

The Role of Hardship in IRS Collection Cases

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Panelists:

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Panel



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Agenda

- Overview of Collection
- What is “uncollectible status”?
- The definition of hardship
- Strategies for the practitioner

IRS Collection Process

Assessment of the tax

10-Year Collection Statute

Billing Notices

Threat to levy and right to a hearing

Appeals (CDP, Equivalent, CAP)

Resolution

Billing Notice



Department of Treasury
Internal Revenue Service

[Redacted]



[Redacted]

Notice	CP501
Tax year	2006
Notice date	February 16, 2009
Social Security number	[Redacted]
To contact us	Phone [Redacted]
Call center number	[Redacted]

Page 1 of 4

You have unpaid taxes for 2006

Amount due: \$9,533.53

Our records show you have unpaid taxes for the tax year ending on December 31, 2006 (Form 1040).

Billing summary

Amount you owed	\$9,444.07
Failure-to-pay penalty	34.98
Interest charges	54.48
Amount due by February 26, 2009	\$9,533.53

What you need to do immediately

Pay immediately

- Send us the amount due of \$9,533.53 by February 26, 2009, to avoid additional penalty and interest charges.

Threat to Levy



Notice	CP504
Tax year	2005
Notice date	March 2, 2009
Social Security number	[REDACTED]
To contact us	Phone [REDACTED]
Call center number	[REDACTED]

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Notice of intent to levy

Intent to seize your property or rights to property Amount due immediately: \$3,999.86

As we notified you before, our records show you have unpaid taxes for the tax year ending December 31, 2005 (Form 1040). If you don't call us immediately or pay the amount due by March 12, 2009, we may seize ("levy") any state tax refund to which you're entitled and apply it to the \$3,999.86 you owe.

If you still have an outstanding balance after we seize any state tax refund, we may take possession of your other property or your rights to property.

Billing summary

Amount you owed	\$2,902.68
Failure-to-pay penalty	284.26
Interest charges	812.92
Amount due immediately	\$3,999.86

Letter 11



Department of Treasury
Internal Revenue Service

[REDACTED]

[REDACTED]

Notice	LT11
Notice date	March 2, 2009
Taxpayer ID number	[REDACTED]
To contact us	[REDACTED]
Your caller ID	[REDACTED]

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Notice of intent to levy

Intent to seize your property or rights to property

Amount due immediately: \$ [REDACTED]

We haven't received a payment despite sending you several notices about your overdue taxes. The IRS may seize (levy) your property or your rights to property on or after April 1, 2009.
Property includes:

Billing Summary	
Amount you owed	\$ [REDACTED]
Additional penalty charges	[REDACTED]
Additional interest charges	[REDACTED]
Amount due immediately	[REDACTED]

Ways to Resolve Outstanding Debt

Installment Agreement

Uncollectable

Offer-in-compromise

Bankruptcy

What is Hardship?

- A hardship exists if a taxpayer is unable to pay reasonable basic living expenses.
- These cases involve no income or assets, no equity in assets and insufficient income to make a payment without causing a hardship.
- The basis of a hardship determination is from information about the taxpayer provided on form 433A or 433B.
- For more information about economic hardship and reasonable basic living expenses, see <https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship>

How To Prove Hardship

- You will have to prove tax hardship to the IRS by submitting Form 433-A or 433-B.
- If the IRS determines that the taxpayer is unable to tap equity and has no available income after paying necessary, allowable expenses, they may deem the taxpayer to be uncollectible

Form **433-A**
(February 2019)
Department of the Treasury
Internal Revenue Service

Collection Information Statement for Wage Earners and Self-Employed Individuals

Wage Earners Complete Sections 1, 2, 3, 4, and 5 including the signature line on page 4. *Answer all questions or write N/A if the question is not applicable.*
Self-Employed Individuals Complete Sections 1, 3, 4, 5, 6 and 7 and the signature line on page 4. *Answer all questions or write N/A if the question is not applicable.*
For Additional Information, refer to Publication 1854, "How To Prepare a Collection Information Statement."
Include attachments if additional space is needed to respond completely to any question.

Name on Internal Revenue Service (IRS) Account SSN or ITIN on IRS Account Employer Identification Number EIN

Section 1: Personal Information

1a Full Name of Taxpayer and Spouse (if applicable) **1c** Home Phone () () **1d** Cell Phone () ()

1b Address (Street, City, State, ZIP code) (County of Residence) **1e** Business Phone () () **1f** Business Cell Phone () ()

2b Name, Age, and Relationship of dependent(s)

2a Marital Status: Married Unmarried (Single, Divorced, Widowed)
SSN or ITIN Date of Birth (mm/dd/yyyy) Driver's License Number and State

3a Taxpayer **3b** Spouse

Section 2: Employment Information for Wage Earners
If you or your spouse have self-employment income instead of, or in addition to wage income, complete Business Information in Sections 6 and 7.

4a Taxpayer's Employer Name **5a** Spouse's Employer Name

4b Address (Street, City, State, and ZIP code) **5b** Address (Street, City, State, and ZIP code)

4c Work Telephone Number () () **4d** Does employer allow contact at work? Yes No **5c** Work Telephone Number () () **5d** Does employer allow contact at work? Yes No

4e How long with this employer (years) (months) **4f** Occupation **5e** How long with this employer (years) (months) **5f** Occupation

4g Number of withholding allowances claimed on Form W-4 **4h** Pay Period: Weekly Bi-weekly Monthly Other **5g** Number of withholding allowances claimed on Form W-4 **5h** Pay Period: Weekly Bi-weekly Monthly Other

Section 3: Other Financial Information (Attach copies of applicable documentation)

6 Are you a party to a lawsuit (if yes, answer the following) Yes No
 Plaintiff Defendant Location of Filing Represented by Docket/Case No.
Amount of Suit \$ Possible Completion Date (mm/dd/yyyy) Subject of Suit

7 Have you ever filed bankruptcy (if yes, answer the following) Yes No
Date Filed (mm/dd/yyyy) Date Dismissed (mm/dd/yyyy) Date Discharged (mm/dd/yyyy) Petition No. Location Filed

8 In the past 10 years, have you lived outside of the U.S for 6 months or longer (if yes, answer the following) Yes No
Dates lived abroad: from (mm/dd/yyyy) To (mm/dd/yyyy)

9a Are you the beneficiary of a trust, estate, or life insurance policy (if yes, answer the following) Yes No
Place where recorded: Name of the trust, estate, or policy Anticipated amount to be received \$ When will the amount be received

9b Are you a trustee, fiduciary, or contributor of a trust Yes No
Name of the trust: EIN: Contents Value \$

10 Do you have a safe deposit box (business or personal) (if yes, answer the following) Yes No
Location (Name, address and box number(s)) Contents Value \$

11 In the past 10 years, have you transferred any assets for less than their full value (if yes, answer the following) Yes No
List Asset(s) Value at Time of Transfer \$ Date Transferred (mm/dd/yyyy) To Whom or Where was it Transferred

Catalog Number 20312N www.irs.gov Form **433-A** (Rev. 2-2019)

Currently Not Collectable (CNC)

What is “CNC” status?

- CNC status allows people in financial hardship situations to defer paying their tax bill until their situation improves.

How is CNC status determined?

- For a taxpayer to qualify for CNC, they must demonstrate a financial hardship. After paying for the cost of living expenses there will be little to no room to pay off an outstanding tax debt.
- For more information on IRS use of “allowable living expenses” see National Taxpayer Advocate 2018 Annual Report to Congress, [*A Study of the IRS’s use of the Allowable Living Expense Standards*](#).

Financial Guidelines

Expense	Actual or Allowable
Food, Clothing and Misc	National Standard
Housing and Utilities	Lesser of Actual or Local Standard
Automobile - Ownership	Lesser of Actual or National Standard
Automobile - Operating	Local Standard
Public Transportation	National Standard
Health Insurance	Actual
Out of Pocket Health Care Costs	Higher of Actual or National Standard
Court Ordered Payments	Actual
Child/Dependent care expenses	Actual (must be necessary)
Life Insurance	Actual (must be reasonable)
Current Year Taxes	FIT, FICA or SE, SIT, Local
Secured Debts	Actual
Delinquent State Taxes	Percentage of State v. Federal Debt

Benefits of CNC Status

- 10-year CSED continues to run (check the transcripts)
- No levy action
- NFTL may still be filed

Need for Compliance

- What is tax compliance?
- The role of compliance
- Usual order of battle: compliance then collection alternative proposal
- Lets discuss *Vinatieri vs. Commissioner* (133 T.C. No. 16, 12/21/2009)

Vinatieri v. Commissioner

- IRS issued final Notice of Intent to Levy
- TP timely requested a hearing under sec. 6330, I.R.C.
- TP submitted to the settlement officer Form 433-A
- The settlement officer stated in her log that TP meets the criteria to have her account reported as currently not collectible because of hardship
- However, R's Appeals Office issued a notice of determination to proceed with levy, stating that P was not entitled to collection alternatives because she had not filed her 2005 and 2007 Federal income tax returns (not in compliance)

Vinatieri v. Commissioner

- TP timely petitioned the tax court, and IRS filed a motion for summary judgment
- Court held for the TP, noting the Secretary must release a levy upon all, or part of, a taxpayer's property or rights to property if its determined that the levy is creating an economic hardship due to the financial condition of the taxpayer. IRC Sec. 6343(a)(1)(D)
- The regulations provide that a levy is creating an economic hardship due to the financial condition of an individual taxpayer and must be released "if satisfaction of the levy in whole or in part will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses." Sec. 301.6343-1(b)(4),

Vinatieri v. Commissioner

Impact:

- May want to reverse the order of battle – file the 433 first if the TP is CNC
- Then clean up compliance issues
- ***Don't forget CNC's impact for innocent spouse claims!***
- ***Don't forget opportunity for successful Offer-in-Compromise after obtaining CNC status for your client!***
- For more information about OICs, see NTA 2017 Annual Report to Congress, [A Study of the IRS Offer in Compromise Program](#), and NTA 2018 Annual Report to Congress, [A Study of the IRS Offer in Compromise Program for Business Taxpayers](#).

Innocent Spouse: Factors for Equitable Relief

- Marital status.
- **Economic hardship.**
- Knowledge or reason to know.
- Non-requesting spouse's legal obligation.
- Significant benefit.
- Compliance with income tax laws.
- Abuse
- Physical/mental health
- Financial dominance

Form 8857 (Rev. 1-2014)

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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 about your current financial situation (Continued)

22 How many people are currently in your household, including yourself? Adults _____ Children _____

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

Monthly Income — If family or friends are helping to support you, include the amount of support as gifts below.

	Amount
Gifts	
Wages (Gross pay)	
Pensions	
Unemployment	
Social security	
Government assistance, such as housing, food stamps, grants	
Alimony	
Child support	
Self-employment business income	
Rental income	
Interest and dividends	
Other income, such as disability payments, gambling winnings, etc. List each type below:	
Type _____	
Type _____	
Type _____	
Total Monthly Income	

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

	Amount
Food and Personal Care:	
Food	
Housekeeping supplies	
Clothing and clothing services	
Personal care products and services	
Transportation:	
Auto loan/lease payment, gas, insurance, licenses, parking, maintenance, etc.	
Public transportation	
Housing and Utilities:	
Rent or mortgage	
Real estate taxes and insurance	
Electric, oil, gas, water, trash, etc.	
Telephone and cell phone	
Cable and Internet	
Medical:	
Health insurance premiums	
Out-of-pocket expenses	

Form 8857

- Often practitioners blow through or skip over
- This is an opportunity
- Similar planning that you would do for an Offer-in-Compromise
 - ~ Missing Expenses otherwise allowed

Innocent Spouse Administrative Record

- IRC 6015(e) provides that taxpayers may petition the Tax Court for review of an IRS determination of relief from joint and several liability under 6015(b) [aka traditional IS relief]; 6015(c) [aka relief for separated taxpayers]; or 6015(f) [aka equitable relief].
- Taxpayer First Act section 1203 added IRC 6015(e)(7), which provides that Tax Court review of any such determination shall be “de novo” (anew) but “shall be based upon –
(A) the administrative record established at the time of the determination, and
(B) any additional newly discovered or previously unavailable evidence.”

Questions

