

Representing Taxpayers Before a Resource- Challenged IRS

IRS Representation
Conference
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- Amanda Evans, EA, Green & Sklarz LLC, Moderator
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Agenda

- Paper filed returns/Unworked backlog
- Level of Service/Practitioner Priority Service/Powers of Attorney
- Notice issues, including date issues and math error notices with no abatement/Notice of Deficiency
- Resolving disputes over the child tax credit and reconciliation with the Advance CTC
- Pushing issues downstream – Appeals/Taxpayer Advocate Service/Tax Court
- Referral to an attorney to file a refund suit when the refund claim is delayed?
- Offers in Compromise
- Payoff letters and certificates of release of federal tax liens
- Individual Tax Identification Numbers
- Responses to Form 4810, Request for Prompt Assessment
- Freedom of Information Act Request responses/Appeals case files
- Boechler, P.C. vs Commissioner impact
- IRC 6015(e)(7) – the administrative record rule in “innocent spouse” cases

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Equity,
Diversity and
Inclusion

Complaint for violation of Civil Rights

https://www.irs.gov/pub/irs-utl/irs_crd_complaint_form_english.pdf



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Treasury Inspector General for Tax Administration

1. RRA98 Section 1203 a/k/a 10 deadly sins
2. 13.1.15.3 (09-21-2021). Elements of Misconduct
An IRS employee treated a taxpayer inappropriately in the course of official business. For example, rudeness, over zealousness, excessive aggressiveness, discriminatory treatment, and intimidation. (These cases will be worked/handled by management within the employee's function.)
3. https://www.treasury.gov/tigta/contact_whistle.shtmlhttps://www.treasury.gov/tigta/reportcrime_misconduct.shtml

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Call and write
your elected
representatives

Know how they work with IRS and TAS
and use the procedures to your
advantage

https://www.irs.gov/irm/part13/irm_13-001-008

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Taxpayer Service/Account Resolution Issues

- IRS Level of Service (LOS) and Average Speed of Answer (ASA) on phone lines is still abysmal.
- Impact of robot-placeholders: <https://procedurallytaxing.com/the-irs-strikes-back-against-robocalls/>
- Return/Correspondence inventory: IRS says it completed “processing” its “inventory from 2021” for Individual Master File in June 2022 and will complete Business Master File in October 2022. As of 10/25/22 it still had 3.3 million IMF paper returns and 4.6 million BMF paper returns to process.
- Question: what does it mean to “process”? Doesn’t include resolution of account issues, math error, identity theft, pre-refund wage verification, fraud detection issues.
<https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones>
- IRS has suspended certain collection notices; National Taxpayer Advocate says they will resume in staggered fashion “soon.”

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A glimmer of hope on the taxpayer service front?

- Since August 2022 the IRS has hired 4,000 customer service employees and plans to hire an additional 1,000 in advance of the 2023 filing season. Question: are these hires over and above attrition?
- <https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones>
- Treasury has established stretch goals for customer service during the 2023 filing season: 85% LOS on the phones; ASA less than 15 minutes; 3 times the number of Taxpayer Assistance Center appointments; digital scanning of returns.
- See remarks of Secretary Yellen, Sept 2022. <https://home.treasury.gov/news/press-releases/jy0952>

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Paper Filed Returns

- Still creating a headache due to the back log
- Issue arises for non-filers who can e-file recent few years but must paper file older years
- E-filed returns get processed and enforcement starts, yet compliance is not met with the paper returns sitting unprocessed
- Amended returns to correct balances or claim refunds are delayed

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Paper Filed Returns

- Options:
- Paper file all returns together
- If waiting on amended returns to lower balance or create refunds/NOLs, OIC/DATL on the collection issue because years and amounts are incorrect
- OIC/DATL stops collection and by the time its reviewed we are hoping returns are processed

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Resolving EITC/CTC/RRC Disputes

- For 2021 Tax Year returns, these disputes can result from:
 - invalid (fraudulent) joint return;
 - child claimed improperly on another person's return;
 - Economic Impact Payments or Advance Child Tax Credit paid to someone other than eligible taxpayer; or
 - EIPs/Adv CTC paid into joint account over which taxpayer has no control and taxpayer did not receive these payments.
- These situations may result in e-file rejections and subsequent paper filings; superseding returns; math error notices or full audits.

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File the Refund Claim and Suit

https://www.irs.gov/irm/part34/irm_34-005-002

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Tax Liens

- Request release with Form 14135
- Request Subordination with Form 14134
- Have been getting these within 30 days: ***critical the package be complete when filed!***

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Release of Lien

- Copy of the Deed to the Property
- Sales Contract
- Title Search with copies
- Appraisal by the Bank
- Payoff's From Liens Ahead of the IRS
- Proposed Settlement Statement

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Assets released from the lien if

- IRS gets full paid
- IRS gets all the equity
- There is no equity for the IRS

~ You can seek a carve out for moving expenses and apartment deposits

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Innocent Spouse Relief & the Administrative Record Rule

- Congress added IRC § 6015(e)(7) in the Taxpayer First Act in 2019, which provides that “Any review of a determination made under this section shall be reviewed de novo by the Tax Court and 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.
- Thus, creating a full administrative record at the agency level in a 6015 case is of vital importance.
- How are IRS and the Courts responding to this change? Will they interpret in a way that harms low income or unrepresented taxpayers, or survivors of domestic violence?

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6015 Admin Record Rule Litigation

- The “Fatty rule” – bench opinion (not precedential) by Judge Holmes on what constitutes evidence “otherwise unavailable.” Since taxpayer was unable to provide testimony under oath or be subject to cross-examination during the administrative proceeding, the testimony was newly available and thus allowed. *Fatty v. Comm’r, Tax Ct.* Docket No. 3787-20S (4/30/2021). <https://procedurallytaxing.com/the-fatty-rule-for-post-tfa-innocent-spouse-cases-an-early-look-at-the-otherwise-unavailable-evidence-exception/>
- Similar bench opinion in *Bacigalupi v. Comm’r, Tax Ct.* Docket No. 20450-2 (9/19/2022). <https://procedurallytaxing.com/innocent-spouse-bench-opinion-part-1/>
- See *Thomas v. Comm’r, Tax Ct.* Docket No. 12982-20, for order, briefing, and amicus on “newly discovered” evidence.

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Establishing an Invalid Joint Election

IRM 21.6.1.5.7 sets forth the procedures for establishing an invalid joint return election. It was updated in Nov. 2020 and again in Jan. 2021 to include procedures specific to the Economic Impact Payment.

To establish an invalid joint return election, the taxpayer must provide documentation supporting their claim that the tax return was not a valid tax return.

IRS procedures suggest some examples of documents you may send in:

- A separate tax return filed by you for the tax year in question.
- A sworn statement supporting that the joint tax return was not a valid tax return because it was signed by you under duress. To establish duress you must explain why you were unable to resist demands to sign the tax return and you would not have signed it except for force or other pressure applied by the other spouse.
- A sworn statement supporting that the signature on the tax return was forged, possibly accompanied by a legal document reflecting your true signature such as a copy of a driver's license.
- A sworn statement or other document supporting that you were not legally married at the time the joint tax return was filed.

If the taxpayer can establish that the joint tax return was not a valid tax return, the IRS will remove the invalid joint return and process the taxpayer's separate return.

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Signing a Joint Return Under Duress

- To show the return was signed under duress, the claimant must show they could not resist their spouse's demands and that they would not have signed but for such constraint on their will. Indications of coercion might include:
 - (1) physical, sexual or emotional abuse;
 - (2) financial exploitation;
 - (3) threatened or actual harm to children;
 - (4) threat of separation from the children;
 - (5) threats related to immigration status;
 - (6) isolation from family and friends;
 - (7) surveillance;
 - (8) shaming; and
 - (9) control over access to necessities.
- See NTA Blog: <https://www.taxpayeradvocate.irs.gov/news/nta-blog-if-you-didnt-get-your-eip-your-joint-return-may-be-the-reason-why/>

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FOIA

- Freedom of Information Act Requests
- Gets you access to the IRS's administrative file
- Gets you your entire CAF listing
- FOIA vs. IRC § 7803(e)(7): obtaining the administrative file from Appeals without going through FOIA.

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Access to Case Files via Appeals IRC 7803(e)(7)

- **(7) [1] Access to case files(A)In general** --In any case in which a conference with the Internal Revenue Service Independent Office of Appeals has been scheduled upon request of a specified taxpayer, the Chief of Appeals shall ensure that such taxpayer is provided access to the nonprivileged portions of the case file on record regarding the disputed issues (other than documents provided by the taxpayer to the Internal Revenue Service) not later than 10 days before the date of such conference.
- **(B)Taxpayer election to expedite conference** -- If the taxpayer so elects, subparagraph (A) shall be applied by substituting "the date of such conference" for "10 days before the date of such conference".

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Access to Case files via Appeals -- limitations

- **(C) Specified taxpayer** For purposes of this paragraph—**(i) In general** The term “[specified taxpayer](#)” means—**(I)** in the case of any taxpayer who is a natural person, a taxpayer whose adjusted gross income does not exceed \$400,000 for the taxable year to which the dispute relates, and
- **(II)** in the case of any other taxpayer, a taxpayer whose gross receipts do not exceed \$5 million for the taxable year to which the dispute relates.
- **(ii) Aggregation rule** Rules similar to the rules of [section 448\(c\)\(2\)](#) shall apply for purposes of clause (i)(II).

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FOIA: <https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines>

- Can submit by Fax
Personal or business taxpayer records: Fax to 877-891-6035
IRS policies and procedures not in the FOIA Library: Fax to 877-807-9215
- Website includes a sample FOIA
- Taking 60-90 days to receive

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Other Appeals Issues

- Appeals has noted its backlog of cases, including a “significant inventory of cases docketed in the United States Tax Court that were referred to [its] Examination Appeals function for possible settlement. Many of these impacted unrepresented taxpayers and resulted from communication challenges during the pandemic.” See guidelines for “streamlined” casework: https://www.irs.gov/pub/irs-utl/2022_04_19_Docketed_Casework_Memo.pdf
- See Appeals’ focus for FY 2023: IR-2022-195 (11/4/2022) at <https://www.irs.gov/newsroom/irs-independent-office-of-appeals-priorities-for-2023-focus-on-taxpayer-service>
- Also see IR-2022-154, inviting taxpayer and tax professional suggestions for enhancing video conference options. <https://www.irs.gov/newsroom/irs-appeals-invites-input-on-enhancing-video-conference-options-for-taxpayers-and-tax-professionals>

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Boechler P.C. v Comm’r, 596 U.S. ____ (2022)

- On April 21, 2022, the United States Supreme Court handed down a unanimous decision in favor of the taxpayer, reversing decades of Tax Court rulings.
- At issue was the nature of the 30 day deadline in IRC § 6330(d)(1) for taxpayers to file a petition in the Tax Court appealing the determination of an IRS independent appeals officer in a Collection Due Process hearing regarding proposed levy action.
- Reversing the 8th Circuit, the Supreme Court held that the 30 day deadline was not jurisdictional but rather a claims processing rule that could be subject to equitable tolling.

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Boechler cont'd

- The Boechler decision and analysis has consequences for other statutory provisions that do not evidence the clear intent of Congress to serve as jurisdictional bars to access to the courts if missed. See, e.g., IRC § 6213(a) deficiency jurisdiction.
- See Keith Fogg's four-part analysis of Boechler in Procedurally Taxing:
 - <https://procedurallytaxing.com/what-happens-after-boechler-part-1-the-irs-argues-irc-6330-is-unique/>
 - <https://procedurallytaxing.com/what-happens-after-boechler-part-2-the-irs-argues-the-floodgates-will-open-if-the-tax-court-follows-boechler-in-interpreting-irc-6213a/>
 - <https://procedurallytaxing.com/what-happens-after-boechler-part-3-the-irs-argues-that-irc-7459-requires-that-irc-6213a-treat-the-time-for-filing-a-tax-court-petition-as-jurisdictional/>
 - <https://procedurallytaxing.com/what-happens-after-boechler-part-4-the-irs-argues-that-equitable-tolling-would-not-apply-in-deficiency-cases-/>

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Boechler progeny

- Significance of Boechler for IRC § 6213(a) Deficiency jurisdiction and 90-day filing period for petition in Tax Court.
- Significance of Boechler for IRC § 6015(e)(1)(A) stand-alone "innocent spouse" 90-day filing period for petition in Tax Court.
- 6213(a): Hallmark Research Collective v. Comm'r, Tax Ct. Docket No. 21284-21; Culp v. Comm'r, 3rd Circuit Docket No. 22-1789; Allen v. Comm'r, 11th Circuit, Docket No. 12537.
- 6015(e)(1)(A): Frutiger v. Comm'r, Tax Ct. Docket No. 31153-21.
- <https://procedurallytaxing.com/second-appellate-case-on-whether-irc-6213as-deadline-is-still-jurisdictional-and-first-tax-court-case-involving-irc-6015e1a/>

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