

# Represent Yourself Before The IRS!

By Joe Mastriano, CPA  
www.TaxProblem.org

"I am bending over backwards to give you the best of what I have from over 25 years in the tax business. My experiences, knowledge, tricks, tactics, etc. that I know will help you in dealing with the IRS are included in this book and the site. I will give you my play by play advice on:

- How to fill out IRS collection forms - my way, so that you have more control of the results!
- How to **guarantee that the IRS will never take collection action** against you. Did I say guarantee? Well let's just say that after thousands of payment plans, and thousands of discussions with other practitioners and potential clients, I know of no exceptions to this!
- How to make your situation fit an offer in compromise, even if it currently doesn't.
- How to **trim your large corporate payroll liability approximately in half**, so you don't go broke paying off the debt, or be forced by the IRS to shut the company down. I do this every month for my clients!
- How to make the IRS, and other related agencies work your case for you.
- How to get the IRS to believe that your current situation is true, and they should accept a payment plan on your terms, (or close to your terms).
- What to do when the IRS says "No" and is not cooperative. This alone will make or break any case. What if they say they will do something and don't, and then you get a levy? Do you want to complain that it wasn't your fault, or do you want to take control and prevent that from happening in the first place?
- Why the IRS really doesn't care about the dates and times of the conversations you had with other IRS employees. Also why it is necessary to know what has to be done to resolve your IRS issue, so you can take the responsibility to see that you and the IRS make sure it gets done.

With this book and the tax problem website (<http://www.taxproblem.org>), you can learn how to represent yourself before the IRS and solve your own tax problems. If you don't feel confident enough or you need additional help, for a one time \$300 fee, you can request a phone consultation with me directly, to discuss and review your documents, and to have me explain to you how to approach and resolve your tax problem. You can choose to have this consultation directly with me for up to one hour, or with an associate CPA for up to 1 1/2 hours. You can sign up for a consultation by clicking the "Payment" link in the left section of our site and making a \$300 payment, then call Sherry at 713-774-4467 and she'll set up the phone appointment."

When dealing with the IRS, it is recommended to hire professional help and not handle this on your own, unless you simply cannot afford full professional services. If you want to make sure your IRS problem is being handled correctly, we can help you. You can hire us by calling 713-774-4467 or emailing [support@taxproblem.org](mailto:support@taxproblem.org). Tell us your problem and we will tell you how we can solve it.

# Chapter 1

## **Essential Information - You Must Read This And Use With Other Information On This Site!**

Remember, this is not an all inclusive web site on the IRS. There are many legal issues, definitions, and rules that are pertinent when dealing with the IRS. For those of you who want to know many of the laws, codes, etc., I suggest that you purchase a book that will teach you that. There are a few good ones out there. The purpose of this information is to show you what I have done over the years to be successful in dealing with the IRS. You can use my successful experience to outline the steps you will take to solve your IRS issues. If you need additional help, of any type, I charge \$300 for a one time phone consultation to discuss, and/or review your documents, and explain to you how to resolve your issue. The call will last up to 1 hour or you can also set the same consultation with an associate CPA of up to 1 1/2 hours. Please go to the left side of the page, click on "payment" and submit \$300. Then call Sherry at 713-774-4467 and she will set up the phone appointment.

**If you need me to represent you before the IRS, please call Sherry, and she will discuss the benefits of hiring us. This is what I offer. Either...**

- represent yourself using this information.
- represent yourself using this information with a phone consultation.
- use this information to keep tabs on someone you hired to represent you.
- use this information to help you represent your own client.
- or hire us to represent you (best alternative).

I have read numerous books dealing with the IRS over the course of my career. Most of them just give you information about your rights, about what forms to use and when, etc. but they leave you hanging when the IRS doesn't do what you ask them to do. These books serve an excellent purpose. Reading them will not hurt you, unless you "attack" the IRS, or try to evade being taxed. It is my intention in giving you this information that you will gain the confidence you need to proceed with the collection division without unnecessary fear.

## **Let's Get Started!**

First, some basics you need to know... The IRS is not like any company you know of. Many experts see the IRS as an unsupervised group, who make up rules as they go along. IRS personal tend to do and say most anything to get you to do what they want. This is why many accountants find it very difficult to accomplish much when dealing directly with the collection personnel of the IRS. So how can you be successful?

Well, after spending over 25 years representing thousands of taxpayers, I've gotten familiar with the various rules the IRS goes by, including the fabricated interpretations of the Internal Revenue Manual. I've learned to have unlimited patience, and not to be disrespectful, no matter how the IRS are acting. I will teach you the secrets I've learned over the years, so you can have similar success. You will not find this information in any book that I know of.

## **Outline About Your General Disposition When Dealing With IRS Personal.**

Never, never complain to an IRS employee. They do not want to hear how sick you are, how poor you are, how bad the government is, how your ex-spouse or partner ripped you off, how good you were to pay most of the original principal portion of the taxes, or the flood you had in your house. Don't get me wrong, some of that information is essential for certain parts of the case. What I am saying is don't whine, or dump your troubles on the collection person. Stick with the facts only. There will be a time and place to list your income and expenses and why certain things happened.

## **Always Keep A Good Rapport.**

Make the IRS person feel good and happy to be working with you (no matter how they respond). What if you were asked to recite your full address, and then 2 minutes later were asked "What is your complete address?". Would you blurt out "You just asked me that!" with an angry expression on your face? Or would you calmly say "I gave that to you?" How willing would you be to give your address the second time? What about the 3rd time? When I say "unlimited patience" I mean it. Being a collection person for the IRS can be a very confusing and difficult job. You will get a lot further by being accepting of their behavior no matter what it is.

There is a difference between fighting with the IRS and sticking up for your rights. However, if you are willing to let issues of your rights slide, and stick with what is necessary to get the most benefit, I will show you how to save time and money.

## **The IRS Is Really Not Out To Get You!**

The IRS does not want to put you in jail. To be put in jail you need to willfully perform a criminal act. Yes, willful non filing of an IRS tax return is a criminal act. The burden of proof is on the IRS to prove willfulness. I don't know of anyone during my career that was ever accused of willfulness, let alone prosecuted for it. You must get any fear or guilt concerning wrongdoing out of your head. When you contact the IRS, you will deal with the situation as it is today only. In 99% of the collection cases the only real questions are...

1. Where are your tax returns?
2. Will you "show me the money"?

The collection division wants any unfiled returns, and wants to be satisfied concerning how taxes will be paid! During the discussion you can deal with other issues, but not in place of these two. Got it? So even if you stall the collection officer (as some advisors incorrectly advise), the manager may discover that the officer is not handling their responsibilities as they should and issue a bank levy. When you "scream" that you were waiting for the collection officer to look up a payment and get back to you, you will be told something like "You had two months to provide him with the financial statement information and you didn't, so we levied your account". So much for stalling the collection officer. You have to take responsibility yourself to see that the case goes smoothly and quickly so no collection action is taken.

Rather than wasting your time with discussions about what the IRS can and can't do, it's easier to just accept that the IRS will do whatever it wants to do against you to collect delinquent returns and taxes. You can fare better by speaking up and defending yourself. We need to focus on just taking care of business and leaving the history lessons, and the general IRS discussions, to the books you can buy off the shelf.

Maybe you want, more time to file returns, more time to submit documents, a lower dollar monthly payment on a payment plan, or more favorable offer in compromise terms. Do not assume the IRS is out to get you, and complain that they are being unfair. You can expect to be burdened with short deadlines. 2-3 week deadlines may be issued when talking to Automated Collections (ACS). If they won't give you a longer period, you can hang up the phone and call back. Chances are the log of the previous call will not be available yet, so the new person won't know you called minutes ago. Either way, you can accept the shorter deadline, and on the last day call and explain that you are almost finished. Tell them that you are willing to send the information in now by fax, and then overnight express, and ask if you can have a couple of days more to complete the information requested. Chances are you will get the extension. However, after I teach you what to do, you really should have no trouble meeting the deadline. If you have a Revenue Officer on your case, chances are they will be a bit more liberal in granting you time.

## **Each Collection Or Audit Group Operates Independently In How They Do Things.**

The rules can be different, they can change, or the person you are talking to may decide to "brow beat" you, and not tell you the rules you are to follow. They may not even admit what the rules are, or what rights you have, even after you tell them that you know what the rules are. Remember, don't fight. Take the best you can get, and move on. You will see later that you have options along the way to sway things back in your favor. Usually you will have to decide if the action is worth the time to pursue or not. Often it is not. It is usually easier to bend to the IRS's timetable for tax preparation and the submission of documents. Of course, paying additional taxes is another matter. If the dollar amount is high you will want to put the time and effort into saving the money.

## **Try Not To Make Assumptions About The Person You Are Dealing With.**

You should give requested information as if you are talking to a computer that sometimes produces output that doesn't make sense. It is foolish to try to prove the computer is wrong. You must enter the IRS's world, with their rules. Don't worry, I will tell you in this manual what the important rules are, every step of the way.

**That's it for the general disposition you must have.**

## **Things To Be Aware Of...**

### **The IRS Website**

The address is [www.irs.gov](http://www.irs.gov), on this website you will find links to the many services the IRS provides. You can get forms (although I find just putting "IRS form xxxx" in a Google search engine is quicker), instructions, etc. You can look up codes, revenue rulings, and even copies of the IRS manuals, including the collection manual. It's important to check dates, since the website is not always kept up to date. Don't start loving this site too much. The guides give you what the IRS wants you to believe the rules are. The information is not written in your favor. The IRS often doesn't advise you of alternate positions, etc. that benefit you more. The IRS will not give you a "map" for using their rules and codes for your best advantage. The site is a great source for forms and general information on areas you need more information about. I use it when needed. Also, sign up on the [www.eftps.gov](http://www.eftps.gov) site for your personal and business payments. There will be a time you will need to make a payment quickly, and this will be the best way to do it. The payment posts the next day, and you get a tracking number to prove the payment was made. You won't have to rely on the bank or delivery service. It takes several weeks to get set up, so you must get set up now, in anticipation of using it. Don't worry, it's free and worth the trouble.

### **The IRS Service Center**

This group processes returns and sends out notices or errors, audits, etc. You may get a letter showing a balance due, or various audit letters. If a letter shows a balance due then the first notice "request for payment" is sent. Other requests may be sent before the IRS sends the cp501- cp504 series of notices. The cp504 is the notice of intent to levy. If not paid or resolved in 30 days the account will transfer to ACS division. ACS will issue a letter 1058 final notice giving the taxpayer 30 days to appeal. Of course the IRS can skip this step and send it directly to a revenue officer (R.O.), who may levy your account before contacting you. So never let a notice of intent to levy go past the 30 days. Yes, the R.O. is supposed to issue a letter 1058, but may do so simultaneously with the levy. You decide if you want to handle it at ACS before it goes to a R.O. You need to take control and not be a victim. I've had clients who told me they hired attorneys who bragged they were necessary because they checked notice dates and other legal notice issues to try to catch the IRS in a mistake so they can take them to court. Some attorneys play on your emotions and sense of fair play. Don't fall for it. All you want to accomplish (I hope), is to resolve the problem in the easiest, least costly way. I have given you the simple version. The IRS accelerates notices under certain conditions. Why try to

figure out how to catch them doing something wrong? Especially since it hardly ever benefits you. I will show you how to prepare for dealing with the IRS to get the best possible advantage.

## **Tax Court**

It is rare to have to resort to using tax court for a collection matter (or even an audit matter). The few times I had my clients petition the tax court, it was with the intention of getting the case transferred to appeals. Each time the petition was accepted, and the IRS's legal department contacted us, I was able to convince the IRS that it would be in their best interest to transfer the case to appeals. You can do this too by convincing them that it will lighten their case load. Tell them that the tax court is pretty full of unnecessary and frivolous cases, and yours is really an appeals case. The only reason you filed a court petition is that the time to file an appeal expired, so this was your only remedy.

## **Handling Your Case In General And The Taxpayer Advocate**

The Taxpayer Advocate is the group to go to when all else fails. When trying to resolve something with an IRS employee, and there is a disagreement, request to speak to the manager. If that fails, and you still think they are being unreasonable you can go to the supervisor above or the taxpayer advocates office. Let's see how this works.

You call ACS and are not getting anywhere with the ACS employee. Asking to speak to an ACS manager usually doesn't work very well, and they often won't call you back. So just hang up nicely, and call immediately back till you get someone who is at least somewhat reasonable. Then attempt to work out why you called. First verify the status of your case. Ask, is this an ACS case? Is the case in the queue being transferred to a revenue officer? If it is an ACS case, then ACS has control over it. If your case is waiting to be transferred to a revenue officer, the ACS employee can't really take action on it, so don't waste your time. They will try to ask questions and take control. They may try to get collection information from you. Just find out what you need, and hang up the phone. Make sure you call revenue officers immediately when you hear from them. They have a habit of levying accounts quicker than you think. Don't give them bank or work information, even if they press for it. Just tell them you need about two weeks to get everything together. They will want to set up a meeting. Set it up two weeks from now. Preferably in their office if they will allow it. Another benefit of having a representative, is that the meetings are mostly in the representative's office so the IRS doesn't poke around your place! Spend the time leading up to the meeting getting your financial statements and back up information together. Look up the IRS table expense allowances for the expenses on the 433A, and put together a picture of your income and expense information and asset situation. Know ahead of time what assets the IRS will allow you to keep, and the likelihood of them allowing each expense deductions. If you are properly prepared, you have a greater chance of getting what you want.

If you are dealing with a revenue officer, the same applies. Don't allow them to brow beat you into submission. You have the right to hire a representative and have time before disclosing your financial information to them. They will try to get you to answer questions about marital status, business ID #'s etc. Even if you think the answers are easy and won't hurt you, don't give to them. If you do, you establish a rapport that allows them influence over you for future questions. In addition you may give information you will want to retract later. Just keep insisting that you are you, and your social security number is yours, and your address is yours and for the rest you will get back to them with on the date of the meeting. If they don't want to wait two weeks, you can agree to a meeting in one week with an agreement from the R.O. to an extension if necessary. If they expect you to meet sooner, ask for manager's name and phone number (which you should do anyway from the start), so you can find out why you can't have two weeks. The R.O. may change the date, or try to brow beat you into not calling. Tell them you are not calling to complain about the R.O. This is very important and should always be said when you ask for someone's manager. Never get mad and say "give me your manager!" They take that as a threat, and they can get very tough if you fight with them. Just say you want the manager's opinion about the appointment date, because you think it is unreasonable, and you want to know what they think about it. Don't be surprised if the manager gives you more time. The manager may also try to intimidate you for calling. No problem, this way you find out early on if you have a good manager or one who doesn't police the revenue officers in their group. This information will help you make decisions later.

If you are really getting frustrated dealing with the collection division, and they are about to issue a lien, or levy, or other collection action, you could call the taxpayer advocate group. You can search at [www.irs.gov/advocate](http://www.irs.gov/advocate) or just Google "Taxpayer Advocate" for the Form 911 to use. It's easy to fill out. No need to give you line by line instructions. But I warn you, when they get busy, they will attempt to make little of your hardship reason. Be careful to explain, and attach an additional sheet if necessary, how you will suffer a great hardship if they don't intervene. Explain exactly what you want them to do. If you have to get them involved because the R.O. has threaten to take enforcement action because of a short deadline, or some other petty reason, then so be it. File your 911 by fax and call the Advocates office to follow it up. Another reason the Advocate uses to turn down a case, is that they will claim that you have not proven that the current action is a burden to you. You can't assume that collection action will take place. You actually have to ask the revenue officer what he/she intends to do if you miss your one week deadline (for example). They may say nothing probably, just issue a letter. Well until you know what's in that letter, you may not have the level of hardship required for an advocate case. The letter may just be a second request (a formal one) for documents. So make sure you can explain, in detail, the exact action that is imminent, and will cause you the exact hardship you see will happen to you.

The taxpayer advocate works with the IRS, often in the same building. You should call them to see if they will take your case. Use them for help when dealing with the collection division or the offer in compromise division, not the audit division. I've never used them for an offer division complaint. I'm not sure if they have much power, since the offer division claims they can pretty much deny offers as they wish. Appeals can force them to take lower valuations for items. Other than that, they can make suggestions concerning fairness. I've not experienced Appeals to have much more power.

One good thing about the taxpayer advocate's office, is that they have greater powers then previously to get the attention of the collection division. They are taken very seriously, and the collection division will respond promptly to them.

## **Did You Move?**

When you move, file a change of address form 8822 with the IRS. File it certified return receipt, and keep a copy of the form and proof of mailing. Many people don't give the IRS their address change as a way to put more distance between themselves and the IRS. This is a big mistake. If you get notices on time, you can avoid collection action easier, and have a better chance at stopping the liability or claim against you. Now that you know how to deal with the IRS, file form 8822 when you change your address.

## **Tax Return Extensions**

If you can't complete and mail your 1040 personal tax return by April 15th, file an automatic extension form 4868. It's very easy to fill out. Read the instructions on the form, and remember that you don't have to pay the amount estimated. You only have to put down approximately what the liability will be when you file the return. Don't try to make it a lower amount. In fact estimate a bit high. A high estimate will avoid late filing penalties.

If you can't pay at the time of filing, file on time and also file form 1127, Application for extension of time to pay. You must show reasonable cause, etc. The strict requirements are listed on the back of the form. Do this anytime you can't pay in situations as described on the form. Download the form and get familiar with the acceptable reasons for granting it. I have done this successfully more than once. You have nothing to lose by trying it on your own. If you need more than 6 months to pay, you can avoid the collection officer by filing Form 9465 with your return. Form 9465 is an Installment agreement request. If your liability is under \$10,000 they must accept it, as long as you meet the rules printed on the form. You can also try it for balances greater than \$10,000. If accepted, you avoid dealing with the collection division. Heck, why not attach your 433a and/or 433b and really convince them to set you up on installments. Just make sure you don't show that you can pay more than the amount offered, or that you have equity in

your house or retirement plan that they will want. Only submit financials with form 9465 if you are "proud of how poor you are" and confident that you have nothing that they can touch!

If you can't file business forms W-2's and 1099's on time for people you paid, file form 8809 to get an extension. You can find this information in the instructions for forms W-2 and W-3.

As you go through each section of this site, remember that the bottom section of the page that starts "Represent Yourself Before The IRS" begins the inside information. Now select a topic on the left side panel, or **if you are considering hiring us call me, Joe Mastriano CPA, 713-774-4467 or [email me!](#)**

# Chapter 2

## Delinquent Tax Returns

If you have delinquent returns to file the IRS can and will use the delinquent returns against you in many ways. For example... If you have a refund coming to you, and you file more than 3 years past the due date (including valid extensions) the IRS will keep the refund. The IRS will not even offset the refund against a tax liability from another year. (Although lately I have seen computer errors doing this). If you are in a "binding" installment agreement to pay a prior tax liability, or in an uncollectible status, the filing of any return or the paying of any tax late will void the agreement and cause all money to become due immediately. Often when an agreement is in default, taxpayers find out via a levy on their bank account or paycheck. Even worse, taxpayers may find out through a levy on their spouses paycheck or a lien on their house and other property! Taxpayers are not always notified first. Sometimes, even the representative was not notified! The IRS may have filed a return for you, charged you with the tax, and is now about to take collection action against you, and you do not even know it yet. You are about to find out the hard way! Even if you like the way they prepared the returns, (probably because they charged you with less tax than you thought you owed), you still need to sign the return. Otherwise, the statute of limitations on assessment does not run. This means that the IRS can audit you and/or charge you with additional taxes at any future time. Normally they have three years from the time you send a return in. Even if for some reason you are not required to file, you should file anyway. This would protect you from having to prove that you were not required to file many years after the fact!

## Unfiled Tax Returns

You need to file any unfiled returns immediately. Even if you are missing records, afraid that there is a possibility of owing money, or you are confused about how to fill out the returns, or afraid to tell the IRS where you are, you still need to file now. O.K., not right now, we have to put a plan of action together first. That is, assuming you owe more money than you can send in with the returns. Let's examine your choices...

You have no IRS problems other than you have failed to file one or more years of unfiled or delinquent returns. You received an IRS letter asking for the return. If you can pay the balance in full, plus interest and penalties, then send the IRS the return with your check for the money owed. Write the check out to "U.S. Treasury" and send it with the returns to the office that requested it.

The problem comes when you are either contacted by a R.O. or ACS asking for money from returns the IRS filed for you, or if the IRS sends you a cp2000 or other letter where they are proposing a liability. This could be based on a W2, 1099, K-1, etc. sent to the IRS reporting income in your behalf. Then you must take actions to refute the liability or make arrangements to establish an installment agreement or other method of payment.

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **[Think again!](#)***
- *For your free analysis, **[Click Here](#)** to email me.*

# Chapter 3

*(Read the "Free Tax Relief" page first)*

## **Trust Fund Penalty, IRS CODE 6672, Civil Penalty (These titles refer to the same thing)**

Any time a company owes payroll taxes (withholding, social security, and Medicare that is taken out of the employees paycheck), the liability can extend to any and all responsible parties. When corporations or legal liability companies, (not general partnerships, or sole proprietorships) owe payroll, only the trust fund can be charged to a responsible party. The trust fund can be significantly less than the total owed by the company. The trust fund consists of the federal withholding, social security (FICA), and Medicare tax that is remaining as unpaid after the IRS takes into consideration the payments that are made and applied to each quarter. The remaining unpaid trust fund gets charged to each responsible party that the IRS feels owes the tax.

You owe the trust fund when you take part in the decision making process for the company funds. Do you help decide who gets paid and who doesn't get paid? Do you sign the checks? The IRS would have you believe that you are liable for the trust fund if you are a signature authority on the company bank account, or if you signed checks, or if you are a stockholder, or if you signed tax reports. The law however, states that if you sign checks as a convenience for the employer, and you do it only when you are told to do so, and you don't have any authority to decide who to pay, when and how much, proving this should get you out of the liability. However, the IRS knows that anyone can say that, so you need further evidence such as notarized statements from people you worked side by side with, who can testify that they never saw you make such decisions. Professional help may be needed here. Testimony from the actual people liable, such as the owner is good too. Your statements should never be in conflict with statements made by other potentially liable people.

**Why is this significant?** Because of the legal entity concept and other rules, the IRS can only look to the assets of the company for payment of the full debt. If the company doesn't have any assets or minimal value (approx. \$3,100. forced sale value), they can only collect the remaining trust fund from the responsible parties.

If you are about to be assessed a trust fund from a company and you are not liable, you must attempt to prove this to the collection personnel as soon as possible. They are required to fill out an IRS form 4180 interview before they determine who is liable. This is where they collect evidence to determine who is liable for the trust fund. It is to your advantage to meet with the collection officer or discuss with ACS your position, so you can sway that person to your way of believing. Just answer the questions as briefly as possible. Do not volunteer additional information. Obtain a copy of form 4180 first from the internet, so you know what questions you will be answering. This way you won't be caught off guard. If you can't convince them that you don't owe the tax you will have to prepare an appeal. See the appeals chapter. If you don't appeal this action, and the trust fund is charged to you, it will be treated as a tax you owe under your social security number. There is little restriction as to what the IRS can levy or seize to satisfy collecting this debt. The trust fund debt will be treated like a debt from your personal tax return Form 1040.

This debt will be forgiven as part of an offer in compromise or if the SOL period on collections expires. A bankruptcy won't get rid of the trust fund liability, not even a chapter 7 complete bankruptcy. During my career I had several attorneys question the fact that the SOL applies to trust fund. They erroneously felt that it didn't because a bankruptcy couldn't discharge it. Make no mistake, I have had trust fund removed from my client's record of account when the statute ran out. Sometimes the IRS will not be up front with you about this, and try to get you to pay after the statute runs out. Don't fall for it. I once had a collection manager back date a levy so that it conformed to the SOL. My client was so mad, thinking that I was wrong, that when I told him to go to the taxpayer's advocate to fight it, he didn't believe me. The IRS is very good at convincing taxpayers to give up their rights and not believe their advisors. It will do you good to look up the rules yourself, if you are ever having doubts about the advice you are following. Anytime

you want more technical information, you could buy a book, or look up the IRS version on their website.

When you want to test the IRS's calculation of the actual trust fund owed, you need to request the Form 4183 and check how the actual payments toward the trust fund were applied. Get copies of the record of account for each period they say you owe. Make sure you know how much money and when each payment was made. Compare this to the Form 4183 and make sure the payments were included and offset against the actual tax. I have seen many cases where the IRS has filed a 6020B and did not accept the actual late return, thereby inflating the trust fund. I have found errors in the trust fund calculation when late payments were treated as future payments and applied more toward the non trust fund, leaving a greater trust fund balance.

If you are one of the owners of the company, you should consider if it is best to pay the taxes or to liquidate and just pay the trust fund. If you are considering doing this, please call my office to discuss what I can do to save you the most money. The money you save is always way more than my fees. I do this each month for clients. I help them set up another company, so they can pay only the trust fund, and operate a company free and clear of any IRS tax debt. You must meet certain qualifications for this. I do not recommend you trying this tactic on your own.

# Chapter 4

## Using Form 433A, 433F & 433B

### Form - 433A

#### Certain key items to make sure of:

1. Each numbered section must have a response. If the answer is zero, put zero. If the question is not applicable to your situation, then put N/A for not applicable. Just make sure all items are answered. If you don't know the answer, then find it! If you can't find it then estimate the answer to the best of your ability. Do not round off all your answers. The IRS doesn't want you to guess or even estimate your income and expenses. They expect you to gather source documents to arrive at the numbers you use. You can use this to your advantage, by putting together a group of months that support the lowest monthly payment you want to make.
2. You must try to get a monthly payment low enough so that you can pay it on time each month. You always have the option of paying more money so the balance can be paid off sooner (saving interest and penalties). But be aware that no matter how much you prepay the liability, you absolutely must pay the total amount of your monthly payment on time, or you will default the installment agreement. Under recent rules, the IRS will give you a short time (perhaps a week) to pay and "catch up" the agreement. But don't rely on it. Even though administratively they are not taking action, technically if you file or pay late (details under another section), you broke the agreement. Once that happens, they can take collection action anytime they want to. For over 20 years, and still holding true today, I have never seen or heard of the IRS taking collection action (levying or seizing) when all five parts of an agreement are still in force. They are as follows:
  1. An IRS manager must approve an agreement.
  2. The agreement is given a status code, such as the number 60 or 63.
  3. The taxpayer files all their business and personal returns on time, including any valid extensions.
  4. All taxes the taxpayer is involved with are paid on time. The payments must be coded in the IRS's computer by the correct due dates. It doesn't matter if an exemption to the penalties are met. Payments must meet the quarterly estimate rules if there is not enough withholding from paychecks.
  5. Monthly installment payments must be coded in the IRS's computer by the due date, and for full amount. "Not a day late or a dollar short".
3. Purpose of this form - The IRS uses form 433A to see what income is available to make monthly payments. They also use it to see what assets you have, and how they can access your assets if they need/want to levy or seize them. You will use this form to show them the IRS you don't have much to give them and why they should accept a low dollar payment plan or offer in compromise.

### Instructions, The Joe Mastriano, CPA Way.

Each item is numbered from 1 to 45. Each numbered item must have a response. Use N/A (for not applicable), Zero, or None, as appropriate.

Read each numbered item carefully. You will be painting a picture of your ability to pay your tax liability.

- 1. Put in your name, etc. Try not to use a P.O. Box, unless that conforms with the IRS's records, such as the record of account.
- 2. Marital status - use married and separated if separated (living in different households), and still married.
- 3. Social Security number- Use the one the IRS has! and date of birth.
- 4. Same for spouse
- 5. Own home, rent, etc. - remember to always think of your purpose when answering questions. Paint a picture that supports your purpose, and make sure it makes sense. If living together, the IRS will consider both incomes and apply the joint living expenses to arrive at a monthly payment. If living apart and not sharing income and expenses, they may only allow the expenses for one person. If living apart and still sharing income and expenses, you will have to argue the additional living expenses created by the two households.
- 6. Dependents are people you are obligated to support. Use the income tax guide definitions for blood relatives. If they are not living with you, they won't be allowed when using the table allowances, except for legally obligated additional expenses you incur. The most common situation of a dependent not living with you would be your minor child living with your ex spouse, who you meet the dependency test for. No problem, your child support and other court ordered payments will be deductible. Here is where your good will for paying child support outside of a court order hurts you when dealing with the collection division. You could go back to court and raise your court ordered payments. This is a good idea. As long as it's a court order for child support and related child welfare, and you can prove that you are making the payments, I've never had the IRS deny the expense when doing a payment plan or offer.
- 7. If you operate a business, put the information here. Then fill out Form 433B so you can deduct your related expenses against the income.
- 8-9. If you or your spouse receive 1099's (for contract income, not interest and/or dividends) put it on a 433B. If you don't claim any expenses against the income, then you can leave it here. Income from W2-s go here. Remember to include the requested attachments, unless you elect to show proof in a different way, such as over more months than the three requested.
- 10. List the other sources of income. If any income is temporary (a few months or so), make sure you include it on page 6 with an explanation of how you won't have that income available to you anymore.
- 11. List your checking account and balance. If the balance is high because of outstanding checks, then put a lower amount down. Submit bank reconciliations to the IRS showing that the balance is always lower after the checks are cashed. You can argue and win the lower amount.
- 12. List your other accounts. Same rules as #11 apply.
- 13. List your investments. If tied up as collateral, the IRS can't expect you to cash it in and pay them.
- 14. Cash on hand - I hope you don't have much. Notice the shaded totals for section 5. They will be added up later as available assets for the IRS. The internal revenue manual, in the collections section, tells the revenue officer to clean out all available assets before considering an installment agreement. Don't say I didn't warn you. All of your assets, cash or otherwise, gets added together and increases the amount you have to pay in offer.
- 15. Available credit - Don't worry, it's credit, not your money. The IRS will look for untapped sources for you to use and pay to them faster.

- 16. If you have a cash value in your life insurance policy, they will likely ask you to withdraw it.
- 17. Other information - This helps the IRS know about the availability of assets for their taking and other things that will/may affect your ability to pay the liability, and make timely payments.
- 18. List all the vehicles titled in you and your spouse's names. Guess at any balances that you can't supply in a timely manner. Remember, if you are really pressed for time, it's better to leave out some information than to fight with an IRS employee to get more time. You may want to save that first extension of time request for when you really can't meet a deadline. Getting more than one extension of time is an art for experienced representatives, and taxpayers with a good gift of eliciting empathy.
- 19. If you lease (or lease to own) put the vehicles here.
- 20. List real estate in your name. Fill in all items, and attach an explanation for any fractional or joint ownership. If not in your name, don't list it! But remember, if you have an equity interest in a corporation, partnership, family trust, etc. you must list it on this form. You will be signing the bottom of the last page "under penalties of perjury" so on the day you sign it, the information must be true, correct, and complete to the best of your knowledge. If you have a >50% interest in an asset or business put it on 433A or 433B as appropriate, with a value for your interest. Be prepared to defend it. Some people with small value assets or small value interests leave it off altogether. If the value is minimal, then you don't have to worry about fraud, but you do get to avoid the argument concerning valuation. Be careful about interests that are traceable, such as information on a K-1 from Form 1065 or 1120S that the IRS has access to. Be extra careful in an offer. If the offer division feels that you are hiding assets they can turn down your offer based on that. In fact they can and do find excuses quite readily for turning down offers.
- 21. I always use quick sale value for current value.
- 22. This should be on 433B. If you are paid on a 1099 with no deductions for related expenses (it's rare not to have expenses), and decided not to use form 433B, but actually have some business assets, list them here. Does it matter where you list it? In general, no. However, in an offer situation you are allowed to deduct an amount a little >\$3,000 from your business assets.
- 23. A/R- I always leave blank. You could put down people who owe you money personally if you want the IRS to attempt to collect it. Business A/R goes on the 433B.
- 24-25. Wages are from W-2's only
- 26. Interest & Dividends - From your cash accounts. Of course if you liquidated them, or will do shortly, the interest and dividends won't exist anymore, so leave it blank.
- 27. Carry over from 433B (or 1099 total if 433B not used).
- 28. If you actually happened to get income from a rental, (pull out depreciation, it's not a cash outlay), put it here, or explain why you won't have any income anymore, so they can't add it to your other income.
- 29-30. Pensions and social security goes here.
- 31. Child support you receive. Yes it's income. For collection purposes anyway. Don't worry, you will get deductions to offset this.
- 32. Alimony goes here.
- 33-34. Other income - list other income. So now don't you feel rich after adding up your many sources of income?

- And now, for your best creative effort to offset that large amount of income, by showing the IRS that most of your income is absolutely necessary for your living expenses. The first three have table amounts. It's almost impossible to get the IRS to go beyond these amounts. Download the tables from my website or the IRS's website.
- 35. Food, etc. - They will accept at least the table amount, even if you spend less. If you have a physician's letter requiring you to eat certain foods that increase your food bill you can add that to your health expense. Make sure you include the letter with your receipts. Read the items in the center of the page that explain what to include on the lines that have the post scripts numbered 1-7. 1-3 pertain to income and 4-7 pertain to expenses.
- 36. Housing and Utilities - Table amount again, but they have a 1 yr rule, so if your amount is greater than the table amount, you can use your amount for the first year, and then their smaller table amount after that. They claim it's not automatically given at your request. I've never failed to get it when it was needed, so plead your case with vigor.
- 37. Use the table for each vehicle. There are two parts, one for payment and one for the operating expenses. These amounts are capped, so read the instructions carefully.
- 38. Medical expenses from your paycheck, separate payments, and any other methods you actually paid for physicians, dentists, insurance, travel to physicians, prescriptions, etc. - all medical related expenses. Be prepared to have receipts and explain why the past expenses represent the future! I had a client with surgery bills who was denied because they said it was not a recurring expense!
- 39. This is your income, FICA, and Medicare, from your paychecks, and estimated payments. Many people, including the IRS, in my experience, just take this from the last filed income tax return, and divide by 12 to get the monthly amount. If that gives you a larger deduction, fine, don't argue with them. If not, then do an estimated tax calculation based on the year to date income and expenses. You may need your accountant to help you.
- 40. Child support and other court ordered payments go here and are readily accepted by the IRS.
- 41. Child care is allowed only if both spouses work. Special needs dependent care and expenses tend to be o.k. even if one spouse doesn't have income.
- 42. Life insurance - The only time it seems they accept this is if you are an insurance salesman! Good luck with this, I'm sure there are willing IRS employees that will allow this.
- 43. Other secured debt - yes under acceptable circumstances. What they are I really don't know. Maybe your furniture payments listed in #21.
- 44.-45. Other expenses - If you have certain expenses that are necessary for living, and are not part of any item above, then list them here and be prepared to argue aggressively.

Now, #34 less #35 shows how much you can pay each month toward your liability. Let's look at this from another perspective.

Let's say you have a liability of approximately \$50,000 under your social security number for personal and/or trust fund taxes. Consider the following cases.

- a) You hardly have any assets, maybe \$5,000 worth. and your 433a shows that you can't make monthly payments. You are probably an offer in compromise candidate. If you fill out the offer form prior to the deadline given to you by the IRS collection person, and meet the other requirements, then submit the offer to the IRS in place of doing a payments plan. If you can't submit it by the deadline, give them the 433A and/or 433B

information with backup and request time to do an offer. You should be able to get it.

- b) You hardly have any assets, maybe \$5,000 worth, and you can pay \$300-\$400 per month. Given that the \$50,000 is accruing interest and penalties, you will not be able to pay this off in 10 years. Ten years is the (statute of collections) time that the IRS has to collect the money starting from the date it is assessed. Not that they will give you that amount of time anyway. They want the liability paid off as soon as the financial statements allow. In the alternative at least 3-5 years. Anyway, you are probably an offer candidate. If you fill out the offer form prior to the deadline given to you by the IRS collection person, and meet the other requirements, then submit the offer to the IRS in place of doing a payments plan. If you can't submit it by the deadline, give them the 433A and/or 433B information with backup and request time to do an offer. You should be able to get it.
- c) You hardly have any assets, maybe \$5,000 worth, and you can pay \$1,000 per month. This is close. You're probably not an offer candidate, but you will have to argue a longer payout, probably by signing a 2751 extension, giving them additional time, past the statute of limitations on collections, to collect the money. You should agree to this so you can get your payment plan or offer.
- d) You hardly have any assets, maybe \$5,000 worth, and you can pay \$1,000-\$2,000 per month, then move forward with the agreement or offer. But wait, even though the financial statements say so, you really can't afford \$1,000 per month. Well too bad says the IRS. You do not have a choice. If you don't agree we will take levy and seizure action till the debt is paid! **This is why you always seek to have a binding agreement or an accepted offer.**

It is your job, before you turn in the 433A and 433B, to have it show, or "paint the picture" of the lowest monthly payment amount, and least asset liquidation that you can afford! If you want to liquidate more assets, like your home for instance, that's o.k. It will lower all the interest and penalties that are accruing. If you want to pay a larger monthly payment, then do so at your option. You don't want to be obligated to pay more than the minimum you can afford.

## IRS Trap

If you make additional payments, or increase your monthly payment voluntarily, the IRS won't let you reduce your next monthly payment. For example you are required to pay \$500 per month. One month you get "extra money" and pay an extra \$10,000. The next month you can only pay \$450 (not the whole \$500.) This will break your agreement. If this ever happens, or if you are short on a payment, call the IRS and tell them that you will be short and they will give you permission to pay later. You still technically broke your agreement in my opinion. And the IRS can take collection action anytime they want. However in my experience, I've never seen them do so under this circumstance.

## Form - 433F

Most IRS collection personnel wants you to fill out the 433a to present your personal income and expenses to them, and a 433b to present your (non salaried or non W-2) income and related expenses, assets and liabilities to them. Sometimes ACS will demand that you fill out and send in the 433f form. I've tried in the past to get them to accept the other forms, since it gives a larger and more detailed picture of the taxpayer's situation. They insist that they will only accept the 433f form. I suggest you lay everything out on the 433a and if needed the 433b, figure out your table allowances and get an idea of what your monthly payment should be, and then transfer it to the 433f. Anything that doesn't fit, put on a separate attached sheet. You are entitled to all IRS allowable expenses whether or not you can fit them on the forms! Then, do your formal request for an installment agreement in a separate letter and include it with the form 433f and the required backup.

Remember, even if they ask for 3 months of receipts, ask yourself if 3 months gives an accurate description of what you can pay each month? If you extend it to 4 months, or 5,6,7 etc. will that give you less income or more expenses

because of additional recurring medical bills paid? Also, document your expenses with the most extensive amount of backup receipts, cancelled checks, doctors letters, etc. And then ask yourself if you gave it to the high school kid next door, would they understand what you are trying to say? Will they think your support proves you actually paid what you are saying you did?

This form is very similar to the 433a, refer above for explanations

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **Think again!***
- *For your free analysis, **Click Here** to email me.*

# Chapter 5

## IRS Offers In Compromise

Despite what a collection of internet vulture representatives on the web told you, you may not qualify for an offer. Do you actually qualify for an Offer? Let's see...

A two part formula is used to see if you qualify. Take your income, and deduct allowable expenses (you need the IRS allowable expense chart for this). Your result is the amount the IRS feels you can pay each month after paying your "necessary living expenses". Then multiply this number by fifty. Next add it to the equity (that is how much you pocket for yourself if you sold the item at a bargain sale) in each of your assets. For example...add the equity in your house, car, retirement plan, rental property, stocks, etc. to fifty times the monthly amount. Multipliers may vary, this is just an estimate. The result is the total amount the IRS expects from you now in a lump sum. Or if you can pay it out over two years (maybe more) with interest added, you can do that instead. This calculation is subject to the IRS's opinion of the value of your assets, and the allowances they will give you when computing how much money you have available to pay monthly.

The offer divisions take the attitude that they are not obligated to do an offer for anyone that they don't want to. They also get pressured to meet quotas, and do so at the last minute. So what I have experienced happen over the years, is that non qualifying offers sometimes get accepted and qualifying ones (really deserving ones) sometimes do not. Obviously you do not want your offer to be turned down. Offers need to be worked consistently, (it is not a static process), sometimes for almost 2 years! The good news, is that offers can be quickly filed again after they are turned down.

Download the offer in compromise book from the IRS's website. The key of course to a low offer is in the 433a and 433b(if needed). Please review the sections concerning these forms. Offers are also used to resolve a doubt as to liability. Let's say you are charged a tax that you really don't owe. You have either exhausted your appeal rights, or they have expired. Filing an offer is a way to get these rights back. You present your best argument to the offer division, and if you are poor, even though the instructions say that a 433a is not necessary, fill one out. Doing so shows that your income is low, especially if the expense items allowed are less than your income. The IRS will probably be more sympathetic if they know they can't get more money out of you anyway.

### **So Here's Your Checklist For Doing An Offer:**

1. Prepare an offer - download the forms 433A (and 433B if needed) and the form 966. Use 656-A for your income certification if your income is low enough so you are exempt from paying the application fee, and/or payments. Use form 656-PPV to accompany any monthly payments you make under the offer, starting with the first one. Mailing addresses will vary, so please check the one for the offer location you are sending to.
2. Fill them out, and send them along with your backup receipts, payment of processing fee, and required payment. See the instructions for computing this. Also check the chart to see if you are exempt from paying the fee and/or payment.
3. Do follow up calls and make sure that your offer is accepted for processing.
4. Respond in a timely manner to requests for additional information. Make sure the offer division acknowledges receipt of the information prior to their deadline.
5. Make sure you have a conversation with the offer specialist prior to their preparation of what the offer amount should be. Call and ask how the review is going, and let them know you are available for questions. This way you can explain things before they come to conclusions on their own.

6. Don't argue too much. This is your big chance for a reduction. You will probably have to pay more than you think is fair. Just make sure they don't make big unfair adjustments against you. Don't sweat the small stuff.
7. If you think they are grossly wrong about what you should have to pay, you can appeal, or submit an offer later.
8. Exercise patience. Offers get kicked around a lot and may have to be refiled in the process. Yes, you will have to update the forms and redo your proof of income and expenses. Maybe more than once. Hang in there, and remember to be patient. It hopefully will be worth it all in the end.
9. Be prepared, even a year later to submit updated income and expense information. Make sure your income didn't go up, or you didn't pay a large expenditure.

## **More Critical Information**

If the IRS feels that your situation is temporary and it benefits them to do so, they may elect to average the prior three years. The burden of proof will be on you to show that your current immediate situation is an accurate projection of your income over the next 5 years (or remaining statute of limitations on collections). You will have to show that the last three year average is higher than your projection because of an extraordinary situation that is not likely to repeat itself.

The offer division likes to use the prior year's tax return as a guide for showing what your income and expenses are. If it is within the first few months of the year, and it benefits you to do so then use that. Of course you will then have to lower your income over the next few months so that it closely resembles or is less than the prior year.

It is beneficial to look at income and expenses "per month", so you can group together a number of months back, as a way to support what you are representing as your income and expenses on form 433a. For example, it is Sept. and you are preparing your 433a to submit as part of an offer in compromise. You could include the info for July-Sept (three months as the instructions show) or expand it to June-Sept, or Mar-Sept if that would be more favorable for you. Also, include information about projected future income. Give them proof beyond just your word.

Get letters from your physician to support how your current medical condition does not allow you to work more hours than you currently are. This will support you having a low income too. The more proof the better.

If you own a house, get an appraisal of it that supports your value. If it is close to their estimate they will more than likely use yours. If a very large difference they will push for their value. Don't worry, this is an issue that IRS appeals will take and force the collection division to use what they feel is the most reasonable value.

Does your spouse stay home to care for your healthy teenage kids? The offer division may not accept a spouse not working. You will be hard pressed to prove that it is absolutely necessary for your spouse to not even work part time! Maybe they should get a job before filing the offer. Yes it will hurt the offer amount, but it will increase the chances of acceptance.

The main taxpayer, who has the liability (or joint liability) needs to be working too. You should not file saying that you were laid off last month and that you are looking for a job. Get a job before you file. Remember, the IRS has to be comfortable that the offer amount they accept is the most that they can get out of you over the remaining collection statute. Obviously, once you do get a job your income will be higher, so your ability to pay them more money will be greater.

It's o.k. to file the offer before you get your first paycheck on your new job. Just indicate on your cover letter that you will send in the pay stubs when you get it.

Sometimes the liability is just yours. However your spouse must take part in the offer process and sign the financial statement (433a), and include their income and expenses to arrive at the monthly amount available after allowable expenses are deducted from income, even though she/he may not be liable for the tax, and will not be signing the offer form 966. If you are married and have a prenuptial agreement or have kept your income, expenses, income tax filing, etc. separate, you have a good argument for keeping your spouse's information out of the offer process. You will be able to deduct only 1/2 of your living expenses, so you must see which way benefits you the most. Usually if your spouse has an income much greater than their share of the living expenses, using 1/2 of the deductions and only your income will be better. Different states follow different practices, so always be prepared to carefully explain and document what you are doing.

## **How Not To Break Your Payment Plan Or Your Offer In Compromise. Also, Making Sure You Qualify For An Offer In Compromise From A Compliance Standpoint.**

You do this by keeping in compliance. This means filing and paying on time as follows...

Each taxpayer is responsible for their own companies or individual compliance with tax filings and payments of taxes, and installments under an IRS agreement. You cannot obtain an installment agreement, or an offer, or even appeal a decision (and get proper consideration) from an IRS employee, without all of your tax returns filed. All income tax returns and all business returns you are associated with must be filed.

### **Individuals (non business)**

All installment payments must be received (and noted as such by the IRS) by the due date. The payment should clearly reflect what periods and years are being paid. Even if taxes are being taken out of your paycheck and you never had to make payments before, if you owe tax when you file your return, you will break your installment agreement. In fact, any liability assessed to your personal social security number will break the agreement. This includes trust fund from a corporation where you were a responsible party for the corporation not paying their payroll taxes! It does little good to establish an agreement if you know that sometime in the near future you will have a tax liability assessed to you.

### **Individuals (with payroll from a sole proprietor schedule c business)**

In addition to the above, all payroll deposits must be made on time for the correct amount. **"Not a day late or a dollar short"**. I mean this literally, it is your responsibility to see that all payments are made on time for the correct amount. If you hire an accountant or payroll service then make sure you review the worksheets and verify that the amount is correct and that the payments are made on time. I have seen many installment agreements and offers broken because people trusted others to do just this. It's o.k. to hire someone to help, but since your payment plan or offer can be broken by this, why not take the extra step to see that it is being done right!

All tax reports (the ones applicable to you), 1120, 1120s, 1065, 941, 940, 1120 ES etc. must be filed on time. This means by the due date including any extensions. This is also very critical. If mailing, check the correct address and send registered receipt.

### **Offer Qualifying**

Individuals must of course have their 1040 personal returns and current estimated taxes filed and paid on time. If you have payroll, you must have the last two quarters paid on time. Not a day late or a dollar short to be able to file.

## **Forms 433A and 433B**

See the "Owing The IRS" page.

## Form 656 Instructions - The Joe Mastriano, CPA Way

Section I. Remember that separate offers need to be done for each account. So pull the record of account under your social security number, your wife's social security number and under the joint numbers. Make sure your returns are filed correctly. Sometimes the accounts are mixed up. Call ACS and have them fix the records of account. Once straightened out, or even before it is straightened out, especially if you have a collection deadline, prepare your offer in compromise forms.

Any liabilities for periods under a separate ID number must be put on a separate 656 as a separate offer with a separate offer fee.

A joint liability will require a separate joint offer form too.

Any business liabilities, under a separate ID number will be a separate offer as well. However, different business ID's can be combined on the same offer form.

So, depending on who the offer is for, you will have up to three separate forms to fill out. You can divide your offer amount proportionally under each form. Put a note on the forms to alert the reviewer at the IRS which other offer forms are part of you offer request. They will consider all of them together.

**Section I.** Fill in section 1 with the correct name, address, and ID number.

**Section II.** Fill in the type of liabilities you are attempting to compromise. They will be the periods and years that show up on the record of account that you pull from the IRS. The revenue officer can get that for you. I would rather trust my own request, just in case they leave some periods of liabilities out. However, the worst that can happen here is that the offer gets kicked back to you with a request to include the periods you left out. Then you make the adjustments and send it back to the offer division.

**Section III.** If you are submitting an offer based on doubt as to liability, meaning that you don't owe it in the first place, you must fill out form 656-L instead of this form. The two choices are doubt as to liability, and effective tax administration. The first one is the most common. That is why you are filing this offer in the first place. You can't pay off the full amount within the statutory period of collection. Just check this box if your assets can fully pay off the liability, but your exceptional circumstances would cause an undue hardship. Funny, I think everyone qualifies for this. After the IRS cleans you out of your assets and the biggest monthly payment you can possibly make, who wouldn't suffer an "economic hardship"! But the IRS has a different interpretation than mine. Let's say for example, you are 70 years old and your health is bad. You are living on social security, and you have equity in your house greater than your tax liability. You've lived there for 30 years and paid off the mortgage. Using the offer formula, your house is worth \$200,000 and 80% is \$160,000, and you only owe \$120,000. You don't qualify for an offer under doubt as to ability to pay. But given your health and income situation, if you borrowed against the house, you couldn't make the payments. You probably wouldn't qualify for a loan anyway. Not to mention, moving you out of the house would cause great emotional stress. I would argue for a minimum offer, because the IRS can't get more money from you. They may argue that you take out a reverse mortgage and pay them whatever the bank is willing to give. I suggest hiring me in this type of circumstance. These are hard offers to get accepted, and admittedly I have had trouble doing so.

**Section IV.** The terms. I have gone back and forth with the IRS many times to get this section straight. I won't confuse you with my experiences. Be careful to read the instructions and do the math. Don't sweat this, if the offer specialist thinks the amounts should be different, they will send the offer back and ask you to redo it. No problem, you already know they will probably do that anyway.

**Section V.** The conditions you are agreeing to. I like this. Anytime the IRS boldly points out to you what they require

of you. You give away some legal rights here. Sometimes it is easier to file an offer based on doubt as to ability to pay, instead of going to appeals to lower an audit adjustment. Let me explain. You are audited, and the adjustment causes you an additional tax liability of \$100,000 on top of the \$50,000 you already owe for that year. You could pay someone to fight an appeals case to lower the \$150,000 to perhaps \$120,000,(because you have receipts and you think the auditor was not fair). However, you feel that, why bother because you project that you will only have to pay \$40,000 at most in an offer, based on your calculations. Now you sign part V(j) that says "Upon acceptance of the offer you agree to give up your rights to contest the liability". You do the offer, and break it later because you missed a payment. Too bad, you just lost the \$30,000 potential adjustment (that reduced the liability from \$50,000 to \$120,000). You can avoid this by making sure you do everything possible to lower a tax liability before you file an offer. Sometimes it's easier said than done. **Please take the time to understand each section the best you can.**

I'll have to keep in mind that the only reason you would file your own offer, unless you have the IRS experience, is that you are broke and can't afford to hire a representative. In which case the above may not matter. You may be able to work out a payment plan that doesn't pay the full balance. I've done some of those. You need to ask the collection officer what their current policy is on that. It varies.

**Section VI.** Explanation of Circumstances- I've seen other representatives in the past not put in the time and attention needed here. You are painting a picture for the IRS to see how poor you are, and your lack of ability to pay the liability in full. So make sure you let them know of your illnesses, lack of education, skills, etc. The recent depression, down turn in business, current layoffs in your company, the business contract that probably won't renew, the alcohol program you just joined, the psychologist you are going to, the drugs for medical conditions you are taking, etc.. Make them realize how bad your life is in the first place, on top of now having to give them most everything you have to settle the liability.

I wouldn't tell them that you will file a bankruptcy if they don't accept an offer. They may take this as a threat. Their opinion has been that if you are going to file for bankruptcy, then just do it.

**Section VII.** Source of funds- I usually just write that money will be borrowed from family and friends, if it is a lump sum offer. Don't give names or other identifiers, unless they specifically ask.

If your financial statements do actually show that you have the cash available for a lump sum offer, then the offer amount will be more, as the formula to compute the offer amount will show.

**Section VIII.** Sign and date the offer.

**Section IX.** If you are not able to communicate with the IRS and have a friend or family member helping you, fill this part out.

**Section X.** For you power of attorney representative.

**Section XI.** Same as IX , unless you use two different people. Maybe you have an accountant friend who was willing to fill out the forms, but not willing to represent you, and a friend or family member who is helping you, will speak to the IRS for you. This is very dangerous to do. The person speaking to the IRS should be knowledgeable about the financial information. Then again, some people don't have a choice!

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **[Think again!](#)***
- *For your free analysis, **[Click Here](#)** to email me.*

# Chapter 6

## Liens, Levies And Subordination

A lien is a legal claim against real property filed in a county court house.

A levy is the action of taken an asset (wages, bank account, etc.) to satisfy payment of a debt.

A subordination is getting the IRS to allow another creditor a higher collateral security position in your assets.

If you get a levy notice, follow the procedures for contacting the issuer and resolving the matter.

A good source for detailed information for a lien subordination is IRS Pub 764. Do a Google search and download a copy. It has a great section on how to prepare the application and what to do afterward.

Reasons the IRS will give you a subordination. a) You can offer approximately 3 times the value of your liability as collateral, or you can buy an insurance bond for approx. 3 times the liability. b) You can show that it will be easier for the IRS to collect more money by doing the subordination, like getting all the proceeds on the sale of your house, for example.

I have received approval for several subordinations depending on the circumstances. The following points should be helpful for your success.

1. You should acknowledge that you could and probably should have stopped this much earlier in the collection process. Understand that the IRS is not going to be sympathetic to your concerns about how tough it will be to successfully conduct your business. The IRS puts a lien on to protect them against 3rd party creditors getting your assets before they do. So why would they be willing to give up their creditor protection? Their general policy is not to remove or subordinate liens (or levies) unless you fit one of their acceptable categories.

First consider the question of whether or not you can live with the lien. It's usually not as bad as you initially thought. Is it hurting your credit? By the way, the IRS does not file the lien with the credit bureaus, so don't ask the credit bureaus to take it off. The credit bureaus pick up the lien on their own from court house records. You can remove it for a short time by sending a letter to the credit bureau explaining how this is not yours, (assuming that it isn't), or that it is grossly overstated. If there is no confirming response within 30 days, the credit bureau must remove it until they receive a confirming response. But this is the subject for a manual on credit repair. Anyway, you can use someone else's credit or don't use any credit till the liability is paid or resolved. Many times people you buy from will be sympathetic and help you work around it. I want you to consider living with the lien and focusing on paying off the liability as soon as possible. It's better than throwing your money away paying some misleading representative that promises to remove the lien using some type of trick or exceptional experience!

Liens are specific to the county that they are filed in. I have advised several people to quickly sell property located in counties that the IRS did not have a lien on. You need to do a lien search in each county to find out. Some counties have records on computer. In some you have to go to the court house to check liens. Otherwise you can pay an attorney or paralegal, or a lien service on the internet to check for you. It's better to sell the property and give that money to the IRS to lower your debt, than to try to spend the time and money to untangle it once the lien is filed in that county.

You can also sell property that you have a lien on. WHAT? Well, you can't convey title, but if you sell it for fair market value, you have not broken any laws. Who would buy it? A relative or friend or someone else who really wants the property, and understands and is willing to wait for the IRS to release the property once the fair market value (money) is offered to them. The risk here of course is the IRS should agree with your value of the real estate. I don't recommend doing this on your own.

On the other hand, if your asset is not real property, the IRS has greater trouble recovering the transferred property. I know of many people who have sold their cars, boats, and pulled out the money from their bank accounts while a levy was in place and got away with it. I can't advise anyone to do this without knowing all the details of their situation. Most people will be safe taking out cash, especially if you show it went to food, rent or mortgage, medical, and other general living expenses.

## **If You Really Need A Lien Subordination**

1. Liens really hurt companies when sales and financing are inhibited. A business could be ruined without a subordination. A subordination may be needed so a bank or accounts receivable financing company may become a first position creditor.
2. Make sure you answer all items on the application for a **Certificate of Subordination of Federal Tax Lien**, and include all documents that explain what you are trying to show them. Then when finished, sit back and ask yourself, "If you were an IRS employee and got your application, would you understand and approve it?" Would you be convinced that it was in the IRS's best interest to let you continue your business without the lien, and pay them back the money you owe? If not go back and make any necessary changes.
3. When you are satisfied, sent it to your revenue officer, and call to make sure they received it. Find out when they plan on sending it to the subordination group at the IRS. Then call at that time to make sure it went out. What? You don't have a revenue officer assigned to your case, no problem. Contact the subordination group directly. Request that they handle it immediate if "time is of the essence". Be nice, always remember to ask as if you are asking for favors. Don't tell the IRS employees what their job is. Make the appropriate follow up calls to get it through the system.
4. Bad News - the IRS gets a lot of these requests, so it still may take from two weeks to three months! Sorry, but I have had people try to sell their house at a high sales price, so they could use ALL the profits to pay the IRS, and the IRS still couldn't do the subordination in time. They lost the sale. Sometimes it is hard to convince the IRS that it is in their best interest to do the release. Our Federal government moves slowly to their own disadvantage sometimes. Some companies I know of have gone out of business because they couldn't factor their accounts receivable anymore. Recently, I was told that the IRS doesn't want to handle subordinations for receivable factors! How's that for helping companies go out of business?
5. You could file an emergency collection appeal to release the lien, but it still has to go through the subordination group. The collection appeal could be used prior to the lien being filed, or to appeal levies and other collection actions. Now you see why it is so important to head off a lien before it happens, when you intend to sell real property to help pay off an IRS debt. Don't become a victim to this.
6. You can always take this to the Taxpayer Advocates office. If you prove the hardship to them, they may take your case on.
7. If you can show that the IRS didn't give proper notice, such as a notice of deficiency or another 30 day notice, you can appeal the lien. However, even if you win, you still didn't resolve the problem, and they can always put it back on, once they cure the notice issue. You don't fare better in appeals one way or the other, so why not just do a CDP (collection due process) or CAP (collection appeals program) appeal based on hardship, and establish a payment plan, offer in compromise, etc. The time that I would consider fighting a lien based on not given proper notice if a) I can prove it and b) if I was about to sell real property and if not for an immediate release, I would lose the buyer. The IRS publication 1660 explains your appeal rights. Obtain a copy from the IRS's website.
8. You can get a release to obtain a bank loan.

9. I have gotten releases to pay off accounts receivable factors in the past. Currently the IRS claims that they won't do this anymore. If this will cause you to go out of business, I would file an appeal or get the Taxpayer Advocate involved.

## Lien Releases

We call 1-800-913-6050 to discuss lien releases with the IRS. This is a division for releasing liens. This is for the times you paid the liability, or it should have been removed for another reason and you want action now to remove the lien. Once the liability is fully paid, the lien is no longer valid and should be removed.

If they give you a hard time then contact the Taxpayer Advocate's office for help.

If you want a lien released because of hardship reasons, then you need to file an appeal.

You should file an appeal directly with the collection officer or ACS. If no one is assigned you can file directly with your local appeals office. Be careful, sometimes I've had appeals secretaries tell me that they can't accept an appeal unless it comes to them from collections. Don't believe it. If you are about to suffer a hardship, and you have no one in collections assigned to your case, just call an appeals officer or visit your local appeals office and get them to accept your appeal. I have never failed at doing this.

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **Think again!***
- *For your free analysis, **Click Here** to email me.*

# Chapter 7

## IRS Letters Or Notices

You should respond to all letters and notices if you want to protect your rights or to initiate an action. If the action you decide to take is no action, that is ok too. The further in the collection process you wait to make a correction, the harder and more time consuming it will be. People have paid me thousands of dollars to correct actions that would have been very simple, and less costly, if done the moment the IRS first contacted them. This tax relief guide will give you better information about how to respond. Each letter can be found on the IRS website. Just Google the letter or form number and select the sites you want explanations from, including the link to the IRS website.

Please read my descriptions for each letter. Even if you didn't get that letter, the descriptions contain a lot of useful information to help you understand the IRS.

## Great Tax Reduction Technique

What if you get a letter from the IRS charging you additional tax based on a math error or a clerical error? How would you like to avoid paying it? Here's how...Write back within 60 days and say you request an abatement under section 6213(b)(2). This may get it abated. It's worth a try. Sometimes they reassess it, but they must issue a "notice of deficiency" giving you appeal rights. Include in the letter a statement that you disagree with the additional tax and the action you want taken, such as "I disagree with the additional tax assessment because I did everything correctly and I want you to remove the taxes." Also state that if they don't remove the taxes, you are requesting that they issue a notice of deficiency so you can file an appeal. The notice of deficiency will list the changes that they made. (Often you get a correction letter that doesn't spell out why they made the changes in the first place.) Use this approach for letters involving a missing SS# (supply the number and copy of Social Security card if you have it, in your letter). Send your letter to the address they request you respond to. Never be afraid to call or write for an explanation of the letter or the adjustments being made. You may just want to pay it, or if you are contesting it, you have a better understanding of what you are contesting. If you do call for an explanation, do not give any information as to what and why etc. you did anything! They will record it and it can be used to deny your request for abatement.

## CP 11 - We Changed Your Return, You Have A Balance Due.

This notice reflects adjustments the IRS made to your return and the effect it had on penalties and interest. If you don't agree, speak up now, usually the longer you are in the collection process the harder it is to undo things. If you don't understand why the changes were made, contact the IRS and ask. You don't have to answer questions beyond the verifying questions to prove that you are you, or make promises of when you will make payment. Just say you will call back soon after looking into the matter.

## Letter 11 - Final Notice Of Intent To Levy

And notice of your right to a hearing. You have 30 days to appeal. I prefer solving the case before that time and getting the R.O. to hold off on the levy. Appeals are time consuming, and still won't solve the compliance issues of filing delinquent returns, and payment issues of paying delinquent taxes. If you can't file the delinquent taxes and fill out the collection information statements within the 30 days, call the R.O. or ACS and explain your great desire to cooperate. Give them what they want, give them some answers they want, and you will probably be given more time. If not call back again. Don't give up. You are allowed to have time to resolve your case.

## **CP 14 - Request For Tax Payment**

This is your first bill for taxes due. A nice simple request for payment. The IRS feels that you still did not pay enough to cover the liability plus interest and penalties. This letter will go to great lengths to explain the interest and penalties, and often less about why you owe money.

## **CP 22E**

This is a change based on the result of an IRS audit examination. You don't even have to be aware of it! The IRS can and does conduct audits without your knowledge. If they think everything is O.K. then you probably will never know it happened. If not you will get a letter. You should respond with your proof for any items you want to claim are justified as staying the way you reported them. Or you can just agree to their changes. Often the reasons for the change are missing. How nice. Pull your third party payer information and see why they have different information than you. If you can't get it in time, call and find out why. You may have to make a few calls. Hang in there.

## **CP 71A or CP 71D - Reminder Of Balance Due**

Your annual notice of what is still owed. This notice will also inform you of your "currently not collectable" status. How nice of them!

## **CP 90 - Final Notice Of Intent To Levy And Notice Of Right To A Hearing**

As it says, they will levy. The ball is in your court to fix what is wrong. To get into compliance and work out payment arrangements. You have 30 days to appeal the notice of levy. Not any other collection action by the collection division, not the tax in the first place, just the levy. You can appeal a lien separately as a lien appeal. You can appeal a collection action with a specific appeal for that. You appeal the tax by an offer, appeal, or tax court petition. I've had cases where my client started the appeals process, only to find out they didn't understand what they were appealing exactly, so the appeal was lost. What a waste of time and money! Match your appeals properly.

## **CP 101 - Math Errors**

This form consists of math errors they say you made, computational errors, tax deposit errors, or no reply to additional information, etc. If they are wrong, correct them. If they are right, just ignore the letter.

## **CP 161 - Underpaid Tax**

This shows the underpaid tax according to the IRS records. Pull your ROA and verify your payments and filing of returns. You will see how the IRS came up with the balance. If you owe it, pay it. Use [www.eftps.gov](http://www.eftps.gov) if you are set up. Usually call the IRS office on the letter to resolve it. If you need to do an installment agreement or offer in compromise consult this manual.

## **CP 210 or CP 220 - Penalty Notice For Failure To Deposit**

Check your records against the IRS. Check circular E and make sure you understand when to make your deposits, and how much they should be. You should not rely on IRS notices to tell you how often to deposit. You also must use the correct deposit method. Certain large employers must use electronic deposits and not regular bank deposits.

## **CP 297**

See CP-90 final notice.

## **CP 501 or CP 502 - Reminder Of Balance Due, etc.**

These are initial requests before the CP-503 and CP-504 are issued. You are in notice status now. Probably no collection action yet if this is your only IRS contact. What a great time to plan for your resolution with this guide!

## **CP 503 - Important Immediate Action Required**

If you have received this notice, it means you have ignored the initial tax bill, CP-14, they skipped the CP-501 and CP-502 notices (or you received them prior to this) , or your case is back in collections after being declared "currently not collectable" for a while. If you owe for more than one tax period, you will receive this notice even if you made arrangements to make installment payments, or you have been placed in a "hardship" status. It will say on the face of it to ignore it if you have entered into an installment agreement or paid the balance. As long as you have confirmed this, then you can ignore the letter.

## **CP 504 - Urgent We Intend To Levy On Certain Assets**

This means that you have 30 days before they will actually levy a bank account or wages, etc. If you owe for more than one tax period, you will receive one of these notices each year. You may receive this notice even if you have made arrangements to make installment payments, or you have been placed in a "hardship" status. You may get this notice at any stage of collections. It requires immediate attention. See the chapters on working your case.

## **CP 515 - Request For Your Tax Return**

If you have received this notice, it means you have failed to file a tax return, or at least the IRS has not logged in a copy on their computer system. The type of return and tax period will be shown in the upper right corner as well as in the body of the notice. File the return as soon as possible, otherwise your case will be transferred to an audit group who will prepare the return for you, without those necessary deductions you need to lower your liability.

## **CP 518 - Your Tax Return Is Overdue**

Well now you know. Get it prepared and sent in. If you owe more than you can pay, then prepare to deal with the collection division. Luckily you can be prepared because of this manual.

## **CP 521 - This Is An Installment Agreement Payment Notice**

As long as you are meeting your terms of your payment plan, there is nothing else for you to do. If you've broken your agreement, even if you didn't receive this notice, take the initiative to immediately get back into your agreement.

## **CP 522 - Two Year Review For More Financial Statement Information**

Be careful responding. If your income has gone up, your monthly payments to the IRS will probably go up too. Maybe your living expenses, especially medical, has increased too! You want to maximize deductions to offset any increase in income. If you need to lower your monthly payments, argue that too.

## **CP 523 - Notice Of Intent To Levy**

Oops, either you defaulted on your agreement or the IRS isn't posting your payments properly. Remember the IRS must receive payment by the due date of your monthly payments. They must also receive payment by the due dates for all taxes you are liable for. Not a day late or a dollar short. In the past they used to break your agreement and levy your account. Now, they give you about a week to straighten it out. Call and get it fixed.

## **CP 525 - 30 Day Letter To Appeal**

This comes with your audit adjustment letter. It gives you 30 days to appeal if you disagree with the adjustments. It's a good idea to prepare this appeal along with your continued arguments and give it to the auditor. This way you protect your rights if you and the auditor disagree about the changes.

## **CP 531 - Notice Of Deficiency**

This shows how much you owe for each year, and how to dispute the adjustments. In many dispute cases you must pay first, and then file a claim for refund. Otherwise you have 90 days to file a tax court petition.

## **CP 566 - Initial Contact Letter On An Audit**

Be glad you received it. Many audits take place without taxpayer notification. At least you get a chance up front to defend your positions. Make sure you prepare properly.

## **Form 668W - Wage Levy**

Fill out the exemption portion so you can get the biggest paycheck. This is a very serious collection action. If you want your next full check, you need to take care of delinquent filings and information the IRS needs from you to determine a payback plan right away. Get your information together and "paint a defensible picture" of your financial situation as instructed in this manual. File any delinquent returns, and pay any current payments of estimated taxes that are delinquent (or prove that you are not required to make one by providing your estimated tax calculation). Provide this calculation anyway if your payment is less than it normally should be. Then call for an immediate levy release. Give them the name and the fax number of the person in your company whose job it is to receive wage levy releases. Your social security or retirement can be levied.

## **Form 668A - Levy**

Same as above, except this is a one time bank or financial institution levy. Works on anyone who is holding your money. The funds are on hold for 21 days, then they are sent to the IRS collection person who sent out the levy. I have seen banks not follow the rules on the one time nature of this levy. On the back of the levy it states that this is a one time, not continuous levy. It is for funds on hand the day it is received only. I had a real estate client who had to

switch jobs because his employer got a 668A levy on his commissions. None were owed. The following week he had a closing, and would receive commissions. I tried to explain to his employer that the new commissions did not have to be held for the IRS and to read the back of the levy. It's amazing how some people can be so afraid of the IRS that it clouds their common sense judgment.

### **Letter 692 - Request For Consideration Of Additional Findings**

This comes with proposed adjustments to your tax return. It gives you courses of action. You can sign it, or request an appeal. Be careful, you usually have less than 15 days from your receipt of the letter, to take action.

### **Letter 1058 - Final Notice Of Intent To Levy And Notice Of Your Rights To A Hearing. Please Respond Immediately.**

If you received this notice, it means you owe tax and have ignored Letter 2050. This is one the most serious collection attempt notices the IRS sends to a taxpayer owing tax. It must be responded to or you will lose appeal rights and the IRS will levy anything they can find. As always prepare a preliminary financial statement to know where you stand before contacting the IRS.

### **Letter 1085 - This Is A 30 Day Letter To Protest An Assessment On A 6020B**

This is a 30 day letter to protest an IRS tax assessment on a 6020B, which is the IRS code for a payroll report they filled out and filed for you. Don't just accept their figures, even if they are close to the actual amounts. Your 941 payroll reports must balance to the 940, the state reports, W-2's, etc. At a minimum, you must see that the total gross wages for the year is the same for each report. Hire a professional to help you if you can't do this on your own.

### **Letter 1153 - Trust Fund Recovery Penalty**

The remaining FICA and withholding not collected from the business is now being charged to you. Very serious. Different regions of the country rely on different court rulings to settle some disputes. Basically you must show that you didn't have authority to direct the company's funds and that you did not have knowledge of the taxes not being paid. You should send the R.O. your appeal along with your proof that you are not liable, just in case they don't agree with you. It shows that you are very serious. Many people will wait on this part until it is absolutely necessary. Sometimes R.O.'s will chase everyone who has signature authority on the bank account, any stockholder, any signer of a tax form, or listed officer, and then leave it up to you to defend yourself.

### **Letter 1389 - 30 Days Protest On Tax Shelter**

This gives you 30 days to protest changes made to your return because of your tax shelter activity. Sign it or appeal it.

### **CP 2000 - We Are Proposing Changes To Your Return**

If you received this notice, it means that you have omitted income from your return or the amount of income or expenses on your return does not match the amount reported to the IRS. The following pages will provide an explanation of the changes followed by a detailed listing of the items that were left off your return or did not match the amounts reported to the IRS. Respond immediately, with all the proof you have to sway them to your way of thinking. Do not shortcut your proof.

## **Letter 2050 - Please Call Us About Your Overdue Taxes Or Returns**

If you received this notice, it means you owe tax and have ignored previous notices CP-504 or CP-523 or you have delinquent tax returns. You may receive this notice even if you have made arrangements to make installment payments or you have been placed in a "hardship" status. Do not call. Spend time now preparing the delinquent returns, and preparing your financial statements.

## **Letter 3016 - Preliminary Determination Letter**

You have 30 days to appeal, if they turned down your request for innocent spouse relief. Go back and develop your arguments before calling for a new determination. If you can't get the reviewer to change to your way of thinking, then file your appeal in a timely manner.

## **Letter 3172 - Notice Of Federal Tax Lien And Right To A Hearing**

You now have a real property lien in a particular county only. Just the county listed. Not all counties you own property in. I have had clients that sold all property they had in other counties and used this money to help them negotiate better payment plans. If the lien will cause a hardship, one acceptable to the IRS, then appeal it.

## **Letter 3174(P) - Notice Of Levy**

Similar to letter 1058. Used when a taxpayer changes address. This needs immediate attention. You avoid levies by resolving the collection issues, or you appeal based on a hardship.

## **Letter 3173 - 3rd Party Contact**

This letter advises taxpayers that the IRS may be contacting 3rd parties to ask questions. You can't really do anything about it. Don't worry though, your personal information will be kept confidential.

## **Letter 3219 - Notice Of Deficiency**

Issued to a taxpayer before an assessment is made. Usually the result of an audit. If you disagree, you need to file a tax court petition within 90 days. You can file an appeal to contest it. Don't worry, if you miss the deadline for an appeal you can usually get Appeals to take the case, by filing a tax court petition. Once accepted by the IRS legal division you can call and convince them that this is really a case to be heard by Appeals.

## **Letter 3228 - Annual Reminder Notice**

This is a notice to let you know what taxes and years you owe. This is sent yearly as long as there is an unpaid balance.

## **Letter 3391 - 30 Day Notification Letter**

The IRS says you owe for the years stated. The letter shows you what the liability is based on. Agree to it or protest. However, if you never filed the return, then file it. Use their numbers for income and expense if you feel comfortable with them. If you just want to accept their information without filing a return, ask for a signature form so you can show you signed the return they prepared. They file an SFR (substitute for return) using the 3rd party payer information they have on file. This includes the W-2's, K-1's, 1099's, etc. filed under your tax ID number. Signing a return and having the IRS enter it on their system will start the SOL on collections. I have seen the IRS collect tax liabilities way beyond 10 years because the taxpayer never started the running of the collection statute. The statute starts when the taxpayer files a return that the IRS accepts.

## **Considering Writing Your Own Letter To The IRS?**

If you follow my guide, you will rarely have to write a letter to the IRS, unless you are attempting to remove penalties. If you can't get someone at the IRS to take care of your requests by a due date, or if you can't confirm that your request was completed, you may want to send something in writing, certified return receipt, prior to the due date, therefore complying with a statute date that you don't want to expire.

When in doubt, do a mailing to lock in the due date. Never, however, expect it to be read and acted upon in place of your phone calls! I can tell you to wait 3-6 weeks, but each case will determine the follow up time for each mailing. Other factors will too. For example.... How much risk you are willing to take that your paycheck or bank account will be levied?

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
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- *For your free analysis, **[Click Here](#)** to email me.*

# Chapter 8

## Payment Plans

### Various Types Of Payment Plans Or Installment Agreements

#### **Small Dollar Payment Plan-**

You may easily be able to get up to 60 months to pay a liability if the principle plus any interest and penalties that are part of the original assessment is < \$25,000 (notice I said original assessment). You can also buy this down below \$25,000 by making an immediate payment. This can be tricky. If you say to the ACS person that you want to buy it down and they are not cooperative you will have to be very persistent. Here's what you do. Go to the nearest IRS walk-in office and pay an amount that will bring the liability down below \$25,000. Get a paid receipt. Then call ACS after you completed your 433a and 433b (if needed). Fax them the receipt if they want it. They can check their system the next day to verify it. Then show them that you can only pay the monthly amount you want to pay. It is a lot harder if you call up and say something like "hey, I was reading the collection manual on your Website and it says I can have a 60 month installment agreement, so give it to me". Boy, will they "give it to you".

#### **A currently not collectable (CNC) payment plan installment agreement-**

If as a result of filling out the collection information forms, the IRS can't satisfy the payment of the debt by the end of the statute of limitations on collections they may put you in a CNC status. This means they have considered any equity in assets, and your ability to make reasonable monthly payments that will extinguish the debt in a reasonable collection time frame, and have concluded that you really don't have the ability to pay. I say take this status from them. Make sure it's coded on the system. Then work toward resolving the liability. The liability is still accruing interest and penalties (interest only if a trust fund liability), and you will have to pay it later. Try to set yourself up for an acceptable offer in compromise to get rid of the liability. See the chapter on offers.

#### **Applicable to all installment agreements...**

After getting the agreement don't wait for notices from the IRS to make your payments (a very common mistake). To allow for processing, send the payment in at least 10 days prior to the due date. Immediately after getting the agreement, or sooner in anticipation of the agreement, go to [www.eftps.com](http://www.eftps.com) and sign up personally, if the agreement is under your social security number, or sign up your business if the liability is under your companies ID number. That way you can make sure the payments are processed before the due date.

If you get subsequent collection notices, they may be for other tax periods. If so, they need to be handled immediately. The agreement can be broken if you owe new taxes, so get this paid off immediately, or you may have to renegotiate your agreement to get it included. If the liability existed at the time you made the agreement, it needs to be put into the payment plan. It is so essential that all outstanding periods you owe for are put into the agreement when it is negotiated. If you owe business taxes as well as personal you may have to get the IRS to do two installment agreements. They are often reluctant to do this. An alternative would be to mention how the other account will be handled on the face of the 433d installment agreement form. Occasionally I have failed to get the IRS to do two agreements, and had to liquidate the business to get all the liability under the personal account. Fortunately, the

taxpayer saves a lot of money in the process. This is one area in which people often get set up for a fall. Remember, you must have a plan that answers to your current personal and business liabilities, and any liabilities about to be assessed because of returns not processed yet by the IRS (late or otherwise). This is an area you might say we are specialists in.

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **Think again!***
- *For your free analysis, **Click Here** to email me.*

# Chapter 9

## Disagreements, Penalty Removals, and Collection Appeals

### Requesting Records From The IRS

You can obtain your record of account. Currently you can call any number you have for the IRS and have them direct you. We currently use 859-669-5498 for transcripts, document 10978, or copies of BMF or IMF accounts. Or call 866-860-4259. Numbers change so don't hold me to this. With a signed power of attorney, we can pull your transcripts in three days. Or right away if we have a power of attorney filed on you. The cost is \$300-\$400.

Should you pull your Individual Master File (IMF) or Business Master File (BMF)?

Unless you are going to court to prove certain documentation (which I really don't recommend), I would not bother pulling any of these. I don't pull them for my clients. If it is necessary to look something up, it usually is part of a revenue officer conversation and they are happy to fax their copy. What you should pull is the "record of account" transcripts. These will give you information as to when certain transactions have taken place. The date a return was received from the taxpayer or made up by the IRS. Dates of payments, credits, interest charges, penalty charges, statute write offs, offer in compromise filings, bankruptcy filings, etc. This is usually comprehensive enough to solve your IRS problems. Pull these records any time you are resolving what you owe for any year.

Many people use the IRS letters as reference to what they owe. The problem with this is that they only tell part of the story, and are often incomplete. They are often out of date. I call the IRS "record of account" the "Bible" of the IRS. It is equivalent to "the word of God". If it is not on the ROA it doesn't exist for practical purposes. You must verify this with a revenue officer however. I once pulled a record of account that was actually up to date transaction wise, but someone failed to apply the actual balance with interest and penalties. Both the revenue officer and I knew it was incorrect. She said she would have it corrected and send me a copy. Sure enough it was corrected and I had a copy! So make sure the record of account reflects what actually exists, otherwise you will overpay or you will mistakenly think that you don't owe, do nothing about it, and then wind up with a wage levy! Make it your responsibility to see that the record of account is correct. Look up any codes you don't understand on the IRS web site. You can always call IRS ACS general numbers at 1-800-829-7650 or 1-800-829-1040 to request documents.

### Penalty Removal

If you don't want to pay the penalties pertaining to a particular year or period, you can file an 843 claim for refund, if applicable (read the instructions). Usually you can get the penalties off for the first period involved, after paying it in full, just by asking. But I would show that it was due to reasonable cause and not willful negligence anyway. There are specific wording that the IRS looks for. Consult the IRS penalty handbook information.

#### **Instructions for filing out form 843:**

1. Fill out name and address etc. List the start and end of each period. Ex: 1/1/05- 12/31/05 for 2005 1040. Use a separate form for each period.
2. Copy the amount from the notice.
3. Type of tax or penalty and the form number. For the form 1040 select "other" and write it in.

4. If not just interest and penalty from IRS error (not in this case) just leave blank.
5. Put 'see attached' and attach your letter. Fill out the signature and date portion. Make a copy. Mail certified return receipt. Mark your calendar to follow up about 6 weeks to see if it has been processed. As with all correspondence to the IRS, take responsibility to work it through the system.

If you can't agree with ACS, you should request that the case be sent to a revenue office (field officer). You can tell them that you want to deal with someone face to face, someone local who knows what the local living expenses are. R.O.'s are better able to make decisions concerning your 433a and 433b and the monthly payments you are to make to pay off your debt. You may have to call back a few times to get this. Each time you call back, keep trying to get the payment amount you want. Remember to argue within the guidelines I have given you. Do not argue for favors because of your hardship situation. Keep supporting your reasons for them to accept your income and expense items so that you will pay the monthly amount that you figured you should pay. If they still don't agree, request that the case go out to a local R.O. Tell them that you will make the monthly payment that you are trying to get (the first one now if necessary), and therefore you are not asking that it go to a R.O. as a stalling tactic. If you get a lot of resistance, rethink your strategy. You may be holding out for an expense deduction that won't stop you from meeting the monthly payment amount anyway.

## **More Penalty Removal**

### **Failure to file penalty code 6651.**

Check the penalty handbook for the reasons to address removal of this penalty. Some of the most common ones are:

You mailed returns and payments in a timely manner, used the wrong address, relied on information from the IRS, had an illness or death in the family, were a victim of a fire or flood, couldn't get the information to file on time, were given wrong advice by an Attorney, etc. Prepare as you would a regular affidavit.

This is a big penalty. 5% per month for up to 5 months from the date the return was due. It is 5% of the tax liability at the due date. So let's say you owe \$1,500,000 as of the due date. Then two months later you pay the whole thing, but do not file the return until 8 months later. You may think that the penalty is only for two months because the liability was paid off. How can they charge a penalty based on a liability that doesn't exist anymore? Well the IRS says they can. I encountered just this very case. I even did an appeal based on the fact that I told taxpayers that they could file the return late since it was paid and they didn't have to worry. Since this is not something that the taxpayer should or would have known, and is complicated enough to seek professional advice, they should have had the penalties removed. This is a great example of how the IRS will force issues to tax court. This is why you must try to head off IRS problems by first by filing and paying in a timely manner, making sure the IRS has your correct address, and contesting letters at the time you receive them.

## **Negligence And Substantial Understatement Penalties**

### **IRS code 6662 and code 6664**

The IRS will charge this penalty in addition to late filing and late paying penalties. They charge it for negligence or intentional disregard of the rules or regulations, and for substantially understating the tax liability. You can't be reckless when preparing your return. Which is why you should chose your tax preparer wisely. You could pay penalties far greater than any savings in preparation fees. These are easier to beat than the other penalties.

1. Consult the IRS penalty handbook.

2. Demonstrate in affidavit form that the above situation does not exist.

## **Audit Appeals**

Try to work with your auditor and their manager. It is rare that I have to appeal an audit I handled from the start. My audit appeals are usually to bail out people who missed audit appointments, or who were not cooperative during the audit. Most auditors (unlike the collection division), tend to be very logical and understanding about your situation. Audit appeals are a little more loose than the appeal below for trust fund. They understand that not everyone has an adequate chance to provide the necessary documents to avoid adjustments against them. Do the following...

1. File a timely appeal. Read the instructions carefully. You have 90 days if issued a notice of deficiency, otherwise you have 30 days.
2. Look up the tax law involving the items disallowed or added to the return. Become familiar with the reasons why an item may not be accepted and prepare to defend it.
3. As with all appeals, look up cases that support any items you think may be a problem, and obtain notarized statements from anyone who can support your claims.

## **Appeal Of The Trust Fund Or Civil Penalty**

If you can't convince the revenue officer that you are not liable, you must file an appeal before the 30 days are up. An appeal should cite to the court cases and other documentation that went into your research, but if time is running out, you can file a short summary version with a request that a more detailed version will follow later. This is an area that relies heavily upon court decisions in your region of the country. Find out what federal circuit court your state is in and pay attention to decisions in your favor from that circuit. You will have to do the following to win. Remember that if the revenue officer and manager didn't agree with you, they feel that they have a case.

1. Become familiar with exactly what constitutes liability for the trust fund.
2. Find out how the courts in your circuit feel on distinguishing items that make someone liable.
3. File your appeal, even the short version, on time and with as much detail as you can, so it isn't turned down.
4. When the appeals conference is scheduled, call up and request that you look at the files they have. This is your right, and they don't mind, so use it any time you file an appeal. In my earlier days I used to do appeals without examining their records and went blindly to the appeal. Then one day an appeals officer said "Why didn't you look at my records before, then you would have been aware of my arguments?". Well from that day forward I did. It makes appeals a lot easier when you know ahead of time what their arguments are!
5. Make sure you do a lot of case research. Appeals is looking for you to prove that if they error, you will win in court. That is their main objective, so you may as well know it now. This is not an appeal for sympathy based on hardship. This is a question of you being able to prove to them that if they still want to make you liable, it will be a waste of the IRS's time and money to take you to court, because you will win! Got it ?
6. Don't forget witnesses. Get signed notarized statements from people who worked with you, have witnessed, and have first hand knowledge, etc. of anything that helps prove your case.

When appealing the Trust Fund, I highly recommend that you hire a professional representative.

## **Independent Contractor Disputes**

If the IRS is trying to say you paid someone contract labor (no withholding tax taken out) instead of on a salary (withholding tax taken out) and you feel that you are in the right, you should fight it. Proof can be found by using your local state's unemployment or workforce office's rules for determining whether or not someone should/could be paid contract labor. Document in detail how you meet the tests, the way you normally would when preparing an affidavit. Get signed affidavits from as many witnesses as you can who will say that they witnessed your actions as a contract labor person, not an employee, according to the rules. Do this within the 30 day time period.

Look up the current 'safe harbor' rules to avoid the IRS charging you for several years, if you had a 'reasonable basis' for treating them as contract, and filed all the applicable 1099's on time, etc.

Remember: Even if you lose and are charged the self employment tax, interest, and penalties, none of it is trust fund (since you never took it out of the paycheck in the first place). Therefore, if you have a corporation or LLC, you will have time to set yourself up to liquidate the company if the taxes are too big for you to handle. A corporate liquidation will get you out of all of these. You can call or email us to see if you qualify. If you don't qualify, we can look at ways you can qualify in the near future.

### **Wage levies - Bank levies**

Reasons the IRS may remove levies are:

1. Statute Of Limitations on collections has expired.
2. Releasing the levy makes their collection easier.
3. You have convinced the IRS that the levy creates a severe economic hardship for you.

However, the best thing to do is accelerate the collection process. Money can go toward the 1st payment that you negotiate 45 days from now, so the next payment isn't due till 2 1/2 months! The IRS will give back money from a bank levy, by allowing the bank to cash certain checks written to employees that are not part of your immediate family. You should also argue that the money frozen in the bank was your federal tax deposit money, so it should be coded first to that before the payment of any back taxes. If you can negotiate the removal of these levies with the agreement that the money go toward the first installment payment 45 days from now, this will give you 2 1/2 months till you have to write a check toward the back taxes. See chapter 8 on doing payment plans for advice.

## **Affidavits**

Signed Affidavits switch the burden of proof back to the IRS. Sometimes that doesn't matter, but many times it does. So when in doubt about its effectiveness, I would use one anyway. Here is a general outline...

Affidavits need to be exact as to facts and conclusions so make sure you include the following:

1. Reference to the letter from the IRS that you received with the title and name of the letter. Include the date on the top of the letter.
2. State specifically what the letter is doing that you take objection too. Then state your objection. For example, if the letter imposes a tax, don't state the reasons why you can't pay the tax. State the reasons why you object to the tax being applied to you. For example, you filed your return. You paid the tax already. The code doesn't allow the penalty to be applied because of a certain reason, etc. Short, sweet, and to the point.

3. State all facts. Leave out emotions. Include what was happening that led up to the actions you took. State why you took them, and how your actions were the only prudent choice. Show that there was reasonable cause not willful neglect. Show your actions were in good faith, any failure to pay was a result of prudence when providing for payment, and that you still were unable to pay without suffering a hardship, etc.
4. In many cases there is a set of reasons you have to prove in order to use an affidavit. Google "IRS penalty handbook" and look up "relief from penalties". You will find the definitions needed to get out of penalties. I have included some other cases in this manual. Once you read through you will have a good feel for what it takes.
5. When asking that penalties be removed, make sure that you ask separately for any interest to be removed. Sometimes the IRS removes penalties and forgets to remove the interest that has accrued on those penalties.
6. Put your declaration at the bottom of the letter. Use words such as "I swear under penalties of perjury that to the best of my knowledge, the above facts contained in this letter are true and complete". Sign and date the letter.

## **The IRS Is Missing A Return You Filed**

Sometimes the IRS is missing a return you would swear was filed. If you want credit for filing it on the date you filed, prepare a letter (affidavit), stating the exact situation. For example, "on March 4, 2007 I personally went to the mailbox at the post office at 2348 Main St., Buffalo, N.Y. and dropped in an envelope containing my 2006 form 1040 personal income tax return, sealed and addressed to the IRS at 1200 Government Plaza, Albany, N.Y." Include with your mailing, any proof of mailing that you may have. Have your letter notarized and give it or mail it to the collection officer. If no one is assigned your case, mail it directly to the IRS address designated in the letter you received informing you of the missing return. If you found out by pulling your own record of account, then call ACS to find out the status of your case and who to mail it to. I hope you are not asking for the phone number. By now you should know to Google "IRS ACS PHONE NUMBER", or something like that. The numbers they give are 1-800-829-1040 and 1-800-829-4933. You can always call phone numbers on other IRS letters you have and they can direct you. Always send any mailing to the IRS certified, return receipt. I have a client that does his IRS mailings just "certified" and without the receipt. This does prove you mailed it, and it's cheaper that way. Personally, I like to have the actual receipt copy in my hand. I'm old school, and sometimes don't like to trust any government office with records of transactions I may need to prove later!

To make sure you win when it comes up in the future, send all correspondence to the IRS certified, return receipt, after making a copy for yourself of every document send. Staple it all together so you have an exact duplicate of the order of each paper sent. Mail each tax return copy. You keep the originals, including signature pages, in a separate envelope. A photo copy of a signature is as good as an original in most cases. If sending in 1040's for more than 3 years, mail each one 3 days apart. That should keep it from going to the fraud division to determine if they should question why so many returns are delinquent.

## **IRS Letter Charging Unreported Income.**

Just get a copy of the 3rd party payer information. Call the IRS to get it (see above). Usually the notice will list the income sources and amounts, so you may be able to verify it right away. Good news- since this is a correction notice, contest it, stating that each source individually is not your income, (or only part of it is), and swear that you didn't omit income on your return. Then request that under code section 6213(b) they must abate the liability, or in the case where they elect not to abate it to send you a notice of deficiency so that you can file an appeal. Then state under penalties of perjury that you declare that the facts stated in this letter are true, correct and complete. Of course, I do not advise you to do this if the facts are not true. Follow the procedures outlined above for preparing an affidavit. You should also include form 843 Claim for refund and request for abatement. This will formalize your abatement request. You have

to change the form a bit. Above the words 'Claim for refund....' put "Abatement request under code section 6213(b)". At worst, if they don't accept this and issue the 90 day notice of deficiency, or even just tell you "where to go", you can continue to make sure they only add the correct amount to your liability. Try to get the IRS to remove any negligence or substantial understatement penalties. And if you remember, after you pay it off, you can file a claim for refund of taxes paid (same form). Explain how you didn't realize that you had this income in the first place, and that you will endeavor to keep better records in the future, etc.

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? **Think again!***
- *For your free analysis, **Click Here** to email me.*

# Chapter 10

## Form 433B

### Key Items To Make Sure Of

1. Each numbered section must have a response. If the answer is zero, put zero. If the question is not applicable to your situation, then put N/A for not applicable. Just make sure all items are answered. If you don't know the answer, then find it! If you can't then estimate it to the best of your ability.
2. Do not round off all your answers. The IRS doesn't want you to guess or even estimate your income and expenses. They expect you to gather source documents to arrive at the numbers you use. You can use this to your advantage, by putting together a group of months that support the lowest monthly payment you want to make.
3. Purpose of this form- The IRS uses it to see what income is available to make monthly payments for a business agreement, or to be added to the form 433A to increase income . They also use it to see what assets you have, and how they can get to it if they need/want to seize it! You will use this form to show them that you don't have much to give them and why they should accept a low dollar payment plan or an offer in compromise.

Use this form to show income from a business that is not on a W-2, such as shown on a 1099. If your income is on a K-1 and you have expenses against that income (not already included on the K-1), then use this form to deduct those expenses. Always check back to your 1040 income tax return. Sometimes you have business expenses included on a schedule c, form 2106, office in home, etc. that you want to make sure is included on the 433B. If the form doesn't show where to include the expense, just attach a separate sheet of paper.

### Instructions, The Joe Mastriano, CPA Way

Each item is numbered. They are numbers 1-39. Each numbered item must have a response. Use N/A for "not applicable", zero, or none, as appropriate.

Read each numbered item carefully. You will be painting a picture of your ability to pay your tax liability.

- 1. Name, address, etc. If same as residence, put that address.
- 2. Employer ID #, if you have one, even if you don't currently have employees. Otherwise put N/A on line 2a. Line 2b is for the type of entity. This can be a sole proprietor, (incorrectly referred to as a dba (doing business as). Corporations have dba's too! If you just get paid on a 1099 and don't really operate a separate business, check other and write "none". Don't worry if you are paid on a 1099, or even if you don't file a 1099 for you income, when it should be correctly reported on a W-2. They need to have the correct picture of your income reporting. Let the collection person tell you how it should be filed. They actually enjoy helping people get into compliance with the correct report filing. I've never seen a collection employee use this against the tax payer as one of the reasons for denying an installment agreement. It is rare that they report it to the audit division, in my experience, especially if you start correcting the reporting and tax paying error immediately.
- 3. Put your name as the contact name, or spouse, or child. Use whoever will be speaking to the IRS for you. Don't put your power of attorney, if you assigned one on form 2848 (not 4828), if they are not actively representing you. Otherwise the IRS will call that person. Funny, they ask for an email even though there are no

IRS collection employees that contact taxpayers or representatives by email.

- 4. Always indicate the owner or majority shareholder, even if they delegate the actual banking functions to another employee. Until you've resolved who is liable for the trust fund, it's best not to mention other employees.
- 5. Same principle as #4. Limit this to owners and someone with signature authority on the bank account. You can resolve missing information later.
- 6. Be careful here. If you are in a "hostile" situation and feel they will immediately go after your accounts receivable you can leave some out or indicate that you need more time to complete the form. Don't sign the 433B. If you do, put a comment near your signature that the form is not complete. I'm not suggesting that you do this, but I don't know anyone that was charged with breaking the law for leaving out their A/R and signing the form. As to contracts awarded but not stated, it is my opinion that an A/R or notes receivable is money actually owed to you, so I always have my clients list accounts from people/businesses that actually owe money on the day that the 433B is signed and dated. This is one sensitive area where people who were trying to represent themselves made the decision to hire me. An experienced professional can keep the IRS at bay, and at the same time not get you or the representative in trouble. There's an art to striking a good balance between collecting A/R and stopping IRS collection action. Good luck. Use page 6 if needed, or attach a separate schedule. Many revenue officers get mad if you leave out the A/R, so expect them to accuse you of hiding them. Of course that is what you are doing when you leave it out (some people just forget or are sloppy preparers of forms), so don't leave it out unless you are very scared and think that you can collect it within a few weeks. In most cases, if you cooperate with the IRS, especially as I am suggesting in this guide, it is unlikely that they will levy your A/R. Please believe this. Levies come when you miss a deadline the collection person gives you, or if you continue to file late returns and make late payments. It is rare for an IRS collection employee to give you a deadline and then issue a levy before the deadline. However, a levy may have been issued prior to your conversation in which you were given a deadline! So always ask "Are there any levies pending now?". Tell them you want to make sure nothing happens before the deadline.
- 7. Just answer based on what you know, and guess on the amount you don't know and can't look up. If you are filing an offer in compromise, or even a payment plan, the bankruptcy question is very important. They must make sure the bankruptcy was dismissed (turned down) or discharged (the plan was accepted and completed), before the IRS can continue your collection case.
- 8. List your vehicles titled in the company name. Those titled in your personal name get listed on the 433A. If a sole proprietor and you have vehicles used >50% for business list it here. Some IRS collection employees may want it here for <50% use. Don't sweat this, it's not that important.
- 9. Same as #8. for leased vehicles.
- 10. List real estate titled in the company name. Real estate titled in your individual name is put on 433A. It doesn't matter if it is used solely in your business. A word of caution here. Let's say that you have a corporation or LLC and have a vehicle or real estate used 100% for business, but titled in the personal name. It is not a business owned asset! Even though you put it on the corporate return and depreciate it, it is still a personal asset for IRS collection purposes. Do not be intimidated. This comes into play mainly if you are liquidating your corporation. Personal assets can only be seized to offset personal liabilities. That is IRS liabilities on your IMF account under your social security number. Mostly made up of form 1040 personal income tax and trust fund tax.
- 11. Same as #8 . Be careful to list your payment and final dates throughout this form.
- 12. Does the company have investments? Personal investments go on the 433A
- 13. List the company's separate accounts. I would show the balance after all outstanding checks are cleared. Otherwise the IRS wants this money. It will also increase the offer amount if doing an offer. This is another area

often argued by a representative. If you want the IRS to use a lower amount, you will need to show that you always have people who don't cash their checks right away. You then show that if they cashed their checks each month, the balance will always be lower.

- 14. List other accounts you have. Remember you will be asked to give this money to the IRS before they even consider the monthly payment plan. So if you want to keep the interest and penalties down, then liquidate your accounts and pay them off. On the other hand, if you feel that you won't be able to pay the monthly amount they will request, then cash in some of your accounts and don't list them. If they ask about it, you can say (if you actually did) that it went toward your basic living expenses. Again, this is a big negotiation area. Don't get greedy here. Obviously an account that has a lot more money than what could pay your living expenses should be used partially for that, and the rest to pay toward your tax liability. Don't try to hide things from the IRS. Once you agree that you owe the money (with any pending adjustments that will be made later), it's best to pay them off as soon as possible. Make sure your record of account for each liability period is cleared, and be done with the collection division of the IRS! The only reason to try to "hold back" is to use money to pay the monthly amount that the IRS wants you to pay. This is just in case you are short each month. For example.... You feel that the most you can pay is \$700. per month. The IRS says you should pay \$1,000. This is an extra \$300. per month or \$3,600 per year. Instead of fighting, going to the manager, filing an appeal, contacting the taxpayer advocate, etc., it's a lot easier to have back up money to use to make up the monthly difference. You can always turn down the overtime work, or taking on extra clients, till after the payment plan is approved.
- I have clients with a company that no longer could allow them to work as much, or be paid as much as in the past. They got letters from their employers to say that they could not provide them the level of employment that they did in the past so their salary will be less from now on. These were lucky people. Their agreements or offers were accepted for less, or their payment plans were approved with lower payment amounts. Once accepted, some of them even went on to make more money!
- 15. I always felt that it was best to keep as little money on hand as possible.
- 16. If you have available credit, the IRS may expect you to tap this source. Not a bad idea. The interest rates will usually be less than the IRS's interest plus penalty rates.
- 17. Fill in the period you are using. If showing one month of income and expenses below, put the monthly period here. If you are using more than one month, cross out the words "gross monthly" and "actual monthly" below, and write in the period. For example....3 months or 1 year. When you finish line 39, you will subtract line 39 from line 26 and divide it by the number of months in the period you are using. Then carry that amount to form 433A if you are submitting that. This difference should be the income minus expenses you have available each month.
- 18-39. Instead of trying to fit your whole income statement here, you can just write "see attached". Remember to make sure your bank statements and receipts reflect this, or you will have a lot of explaining to do later. Better to explain now and steer the IRS to your way of thinking.
- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
- *Think your IRS matter is handled? [Think again!](#)*
- *For your free analysis, [Click Here](#) to email me.*

# Chapter 11

**There are now many court decisions under the applicable code section 6015. Please look up cases to support your request when filing. Also check any updates to the code. How? By looking up the code on the IRS website and reading it.**

If this gets really difficult to handle and you can't afford to hire a good representative, try to convince the Taxpayer Advocates office to help you (scream hardship), or your current R.O. Some R.O.'s are really very nice and may help you. Just don't dump it on their lap. Put together what you can and ask them to review it. Write down specific questions and ask them to answer them, so you can complete it.

Of course, if you didn't sign the return, then you are not liable. If you had income, then you always had the choice to file under the filing status of "married filing separate". Separate returns means you pay your share and he pays his. Community property states split income so that may cause a problem for the lower income spouse.

O.K. so let's look at the code 6015.

## **There Are Three Sources Of Relief If You Signed A Joint Return:**

1. Code 6015(b) a general relief rule (IRS must prove) for joint filers, even if still married (if still married, it's even harder to win your claim).

Under 6015(b)(1) You must prove that all 5 conditions are met. List them one by one and explain how they are met. I do this on all my claims under this rule. It is essential to try to show evidence, not just make statements. O.K.?

- You filed a joint return. (A copy of the return is good.)
- There is an understatement of tax on a joint return attributable to errors of the other spouse. A copy of the return showing a liability would qualify, or show that the liability was the result of an audit. Then show that it was from his income and deductions and not from yours.
- Show that when you signed the return, you did not know or had reason to know of the understatement of the tax. Here is where they get you. If there was a refund or a small liability on the bottom line, or the taxes were a result of an audit, this is less difficult to prove. But if the big liability you are trying to get out of is staring at you on the bottom of the second page of the Form 1040, not far from where you put your signature, you will have a big fight from the IRS trying to prove you didn't know that the taxes were owed! Different parts of the country have different interpretations of this. It is important do your case research. The knowledge part should be satisfied if you did not know or have reason to know at the time the return was signed, that the taxes would not be paid. You must establish that it was reasonable to believe he would pay the liability. I won a case where the therapist of the separated couple assured my client that he would pay the tax, even though he had previous tax liabilities. Given the nature of therapist and clients, it was reasonable for her to accept her therapist's professional evaluation of her husband, which included her opinion and reassurance to her that her husband would pay the taxes. The IRS accepted this.
- It is inequitable to hold you liable for the joint tax. (Here you not only show that it is his, but show that you never benefited from the money. If he bought you fancy clothes, a new car, house etc. with the money, then the IRS will want you to pay the tax on it.)
- You must show that you are making this claim within two years after the IRS first began collection

activities. (In my experience, my clients usually think it started after it really did. Call ACS or your R.O. right away, to look up this date for you. Then you will know when the 2 years are up. I once won an innocent spouse appeal on one year and lost on the other because one of the years was past the 2 year period. Luckily for my client the one we lost was for a very small amount.

2. Code 6015(c) additional relief for joint filers who at the time of the election (now, that you are filing for innocent spouse)...
  - Are divorced or legally separated from the other tax return signing party
  - Or have lived apart from the other party for the preceding 12 months.

Under 6015(c) to deny the claim the IRS must prove that you had actual knowledge of the terms that gave rise to the deficiency at the time you signed the return. If you know of some of the deductions then that part will be denied but not the rest.

3. If code 6015(b) or (c) doesn't apply you still can get relief under code 6015(f)

**Here you show that even if you don't qualify under the above codes, it would be inequitable to hold you liable. You should get signed notarized statements from unrelated parties. You must satisfy all of the following conditions.**

1. You filed a joint return for the year in question.
2. You don't qualify under 6020(b) or 6020(c).
3. You must file within 2 years of the first collection activity of the IRS (although this has not held up in tax court).
4. No assets were transferred between spouses as part of a fraudulent scheme.
5. The husband did not transfer disqualified assets to you. As defined in code 6015(c)(4)(B).
6. You did not have any fraudulent intent when filing, or not filing the return.
7. The liability you are requesting relief from is not from an item on the return that is yours.

**In addition the following must be true...**

1. You are divorced or legally separated from the other tax return signing party, Or have lived apart from the other party for the preceding 12 months.
2. On the date you signed the return, you had no knowledge or reason to know that your husband would not pay the tax liability. You must establish that it was reasonable to believe that he would pay the tax liability.
3. You will suffer an economic hardship if you don't get the relief you seek.

The IRS will consider all facts and circumstances and not just a single factor. It is very critical to develop your arguments under each category.

Innocent spouse cases are best suited for professional representation, so please consider hiring someone who has experience. Consider borrowing the money to pay the fees if necessary.

If you cannot, and must proceed on your own, I suggest that you buy a professional guide on preparing innocent spouse relief cases. Sometimes you need to have a more in depth technical manual. Or you could pay me to review the forms for you, and then pay for additional advice beyond that to look up case citations for you.

Just remember, as with any collection case, assuming you waited till this reached the collection division, you must appease the collection officer. Make sure you get an agreement (verbal is o.k.) to stop collection action during the time you are preparing your relief request. Once prepared and given to the collection employee of the IRS, make sure they agree to stop collection action during the process. If the IRS employee refuses the request, they will want your financial statement information, forms 433A and if necessary 433B and the required backup. You can do this if you want, or complain the group manager that they should wait. Mention you will be seeking the opinion of the Taxpayer Advocate and they may back off. If not ask them for the phone number of the local office, or look it up, and tell them that the collection division refuses to hold off collections while the IRS looks into your valid claim of innocent spouse. Remember to prove hardship, and let them know that the collection person wanted financial statements and backup. You need to be truthful with any group managers and the Taxpayer Advocate's office about the collection officer's position as well as yours. If you make the argument one sided and don't give equal weight to the collection persons side of the story, your credibility will be weakened. On the other hand, if you do give equal weight, then you will be seen as credible, and may sometimes be believed over the collection person. This has happened to me many times. In my early years I felt like I was unfairly overruled by some higher up IRS groups. Then as I got more experienced and gave equal weight to the IRS employee's arguments, I was treated a lot more fairly. So state your disagreement, your feelings etc. as if you were talking to an impartial mediator. The IRS is not your enemy!

Use Form 8857 Request for Innocent Spouse Relief to apply. Also complete Form 12510 Questionnaire for requesting spouse. The form is filed with the revenue officer assigned to your case, or appeals officer if you are in an appeal. Most people don't address this issue until it hits collections, but if you are really serious, and you see that this liability is coming from an audit, and you get a 90 day notice of deficiency, then you could also file a tax court petition within the 90 days to preserve your rights. This way if you lose, you can go to tax court. You will need to hire someone to represent you though. Anyway, if you waited till a collection officer contacted you, they will normally back off while you have a chance to file and resolve this claim. If not, you could file a CDP appeal. If an abuse situation, put on the top of the form 8857 "Potential Domestic Abuse" and then explain the abuse in a separate attached statement.

## **Various Correspondence You Will Get From The IRS...**

- A letter acknowledging receipt of the innocent spouse claim.
- A letter notifying non-requesting spouse of the preliminary decision to grant the relief.
- A questionnaire for the non-requesting spouse.
- Preliminary letter granting the relief.
- Letter notifying requesting spouse of final approval of relief.
- Preliminary letter denying relief and giving your appeal rights.
- Notice advising that requesting spouse is not entitled to relief and right to tax court.
- Letter to taxpayer with a discussion about the relief.

The form and questionnaire are pretty self explanatory once you are clear on what code section you qualify under. After you do your research on the arguments you qualify under, fill out the form to reflect the "picture you are painting" of the situation. As you know, never contact the IRS by phone or by sending in forms, unless you have

prepared 'your picture' that you are presenting of your information and situation.

It's O.K. to call the IRS to try to get information while you are getting your information together. You must be willing to hang up if asked questions beyond the initial identifying ones. I do not suggest that you answer any other questions.

- *If you are considering hiring us, call **Joe Mastriano, CPA 713-774-4467.***
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# Chapter 12

## Penalties

Removing penalties on your first late personal tax return form 1040 should be easy. It's pretty much a given. After you pay the liability you can call and request a penalty removal. Just tell them that you forgot to file on time, or thought that you did. Or you could fill out form 843 claim for refund. You have to write the form number in and select other on line 3b. I would still try to prove reasonable cause and not willful negligence was the reason.

Use form 843 for any years of personal returns, or other returns, you want to claim a penalty abatement for.

## Interest

Interest is charged when there is a balance due. When a tax liability is reduced or abated, the corresponding interest will be too. When a penalty is abated, the interest on that penalty must be abated too. Interest can be abated if it can be shown that it is attributable in whole or in part to an unreasonable error or delay by an officer or employee of the IRS. You have to prove...

1. That the error or delay occurred in connection with 'a procedural or mechanical act' or a 'managerial act' associated with the case.
2. The error or delay occurred after the IRS contacted the taxpayer 'in writing' about the case.
3. No 'significant aspect' of the error or delay can be attributed to the taxpayer's actions.

If you want to request relief of interest charged due to an error or delay I encourage you to do so. I have never attempted to do this given the IRS posture in defending these claims. It is hard for an honest practitioner to justify charging the fees necessary to defend this, given the odds against it. You of course can try this on your own. I would look further into how cases are settled and what the taxpayer advocate has to say about it. A lot of research will be necessary. You can always appeal a decision against you if the facts are in your favor.

### **The three ways to reduce your tax liability in general are:**

1. Pull your record of account and make sure the IRS has recorded your payments. Make sure if they removed any penalties they took off the related interest. Make sure you file original returns for any years that they filed a SFR (substitute for return). Make sure you file original reports for any payroll report, under code 6020b that the IRS filed.
2. Amend any returns that you think are not correct. Submit proof with the return and your copy of new return and the amended version. Do not be afraid of an audit by doing this. Submitting your documentation will prove your case, so they will see little chance in auditing you.
3. Apply for penalty abatements according to the instructions in this site.

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# Chapter 13

## Audits Are Selected Based On IRS Programs

One program looks for compliance and another tries to find errors. They have not examined your return yet. Are you afraid? These days, auditors tend to be nicer. They tend to be more educated than the collection officers. They do not want to send your case to the criminal division unless they have to. I have represented people who have taken phony deductions, and have left out income on their tax returns. During my career I have never had an auditor accuse my client of criminal fraud. In each case they were happy to make the adjustments and charge the taxpayer additional tax, interest and penalties.

Of course, you have to say things like... I forgot, or I guess I make an error, or I can't find the proof for the deduction. You can't say, "Oh yeah, my friend the accountant said I should put down a lot of expenses because there is less than 1% chance of being audited". There may actually be a less than 1% chance of being audited in your case, but you have to be careful not to say you 'willfully' did anything you know was wrong in the preparation of the tax return. Got it? To this day I don't know of anyone foolish enough to admit to 'willfulness'. If you follow this manual, you will have very little to fear, unless of course you can't document the items on your return and don't want to deal with the increased tax liability.

## There Are Two Main Types Of Audits

Correspondence and face to face. If any of these produces a tax liability, then the IRS sends you an examination report. You have 30 days to appeal it. In a face to face audit, the letter will ask you to provide information to back up certain items on your return. I suggest that you prepare two sets of proof. One directly responding to the letter, and another proving all the other items on your return. Be mindful of things like depreciation, loss carryovers, etc. that affect other years. Make sure that you are prepared to defend 'all' deductions, including carryovers to other years under audit. Purchase an audit guide from the book store to supplement the info I am giving you if you wish.

In my experiences, you will fare best by being able to support your deductions with receipts, proof that the payment was made, and by also explaining the business purpose! Part of explaining the business purpose is knowing the tax law pertaining to the deduction, so take the time to look it up. If you can't convince the auditor, then get a list of what would be acceptable proof, and have it by the due date the auditor gives you. Remember: Do not assume that it was received on time. If mailing, copy everything and send it certified return receipt. Call the auditor to make sure that it was received on time. Or you can have hired a representative to help you from this point. You always have the right to hire a representative at any point in any IRS matter! Don't ever forget that.

I have represented people in audits from other states without any problems. It is not necessary, or better, for the tax payer to sit face to face with an auditor to prove your income and expenses. You should not let the auditor into your home or office to conduct the audit. If representing yourself, set up the audit at the IRS, or get the auditor's agreement that you will promptly mail the information and that you request that it be handled that way. Tell the auditor you will put it in writing along with a signed notarized affidavit so the manager can accept or deny the request. If they deny it, then meet with them. This is not a battle to fight. Winning it doesn't directly reduce your liability, so save the battles for when it counts. As a representative, I have yet to have the IRS refuse to have me send the information by mail when I have an out of town client. Locally, I don't mind appearing with my client. We have a pretty decent audit group here in Houston.

As in all dealings with the IRS, collections or audit, never adopt a guilty posture, or any posture for that matter. Treat the audit as a routine examination of documents and explain the business purpose. Remember that the auditor has no

collection power and can't do anything against you, other than making up an examination report against you. So don't be intimidated, but be nice and cooperative. Never admit to any wrongdoing, even if you have a good excuse. You do not want the auditor to document that you willfully left out income or put down expenses that you did not incur. This is the beginning stage of fraud and criminal cases against taxpayers. It is really o.k. to say that you forgot, or don't remember, or that you don't have a reason or doing something. Maintain your innocence! Be persistent in your response no matter how much the auditor may push you for reasons.

**Always pull the 3rd party payer information or get it from the auditor ahead of time. If there is incorrect W-2, 1099, or K-1 information filed against you it's best to resolve this prior to the audit.**

If at any time during the audit you feel uncomfortable, just get up and say that you don't feel well. Tell them that you will call later or the next day to reschedule. Do this if you need time to think. If you decided that you want representation, inform the auditor and reschedule the appointment. Request a rescheduling if you demand time to get additional proof when your current proof is not accepted. You are entitled to this. You can make a request to record the audit if you do so at least 10 days prior to the audit. However my discussions with auditors over the years show that this is not very wise. If you start out not trusting the auditor, they won't trust you, and will be more hardnosed in accepting your proof. If you start quoting IRS publications and taxpayer rights, that may not go over well, and you may get an examination report that gives you no choice but to go to appeals to have your proof reviewed properly.

When gathering your proof, if you don't have a mileage log for your business miles, create one. Don't try to make it look like you did it during the year being audited. You are allowed to create it now for the year under audit. If you are missing receipts or need to swear to a condition or circumstance that makes an expense deductible, prepare an affidavit swearing that you actually spent the money and what the reason was. Use an affidavit to swear what your income is, in cases where the auditor wants to add income, but he/she doesn't have 3rd party payer (W-2 or 1099 etc.) to back it up. If the auditor has 3rd party payer information to back it up, but the information is not yours or higher than you actually received, you need to prove that it is not your income. Go to the issuer to resolve it by having them issue a correct one, or do an analysis of your income and expenses to show you didn't receive that money if you can. Now you see why it is important to get the 3rd party payer information first. Remember, when doing an affidavit to give a lot of detail, simple logical explanations that will lead anyone clearly to your conclusions. Leave no room for doubt.

If you disagree with the examination report from the auditor, get your documentation together and discuss it with the auditor again. If you don't get satisfaction, go to the manager for their opinion. If still not resolved, you can go to the taxpayer advocate and prove what a hardship it would be if you suffered a large tax burden, or unfair one, from income caused by disallowing expenses of which you have proof. Don't forget to file an audit appeal before the due date, even if things seem to be going well with the manager or taxpayer advocate. They may not resolve your issues timely enough for you to be able to appeal it, so the appeal extends your time to challenge it at appeals.

You may avoid an audit by explaining any items that would be a red flag. If any deductions look too large to you in relation to your income, just attach your evidence as part of the tax return. Even if the IRS disagrees with your proof and wants to disallow the expense, they probably will not charge the negligence or substantial understatement penalty. They really shouldn't charge any penalties, but fighting the late payment penalty may be more time and trouble than it's worth. Make sure your evidence is very specific, just like the detail as required in an affidavit. Show that your deductions and positions have a reasonable basis in law and in fact.

Do you still feel that you are up to representing yourself in an audit? Call or email us before it's too late.

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