evidence exists to prove abuse in many instances.
- The tax court found that not every instance of documentary evidence establishes abuse, in *Agudelo v. Commissioner*, that Tax Court found that two alleged incidents, 14 years apart, do not establish a pattern, and that the 1997 arrest, while “prior to” the date on which the return was filed in 2012, is too remote from the filing date to infer an abusive relationship. *Agudelo v. Commissioner*, T.C. Memo 2015-124 * 23 (2015).

ESTABLISHING ABUSE: EXPERT TESTIMONY

- How does an expert determine a taxpayer is an abuse victim?
 - The expert will review the taxpayer’s medical records;
 - Through the expert’s professional relationship with the taxpayer; and
 - Speaking with the taxpayer’s family and friends.

AN ABUSE VICTIM

- Women are Primarily Requesting Spouses Seeking Relief under I.R.C. 6015. Studies have shown that women make up the majority of requesting spouses seeking innocent spouse relief. In addition, the majority of requesting spouses alleging abuse are women. Stephanie Hunter McMahon, “An Empirical Study of Innocent Spouse Relief: Do Courts Implement Congress’s Legislative Intent”, 12 FLA TAX REV. 662 (2012).

PATTERN OF ABUSE

- The American Psychological Association's ("APA") Presidential Task Force on Violence and the Family define domestic violence as pattern of abusive behaviors including a wide range of physical, sexual, and psychological maltreatment used by one person in an intimate relationship against another to gain power unfairly or maintain that person's misuse of power, control. Rakovec-Felser, Zlatka. [Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective](#). (Oct. 22 2014).

PATTERN OF ABUSE

- Abuse is rarely constant but alternates between four stages:
 - Period of tension building (tension starts and steadily builds, abuser gets angry, communication breaks down, victim feels the need to concede to the abuser, tension becomes too much, victim feels uneasy)
 - Acting out period (any abuse occurs)
 - The honeymoon period (abuser apologizes for abuse, some beg forgiveness or show sorrows, abuser may promise it will never happen again, blames victim for provoking the abuse or denies the abuse occurred, minimizing);
 - The calm period (abuse stops, abuser acts like the abuse never happened, promises made during honeymoon stage may be met, abuser may give gifts to victim, victim believes or wants to believe that the abuse is over or that the abuser will change).
 - Rakovec-Felser, Zlatka. [Domestic Violence and Abuse in Intimate Relationship from Public Health Perspective](#). (Oct. 22 2014).

LITIGATING INNOCENT SPOUSE CASES

- Witnesses to testify on behalf of the RS to the alleged abuse:
 - RS's Children
 - Family/Friends; and
 - Medical Professional.
- Cross-Examination of Intervener:
 - A NRS has the right to intervene in Innocent Spouse Cases. If an Intervener is subpoenaed to testify in court, then RS's attorney has the right to cross-examine the Intervener spouse under oath.

LITIGATING INNOCENT SPOUSE CASES IN TAX COURT AND BEYOND

- Standalone Innocent Spouse Cases
 - A RS may separately petition the Tax Court for relief from joint and several liability on a joint return following the Commissioner's denial of a claim.
- Deficiency Cases
 - Court may consider innocent spouse as an affirmative defense in a deficiency proceeding.
- Collection Cases
 - A RS may request relief from joint and several liability on a joint return in connection with a lien or levy action.

THE ROLE OF ABUSE IN OTHER TAX CASES

Taxpayers who are victims of domestic abuse are often victims of financial abuse.

- Identity Theft:
 - Identity theft is a form of abuse in a marriage.
 - In *Roberts v. Commissioner*, 141 T.C. 569 (2013), petitioner's wife forged his signature on financial documents requesting an early withdrawal of his IRA.
 - In *Roberts*, the Tax Court held that petitioner did not receive an economic benefit when his wife forged his signature and received an early distribution from his IRA, therefore, petitioner did not have to include the withdrawals in his taxable income.

THE ROLE OF ABUSE IN OTHER TAX CASES, CONT.

Taxpayers who are victims of domestic abuse are often victims of financial abuse.

- Conduit:
 - Wife is a dual citizen. Husband puts financial accounts in his wife's name using her Mexican passport, so the bank has no reporting obligations under FACTA.
- Husband:
 - Source of Funds; and
 - Manages account.

BEFORE PREPARING THE FORM 8857

- Know your RS and NRS
- Request IRS Account and Wage & Income Transcripts
- Conduct asset searches
- Request credit reports
- Conduct adverse judgment searches
- Conduct Google search
- Freedom of Information Act (FOIA) Request

8857 Request for Innocent Spouse Relief

OMB No. 1545-1096

Important Things you should know

- Do not file this form with your tax return. See **Where to file** in the instructions.
- Review and follow the instructions to complete this form. Instructions can be obtained at www.irs.gov/form8857 or by calling 1-800-829-3070.
- While your request is being considered, the IRS generally cannot collect any tax from you for the years you request relief. However, filing this form extends the amount of time the IRS has to collect the tax you owe, if any, for those years.
- The IRS is required by law to notify the person on line 3 that you received this relief. That person will have the opportunity to participate in the process by completing a questionnaire about the tax years you enter on line 3. This will be done before the IRS issues credits and final administrative letters.
- The IRS will not disclose the following information: your current name, address, phone numbers, or employer.

Part I Should you file this form?

Generally, both you and your spouse are responsible, jointly and individually, for paying any tax, interest, or penalties from your joint return. If you believe your current or former spouse should be solely responsible for an erroneous item or an underpayment of tax from your joint tax return, you may be eligible for innocent spouse relief.

Innocent spouse relief may also be available if you were a resident of a community property state (a list of community property states is in the instructions) and did not file a joint federal income tax return and you believe you should not be held responsible for the tax attributable to an item of community income.

1 Do either of the paragraphs above describe your situation?

Yes. You should file this Form 8857. Go to question 2.

No. Do not file this Form 8857, but go to question 3 to see if you need to file a different form.

2 Did the IRS take your share of a joint refund from any tax year to pay any of the following past-due debts? (owed ONLY by your spouse) • Child support • Spousal support • Student loan for other federal number 0040 • Federal or state fines

Yes. You may be able to get back your share of the refund. See Form 8379, Injured Spouse Allocation, and the instructions to that form. Go to question 3 if you answered "Yes" to question 1.

No. Go to question 3 if you answered "Yes" to question 1. If you answered "No" to question 1, do not file this form.

3 If you determine you should file this form, enter each tax year you want innocent spouse relief. It is important to enter the correct year. For example, if the IRS used your 2011 income tax refund to pay a 2009 joint tax liability, enter tax year 2009, not tax year 2011.

Tax Year	2011	Tax Year		Tax Year	
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Part II Tell us about yourself and your spouse for the tax years you want relief

4 Your current name (see instructions)
 Name: Janet Brudner
Address where you wish to be contacted. If it is a change of address, see instructions.
 Number and street or P.O. box: _____ Apt. no. _____ County _____
 City, town or post office, state, and ZIP code. If a foreign address, see instructions. _____
 (S) (C) (M) (F) (A) (E) (O) (N) (Y) _____
 Telephone number (between 6 a.m. and 5 p.m. Eastern Time) _____
 Hatchedman, IA 50555 _____ 221-213-4455

5 Who was your spouse for the tax years you want relief? File a separate Form 8857 for tax years involving different spouses or former spouses.

1st Spouse:
 Last person's current name: _____ Social security number (if known) _____
 Joint address (number and street) (if known). If a P.O. box, see instructions. _____ Apt. no. _____
 28025 Treble Way _____
 City, town or post office, state, and ZIP code. If a foreign address, see instructions. _____ Daytime phone number (between 6 a.m. and 5 p.m. Eastern Time) _____
 Crossland, WV 27777 _____ 271-444-5655

For Privacy Act and Paperwork Reduction Act Notice, see instructions. OMB No. 1545-1096 Form **8857** Rev. 1-2014

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6 What is the current marital status between you and the person on line 5?

Married and still living together

Married and living apart since MM/CC/YYYY Attach a photocopy of the death certificate and will (if one exists).

Widowed since MM/CC/YYYY

Legally separated since MM/CC/YYYY Attach a photocopy of your antenuptial agreement.

Divorced since CC-15-2013 Attach a photocopy of your antenuptial agreement.

Divorced since MM/CC/YYYY

7 What was the highest level of education you had completed when the returns were filed? If the answers are not the same for all tax years, end here.

Did not complete high school

High school diploma or equivalent

Some college

College degree or higher. List any degrees you have: _____
 List any college-level business or law-related courses you completed: _____

8 Were you or other members of your family a victim of spousal abuse or domestic violence, or suffering the effects of such abuse during any of the tax years you want relief or when any of the returns were filed for those years?

Yes. If you are the victim, include the information needed to determine, complete Part VI of this form, and include the other parts of the form. First read the instructions for Part VI to understand how the IRS will proceed with evaluating your claim for relief in these circumstances.

If you checked "Yes" above, we will put a note on your separate account. This will enable us to respond appropriately and be sensitive to your situation. We will remove the note from your account if you request it (as explained in the instructions).
 Please do not start us to put a note on your account. Check here: _____

No. Complete the area provided for answers on line 9, explain below.

9 Where any of the returns listed on line 3 were filed, did you have a mental or physical health problem or do you have a mental or physical health problem now? If the answer is "Yes," explain below.

Yes. Attach a statement to explain the problem and when it started. Provide photocopies of any documentation, such as medical bills or a doctor's report or letter: _____

No.

10 Is there any information you are afraid to provide on this form, but are willing to discuss?

Yes No

Part III Tell us if and how you were involved with finances and preparing returns for those tax years

11 Did you agree to file a joint return? Yes No

Explain why or why not: _____

12 Did you sign the joint return? See instructions. Yes No

Explain why or why not: _____

Form 8857 (Rev. 1-2014)

Form 8867 (Rev. 1/2016) Page 5

Note: If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part IV Tell us if and how you were involved with finances and preparing returns for those tax years (Continued)

13 What was your involvement with preparing the returns? Check all that apply and explain, if necessary. If the answers are not the same for all tax years, explain.

- You were not involved in preparing the returns.
- You filed and/or prepared the returns.
- You gathered receipts and canceled checks.
- You gave tax documents such as Forms W-2, 1099, etc., for the preparation of the returns.
- You prepared the returns before they were filed.
- You did not prepare the returns before they were filed. Explain below why you did not prepare the returns.
- You did not know a paid return was filed.
- Other: _____

Explain how you were involved: _____

14 When the returns were filed, what did you know about any incorrect or missing information? Check all that apply and explain, if necessary. If the answers are not the same for all the years, explain below.

- You were somewhat sure income or missing information was not correct, but you had no way to verify it below.
- You were somewhat sure income or missing information was correct and asked about it. Explain below.
- You were not sure anything was incorrect or missing.
- Not applicable. There was no incorrect or missing information.

Explain: I did not know about the \$5,000 award. My ex-husband was very cooperative about the way he conducted his financial affairs.

15 When any of the returns were filed, what did you know about the income of the person on line 5? Check all that apply and explain, if necessary. If the answers are not the same for all tax years, explain.

- You knew that the person on line 5 had income.
- You knew that the person on line 5 had no income.
- You did not know whether the person on line 5 had income.
- You did not know whether the person on line 5 had income. Explain why you did not know whether the person on line 5 had income: _____

16 When the returns were filed, did you know if the returns showed a balance due to the IRS for those tax years? If the answers are not the same for all tax years, explain.

- Yes. Explain when and how you brought the amount of tax reported on the return would be paid: _____
- No. Explain why you did not know the return showed a balance due: _____
- Not applicable. There was no balance due on the return.

17 When any of the returns were filed, were you having financial problems (for example, bankruptcy or bills you could not pay)? If the answers are not the same for all tax years, explain.

- Yes. Explain: _____
- No.
- Did not know. Explain: _____

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Form 8867 (Rev. 1/2016) Page 5

Note: If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part V Tell us about your current financial situation (Continued)

18 How many people are currently in your household, including yourself? Adult 3 Children 1

19 Tell us your current average monthly income and expenses for your entire household.

Monthly Income - Enter all income, including tax-exempt income, such as Social Security, IRA, etc. List each type below.

Type	Amount
Wages (before tax)	\$2,000
Pensions	
Investment	
Social Security	
Government assistance, such as housing, food stamps, grants	
Alimony	750
Child support	
Self-employment business income	
Rental income	
Interest and dividends	
Other income, such as charity payments, quarterly earnings, etc. List each type below:	
Type	
Type	
Total Monthly Income	2,750

Monthly Expenses - Enter all expenses, including expenses paid with income from gifts.

Type	Amount
Food and Personal Care	
Food	500
Housekeeping supplies	
Cleaning and other services	200
Personal care products and services	
Transportation	
Auto lease/lease payment, gas, insurance, license, parking, maintenance, etc.	254
Public transportation	
Housing and Utilities	
Rent or mortgage	600
Rent, other taxes and insurance	
Electric, oil, gas, water, trash, etc.	100
Telephone and cell phone	40
Cable and internet	
Medical	
Health insurance premiums	200
Out-of-pocket expenses	
Other	
Child and dependent care	450
Charitable expenses	
Income tax withholding (federal, state, and local)	250
Employer tax payments	
Term life insurance premiums	10
Retirement contributions (employer required)	
Retirement contributions (voluntary)	
Union dues	
Unpaid state and local taxes (minimum payment)	
Student loan interest payments	
Court-ordered debt payments (for example, court- or agency-ordered child support, alimony and garnishments). List each type below:	
Type	
Type	
Miscellaneous	
Total Monthly Expenses	2,607

Form 8867 (Rev. 1/2016)

Note: If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part V Complete this part if you were (or are now) a victim of domestic violence or spousal abuse

As stated in line 8, providing this additional information is not mandatory but may strengthen your request. Additionally, if you prefer to provide this information orally, check the "Yes" box on line 10.

If you were (or are now) a victim of domestic violence or spousal abuse by the person on line 5, the IRS will consider the information you provide in this part to determine whether to grant innocent spouse relief. However, the IRS is required by law to notify the person on line 5 that you requested this relief. There are no exceptions to this rule. That person will have the opportunity to participate in the process by completing a questionnaire about the tax years you entered on line 3. This will be done before the IRS issues preliminary and final determination letters. However, the IRS is also required by law to keep all the personal identifying information (such as current names, addresses, and employment-related information) of both you and the person on line 5 confidential. This means that the IRS cannot disclose one person's information to the other person. If the IRS does not grant you relief and you choose to petition the Tax Court, your personal identifying information is available, unless you ask the Tax Court to withhold it.

The person on line 5 will receive a questionnaire about the tax years you entered on line 3. Except for your current name, address, phone numbers, and employer, this form and any attachments could be disclosed to the person on line 5. If you have any privacy concerns, see instructions.

The IRS understands and is sensitive to the effects of domestic violence and spousal abuse, and encourages victims of domestic violence to call 911 if they are in immediate danger. If you have concerns about your safety, please consider contacting the 24-Hour (Confidential) National Domestic Violence Hotline at 1-800-799-SAFE (7233), or 1-800-787-3224 (TTY), or 1-855-812-1001 (Video Phone Only for Deaf Callers) before you file this form. A representative from the IRS may call you to gather more information and discuss your request. Be sure you enter your correct contact information on line 4.

24a During any of the tax years for which you are seeking relief or when any of the returns were filed for those years, did the person on line 5 do any of the following? Check all that apply. (Note: If this does not apply to you, skip lines 24a, b, and c, and complete lines 25 through 29.)

- Physically harm or threaten you, your children, or other members of your family.
- Sexually abuse you, your children, or other members of your family.
- Make you afraid to disagree with him/her.
- Criticize or insult you or frequently put you down.
- Withhold money for food, clothing, or other basic needs.
- Make most or all the decisions for you, including financial decisions.
- Restrict or control who you could see or talk to or where you could go.
- Isolate you or keep you from contacting your family members and/or friends.
- Cause you to fear for your safety in any other way.
- Stalk you, your children, or other members of your family.
- Abuse alcohol or drugs.

b Describe the abuse you experienced, including approximately when it began and how it may have affected you, your children, or other members of your family. Explain how this abuse affected your ability to question the reporting of items on your tax return or the payment of the tax due on your return.

FORM 8857

- The Attachment to Form 8857 is crucial for the finding of a hardship.
- This attachment is where you tell your client's story and plead the facts and circumstances of the taxpayer's situation and explain why they should be granted innocent spouse relief.
- This is why Part V of 8857 is so important.

MORE FORMS

- Innocent Spouse Statement completed by third parties who have knowledge or information supporting the request for innocent spouse relief (IRS Form 12507).
- Questionnaire for NRS (IRS Form 12508)

RIGHTS OF NON-REQUESTING SPOUSE

- File a protest to the IRS's preliminary determination to grant full or partial relief to the RS.
- The IRS must hold an Appeals conference with the NRS after timely filing of the protest.
- After the conference, the Appeals office will issue its final determination. Both spouses will be notified of the final decision.
- NRS has the right to intervene in the Tax Court proceeding.

IRS NOTICES AND HOW TO RESPOND

- Preliminary determination
 - 30 days to file a protest and request an Appeals hearing.
- Final Determination
 - 90 days to prepare US Tax Court petition.

APPEALING TO THE US TAX COURT

- Standalone
 - Pursuant to I.R.C. § 6015(e), the RS may petition the Tax Court to review a denial of relief under I.R.C. § 6015 within 90 days after the date notice of the Service's final determination (e.g., "Notice of Determination") is mailed by certified or registered mail (90-day period).
 - If the IRS does not mail the RS a final determination letter within 6 months of the date the RS files an election under I.R.C. § 6015, the RS may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period.

FILING A PETITION IN TAX COURT, CONT.

- Notice of Deficiency
 - Taxpayer may petition the Tax Court in response to a Notice of Deficiency and raise innocent spouse as a defense to the additional tax.

FILING A PETITION IN TAX COURT, CONT.

- Notice of Determination
- Taxpayer may petition the Tax Court in response to the Notice of Determination (30-day period) and raise innocent spouse as a defense to the tax.

FILING A PETITION IN TAX COURT, CONT.

- An action for relief from joint and several liability is commenced by filing a petition with the Tax Court. See Tax Ct. R. Prac. & Proc. R. 321; see also I.R.C. § 6015(e)(1)(A).
- Title: A petition initiating a determination of relief from joint and several liability shall be entitled, "Petition for Determination of Relief From Joint and Several Liability on a Joint Return." Tax Ct. R. Prac. & Proc. R. 321(b).

JURISDICTION

- The Tax Court has jurisdiction to hear standalone innocent spouse cases. I.R.C. § 6015(e)(1)(A)
- I.R.C. § 6015(e) also defines the substantive rights of the RS and NRS in a standalone innocent spouse case.
- The Tax Court also has jurisdiction to determine whether relief from joint and several liability applies in connection with a deficiency case. Van Arsdalen v. Commissioner, 123 T.C. 135, 138 (2004).

CONTENTS OF PETITION

- The petitioner's name, State of legal residence, and mailing address;
- A statement of the facts upon which the petitioner relies to support the Court's jurisdiction;
- A statement of the facts upon which the petitioner relies in support of the relief requested;
- A prayer setting forth the relief sought by the petitioner;
- The name and mailing address of the other individual filing the joint return (if available);
- The signature, mailing address, and telephone number of the petitioner or the petitioner's counsel, as well as the counsel's Tax Court bar number; and
- A copy of the notice of determination, or if not issues, a copy of the election for relief the petitioner filed with the IRS.
- To the extent the RS intends to argue that there was *no valid joint return*, he or she must affirmatively plead that argument in the petition.

FILING FEE

- The fee for filing a petition for determination of relief from joint and several liability on a joint return is \$60, payable at the time of filing, unless the taxpayer qualified to have said fee waived.

Tax Ct. R. Prac. & Proc. R. 321(d); see also Tax Ct. R. Prac. & Proc. R. 20(d) (with respect to waiver of the fee).

REQUEST FOR PLACE OF TRIAL

- At the time of filing a petition for determination of relief from joint and several liability on a joint return, the petitioner shall file a request for place of trial.

See Tax Ct. R. Prac. & Proc. R. 322; see also Tax Ct. R. Prac. & Proc. R. 140 (with respect to requirements for designating a place of trial)

DEFICIENCY CASES

- Must be Plead in Petition: Taxpayers must clearly and concisely plead the claims they rely upon to support their case. Tax Ct. R. Prac. & Proc. R. 34(b)(4). This requirements generally means that request for relief from joint and several liability must be pleaded, if at all, in the petition.
- A claim for relief from joint and several liability must be pleaded in the petition or else it will be *waived*. Tax Ct. R. Prac. & Proc. R. 34(b)(4). It is a best practice to specify that all subsections apply because of the prospects for divorce during the proceeding.

ANSWER TO PETITION AND REPLY

- The Commissioner shall file an answer or move with respect to the petition in accordance with Tax Ct. R. Prac. & Proc. R. 36. Tax Ct. R. Prac. & Proc. R. 323(a).
- A reply may be required.
Tax Ct. R. Prac. & Proc. R. 323(b); see also Tax Ct. R. Prac. & Proc. R. 37 (for provisions with respect to the filing of a reply).

ABILITY TO AMEND PLEADINGS

- Failure to please innocent spouse in the petition does *not* preclude litigation of the issue because pleadings may be amended if it becomes apparent later on that the petition should have raised innocent spouse as an affirmative defense.
 - A party may amend a pleading to raise an innocent spouse issue once as a matter of course at any time before a response pleading has been served, or (if a case has not yet been calendared for trial) within 30 days after it is served. Tax Ct. R. Prac. & Proc. R. 41(a).
 - A party may otherwise amend a pleading only by leave of Court (filing a motion to amend with the Tax Court) or by written consent of the adverse party. Tax Ct. R. Prac. & Proc. R. 41(a).

BURDEN OF PROOF

- RS bears the burden of proving his/her entitlement to the requested relief. T.C. Rule 142(a).

INNOCENT SPOUSE V. INJURED SPOUSE

- Innocent spouse relief is largely limited to taxpayers who are no longer married.
- Injured spouse relief applies to taxpayers who are married.
 - You are an injured spouse if your share of your tax refund as shown on your joint return was, or is expected to be, applied against your spouse's past-due federal debts. This typically happens when, after a joint return is filed, the tax ID number of the person responsible for the tax liability triggers an offset of the entire refund.

TAXPAYER'S FIRST ACT OF 2019

- TFA changes to Innocent Spouse Relief
 - §6015(e) is amended to provide that any determination under §6015 will be reviewed de novo by the Tax Court.
 - §6015(f) is amended to add a limitation that a request for equitable relief may be made only for the portion of any tax liability that has not been paid, as long as the request is made before the expiration of the applicable §6502 limitation period, or that has been paid, as long as the request is made during the period in which the individual could submit a timely claim or refund or credit.

INJURED SPOUSE

- IRC §6402
- File Form 8379 when you become aware that all or part of your share of an overpayment was, or is expected to be, applied against your spouse's legally enforceable past due obligations.
- Must file Form 8379 within 3 years from the due date of the original return.

QUESTIONS

Break!



Criminal Tax Case Selection

How IRS-CI and DOJ Select Which Cases to Investigate & Prosecute

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Speakers

- Eric L. Green, Esq.
- Lisa E. Perkins, Esq.
- Caroline D. Ciruolo, Esq.
- Don Fort, IRS Criminal Investigation
- Jorge Almonte, US Dept. of Justice-Tax Division

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Agenda

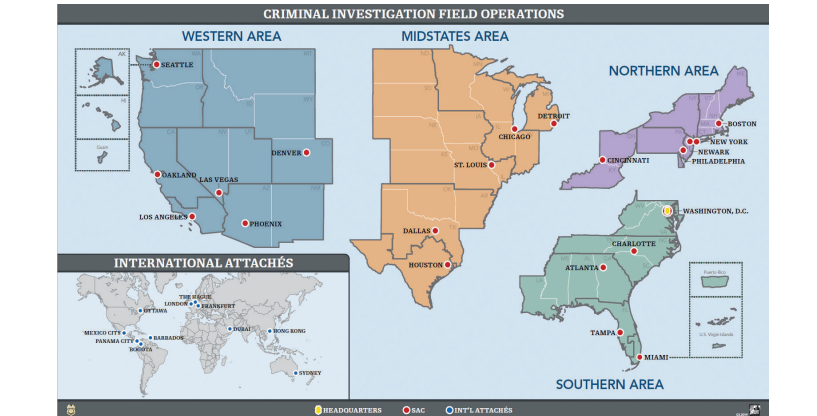
- The various types of cases
- IRS CI Case selection process
- IRS CI role in Investigating cases
- DOJ Tax Division's role
- The referral process from IRS to DOJ
- What happens once the referral is made from IRS to DOJ?

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IRS-CI Selection of Cases

- Geography: Commissioner's desire to be in every neighborhood



IRS-CI Selection of Cases

- Dollars at issue and guidelines
- Public Policy (public figures and government employees)
- Priority of the type of case (employment tax, international tax, abusive tax schemes)
- Other bad behavior – mortgage fraud, illegal sources of income, etc.
- Societal Impact/Deterrence – collateral impact when the community hears
- DOJ Priorities/Violation of other laws – US v. Nehmad, US v. Pasquantino (wire fraud in evading other country's VAT)

Types of Cases

- Administrative
- Grand Jury



IRS-CI's Role in Investigating

- Only agency that can investigate Title 26 Crimes
- CI's areas of focus include:
 - International Tax Fraud
 - QRP, RPP and ID theft
 - Employment Tax
 - Frivolous Arguments Program
 - Money Laundering/BSA
 - OCDEF
 - Fraud Referral Program
 - Abusive Tax Schemes
 - Political/Public Corruption
 - Non-filers
 - Cyber Crimes and Virtual Currency

1920's – 1940's The World's Most Notorious Criminals Are Brought To Justice



70s, 80s, and 90s

John "Teflon Don" Gotti



Studio 54



And
Various
Drug Lords



Into The 21st Century CI Helps Combat Foreign Threats



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And Domestic Threats

The "Queen of IRS Fraud"*



Identity Theft Creates Massive Tax Fraud Cases

- Rashia Wilson (pictured left)
- Poster child for ID theft and refund fraud – Operation Rain Maker
- Plead Guilty to stealing \$3 million from Government
- IRS joins forces with local law enforcement as many violent criminals turned to refund fraud as a new stream of illegal income

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Financial Institutions Investigated



\$780M

\$2.6B
CREDIT SUISSE



\$8.9B



Just to name a few...

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IRS CI – The Unsung Heroes of Federal Law Enforcement

World Futbol Organization
Rocked By
Corruption Scandal

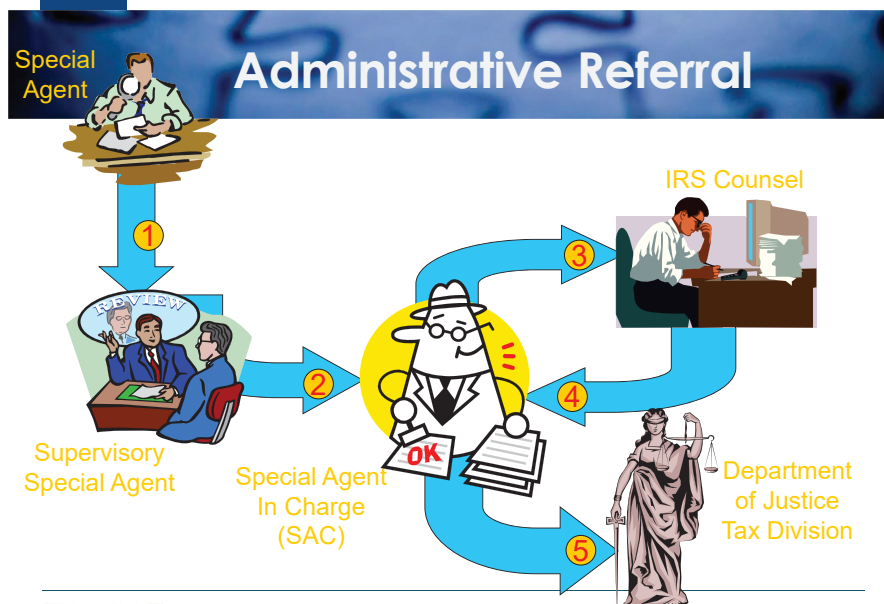


★ "Real Housewives"
Stars Convicted of
Tax Fraud and
Bankruptcy Fraud



GREEN & SKLARZ LLC IRS CI Plays A Critical Role In Significant Cases Everyday

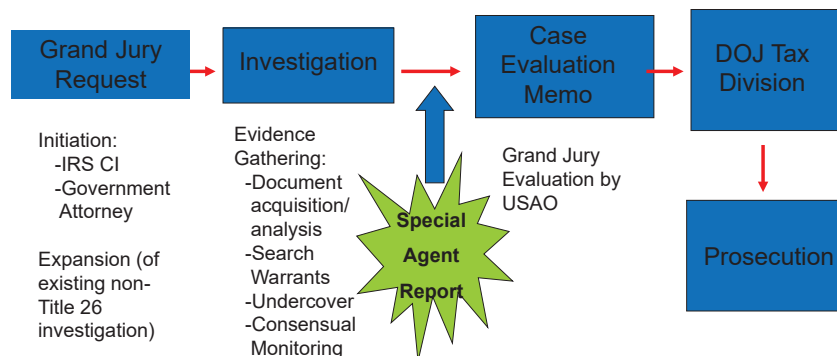
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Grand Jury Referral



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Department of Justice's Role

- To achieve uniform, broad, and balanced criminal tax enforcement, the Attorney General has authorized the Tax Division to oversee all federal criminal tax enforcement and to authorize or decline investigations and prosecutions in tax matters. See Justice Manual (formerly USAM) Title 6-4
- The Tax Division must first approve and authorize the United States Attorneys' use of a grand jury to investigate criminal tax violations.
- Limited delegation to USAO to open certain tax-related grand jury investigations and arrest and charge by Complaint a person engaged in Stolen Identify Refund (SIRF) crimes.
- Subsequent indictment or plea agreement subject to approval by the Tax Division

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At DOJ-Tax Division

- Case assigned to Trial Attorney who prepares prosecution memorandum, which is reviewed by two supervisors. If there is a disagreement, the Deputy AAG for Criminal Tax may participate in the authorization process.
- Conferences in Washington, DC for the target to present through his attorney(s) explanations or evidence to consider in reaching a decision regarding prosecution. Target given limited information, namely the IRS's proposed charges, the method of proof, and the income and tax computations. No vicarious admissions by lawyers. If taxpayer or witness attends, no restrictions on use of any statements. If grand jury investigation, AUSA may attend the conference. See Tax Division Directive 86-58.
- Standard of Review encompasses the Department's Principles of Federal Prosecution (whether the person's conduct constitutes a federal offense and there is admissible evidence to obtain and sustain a conviction) and other uniformity factors. See JM 9-27.000
- Tax Division approval required before bringing mail, wire, or bank fraud charges, either alone or as the predicate to RICO or money laundering charges, if the conduct arises under the internal revenue laws.

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Referral from CI to DOJ

- Case is referred
- DOJ Review
- Conference
- Approval
- US Attorney Role?



Criminal Investigation

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

January 13, 2017

Client Name
Client Address
City, State Zip

Dear Mr. CLIENT:

A report recommending you be prosecuted for filing a false tax return and preparing false tax returns for the years 2011 through 2012 and in violation of Title 18, United States Code, Sections 286 and 287, was forwarded to Department of Justice, Tax Division on this date.

Department of Justice, Tax Division will review this matter and make the final determination as to the disposition of this prosecution recommendation.

Any further inquiry concerning your investigation should be made to:

The Honorable Caroline D. Ciralo
Assistant Attorney General for the Tax Division
United States Department of Justice

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Department of Justice's Role

- Approval of Grand Jury
- Approval of Prosecution
- DOJ Tax may assist USAO or lead tax investigation



U.S. Department of Justice

Tax Division

*Northern Criminal Enforcement Section
P.O. Box 972
Washington, D.C. 20044
202-514-5150 (v)
202-616-1786 (f)*

February 13, 2017

VIA HAND DELIVERY
TAX PREPARER
Street
CITY, STATE ZIP

Dear Mr. Preparer:

We write to inform you that you are the target of a grand jury investigation in the Eastern District of New York. The Department of Justice possesses evidence that you may have committed numerous violations the tax laws including but not limited to corruptly endeavoring to obstruct or impede the due administration of the Internal Revenue Code, in violation of 26 U.S.C. § 7212(a); aiding and assisting in the preparation of fraudulent tax returns, in violation of 26 U.S.C. § 7206(2); and aggravated identity theft, in violation of 18 U.S.C. § 1028A.

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Final Thoughts

- Many reasons IRS may investigate and DOJ support the prosecution of a case
- Fact driven analysis
- No specific dollar cut off

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Questions?



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Rise of the Machines

The Impact of Automation and Artificial Intelligence on the Future of the Tax Practice

Presented by:

Eric L. Green, Esq.
Brent Robertson
Peter Scavuzzo, CIO
Christopher Loiacono, CPA
Michael C. Pelletier



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Speakers

Michael C. Pelletier
BlumShapiro

As the firm's Chief Innovation Officer, Michael helps drive excellence and ingenuity in an ever-changing world. Michael is also the partner in charge of blum's technology advisory group, where he consults with a range of businesses and industries on issues related to technology strategy and direction, enterprise and solution architecture, cloud computing and digital transformation.

Peter Scavuzzo, CIO
Marcum, LLP

Peter Scavuzzo is a partner and Chief Information & Digital Officer of Marcum LLP. Mr. Scavuzzo is responsible for creating and executing the strategic technology roadmap across all Marcum Group companies. His current strategic charter focuses on five major points: Innovation, Digital Transformation, Customer Experience, Data Analytics/Insights, and Risk Aversion.

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Speakers

Christopher Loiacono, CPA
Eisner Amper

Christopher Loiacono is the Managing Partner of Services, responsible for the growth and quality of the firm's service offerings. He is also a Tax Partner and a leader in the Tax Services Group. Chris is experienced in working with publicly and privately held clients, including family groups and high net-worth individuals.

Brent Robertson
Fathom

Brent has been working one on one with leaders since Fathom's inception – guiding them closer to what matters to them, helping them see the potential their organizations possess, and focusing their energy in ways that will make the biggest difference. He guides organizations through clarification of goals and intentions, the design of new organizational futures, and the strategies that will realize them.

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Agenda

- The Current Landscape and Where We Are Now
- What Automation and AI will Do To Change the Practice
- The Impact on Practitioners
- The Impact on Recruiting
- The Impact on Partners
- The Culture Shift and Where We Are Headed

The Current Landscape

- Automation is here:
 1. BotKeeper: Better than humans, better than machines. Automated bookkeeping with a human touch.
 2. Intuit is taking and automating bookkeeping, offering on-demand bookkeeping services bundled with its QuickBooks online accounting software for an extra \$200 per month
 3. Receipt Bank, VeriFy, etc...

1040s are Dead

- Increased standard deduction
- Free online filing
- Decreasing Average fees
- National Prep Chain closes 400 locations



Audit Review and Testing

- Machine Learning
 - Ingest the full GL detail as well as sub ledgers, look at every transaction and determine bucket them as high, medium and low risk transactions
- Robotic Process Automation (RPA)
 - Removal of repetitive tasks to focus on value added work
- Drones
 - Inventory assessment
- Natural Language Processing
 - Parsing contracts, lease agreements, and other documents to pull out relevant content

What is the Impact to the Practice?

- Accounting
- Audit
- Tax



The Impact on Practitioners?

- Solos and Small Firms
 - a. Risks
 - b. Opportunities
- Large Firms
 - a. Risks
 - b. Opportunities



Impact on Recruiting

- Students
- Lateral Hires
- Majors/Skills now in demand....

Impact on Partners

- Impact on existing practices
- Transition of the practices and clients
- Culture shock

Firm Culture and the Culture Shift

- The shifting landscape
- Helping firms adjust
- Helping people adjust

Where are we headed?

- Next year?
- Next 5 years?
- Next 10 years?

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Questions?



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Final Instructions

- u CPE Certificates are/were handed out
- u For the online audience, look for a link to do your evaluation and get your certificate
- u We will email you a survey for next year's conference
- u Sign up now and grab the discounted rate

Upcoming Conferences

- u 4th Annual Criminal Tax day – May 15, 2020
 - ~ Quinnipiac Law School, North Haven
- u 2nd Annual High Net Worth Conference – June 26, 2020
 - ~ Sacred Heart University, West Campus
- u 7th Annual New England IRS Representation Conference – November 19th & 20th, 2020
 - ~ Quinnipiac Law School, North Haven
 - ~ Mohegan Sun Resort & Casino, Uncasville, CT

The Agostino Giveaway



Nespresso
Creatista Plus
by Breville

Cocktail Hour – Sponsored by



Connecticut Society of Enrolled Agents



J&J
Financial Associates LLC

