



2023 Study Cards



SEE

Special Enrollment Exam
Part 3 - Representation, Practice and Procedures

Tax Return Preparer Rules

Preparer tax identification number (PTIN). A PTIN must be obtained by all enrolled agents, as well as all tax return preparers who are compensated for preparing, or assisting in the preparation of, all or substantially all of any U.S. federal tax return, claim for refund, or other tax form submitted to the IRS except the following:

- ▶ Form SS-4, Application for Employer Identification Number.
- ▶ Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
- ▶ Form SS-16, Certificate of Election of Coverage under FICA.
- ▶ Form W-2 series of returns.
- ▶ Form W-7, Application for IRS Individual Taxpayer Identification Number.
- ▶ Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment.
- ▶ Form 872, Consent to Extend the Time to Assess Tax.
- ▶ Form 906, Closing Agreement On Final Determination Covering Specific Matters.
- ▶ Form 1098 series.
- ▶ Form 1099 series.
- ▶ Form 2848, Power of Attorney and Declaration of Representative.
- ▶ Form 3115, Application for Change in Accounting Method.
- ▶ Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
- ▶ Form 4419, Application for Filing Information Returns Electronically.
- ▶ Form 5300, Application for Determination for Employee Benefit Plan.

Tax Return Preparer Rules Reg. Sec.301.7701-15

Tax preparer defined. An income tax return preparer is any person who prepares for compensation, or who employs (or engages) one or more persons to prepare for compensation, all or substantially all of a tax return or claim for refund of tax. Factors involved in determining whether an individual is a tax return preparer include, but are not limited to, the following:

- ▶ The complexity of the work the individual performs relative to the overall complexity of the tax return or claim for refund of tax.
- ▶ The amount of the items of income, deductions, or losses attributable to the work the individual performs relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax.
- ▶ The amount of tax or credit attributable to the work the individual performs relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax.

Note: The individual who prepares a substantial portion of a return is considered the preparer even if someone else may be required to sign the return.

Persons who are not preparers. A person shall not be considered a preparer if the person performs only one of the following services:

1. Typing, reproduction, or other mechanical assistance in preparing a return.
2. Preparing a return for a person, an officer, a general partner, or employee of a person by whom the individual is employed.
3. Giving advice on specific issues of law.

Signing the return. A paid preparer must sign the return he or she prepared. The paid preparer can sign the return manually or use a rubber stamp, mechanical device, or computer software.

Identification of preparer. The preparer must furnish their preparer tax identification number (PTIN) and employer identification number on the return. Preparers employed by others or partners in partnerships must enter their PTIN and the identification number of the employer or partnership.

Copies of return. A preparer must furnish a copy of the return to the T/P at the time the return is presented for signature to the T/P. The preparer must also retain a copy of the return or retain a record of the name, T/P identification number, and taxable year of the T/P. The copy or record must be kept available for inspection for the **3-year** period following the close of the return year.

Information returns of income tax return preparers. A person who employs preparers to prepare returns must keep a record of each preparer employed by him or her at any time during the return period (July 1 - June 30). The record must include each preparer's:

- ▶ Name,
- ▶ Taxpayer identification number, and
- ▶ Place of work.

Recordkeeping. This record must be kept available for inspection for the **3-year** period following the close of the return period to which that record relates.

Due diligence. Preparers who prepare tax returns claiming the Earned Income Tax Credit (EITC), the child tax credit (CTC), the additional child tax credit (ACTC), the credit for other dependents (ODC), the American opportunity tax credit (AOTC), and head of household (HOH) filing status must meet four due diligence requirements. Failure to meet the due diligence requirements for claiming the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status could result in a for each failure.

1. ***Compute the Credits Based on the Facts.*** Compute the credits and complete the applicable worksheet(s) or a preparer's own worksheet(s) for any EITC, CTC/ACTC/ ODC or AOTC claimed on the return or claim for refund. Most professional tax return preparation software includes the worksheets.
2. ***Complete and Submit Form 8867.*** Complete Form 8867, Paid Preparer's Due Diligence Checklist, and submit this completed form to the IRS with every electronic or paper return or claim for refund prepared that claims the EITC, CTC/ACTC/ODC, AOTC, or HOH filing status.
 - ▶ Make sure that the software used includes Form 8867 and file the completed form with every electronic return or provide the completed form with every paper return or claim for refund prepared that claims the EITC, CTC/ACTC/ODC, AOTC, or HOH filing status.
 - ▶ Answer each question on the form based on information from the client and information the preparer knows is true.
 - ▶ The preparer must also personally complete Part VI, Eligibility Certification.

Continued on next card

3. **Keep records.** Keep copies of the following records either electronically or on paper:
- ▶ Form 8867.
 - ▶ The applicable worksheet(s) or the preparer's own worksheet(s) for the EITC, CTC/ACTC/ODC, or AOTC claimed on the return or claim for refund.
 - ▶ Any taxpayer documents that the preparer may have relied on to determine eligibility for the credit(s) and/or HOH filing status or to compute the amount of the credit(s).
 - ▶ A record of how, when, and from whom the information used to prepare Form 8867 and the applicable worksheet(s) was obtained.

Keep these documents for **3 years** from the latest of:

- ▶ The due date of the tax return.
 - ▶ The date the tax return was electronically filed.
 - ▶ For a paper return, the date the return or claim for refund was presented to the client for signature.
 - ▶ If the preparer is a non-signing tax return preparer, the date the non-signing preparer submitted to the signing tax return preparer the part of the return for which the non-signing preparer was responsible.
4. ***Ask all the right questions.*** The preparer, in interviewing the taxpayer, should ask adequate questions and document the taxpayer's responses to determine eligibility for the credit(s) and/or HOH filing status.

Tax Return Preparer Rules Preparer Penalties

IRC Sec. 6694(a)

Penalty for understatement due to an unreasonable position (section 6694(a)). The penalty is the greater of \$1,000 or 50% of the income derived by the tax return preparer with respect of the return or claim for refund will apply if:

1. The preparer knew (or reasonably should have known) of the unrealistic position,
2. There was not a reasonable belief that the position would be sustained on its merits, and
3. The position was not disclosed, or there was no reasonable basis for the position.

Penalty for understatement due to willful, reckless, or intentional conduct (section 6694(b)). The penalty of the greater of \$5,000 or 75% of the income derived by the tax return preparer with respect to the return or claim of refund due to:

1. A willful attempt in any manner by an income tax return preparer to understate the liability for tax, or
2. Any reckless or intentional disregard of rules or regulations by an income tax return preparer.

Burden of proof. The preparer must bear the burden of proof of whether he or she understated the tax liability of a T/P under section 6694(a), understating tax liability due to unrealistic position and under section 6694(b), understating tax liability due to willful understatement of tax liability or reckless or intentional disregard of rules and regulations.

Tax Return Preparer Rules Preparer Penalties

IRC Sec. 6694

Section 6694(b) penalty reduced by section 6694(a) penalty. If a preparer is assessed both the section 6694(a) penalty and the section 6694(b) penalty on a given return, the total amount of the penalty cannot exceed the section 6694(b) penalty.

Abatement of penalty where taxpayer's liability not understated. If a penalty under section 6694(a) or section 6694(b) is assessed against a preparer, and if it is established in a final IRS examination that there was no understatement of liability on the return, the penalties are abated.

Claim for Refund of Income Tax Return Preparer and Promoter Penalties (Form 6118). If a preparer's assessed a penalty under section 6700, 6701, or 6694, the preparer may file a claim for refund upon paying 15% of the penalty within 30 days from the date of notice and demand. Otherwise, a claim under sections 6700 and 6701 must be filed within 2 years from the date the penalty is paid in full. A claim under sections 6694 and 6695 must be filed within 3 years from the date the penalty is paid in full. The preparer files Form 6118 with the IRS service center or IRS office that sent the statement(s).

Tax Return Preparer Rules Preparer Penalties

IRC Sec. 6694-95

Type of Penalty	IRC Section	Amount	Limitation
Understatement of taxpayer's liability due to unreasonable position	6694(a)	\$1,000 or 50% of preparer fees	No limit
Willful attempt to understate taxpayer's liability or intentional disregard of rules or regulations	6694(b)	\$5,000 or 75% of preparer fees per return	Must reduce 6694(b) penalty by 6694(a) penalty if both are assessed
Failure to furnish a copy of return to taxpayer	6695(a)	\$50 per return	\$27,000 per year
Failure to sign return	6695(b)	\$50 per return	\$27,000 per year
Failure to retain copy of return or list of returns prepared	6695(d)	\$50 per return	\$27,000 per year
Failure to furnish identifying number(s) of preparer/employer	6695(c)	\$50 per return	\$27,000 per year
Employer failure to file correct information return of preparers employed	6695(e)(1)	\$50 per return	\$27,000 per year

Tax Return Preparer Rules Preparer Penalties

Type of Penalty	IRC Section	Amount	Limitation
Failure to file correct information returns	6695(e)	\$50 per return	\$27,000 per year
Preparer endorsement or negotiation of taxpayer's refund check	6695(f)	\$545 per check negotiated	No limit
Failure to comply with due diligence requirements in determining eligibility for earned income credit, child tax credit, and American opportunity credit	6695(g)	\$545 per return	No limit
Promoting abusive tax shelter	6700	\$1,000 per activity (or if lesser 100% of the gross income derived from the promotion).	N/A
Aiding and abetting understatement of tax liability	6701	\$1,000 (\$10,000 if the conduct relates to a corporation's tax return).	N/A

Tax Return Preparer Rules Preparer Penalties

Type of Penalty	IRC Section	Amount	Limitation
Unauthorized disclosure or use of information connected with a tax return by a preparer	6713	\$250 per disclosure. \$1,000 if disclosure is connected to identity theft.	\$10,000 per year. \$50,000 for identity theft.
Guilty of a felony and, upon conviction, of fraud and false statements	7206	\$100,000 (\$500,000 in the case of a corporation), imprisonment of not more than three years, or both (together with the costs of prosecution).	N/A
Guilty of a misdemeanor and, upon conviction of fraudulent returns, statements, or other documents	7207	\$10,000 (\$50,000 in the case of a corporation), imprisonment of not more than one year, or both.	N/A
Guilty of a misdemeanor for knowingly or recklessly disclosing information furnished in connection with a tax return	7216	\$1,000, imprisonment for not more than 1 year, or both (together with the costs of prosecution).	N/A

Practice before the IRS. Practice before the IRS covers all matters relating to any of the following:

1. Communicating with the IRS for a T/P regarding the T/P's rights, privileges, or liabilities under laws and regulations administered by the IRS.
2. Representing a T/P at conferences, hearings, or meetings with the IRS.
3. Preparing and filing documents, including tax returns, with the IRS for a T/P.
4. Providing a client with written advice on one or more Federal tax matters.

Note: Furnishing information at the request of the IRS, or appearing as a witness for the T/P is not practice before the IRS. Practice before the IRS does not include representing a T/P before any courts including the Tax Court.

Who may practice? The following are eligible to practice before the IRS:

1. Attorneys.
2. CPAs.
3. Enrolled agents.
4. Enrolled retirement plan agents.
5. Enrolled actuaries (limited practice).
6. Unenrolled tax return preparers (limited practice).
7. Other unenrolled individuals (limited practice).

Limited practice by an enrolled actuaries. Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. The practice of enrolled actuaries is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.

Limited practice by unenrolled return preparers. Unenrolled return preparers may only represent T/Ps before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination of the taxable year or period covered by the tax return they prepared and signed prior to December 31, 2015. Unenrolled return preparers cannot represent T/Ps, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel or similar officers or employees of the IRS or the Department of Treasury. Unenrolled return preparers cannot execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, execute claims for refund, or sign any document on behalf of a T/P. Unenrolled return preparers cannot provide tax advice to a client or another person except as necessary to prepare a tax return, claim of refund, or other document intended to be submitted to the IRS.

Annual Filing Season Program Record of Completion. Only unenrolled return preparers who hold a record of completion for BOTH the tax return year (2015 or thereafter) under examination and the year the examination is conducted may represent a T/P under the conditions discussed above under limited practice by unenrolled return preparers.

Other unenrolled individuals. Because of their special relationship with the T/P, the following unenrolled individuals can represent the specified T/Ps before the IRS:

1. ***An individual.*** An individual can represent himself or herself before the IRS and does not have to file a written declaration of qualification and authority.
2. ***A family member.*** An individual can represent immediate family members. Immediate family includes a spouse, child, parent, brother, or sister of the individual.
3. ***An officer.*** A bona fide officer of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group can represent the corporation, association, or organized group. An officer of a governmental unit, agency, or authority, in the course of his or her official duties, can represent the organization before the IRS.
4. ***A general partner.*** A general partner can represent the partnership, but limited partners cannot.
5. ***An employee.*** A regular full-time employee can represent his or her employer. An employer can be, but is not limited to, an individual, partnership, corporation (including a parent, subsidiary, or other affiliated corporation), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.
6. ***A fiduciary.*** A fiduciary (trustee, executor, personal representative, administrator, receiver, or guardian) stands in the position of a T/P and acts as the T/P, not as a representative.

Who cannot practice before the IRS. Corporations, associations, partnerships, and other persons that are not individuals are not eligible to practice before the IRS.

Loss of Eligibility. Generally, individuals lose their eligibility to practice before the IRS in the following ways:

- ▶ Not meeting the requirements for renewal of enrollment (such as CPE hours).
- ▶ Requesting to be placed in inactive retirement status.
- ▶ Being suspended or disbarred by the Office of Professional Responsibility for violating the regulations governing practice before the IRS.

Failure to meet requirements. Individuals who fail to comply with the requirements for eligibility for renewal of enrollment will be notified by the IRS. The notice will explain the reason for noncompliance and provide the individual with an opportunity to furnish information for reconsideration. The individual has 60 days from the date of the notice to respond.

Inactive roster. An individual will be placed on the roster of inactive individuals for a period of three years, if he or she:

- ▶ Fails to respond timely to the notice of noncompliance with the renewal requirements,
- ▶ Fails to file timely the application for renewal, or
- ▶ Does not satisfy the requirements of eligibility for renewal.

Note: An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal within 3 years of being placed in inactive status.

Practice Before the IRS

Eligibility for enrollment. To become an enrolled agent a person must take the following steps:

1. Obtain a preparer tax identification number (PTIN).
2. Apply to take the Special Enrollment Examination (SEE).
3. Achieve passing scores on all three parts of the SEE.
4. Apply for enrollment using Form 23.
5. Pass a tax compliance check to ensure that the applicant has filed all necessary tax returns and there are no outstanding tax liabilities.

Note: Certain IRS employees, by virtue of past experience, are exempt from the exam requirement.

Form 23. Individuals who have passed the examination or are applying on the basis of past service and technical experience with the IRS can apply for enrollment by filing Form 23, Application for Enrollment to Practice Before the Internal Revenue Service. The application must include a check or money order in the amount of the fee shown on Form 23. Alternatively, payment may be made electronically pursuant to instructions on the forms.

Additional information and examination. The IRS may require the applicant, as a condition to consideration of an application, to file additional information and to submit to any written or oral examination under oath or otherwise. Upon the applicant's written request, the IRS will afford the applicant the opportunity to be heard with respect to the application.

Compliance and suitability checks. As a condition to consideration of an application, the IRS may conduct a Federal tax compliance check and suitability check. The tax compliance check will be limited to an inquiry regarding whether an applicant has filed all required individual or business tax returns and whether the applicant has failed to pay, or make proper arrangements with the IRS for payment of, any Federal tax debts. The suitability check will be limited to an inquiry regarding whether an applicant has engaged in any conduct that would justify suspension or disbarment of any practitioner under the provisions of this part on the date the application is submitted, including whether the applicant has engaged in disreputable conduct as defined in §10.51. The application will be denied only if the results of the compliance or suitability check are sufficient to establish that the practitioner engaged in conduct subject to sanctions under §§10.51 and 10.52.

Protest of application denial. The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the IRS in forms, guidance, or other appropriate guidance.

Enrollment card. The IRS will issue an enrollment or registration card or certificate to each individual whose application to practice before the IRS is approved. Each card or certificate will be valid for the period stated on the card or certificate. An enrolled agent, enrolled retirement plan agent, or registered tax return preparer may not practice before the IRS if the card or certificate is not current or otherwise valid.

Period of enrollment. An enrollment card will be issued to each individual whose enrollment application is approved. The individual is enrolled until the expiration date shown on the enrollment card or certificate. To continue practicing beyond the expiration date, the individual must request renewal of the enrollment by filing Form 8554, Application for Renewal of Enrollment to Practice Before the Internal Revenue Service, or Form 8554-EP, Application for Renewal of Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

Change of address. An enrolled agent or enrolled retirement plan agent must send notification of any change of address to the address specified by the IRS within 60 days of the change of address. A practitioner's change of address notification under this part will not constitute a change of the practitioner's last known address for purposes of section 6212 of the Internal Revenue Code and regulations thereunder.

Renewal period for EAs. An EA whose social security number ends with digit 0, 1, 2, or 3 must renew between November 1, 2018 and January 31, 2019. The renewal is effective April 1, 2019. An EA whose social security number ends with digit 4, 5, or 6 must renew between November 1, 2019 and January 31, 2020. The renewal is effective April 1, 2020. An EA whose social security number ends with digit 7, 8, or 9 must renew between November 1, 2020 and January 31, 2021. The renewal is effective April 1, 2021.

Condition for renewal - CPE. In order to qualify for enrollment, an EA must certify on the application that they have satisfied the following continuing professional education (CPE) requirements:

1. A minimum of 72 hours of CPE credits must be completed for the full enrollment cycle.
2. A minimum of 16 hours of CPE credits, including 2 hours of ethics or professional conduct, must be completed in each year of an enrollment cycle.
3. An individual who receives initial enrollment during an enrollment cycle must complete 2 hours of CPE credits for each month enrolled during enrollment cycle.

Enrollment year. For CPE purposes, an enrollment year is January 1 to December 31 of each year of an enrollment cycle.

Qualifying continuing education. To qualify for continuing education credit for an enrolled agent, a course of learning must:

1. Be a qualifying continuing education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics), and
2. Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

Qualifying programs. The following are qualified programs.

1. **Formal programs.** Formal programs qualified as a continuing education programs if they meet all the following:
 - a) Requires attendance and provides each attendee with a certificate of attendance.
 - b) Is conducted by a qualified instructor, discussion leader, or speaker.
 - c) Provides or requires a written outline, textbook, or suitable electronic educational materials.
 - d) Satisfies the requirements established for a qualified continuing education program pursuant to §10.9.

Continued on next card

Qualifying programs (cont.)

2. **Correspondence or individual study programs (including taped programs).** Such programs qualify as continuing education programs only if they meet all the following:
 - a) Require registration of the participants by the continuing education provider.
 - b) Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing education provider.
 - c) Provide a written outline, textbook, or suitable electronic educational materials.
 - d) Satisfy the requirements established for a qualified continuing education program pursuant to §10.9.
3. **Serving as an instructor, discussion leader, or speaker.**
 - a) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements.
 - b) A maximum of two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs.
 - c) The maximum continuing education credit for instruction and preparation may not exceed 6 hours annually for enrolled agents.
 - d) An instructor, discussion leader, or speaker can only get credit for one presentation on the same subject during an enrollment cycle or registration year.

Periodic examination. Enrolled agents may establish eligibility for renewal of enrollment for any enrollment cycle by:

1. Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and
2. Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

Measurement of continuing education coursework. All continuing education programs are measured in terms of contact hours. A contact hour is 50 minutes of continuous participation in a program. College semester courses equal 15 contact hours and a quarter equals 10 hours.

Recordkeeping requirements. Individuals applying for renewal must retain the information regarding continuing education credit hours for 4 years following the date of renewal.

Waivers. Waiver from the continuing education requirements for a given period may be granted for the following reasons:

- ▶ Health
- ▶ Military service
- ▶ Absence from the United States
- ▶ Other compelling reasons, which will be considered on a case-by-case basis

Practice Before the IRS Duties & Restrictions

Cir. No. 230 Sec. 10.20

Information requested by IRS. A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the IRS, promptly submit records or information in any matter before the IRS unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged. Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting IRS officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

Knowledge of client's omission. A practitioner who knows that his or her client has not complied with the revenue laws or has made an error in or omission from any return, document, affidavit, or other required paper has the responsibility to advise the client promptly of the noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Practice Before the IRS Duties & Restrictions

Confidentiality privilege. The confidentiality protection for certain communications between a T/P and an attorney (privileged communications) applies to similar communications between a T/P and any federally authorized tax practitioner. Federally authorized tax practitioners include attorneys, certified public accountants, enrolled agents, enrolled actuaries, and certain other individuals allowed to practice before the IRS. This confidentiality privilege cannot be used in any administrative proceeding with an agency other than the IRS.

Communications that are protected. The protection of this privilege applies only to tax advice given to the T/P by any individual who is a federally authorized tax practitioner. Tax advice is advice in regard to a matter that is within the scope of the practitioner's authority to practice. The confidentiality protection applies to communications that would be considered privileged if they were between the T/P and an attorney and that relate to:

1. Noncriminal tax matters before the IRS, or
2. Noncriminal tax proceedings brought in federal court by or against the United States.

Practice Before the IRS Duties & Restrictions

Cir. No. 230 Sec. 10.22

Diligence as to accuracy. A practitioner must exercise due diligence when performing the following duties:

1. Preparing or assisting in the preparing, approving, and filing of returns, documents, affidavits, and other papers relating to IRS matters.
2. Determining the correctness of oral or written representations made by him or her to the Department of the Treasury.
3. Determining the correctness of oral or written representations made by him or her to clients with reference to any matter administered by the IRS.

Reliance on others. Except as provided in Circular 230 sections 10.33, 10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

Practice Before the IRS Duties & Restrictions

Prompt disposition of pending matters. A practitioner must not unreasonably delay the prompt disposition of any matter before the IRS.

Assistance from disbarred or suspended persons and former IRS employees. A practitioner must not knowingly, directly or indirectly, do the following:

1. Accept assistance from or assist any person who is under disbarment or suspension from practice before the IRS if the assistance relates to a matter or matters constituting practice before the IRS.
2. Accept assistance from any former government employee where provisions of Circular No. 230 § 10.25 or any federal law would be violated.

Performance as a notary. A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the IRS and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

Practice Before the IRS Duties & Restrictions

Cir. No. 230 Sec. 10.27

Unconscionable fees. A practitioner may not charge an unconscionable fee for representing a client before the IRS.

Contingent fees for return preparation. A practitioner may not charge a contingent fee for services rendered in connection with any matter before the IRS except for the following circumstance. A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to:

1. An original tax return.
2. An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the T/P receiving a written notice of the examination of, or a written challenge to the original tax return.
3. For services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the IRS.
4. For services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the IRS or is not sustained.

Practice Before the IRS Duties & Restrictions

Cir. No. 230 Sec. 10.28

Return of client's records. A practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the T/P's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

Records to return to a client include: any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations.

Records to return to a client do not include: any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

Practice Before the IRS Duties & Restrictions

Cir No. 230 Sec. 10.29

Conflicting interest. A practitioner shall not represent a client in his or her practice before the IRS if the representation involves a conflict of interest. A conflict of interest exists if:

1. The representation of one client will be directly adverse to another client; or
2. There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

Exceptions. The practitioner may represent a client if all of the following are met:

1. The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client.
2. The representation is not prohibited by law.
3. Each affected client gives informed consent, confirmed in writing within **30 days after the conflict of interest is known** by the practitioner.

Copies of the written consents. Copies of the written consents must be retained by the practitioner for at least **36 months from the date of the conclusion of the representation** of the affected clients and the written consents must be provided to any officer or employee of the IRS on request.

Practice Before the IRS

Duties & Restrictions

Advertising and solicitation restrictions. A practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term “**certified**” of indicate an employer/employee relationship with the IRS. Examples of acceptable descriptions are “enrolled to represent T/Ps before the IRS,” “enrolled to practice before the IRS,” and “admitted to practice before the IRS.” An EA cannot use the official IRS insignia. No practitioner can make, directly or indirectly, an uninvited solicitation of employment in matters related to the IRS if the solicitation violates Federal or State law or other applicable rules.

Fee information. A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information:

1. Fixed fees for specific routine services.
2. Hourly rates.
3. Range of fees for particular services.
4. Fee charged for an initial consultation.

Note: If the advertisement includes fee and hourly rates, the practitioner is bound by those rates for no less than **30 days**. In the case of radio and television broadcasting, the broadcast must be prerecorded and the EA must retain a recording of the actual transmission.

Practice Before the IRS

Duties & Restrictions

Cir No. 230 Sec. 10.30-.31

Communication of fee information. Fee information may be communicated in professional lists, telephone directories, print media, mailings, and electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least **36 months from the date of the last transmission or use.**

Improper association. A practitioner may not, in matters related to the IRS, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under Circular No. 230 § 10.30.

Negotiation of taxpayer checks. A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

Practice Before the IRS

Duties & Restrictions

Standards with respect to tax returns and documents, affidavits and other papers

Tax returns. A practitioner may not willfully, recklessly, or through gross incompetence sign a tax return or advise a client to take a position on a tax return that the practitioner knows or reasonably should know contains a position that:

1. Lacks a reasonable basis;
2. Is an unreasonable position as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or
3. Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).

Documents, affidavits and other papers. A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the IRS unless the position is not frivolous. A practitioner may not advise a client to submit a document, affidavit or other paper to the IRS:

1. The purpose of which is to delay or impede the administration of the Federal tax laws.
2. That is frivolous.
3. That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

Practice Before the IRS

Duties & Restrictions

Standards with respect to tax returns and documents, affidavits and other papers

Advising clients on potential penalties. A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported. The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This applies even if the practitioner is not subject to a penalty with respect to the position.

Relying on information furnished by clients. A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

Practice Before the IRS Duties & Restrictions

Competence. A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

Procedures to ensure compliance. Any individual subject to the provisions of Circular 230 who has principal authority and responsibility for overseeing a firm's practice governed by Circular 230, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the IRS, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for complying with Circular 230.

Practice Before the IRS

Duties & Restrictions

IRC section 7216 and 6713, disclosure or use of tax information by preparers. Tax preparers must obtain the signed consent of the T/P on paper or electronically before they can disclose T/P's return information to anyone or use it for any purpose other than in the context of preparing and filing the return. The penalty is \$250 for each unauthorized disclosure or use of information furnished for, or in connection with, the preparation of a return. The maximum penalty on any person shall not exceed \$10,000 in a calendar year. If a disclosure or use is made in connection with a crime relating to the misappropriation of another person's taxpayer identity, whether or not such crime involves any tax filing, the penalty increases to \$1,000 for each use or disclosure, with a maximum of \$50,000 per person per calendar year. This penalty applies to disclosures or uses that are made on or after July 1, 2019 (IRC § 6713).

Guilty of a misdemeanor for knowingly or recklessly disclosing information furnished in connection with a tax return or using such information for any purpose other than preparing or assisting in the preparation of such return. Upon conviction, a fine of not more than \$1,000, imprisonment for not more than 1 year, or both (together with the costs of prosecution) (IRC § 7216).

Practice Before the IRS

Duties & Restrictions

Requirements for written advice. A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements listed below. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a Federal tax matter for purposes of this section.

The practitioner must:

1. Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events),
2. Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know,
3. Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter,
4. Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable,
5. Relate applicable law and authorities to facts, and
6. Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

Practice Before the IRS Sanctions for Violation of the Regulations

Incompetence and disreputable conduct. Disreputable conduct for which a practitioner may be sanctioned includes, but not limited to the following:

1. Conviction of any criminal offense under the revenue laws or of any offense involving dishonesty or breach of trust.
2. Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the IRS.
3. Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee.
4. Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the IRS or any officer or employee.
5. Willfully failing to file a tax return, evading or attempting to evade any federal tax or payment.
6. Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment.

Continued on next card

Practice Before the IRS Sanctions for Violation of the Regulations

Incompetence and Disreputable Conduct (cont.)

7. Misappropriation of, or failure to properly and promptly remit, funds received from clients for the purpose of payment of taxes or other obligations due the United States.
8. Direct or indirect attempts to influence the official action of IRS employees by the use of threats, false accusations, duress, or coercion, or by offering gifts, favors, or any special inducements.
9. Disbarment or suspension from practice as an attorney, CPA, public accountant, or actuary by any state, territory, or possession of the United States, including a Commonwealth, the District of Columbia, any Federal court, or any Federal agency, body or board.
10. Knowingly aiding and abetting another person to practice before the IRS during a period of suspension, disbarment, or ineligibility of that other person.
11. Using abusive language, making false accusations and statements knowing them to be false, circulating or publishing malicious or libelous matter, or engaging in any contemptuous conduct in connection with practice before the IRS.
12. Giving a false opinion knowingly, recklessly, or through gross incompetence, or following a pattern of providing incompetent opinions in questions arising under the federal tax laws.

Continued on next card

Practice Before the IRS Sanctions for Violation of the Regulations

Incompetence and Disreputable Conduct (cont.)

13. Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
14. Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the IRC, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.
15. Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
16. Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.
17. Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

Practice Before the IRS Sanctions for Violation of the Regulations

Sanctions

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

Authority to impose monetary penalty. The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanctions.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.60-.61

Institution of proceeding. Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the IRS or the regulations in this part, the practitioner may be reprimanded or, in accordance with §10.62, subject to a proceeding for sanctions described in §10.50.

Conferences. The Commissioner, or delegate may confer with a practitioner concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner is the respondent, the stipulation may be entered in the record by either party to the proceeding. In lieu of a proceeding being instituted or continued, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Commissioner, or delegate may, in his discretion, accept or decline the offer.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.62-.63

Contents of complaint

Charges. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the IRS under §10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that the respondent is able to prepare a defense.

Specification of sanction. The complaint must specify the sanction sought against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

Demand for answer. The respondent must be notified in the complaint or in a separate paper attached to the complaint of the time for answering the complaint, which may not be less than 30 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the IRS to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

Practice Before the IRS Disciplinary Proceedings

Service of complaint. The complaint or a copy of the complaint must be served on the respondent by any of the following manner:

1. ***Service by certified or first class mail.*** Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service. If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail.
2. ***Service by a private delivery service.*** Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations there under) of the respondent.
3. ***Service in person.*** Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent.

Practice Before the IRS Disciplinary Proceedings

Answer of complaint

Filing. The respondent's answer must be filed with the Administrative Law Judge, and served on the IRS, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

Contents. The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

Failure to deny or answer allegations in the complaint. Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

Default. Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.66-.69

Reply to answer. The IRS may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

Motions and requests. At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support.

Representation. The practitioner may appear in person at the hearings or may be represented by counsel or other representative who need not be enrolled to practice before the IRS. The IRS may be represented in proceedings under this part by an attorney or other employee of the IRS. An attorney or an employee of the IRS representing the IRS in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the IRS.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.70

Administrative Law Judge

Appointment. Proceedings on complaints for the sanction of a practitioner, employer, firm or other entity, or appraiser will be conducted by an Administrative Law Judge.

Powers of the Administrative Law Judge. The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under §10.60 assigned or referred to him or her, to do the following:

1. Administer oaths and affirmations.
2. Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge.
3. Determine the time and place of hearing and regulate its course and conduct.
4. Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings.
5. Rule on offers of proof, receive relevant evidence, and examine witnesses.
6. Take or authorize the taking of depositions or answers to requests for admission.
7. Receive and consider oral or written argument on facts or law.
8. Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties.
9. Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding.
10. Make decisions.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.71-.73

Discovery. Discovery may be permitted, at the discretion of the Administrative Law Judge, only upon written motion demonstrating the relevance, materiality and reasonableness of the requested discovery. Within 10 days of receipt of the answer, the Judge will notify the parties of the right to request discovery and the timeframe for filing a request.

Hearings. The Administrative Law Judge shall preside at the hearing on a complaint for suspension or disbarment of the practitioner. If the enrolled agent fails to appear at the hearing, he shall be deemed to have waived the right to a hearing and the Administrative Law Judge, who presides at the hearing, may make his decision against the absent enrolled agent by default. In response to request for discovery, the Judge may order depositions upon oral examination or answers to requests for admission.

Evidence. Official documents, records and papers of the IRS and the Office of Professional Responsibility are admissible in evidence without the production of an officer or employee to authenticate them. The Administrative Law Judge can exclude evidence that is irrelevant, immaterial, or unruly repetitious.

Depositions. Depositions for use at a hearing may be taken, with the written approval of the Administrative Law Judge, by either the IRS or the respondent or their duly authorized representatives.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.74-.73

Transcript. Transcripts of the hearing and any documents or evidence presented at the hearing must be made available to the practitioner upon request either without charge or upon the payment of a reasonable fee.

Proposed findings and conclusions. Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

Decision of the Administrative Law Judge. Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. In the event that a motion for summary adjudication is filed, the Administrative Law Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed.

Appeal to the Secretary of the Treasury. Within 30 days from the date of the Judge's decision, either party may appeal to the Secretary of the Treasury.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.65-.71

Decision of the Secretary. On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

Disbarment. When the final decision in a case is against the respondent (or the respondent has offered his or her consent) and such decision is for disbarment, the respondent will not be permitted to practice before the IRS unless and until authorized to do so by the IRS.

Suspension. When the final decision in a case is against the respondent (or the respondent has offered his or her consent) and such decision is for suspension, the respondent will not be permitted to practice before the IRS during the period of suspension.

Censure. When the final decision in the case is against the respondent (or the IRS has accepted the respondent's offer to consent) and such decision is for censure, the respondent will be permitted to practice before the IRS, but the respondent's future representations may be subject to conditions.

Practice Before the IRS Disciplinary Proceedings

Cir. No. 230 Sec 10.72-75

Notice of disbarment, suspension, or censure. On the issuance of a final order censuring, suspending, or disbarring a practitioner, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the IRS and interested departments and agencies of the Federal government. The IRS may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

Petition for reinstatement. A disbarred practitioner or a disqualified appraiser may petition for reinstatement before the IRS after the expiration of 5 years following such disbarment or disqualification.

Resignation or voluntary suspension. A practitioner, in order to avoid disbarment or suspension, may offer his consent to suspension or his resignation from practice before the IRS. The IRS may accept the offered resignation.

Practice Before the IRS Disciplinary Proceedings

Records

Roster. The IRS will maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, the following rosters:

1. Individuals (and employers, firms, or other entities) censured, suspended, or disbarred from practice before the IRS or upon whom a monetary penalty was imposed.
2. Enrolled agents, including individuals:
 - ▶ Granted active enrollment to practice.
 - ▶ Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment.
 - ▶ Whose enrollment has been placed in inactive retirement status.
 - ▶ Whose offer of consent to resign from enrollment has been accepted by the IRS.
3. Registered tax return preparers, including individuals:
 - ▶ Authorized to prepare all or substantially all of a tax return or claim for refund.
 - ▶ Who have been placed in inactive status for failure to meet the requirements for renewal.
 - ▶ Who have been placed in inactive retirement status.
 - ▶ Whose offer of consent to resign from their status as a registered tax return preparer has been accepted by the IRS under §10.61.
4. Disqualified appraisers.
5. Qualified continuing education providers.

Practice Before the IRS Power of Attorney

A power of attorney (Form 2848) is most often required to authorize another individual to perform at least one of the following acts on the behalf of the T/P:

1. Represent the T/P before any office or employee of the IRS.
2. Sign an offer or a waiver of restriction on assessment or collection of a tax deficiency, or a waiver of notice of disallowance of claim for credit or refund.
3. Sign a consent to extend the statutory time period for assessment or collection of tax.
4. Sign a closing agreement.

Signing a return. The representative named under a power of attorney is not permitted to sign a personal income tax return for a T/P unless:

1. The signature is permitted under the Internal Revenue Code and related regulation, and
2. The T/P specifically authorizes this in the power of attorney.

The regulation permits a representative to sign a T/P's return if the T/P is unable to sign the return due to:

- ▶ Disease or injury.
- ▶ Continuous absence from the United States (including Puerto Rico) for a period of at least 60 days prior to the date required by law for filing the return.
- ▶ Other good cause if specific permission is requested of and granted by the IRS.

Practice Before the IRS Power of Attorney

Non-IRS power of attorney. If T/P wants to use a power of attorney document other than Form 2848, it must contain the following information:

1. T/P's name and mailing address.
2. T/P's social security number and/or employer identification number.
3. T/P's employee plan number, if applicable.
4. The name and mailing address of T/P's representative.
5. The types of tax involved.
6. The federal tax form number.
7. The specific year(s) or period(s) involved.
8. For estate tax matters, the decedent's date of death.
9. A clear expression of the T/P's intention concerning the scope of authority granted to the representative.
10. The T/P's signature and date.

The T/P must also attach to the non-IRS power of attorney a signed and dated statement made by the T/P's representative. This statement, which is referred to as the "Declaration of Representative," is contained in Part II of Form 2848. The statement should read:

1. I am not currently under suspension or disbarment from practice before the IRS,
2. I am subject to regulations contained in Circular 230,
3. I am authorized to represent the T/P(s) identified in the power of attorney, and
4. I am authorized to practice before the IRS.

Practice Before the IRS

Power of Attorney

Limitation on substitution or delegation. A recognized representative can substitute or delegate authority under the power of attorney to another recognized representative only if the act is specifically authorized under the power of attorney. After a substitution has been made, only the newly recognized representative will be recognized as the T/P's representative. If a delegation of power has been made, both the original and the delegated representative will be recognized by the IRS to represent the T/P.

Disclosure of returns to a third party. A representative cannot execute consents that will allow the IRS to disclose tax return or return information to a third party unless this authority is specifically delegated to the representative on line 5a of Form 2848.

Incapacity or incompetency. A power of attorney is generally terminated if the T/P becomes incapacitated or incompetent. The durable power of attorney ends when the taxpayer dies. The power of attorney can continue, however, in the case of incapacity or incompetency if the T/P authorize this on line 5a "Other acts authorized" of the Form 2848 and if the non-IRS durable power of attorney meets all the requirements for acceptance by the IRS.

Tax matters. A power of attorney can be used for tax matters relating to income tax, employment tax, excise tax, or any other tax over which the IRS has jurisdiction.

Joint return. In tax matters involving a joint return, a power of attorney must be signed by both the husband and wife. Exception: When one spouse is not available or is incapacitated, the other spouse can be authorized to sign for that spouse only if the authorization is in writing.

Practice Before the IRS

Power of Attorney

Where to file a power of attorney. A power of attorney can be mailed or faxed to the IRS.

FAX copies. The IRS will accept a copy of a power of attorney that is submitted by fax if the appropriate IRS office is equipped to accept this type of transmission.

Retention/Revocation of Prior Power(s) of Attorney. A newly filed power of attorney concerning the same matter will revoke a previously filed power of attorney. However, the new power of attorney will not revoke the prior power of attorney if it specifically states it does not revoke such prior power of attorney and either of the following are attached to the new power of attorney.

- ▶ A copy of the unrevoked prior power of attorney, or
- ▶ A statement signed by the taxpayer listing the name and address of each representative authorized under the prior unrevoked power of attorney.

Note: The filing of Form 2848 will not revoke any Form 8821 that is in effect.

Practice Before the IRS

Power of Attorney

Updating a power of attorney. Submit any update or modification to an existing power of attorney in writing. The T/P's signature (or the signature of the individual(s) authorized to sign on the T/P's behalf) is required. Do this by sending the updated Form 2848 or non-IRS power of attorney to the IRS office(s) where the originals were previously sent, including the center where the related return was, or will be filed. A recognized representative may substitute or delegate authority if the T/P specifically authorize his or her representative to substitute or delegate representation in the original power of attorney. To make a substitution or delegation, the representative must file the following items with the IRS office(s) where the power of attorney was filed:

1. A written notice of substitution or delegation signed by the recognized representative.
2. A written declaration of representative made by the new representative.
3. A copy of the power of attorney that specifically authorizes the substitution or delegation.

Practice Before the IRS

Power of Attorney

Revoking a power of attorney by T/P. If a T/P wants to revoke a power of attorney and does not want to name a new representative, there are two ways to do it:

1. T/P can send a copy of the original power of attorney (Form 2848) with the word “REVOKE” written on the top center of page 1 and sign and date the bottom of page 2 following the Declaration of Representative section. The revocation copy should be sent to each office of the IRS where the original form was filed and also the service center where the T/P files his or her returns.
2. T/P can file a revocation statement indicating that the power of attorney is revoked and must include the name and address of each representative whose authority is revoked.

Withdrawal by representative. If a representative wants to withdraw from representation, he or she must write “WITHDRAW” across the top of the first page of the Form 2848 with a current signature and date immediately below the annotation. Then, he or she must provide a copy of the power of attorney with the withdrawal annotation to the IRS in the same manner described above .

Revoking a non-IRS power of attorney. T/P must write a letter requesting the revocation and attach a copy of the power of attorney. The letter must be signed and dated and sent to each office of the IRS where the original non-IRS power of attorney was filed.

Automatic revocation of power of attorney. Unless specified otherwise on the form, a newly filed power of attorney concerning the same tax matter will revoke a previously filed power of attorney, but not a previously filed tax information authorization.

Practice Before the IRS

Power of Attorney

When a power of attorney is not required. The following situations do not require a power of attorney:

1. Providing information to the IRS.
2. Authorizing the disclosure of tax return information through Form 8821.
3. Allowing the IRS to discuss return information with a third party designee.
4. Allowing a partnership representative (PR) to perform acts for the partnership under the centralized partnership audit regime for tax years beginning after December 31, 2017.
5. Allowing the IRS to discuss return information with a fiduciary.

Fiduciary. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of the T/P and acts as the T/P. Therefore, a fiduciary need not file a power of attorney. However, a fiduciary should file Form 56, Notice Concerning Fiduciary Relationship, to notify the IRS of the fiduciary relationship.

Nonwritten consents. The IRS is allowed to discuss with a third party designee, tax return or return information after receiving the T/P's (oral) consent. Under this temporary regulation, the IRS is permitted to disclose information to any person accompanying the T/P to a meeting, interview, or participating with the T/P, in a telephone conversation with the IRS. Before any disclosure of information, the IRS must verify the date, nature, and extent of information or assistance requested, the return information to be disclosed, and the identity of the T/P and the designee.

Practice Before the IRS Tax Information Authorization

Form 8821

Tax Information Authorization (Form 8821). Form 8821 authorizes any individual, corporation, firm, organization, or partnership the T/P designates to inspect and/or receive the T/P's confidential information in any office of the IRS for the type of tax and the years or periods list on Form 8821. T/Ps may file their own tax information authorization without using Form 8821, but it must include all the information that is requested on Form 8821. Form 8821 is strictly a disclosure authorization form and cannot be used to designate an individual to represent a T/P.

Central Authorization File (CAF) System is a computer file system containing information regarding the authority of individuals appointed under power of attorney or persons designated under the tax authorization system. When the IRS receives a power of attorney or a tax information authorization form it is processed for inclusion into the CAF. This enables IRS personnel, who do not have access to the actual power of attorney or tax information authorization to do all of the following actions:

1. Determine whether a recognized representative or appointee is authorized to discuss specific confidential tax information.
2. Determine the extent to which a recognized representative or appointee has been authorized to represent a T/P.
3. Send copies of notices and other IRS communications to the person (individual or other entity) designated on the form.

Legal Authority & Reference

Internal Revenue Code (IRC). Federal tax law begins with the Internal Revenue Code (IRC), enacted by congress in **Title 26** of the United States Code (26 U.S.C.). The IRC is the main body of domestic statutory tax law of the U.S., including laws covering income tax, payroll taxes, gift taxes, estate taxes and statutory excise taxes. The tax statutes were brought together by an Act of Congress on February 10, 1939 as the Internal Revenue Code later known as the Internal Revenue Code of 1939. The 1939 Code lasted 15 years. It was replaced by the Internal Revenue Code of 1954. The Tax Reform Act of 1986 represented the most extensive overhaul of the tax code in over 30 years. The scope and magnitude of the amendments were so great Congress decided to redesignate the 1954 Code as the Internal Revenue Code of 1986.

Treasury regulations. A regulation is issued by the IRS and Treasury Department to provide guidance for new legislation or to address issues that arise with respect to existing Internal Revenue Code sections. All regulations are written by the Legislation and Regulations Division of the Office of the Chief Counsel, IRS, and approved by the Secretary of the Treasury. Regulations interpret and give directions on complying with the law. Regulations are published in the Federal Register. Generally, regulations are first published in proposed form in a Notice of Proposed Rulemaking (NPRM). After public input is fully considered through written comments and even a public hearing, a final regulation or a temporary regulation is published as a Treasury Decision (TD), again, in the Federal Register. Although the IRS is bound by the regulations, the courts are not.

Legal Authority & Reference

Classes of regulations. The three classes of regulations are:

1. Temporary
2. Proposed
3. Final

Temporary regulations. Issued to provide guidance for the public and IRS employees until final regulations are issued. Public hearings are not held on temporary regulations.

Proposed regulations. Issued to solicit public written comments. Public hearings are held if written requests are made. Proposed regulations do not replace the temporary regulations unless the proposed regulations specifically say they replace them.

The final regulations. Issued after the public comments on the proposed regulations are evaluated, and they supersede the temporary regulations. The regulations are printed in the Federal Register, Code of Federal Regulations (C.F.R.), Treasury Decisions (T.D.) in the Internal Revenue Bulletin (I.R.B.), and Cumulative Bulletin (C.B.).

Interpretative regulations. Treasury regulations issued under the general mandate of Code section 7805(a).

Legislative regulations. Treasury regulations issued when a specific Code section authorizes the Secretary of the Treasury to write regulations giving details of the application of that Code section.

Legal Authority & Reference

Revenue rulings. An official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties and regulations. It is the conclusion of the IRS on how the law is applied to a specific set of facts. Revenue rulings are published in the Internal Revenue Bulletin for the information of and guidance to T/Ps, IRS personnel and tax professionals.

Revenue procedures. Official statements of procedures that either affect the rights or duties of T/Ps or other members of the public, or should be a matter of public knowledge. The purpose of these rulings is to promote a uniform application of the tax laws and, therefore, IRS employees must follow the rulings. While T/Ps can rely on the rulings, they can also appeal adverse return examination decisions based on those rulings to the Tax court or other Federal courts.

Note: Rulings and procedures reported in the IRB do not have the force and effect of Treasury tax regulations, but they may be used as precedents. In contrast, any documents not published in the IRB cannot be relied on, used, or cited as precedents in the disposition of other cases.

Legal Authority & Reference

Private letter rulings. The IRS' National Office issues private letter rulings in response to a T/P's request for the IRS' position on a specific tax issue. The private letter ruling typically addresses an unusual or complex question pertaining to a particular T/P. Letter rulings are not binding on the IRS and cannot be cited as precedent, but they can provide useful information on how the IRS may treat a similar case.

Technical Advice Memorandum. A technical advice memorandum, or TAM, is guidance furnished by the Office of Chief Counsel upon the request of an IRS director or an area director, appeals, in response to technical or procedural questions that develop during a proceeding. A request for a TAM generally stems from an examination of a T/P's return, a consideration of a T/P's claim for a refund or credit, or any other matter involving a specific T/P under the jurisdiction of the territory manager or the area director, appeals. Technical Advice Memoranda are issued only on closed transactions and provide the interpretation of proper application of tax laws, tax treaties, regulations, revenue rulings or other precedents. The advice rendered represents a final determination of the position of the IRS, but only with respect to the specific issue in the specific case in which the advice is issued. Technical Advice Memoranda are generally made public after all information has been removed that could identify the T/P whose circumstances triggered a specific memorandum.

IRS Notices. The IRS issues Notices to provide guidance before revenue rulings and regulations are available. Notices may contain guidance regarding the tax law or contain guidance to T/Ps of a procedural nature.

Legal Authority & Reference

Internal Revenue Manual (IRM). The IRM is the single official source for IRS policies, directives, guidelines, procedures and delegations of authority in the IRS. The IRM represents the keystone of a suite of tax administration tools that meet the needs of the IRS business unit employees. The public and practitioners have access to most of the IRM via the official IRS website and the IRS public Reading Room.

Circular 230. Circular 230 contains the regulations governing the practice before the IRS for attorneys, CPAs, enrolled agents, enrolled actuaries, appraisers and registered tax return preparers.

IRS publications. The explanations and examples in the IRS publications reflect the interpretation by the IRS of tax laws enacted by congress, treasury regulations and court decisions. However, the information in these publications is not intended to replace the law or change its meaning.

Legal Authority & Reference

Supreme Court Decisions. All Supreme Court decisions on Federal tax matters are published in the Internal Revenue Bulletin (I.R.B.) and Cumulative Bulletin (C.B.).

Tax Court Decisions. Tax Court decisions are not published in the I.R.B. but announcements concerning the IRS' acquiescence or non acquiescence in adverse Tax Court decisions (other than memorandum decisions) are published.

Memorandum Decision. A report of a Tax Court decision thought to be of little value as a precedent because the issue has been decided many times.

Acquiescence. Notice given by the Commissioner of the IRS of intent to follow, to the extent indicated in the Cumulative Bulletin, an adverse Tax Court decision.

Nonacquiescence. Notice given by the Commissioner of the IRS of intent not to follow an adverse Tax Court decision.

Freedom of Information Act Request

The Freedom of Information Act (FOIA), provides that any person has the right to request access to federal agency records or information. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. FOIA requests can only be made for federal executive agency files. Congress, the U.S. Supreme Court, and state or local agencies are not subject to FOIA. The following are the nine exemptions of the FOIA:

1. Items specifically required by an Executive Order to be kept secret in the interest of the national defense or foreign policy.
2. Items related solely to the internal rules and practices of an agency.
3. Items specifically exempted from disclosure by a statute.
4. Trade secrets & commercial or financial information obtained from a person & privileged or confidential.
5. Interagency or Intraagency memoranda or letters which would not be available by law to a party other than an agency.
6. Personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
7. Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.
8. Items contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
9. Geological and geophysical information and data, including maps, concerning wells.

CP2000 Notices. The CP2000 is a computer generated notice sent out by the IRS to a T/P when the T/P's tax return does not match third-party documentation (Form W-2, 1098, 1099, etc.) received by the IRS. It is not a bill, it is a proposal to adjust of income, payments, credits, and/or deductions. The adjustment may result in additional tax owed or a refund of taxes paid. If the T/P does not respond to the notice, the IRS will send a Statutory Notice of Deficiency by certified mail.

What to do if a T/P receives the notice. If the information displayed in the CP2000 notice is correct, the T/P does not have to amend his or her return unless the T/P has additional income, credits or expenses to report.

If the T/P agrees with the proposed changes and the notice received shows that taxes are owed, the T/P should do the following:

1. Sign the agreement form in the notice.
2. Pay any additional tax, penalties and interest owed. If T/P wants to request a payment plan, complete, sign and include Form 9465, Installment Agreement Request (or Form 433-D, Installment Request).
3. Return the signed agreement form and payment (if paying by check or money order), or a completed Form 9465 (or Form 433-D) in the envelope provided.

Continue on next card

CP2000 Notice (cont)

If the T/P receives the notice and agrees with the proposed changes, the notice shows a refund due and the T/P signature is requested, do the following:

1. Sign the agreement form in the notice.
2. Return the signed agreement form in the envelope provided.

If the T/P receives the notice and does not agree with the proposed changes, the T/P should do the following:

1. Don't sign the agreement form in the notice.
2. Explain why he or she disagrees. Address each issue. Send his or her explanation and documentation in the envelope provided.

Examination selection criteria. A T/P's return may be selected for examination on the basis of computer scoring. A computer program called the Discriminant Inventory Function System (DIF) assigns a numeric score to each individual and some corporate tax returns after they have been processed. If a return is selected because of a high score under the DIF system, the potential is high that an examination of the return will result in a change to the T/P's income tax liability. A return may also be selected for examination on the basis of information received from third-party documentation, such as Forms 1099 and W-2, that does not match the information reported on the return. Or, a return may be selected to address both the questionable treatment of an item and to study the behavior of similar T/Ps (a market segment) in handling a tax issue. In addition, a return may be selected as a result of information received from other sources on potential noncompliance with the tax laws or inaccurate filing. This information can come from a number of sources, including newspapers, public records, and individuals.

Notice of IRS contact of third parties. The IRS must give a T/P reasonable notice before contacting other persons about the T/P's tax matters. The T/P must be given reasonable notice in advance that, in examining or collecting tax liability, the IRS may contact third parties such as the T/P's neighbors, banks, employers, or employees. The IRS must also give notice of specific contacts by providing the T/P with a record of persons contacted on both a periodic basis and upon T/P's request. This provision does not apply to the following:

1. Any pending criminal investigation.
2. When providing notice would jeopardize collection of any tax liability.
3. Where providing notice may result in reprisal against any person.
4. When the T/P authorized the contact.

Taxpayer Advocate Service. The Taxpayer Advocate Service is an independent organization within the IRS whose goal is to help T/Ps resolve problems with the IRS. If an ongoing issue with the IRS has not been resolved through normal processes, or the T/P has suffered or is about to suffer a significant hardship as a result of the administration of the tax laws, the Taxpayer Advocate Service should be contacted. Before contacting the Taxpayer Advocate, the T/P or his or her representative should first discuss any problem with an IRS supervisor.

The examination. Examinations can be handled by mail, in the T/P's home or office, or in an IRS office. The examiner will examine the T/P's records and propose any change to the T/P's return. The T/P will receive Publication 1 at or before the first in-person interview.

Third party designee. T/Ps can authorize the IRS to discuss their return with their preparer, a friend, family member, or any other person they choose. If the T/P checks the "Yes" box in the Third party designee area of the return and provides the information required, the T/P is authorizing:

1. The IRS to call the designee to answer any questions that arise during the processing of the return, and
2. The designee to:
 - a. Give information that is missing from the return to the IRS,
 - b. Call the IRS for information about the processing of the return or the status of the refund or payments,
 - c. Receive copies of notices or transcripts related to the return, upon request, and
 - d. Respond to certain IRS notices about math errors, offsets, and return preparation.

Note: The authorization will automatically end no later than the due date (without any extensions) for filing the following year's return.

Confidentiality privilege. Generally, the same confidentiality protection that an individual has with an attorney also applies to certain communications that an individual has with federally authorized practitioners. Confidential communications are those that:

- ▶ Advise on tax matters within the scope of the practitioner's authority to practice before the IRS,
- ▶ Would be confidential between an attorney and an individual, and
- ▶ Relate to noncriminal tax matters before the IRS, or
- ▶ Relate to noncriminal tax proceedings brought in federal court by or against the U.S.

In the case of communications in connection with the promotion of a person's participation in a tax shelter, the confidentiality privilege does not apply to written communications between a federally authorized practitioner and that person, any director, officer, employee, agent, or representative of that person, or any other person holding a capital or profits interest in that person.

Tax Shelter. A tax shelter is any entity, plan, or arrangement, a significant purpose of which is the avoidance or evasion of income tax.

Transfer to another area. The examination usually takes place in the IRS district where the T/P lives. The examination can be transferred to another area if the T/P's books and records are located in that area.

Repeated examinations. If the IRS examines a T/P's return for the same item in either of the two previous years and proposes no change to T/P's tax liability in those years, the T/P should notify the IRS of the prior year's examination as soon as possible so they can see if the examination should be discontinued.

Agreed on changes. If the T/P agrees to the changes proposed by the IRS, he or she may sign an agreement form and pay any additional tax and interest owed. Interest is figured from the return's due date to the date of payment. After the IRS sends a tax bill, the T/P has 10 business days (21 calendar day if amount due is under \$100,000) to pay the bill or be assessed additional interest and penalties.

Disagree on changes. If the T/P disagrees with the proposed changes, he or she can request an immediate meeting with the examiner's supervisor to explain his or her position if the examination takes place in the IRS office. If an agreement cannot be reached with the supervisor at this meeting, or if the examination took place outside of an IRS office, the examiner will write up the case explaining the T/P's position and the IRS' position. The examiner will forward T/P's case for processing.

Fast track mediation. Fast Track Mediation gives small businesses, self-employed T/P and the IRS the opportunity to mediate disputes through an IRS appeals officer, who acts as a neutral party. In this program, most tax disputes are resolved within 40 days compared to several months through the regular appeal process. The IRS offers fast track mediation services to help T/Ps resolve many disputes resulting from the following:

- ▶ Examinations (audits).
- ▶ Offers in compromise.
- ▶ Trust fund recovery penalties.
- ▶ Other collection actions.

Most cases that are not docketed in any court qualify for fast track mediation. Mediation can take place at a conference request with a supervisor, or later. The process involves an Appeals Officer who has been trained in mediation. A T/P may represent himself or herself at the mediation session, or someone else can act as the T/P's representative.

Fast track settlement. Fast Track Settlement is designed to help other IRS Operating Division taxpayers expeditiously resolve disputes during an examination while their case is still in Examination or Collection. Fast Track Settlement brings Appeals resources to a mutually agreed upon location to resolve the dispute before the 30-day letter is issued.

Early referral. T/Ps whose returns are under the jurisdiction of Examination or Collection may request the transfer of a developed but unagreed issue to Appeals, while the other issues in the case continue to be developed in Examination or Collection. The early resolution of a key issue may encourage T/Ps and the IRS to agree on other issues in the case. Early referral can also be requested with respect to issues regarding an involuntary change in method of accounting, employment tax, employee plans and exempt organizations. Regular Appeals procedures apply, including T/P conferences.

30-day letter. Within a few weeks after the closing conference with the examiner and/or supervisor, the T/P will receive a package with:

1. A letter (known as a 30-day letter) notifying T/P of his or her right to appeal the proposed changes within 30 days.
2. A copy of the examination report explaining the examiner's proposed changes.
3. An agreement or waiver form.
4. A copy of Publication 5.

90-day letter. If the T/P does not respond to the 30-day letter, or does not reach an agreement with an Appeals Officer, the IRS will send the T/P a 90-day letter, which is also known as a notice of deficiency.

Suspension of interest and penalties. Generally, the IRS has 3 years from the date the return was filed (or the date the return was due, if later) to assess any additional tax. However, if a return is filed timely (including extensions), interest and certain penalties will be suspended if the IRS does not mail a notice to the T/P, stating the T/P's liability and the basis for that liability, within a 36-month period beginning on the later of:

1. The date on which the tax return was filed, or
2. The due date (without extensions) of the tax return.

If the IRS mails a notice after the 36-month period, interest and certain penalties applicable to the suspension period will be suspended. The suspension period begins the day after the close of the 36-month period and ends 21 days after the IRS mails a notice to the T/P. Also, the suspension period applies separately to each notice stating the T/P's liability and the basis for that liability received by the T/P. The suspension does not apply to the following penalties:

1. Failure-to-pay penalty.
2. Fraudulent tax return.
3. Penalty, interest, addition to tax, or additional amount with respect to any tax liability shown on T/P's return or with respect to any gross misstatement.
4. Penalty, interest, addition to tax, or additional amount with respect to any reportable transaction that is not adequately disclosed or any listed transaction.
5. Criminal penalty.

Seeking relief from improperly assessed interest. A T/P can seek relief if interest is assessed for periods during which interest should have been suspended because the IRS did not mail a notice in a timely manner by submitting Form 843, Claim for Refund and Request for Abatement, and writing “Section 6404(g) Notification” at the top of the form, with the IRS Service Center where the return was filed. If the IRS does not abate interest, the T/P can pay the disputed interest assessment and file a claim for refund. If the claim is denied or not acted upon within 6 months from the date filed, the T/P can file suit for a refund in the United States District Court or in the United States Court of Federal Claims. If the T/P believes that an IRS officer or employee has made an unreasonable error or delay in performing a ministerial or managerial act, the T/P can file Form 843 with the IRS Service Center where the tax return was filed. If the IRS denies the claim, the Tax Court may be able to review that determination.

Interest netting. If a T/P owes interest to the IRS on an underpayment for the same period the IRS owes the T/P interest on an overpayment, the IRS will figure interest on the underpayment and overpayment at the same interest rate (up to the amount of the overpayment). As a result, the net rate is zero for that period.

Abatement of interest due to error or delay by the IRS. The IRS may abate (reduce) the amount of interest owed by a T/P if the interest is due to an unreasonable error or delay by an IRS officer or employee in performing a ministerial or managerial act. Only the amount of interest on income, estate, gift, generation-skipping, and certain excise taxes can be reduced. The amount of interest will not be reduced if the T/P contributed significantly to the error or delay. Also, the interest will be reduced only if the error or delay happened after the IRS contacted the T/P in writing about the deficiency or payment on which the interest is based. An audit notification letter is such a contact. The IRS cannot reduce the amount of interest due to a general administrative decision, such as a decision on how to organize the processing of tax returns.

Ministerial act. This is a procedural or mechanical act, not involving the exercise of judgment or discretion, during the processing of a case after all prerequisites (for example, conferences and review by supervisors) have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

Managerial act. This is an administrative act during the processing of a case that involves the loss of records or the exercise of judgment or discretion concerning the management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

Failure-to-file penalty. If a return is not filed by the due date (including extensions), T/P is subject to a penalty of 5% per month for each month or part of the month that the return is late, but not more than 25%. The penalty is based on the tax not paid by the due date (without regard to extensions).

Fraud. If the failure to file is due to fraud, the penalty is 15% for each month or part of a month that the return is late up to a maximum of 75%.

Return over 60 days late. If the return is more than 60 days late after the due date or extended due date, the minimum penalty is the smaller of \$450 or 100% of the unpaid tax.

Failure-to-pay penalty. A penalty of .5% of the unpaid taxes for each month or part of a month, after the due date that the tax is not paid. This penalty does not apply during the automatic 6-month extension of time to file period if paid at least 90% of actual tax liability on or before the due date of the return and pay the balance when the return is filed. The monthly rate of the failure-to-pay penalty is half the usual rate (.25% instead of .50%) if an installment agreement is in effect for that month. Return must be filed by the due date (including extensions) to qualify for this reduced penalty. The penalty is increased to 1% per month if a notice of levy is issued.

Combine penalties. If both the failure-to-file penalty and the failure-to-pay penalty apply in any month, the 5% (or 15%) failure-to-file penalty is reduced by the failure-to-pay penalty. However, if the return is filed more than 60 days after the due date or extended due date, the minimum penalty is the smaller of \$450 or 100% of the unpaid tax.

Accuracy-related penalty. A T/P is subject to an accuracy-related penalty if the underpayment of tax is because of one of the following:

1. Negligence or disregard of the rules or regulations. Failure to make a reasonable attempt to comply with the tax law or to exercise ordinary and reasonable care in preparing a return. Negligence also includes failure to keep adequate books and records.
2. Substantially understate income tax. The understatement is substantial if it is more than the larger of **10% of the correct tax or \$5,000**.
3. Claimed tax benefits for a transaction that lacks economic substance.
4. Fail to disclose a foreign financial asset.

The penalty is equal to 20% of the underpayment. The penalty is 40% of any portion of the underpayment that is attributable to an undisclosed noneconomic substance transaction or an undisclosed foreign financial asset transaction. The penalty will not be figured on any part of an underpayment on which the fraud penalty is charged.

Fraud. If there is any underpayment of tax on the return due to fraud, a penalty of **75%** of the underpayment due to fraud will be added to the tax owed.

Frivolous return. The Tax Relief Health Care Act of 2006 amended IRC section 6702 to allow imposition of a **\$5,000 penalty** for frivolous tax returns and for specified frivolous submissions other than returns, if the purported returns or specified submissions are either based upon a position identified as frivolous by the IRS in a published list or reflect a desire to delay or impede tax administration.

Failure to supply social security number. If a T/P does not include his or her SSN or the SSN of another person where required on a return, statement, or other document, the T/P will be subject to a penalty of \$50 for each failure. The T/P will also be subject to a penalty of \$50 if he or she does not give his or her SSN to another person when it is required on a return, statement, or other document.

Failure to file correct information returns. The penalty is based on when the information return is filed:

- ▶ \$50 per information return if filed within 30 days (by March 30 if the due date is February 28.
- ▶ \$110 per return if filed more than 30 days after due date but by August 1.
- ▶ \$280 per return if filed after August 1.
- ▶ \$570 per return for intentionally not filing a return.

Note: The penalties are adjusted for inflation each year.

Criminal penalties. T/P may be subject to criminal prosecution (brought to trial) for actions such as:

1. Tax evasion.
2. Willful failure to file a return, supply information, or pay any tax due.
3. Fraud and false statements.
4. Preparing and filing a fraudulent return.

Criminal convictions may result in fines up to \$250,000 and/or up to 5 years in prison for each offense.

Trust fund taxes. Trust fund taxes are income tax, social security tax, and Medicare tax withheld from the employee's wages. Certain excise taxes are also considered trust fund taxes because they are collected and held in trust for the government until submitted in a federal tax deposit.

Trust fund recovery penalty. If income, social security, and Medicare taxes are not withheld or are not paid to the IRS, a penalty may be assessed against any person responsible for collecting, accounting for, and paying of the taxes and willfully fails to do so. A responsible person can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship, or any other person or entity that is responsible for collecting, accounting for, or paying over trust fund taxes. A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

This penalty does not apply to the employer's portion of social security or FUTA. The 100% penalty is computed based on two amounts which constitute trust fund tax:

1. The unpaid income taxes that should have been withheld, or were withheld but not paid, plus
2. The employee's portion of the social security/Medicare taxes that should have been withheld, or were withheld but not paid.

Recordkeeping. All records on employment taxes must be kept for at least 4 years and should be available for IRS review.

Form 843. Form 843 is used to claim a refund or request an abatement of certain taxes, interest, penalties, fees, and additions to tax. Use Form 843 to claim or request the following:

- ▶ A refund of tax, other than a tax for which a different form must be used.
- ▶ An abatement of tax, other than income, estate, or gift tax. Employers cannot use Form 843 to request an abatement of FICA tax, RRTA tax, or income tax withholding.
- ▶ A refund to an employee of excess social security or RRTA tax withheld by any one employer, but only if the employer will not adjust the overcollection.
- ▶ A refund to an employee of social security or Medicare taxes that were withheld in error, but only if the employer will not adjust the overcollection.
- ▶ A refund of excess tier 2 RRTA tax when T/P had more than one railroad employer for the year and his or her total tier 2 RRTA tax withheld or paid for the year was more than the tier 2 limit.
- ▶ A refund or abatement of interest, penalties, or additions to tax, caused by certain IRS errors or delays, or certain erroneous written advice from the IRS.
- ▶ A refund or abatement of a penalty or addition to tax due to reasonable cause or other reason (other than erroneous written advice provided by the IRS) allowed under the law.
- ▶ A refund of the penalty imposed under section 6715 for misuse of dyed fuel.
- ▶ A refund or abatement of tier 1 RRTA tax for an employee representative.
- ▶ A refund of a branded prescription drug fee.

Appeals rights. Because people sometimes disagree on tax matters, the IRS has an appeals system. Most differences can be settled within this system without experience and time-consuming court trials. However, the T/P's reason for disagreeing must come within the scope of the tax laws. For example, a T/P cannot appeal his or her case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

Appeals conference. A T/P may appeal an IRS decision to a local Appeals Office. The Appeals Office is the only level of appeal within the IRS. Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone, or at a personal conference. When requesting a conference, the T/P may need to file a written protest or a small case request with the office named in the letter the T/P receives from the IRS.

Written protest. A T/P will need to file a written protest in the following cases:

1. All employee plan and exempt organization cases without regard to the dollar amount at issue.
2. All partnership and S corporation cases without regard to the dollar amount at issue.
3. All other cases, unless T/P qualifies for the small case request procedure, or other special appeal procedure such as requesting Appeals consideration of liens, levies, seizures, or installment agreements.

Small case request. If the total amount for any tax period is not more than \$25,000, a T/P may make a small case request instead of filing a formal written protest. For a small case request, the T/P sends a letter requesting Appeals consideration, indicating the changes the T/P disagrees with, and indicates the reasons why he or she does not agree.

Appeal Procedure Tax Court

Tax Court. A T/P may petition the U.S. Tax Court for a judicial determination of his or her tax liability within 90 days after receiving a notice of deficiency. Generally, the Tax Court hears cases before any tax has been assessed and paid. However, a T/P may pay the tax after the notice of deficiency has been issued and still petition the Tax Court for review. The Tax Court has jurisdiction over income, estate, and gift taxes, certain excise taxes of private foundations, public charities, qualified pension and other retirement plans, or real estate investment trusts. It does not have jurisdiction over employment, certain other excise, or wagering taxes.

Small case procedure. A case can be handled in the Tax Court under the “small tax case procedures” if the amount is \$50,000 or less. Decisions cannot be appealed.

Note: If the T/P consents, the IRS can withdraw any notice of deficiency. However, after the notice is withdrawn, the T/P cannot file a petition with the Tax Court.

Notice of deficiency. If the T/P does not respond to the 30-day letter or does not reach an agreement with the Appeals officer, the IRS will send the T/P a 90-day letter, known as a statutory notice of deficiency. The T/P has **90 days** (150 days if mailed while T/P is out of the U.S.) from the date of this notice to pay the tax owed or file a petition with the Tax Court to appeal the deficiency.

Appeal Procedure Appeals to The Courts

District Court & Claims Court. A T/P may choose to pay a disputed tax liability and then file a claim for refund. If the claim is denied by the IRS or if no decision is made in 6 months, the T/P may petition either the U.S. Claims Court or the U.S. District court. The T/P must file suit for a refund no later than 2 years after the IRS sends the notice of claim disallowance. The case before the District Court may be tried by jury. The District Court and the Claims Court hear tax cases only after the T/P has paid the tax and filed a claim for a credit or refund.

Appellate Courts. Both the T/P and the Government may appeal decisions of the Tax Court, District Court or Claims Court to the Court of Appeals.

Supreme Court. Decisions of the Court of Appeals may be reviewed by the U.S. Supreme Court. The Supreme Court is not obligated to hear all cases that it has been requested to review.

Claims for refund. A T/P, after paying his or her tax, can file a claim for a refund if he or she believes the tax is too much. The T/P must file the claim within 3 years from the date the original return was filed or 2 years from the date the tax was paid, whichever is later. The T/P should file the claim by mailing it to the IRS center where the original return was filed.

Postponed refund deadlines. The IRS may postpone for up to 1 year the deadlines for filing a claim for refund. The postponement can be used by T/Ps who are affected by a presidentially declared disaster. The IRS may also postpone deadlines for filing income and employment tax returns, paying income and employment taxes, and making contributions to a traditional IRA or Roth IRA.

Appeal Procedure Appeals to The Courts

Burden of proof. For court proceedings resulting from examinations started after July 22, 1998, the IRS generally has the burden of proof for any factual issue if the T/P has met the following requirements:

1. T/P introduced credible evidence relating to the issue.
2. T/P complied with all substantiation requirements of the Internal Revenue Code.
3. T/P maintained all records required by the Internal Revenue Code.
4. T/P cooperated with all reasonable requests by the IRS for information regarding the preparation and related tax treatment of any item reported on T/P's tax return.
5. T/P had a net worth of \$7 million or less and not more than 500 employees at the time T/P's tax liability is contested in any court proceeding if T/P's tax return is for a corporation, partnership, or trust.

Penalties. The IRS has the burden of initially producing evidence in court proceedings with respect to the liability of any individual T/P for any penalty, addition to tax, or additional amount imposed by the tax laws.

Notice and demand. If the IRS examines a T/P's return and finds an error which results in additional tax due, the IRS will send the T/P a bill (including tax, interest, and penalties), which is a notice of tax due and demand for payment. In most cases, the IRS gives the T/P 10 days from the date of the notice of tax due before they may take enforced collection action. The T/P will receive Publication 1 with the initial notice and demand for payment.

Notice of federal tax lien (NFTL). Once a notice and demand for payment is sent to T/P and the T/P neglects or refuses to fully pay the tax within 10 days, the IRS files a notice of federal tax lien. This is a public notice to the T/P's creditors that the Government has a claim against the T/P's property. A NFTL is a legal tool the IRS uses to facilitate the collection of unpaid tax debts. The NFTL places the public on notice that the IRS has a legal claim to a T/P's property as security or payment for their tax debt.

Releasing the lien. The IRS will issue a Release of the Notice of Federal Tax Lien:

1. Within 30 days after the T/P satisfies the tax due (including interest and other additions) by paying the debt or by having it adjusted, or
2. Within 30 days after the IRS accepts a bond that the T/P submits, guaranteeing payment of the debt.

Notice of intent to levy. Once the Notice of Intent to Levy is sent to T/P, the T/P has 30 days to pay the tax, or face collection by levy. This notice may be given to the T/P in person, left at his or her residence or place of business, or sent by certified or registered mail to T/P's last known address.

The Collection Process

Levy

Levy. A levy is a legal seizure of property (such as a house or car) or rights to property (such as income, bank account, or Social Security payments) to satisfy a tax debt. Levies are different from liens. A lien is a claim used as security for the tax debt, while a levy actually takes the property to satisfy the tax debt.

Jeopardy levies. These occur when the IRS waives the 10-day Notice and Demand period and/or Final Notice (Notice of Intent to Levy) 30-day period, because delay would endanger collection of tax.

Property exempt from levy. The following types of property are exempt from levy by Federal law:

1. School books and certain clothing.
2. Certain amount worth of fuel, provisions, furniture, and personal effects for a household.
3. Certain amount worth of books and tools used in trade, business, or profession.
4. Unemployment benefits and certain annuity and pension benefits.
5. Workmen's compensation and certain public assistance payments.
6. Certain service-connected disability payments.
7. Salary, wages, or income included in a judgment for court-ordered child support.
8. Principal residence, unless prior written approval of the district director or assistant district director is secured, or jeopardy exists.
9. A minimum weekly exemption for wages, salary, and other income based on the standard deduction plus the number of allowable personal exemptions divided by 52.

Seizures and Sales

Sale after seizure. After seizure, the IRS must usually wait 60 days before they sell the property. The IRS will post a public notice of the pending sale usually in local newspapers or flyers. The IRS will deliver the original notice of sale to the T/P or send it to the T/P by certified mail. After placing the notice, the IRS must wait at least 10 days before conducting the sale, unless the property is perishable and must be sold immediately.

Taxpayer's right to "buy back" property. T/P has the right to "buy back" personal property at any time before the sale. T/P must pay the tax due, including interest and penalties, and pay the expenses of seizure. For real estate, T/P (or anyone with an interest in the property) may redeem it at any time within 180 days after the sale by paying the purchaser the amount paid for the property plus interest at 20 % annually.

Sale proceeds. After the seizure and sale, the IRS uses the sale proceeds first to pay the expenses of the levy and sale. The remaining proceeds are used to pay the tax liability. If the proceeds of the sale are less than the total of the tax bill and expenses of levy and sale, the T/P will still have to pay the unpaid tax.

IRS action affecting passports. The Fixing America's Service Transportation (FAST) Act of 2015 requires the IRS to notify the State Department of T/P's certified as owing a seriously delinquent tax debt. Seriously delinquent tax debt means an unpaid, legally enforceable federal tax debt of an individual totaling more than \$55,000 (including penalties and interest) for which a:

- ▶ Notice of Federal Tax lien has been filed and all administrative remedies under IRC § 6320 have lapsed or been exhausted, or
- ▶ A levy has been issued.

Note: The \$55,000 threshold is indexed yearly for inflation.

Revocation or Denial of Passport. The State department generally will not issue or renew, and may revoke, a T/P's passport after being notified of the T/P's seriously delinquent tax debt.

Delinquent tax debt excluded. Some tax debt is not included in determining seriously delinquent tax debt even if it meets the above criteria. It includes tax debt:

- ▶ Being paid timely with an IRS-approved installment agreement.
- ▶ Being paid timely with an offer in compromise accepted by the IRS, or a settlement agreement entered with the Justice Department.
- ▶ For which a collection due process hearing is timely requested regarding a levy to collect the debt.
- ▶ For which collection has been suspended because a request for innocent spouse relief under IRC § 6015 has been made.

Summons: Used to Secure Information

Summons. If the IRS has trouble gathering information to determine or collect taxes owed by a T/P, the IRS (pursuant to IRC section 7602(a)) may serve a summons. A summons legally compels the T/P or a third party to meet with an officer of the IRS and provide information, documents, and/or testimony. If the T/P is responsible for a tax liability and is served a summons, the T/P may be required to:

- ▶ Testify,
- ▶ Bring books and records to prepare a tax return, and/or
- ▶ Produce documents to prepare a Collection Information Statement (Form 433-A or Form 433-B).

If the IRS serves a third-party summons to determine the T/P's tax liability, the T/P will receive a notice indicating that the IRS is contacting a third party. Third parties can be financial institutions, record keepers, or people with information relevant to the case. The IRS will not review a third party's information or receive testimony until the end of the 23rd day after the notice was given. The T/P has the right to:

- ▶ Petition to reject (“quash”) the summons before the end of the 20th day after the date of the notice, or
- ▶ Petition to intervene in a suit to enforce a summons to which the third party didn’t comply.

If the IRS issues a third-party summons to collect taxes the T/P already owes, the T/P will not receive notice or be able to petition to reject or intervene in a suit to enforce the summons.

The Collection Process Payment Procedure

Tax bill contains error. If the T/P believes the bill is in error, he or she should immediately reply in writing to the IRS office which sent the bill.

Bankruptcy proceedings. While the bankruptcy proceedings will not relieve the T/P's obligation to pay the tax, a temporary stay of collection may be in effect.

Statute of limitations for assessing tax. Statutes of limitations generally limit the time the IRS has to make tax assessments to within 3 years after a return is due or filed, whichever is later.

Statute of limitations for collecting taxes. Statutes of limitations generally limit the time the IRS has to collect taxes to within 10 years after the taxes have been assessed.

Extension of time to pay within 120 days. A T/P may qualify for an extension of time to pay instead of entering into an installment agreement. The IRS is willing to offer extensions of time to pay in order to assist in tax debt repayment. A T/P can request an extension of up to 120 days.

The Collection Process

Payment Procedure

Installment payments. If the T/P cannot make full payment and if the IRS agrees, the T/P can pay the tax through installments agreed upon by the IRS. If the IRS approves the installment request, the IRS will send a notice detailing the terms of the agreement and requesting a fee. The fees are:

- ▶ \$31, if setting up an online payment agreement and making payments by direct debit.
- ▶ \$107, if not setting up an online payment agreement but making payments by direct debit.
- ▶ \$149, if setting up an online payment agreement but not making payments by direct debit.
- ▶ \$225, if not setting up an online payment agreement and not making payments by direct debit.
- ▶ \$43 if the taxpayer's income is below a certain level.

Generally, a T/P has up to 72 months to pay. During the time the T/P is making payments, interest and penalties continue to accrue. The Interest accrues on the unpaid balance of penalties and interest owed as well as the tax liability. If the T/P fails to meet the terms of the agreement, the IRS may send the T/P a notice of intent to levy. Unless collection is endangered, the T/P has 30 days to pay the tax before enforcement action by the IRS. In certain circumstances, the T/P can have longer to pay or an agreement can be approved for an amount that is less than the amount of tax owed.

Use Form 9465 to request an installment plan. Do not use Form 9465 if:

1. Paying the full amount owed within 120 days, or
2. Requesting an online payment agreement.

Applying online for a payment agreement. If the balance due is not more than \$50,000, the T/P can apply online for a payment agreement instead of filing Form 9465.

The Collection Process Payment Procedure

Guaranteed installment agreement. A request for an installment agreement cannot be turned down if the tax owed is not more than \$10,000 and all three of the following apply:

1. T/P timely filed all tax returns and paid the taxes due on time for the last 5 years.
2. T/P is financially unable to pay the liability in full when due .
3. T/P agrees to pay the full amount owed within 3 years and to comply with the tax laws while the agreement is in effect.

Form 433-F. If the total amount owed is greater than \$25,000 but not more than \$50,000, the T/P must agree to an Electronic Funds Transfer (EFT) Agreement to qualify for an Installment Agreement without completing a financial statement (Form 433-F). If the T/P does not agree to a Direct Debit Installment Agreement, Form 433-F, Collection Information Statement, must be completed and filed with Form 9465. If the amount owed is greater than \$50,000, Form 433-F must be completed and filed with Form 9465.

The Collection Process

Payment Procedure

Collection financial standards. Collection financial standards are used to help determine a T/P's ability to pay a delinquent tax liability. Allowable living expenses include those expenses that meet the necessary expense test. The necessary expense test is defined as expenses that are necessary to provide for a T/P's (and his or her family's) health and welfare and/or production of income. The IRS uses these standards to determine the T/P's ability to make a payment. The IRS has standards for:

- ▶ Food, clothing and miscellaneous expenses
- ▶ Housing and utilities
- ▶ Transportation (car payment, car maintenance, public transportation), and
- ▶ Out-of-pocket health care expenses.

Expenses not generally allowed. The IRS generally do not allow tuition for private schools, public or private college expenses, charitable contributions, voluntary retirement contributions or payments on unsecured debts. However, the IRS may allow the expenses if proven that they are necessary for the health and welfare of the individual or family or the production of income.

The Collection Process

Taxpayer Rights—Offer in Compromise

Offer in compromise. By law the T/P has the right to submit an offer in compromise on his or her tax bill. The IRS may legally compromise a tax liability for one of the following reasons:

1. **Doubt as to Liability.** There is a doubt as to whether or not the assessed tax is correct.
2. **Doubt as to Collectability.** Doubt as to T/P's ability to make full payment on the amount owed.
3. **Exceptional Circumstances (Effective Tax Administration)** There is no doubt that assessed tax is correct and no doubt that the amount owed could be collected, but T/P has an economic hardship or other special circumstances which may allow the IRS to accept less than the total balance due.

Payment options. Submitting an offer requires the selection of a payment option as well as sending an initial payment with the application. The amount of the initial payment and subsequent payments will depend on the total amount of the offer and which of the following payment options chosen.

Lump sum cash. This option requires 20% of the total offer amount to be paid with the offer and the remaining balance paid in 5 or fewer payments within 5 months of the date the offer is accepted.

Periodic payment. This option requires the first payment with the offer and the remaining balance paid within 6 to 24 months, in accordance with the proposed offer terms. Under this option, the T/P must continue to make all subsequent payments while the IRS is evaluating the offer. Failure to make these payments will cause the offer to be returned.

The Collection Process

Taxpayer Rights—Offer in Compromise

Form 656-B

Application process. To apply for an OIC, the T/P must file one of the following forms:

- ▶ **Form 656, Offer in Compromise.** File Form 656 if the T/P is unable to pay the amount due, has an economic hardship, or other special circumstance that would cause paying the amount due to be unjust.
- ▶ Form 656-L, Offer in Compromise (Doubt as to Liability). File Form 656-L if T/P thinks his or her tax debt isn't accurate.

Application process (Form 656). The application involves sending the following:

- ▶ Form 656 (Offer in Compromise).
- ▶ Completed Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals, if applicable. Form 433-A is used to obtain current financial information necessary for determining how a wage earner or self-employed individual can satisfy an outstanding tax liability.
- ▶ Completed Form 433-B(OIC), Collection Information Statement for Businesses, if applicable. Form 433-B is used to obtain current financial information necessary for determining how a business can satisfy an outstanding tax liability.
- ▶ \$205 application fee, unless the T/P meets low income certification.
- ▶ Initial offer payment, unless the T/P meets low income certification.

The Collection Process

Taxpayer Rights—Offer in Compromise

Information needed for OIC. To calculate an offer amount, the T/P will need information about his or her financial situation, including cash, investments, available credit, assets, income, and debt. Also information about the T/P's average gross monthly household income and expenses. The entire household includes spouse, significant other, children, and others that reside in the household. This is necessary for the IRS to accurately evaluate the offer. In general, the IRS will not accept expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the expenses calculation.

Eligibility. Before submitting an OIC, the T/P must:

1. File all tax returns that the T/P is required to file,
2. Make all required estimated tax payments for the current year, and
3. Make all required federal tax deposits for the current quarter if a business owner with employees.

Application process (Form 656-L). A doubt as to liability offer is an offer in compromise based on a legitimate doubt that the T/P owes the tax debt. The T/P will need to complete a Form 656-L, Offer in Compromise (Doubt as to Liability). No deposit or application fee is required for a doubt as to liability offer.

Interest and penalties. Penalties and interest will continue to accrue during the offer evaluation process.

The Collection Process

Taxpayer Rights

Audit Reconsideration

Audit Reconsideration. An Audit Reconsideration is a process used by the IRS to help a T/P when the T/P disagrees with the results of an IRS audit of his or her tax return, or a return created for the T/P by the IRS because the T/P did not file a tax return.

Reasons for a request. A T/P can request audit reconsideration if the T/P:

- ▶ Did not appear for his or her audit.
- ▶ Moved and did not receive correspondence from the IRS.
- ▶ Has additional information to present that was not provided during the original audit.
- ▶ Disagrees with the assessment from the audit.

Acceptance of request. The reconsidered request will be accepted if:

- ▶ T/P submits information that the IRS did not consider previously.
- ▶ T/P filed a return after the IRS completed a return for the T/P.
- ▶ T/P believes the IRS made a computational or processing error in assessing the tax.
- ▶ The liability is unpaid or credits are denied.

Steps to follow to get Audit Reconsideration. Make photocopies of the documents (do not send originals) gathered above and attach to a letter explaining the request for reconsideration. Form 12661, Disputed Issue Verification, is recommended to explain the issues the T/P disagrees with. If available, attach a copy of the examination report, Form 4549, along with the new documentation that supports position.

The Collection Process

Taxpayer Rights

Managerial review of employee decisions. If a T/P, at any step of the Collection process, disagrees with the recommendations of any IRS employee, the T/P has the right to discuss the matter with that employee's manager.

Form 9423. A T/P can appeal a Notice of Federal Lien, levy, seizure, or denial or termination of an installment agreement using Form 9423, Collection Appeal Request. On Form 9423, the T/P must check the collection action(s) that he or she disagrees with and explain why he or she disagrees. The T/P must also explain a solution to resolve his or her tax problem. The T/P must let the Collection office know within 2 business days after the conference with the Collection manager that he or she plans to submit Form 9423. The Form 9423 must be received or postmarked within 3 business days of the conference with the Collection manager or collection action may resume.

The Collection Process

Taxpayer Rights

Taxpayer Advocate Service. The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist T/Ps who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. T/Ps may be eligible for assistance if:

- ▶ They are experiencing economic harm or significant cost (including fees for professional representation).
- ▶ They are facing (or their business is facing) an immediate threat of adverse action.
- ▶ They have tried repeatedly to contact the IRS, but no one has responded, or the IRS has not responded by the date promised.

Taxpayers who need assistance may contact the Taxpayer Advocate Service by:

- ▶ Calling the TAS.
- ▶ Calling or writing their local taxpayer advocate.
- ▶ Filing Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).
- ▶ Asking an IRS employee to complete Form 911 on their behalf.

Low Income Taxpayer Clinics (LITCs). LITCs are independent organizations that provide low income T/Ps with representation in federal tax controversies with the IRS for free or for a nominal charge.

The Collection Process

Taxpayer Rights

Collection Due Process (CDP). A T/P has the right to a CDP hearing by the IRS Office of Appeals if the T/P receives one of the following notices:

- ▶ Notice of Federal Tax Lien Filing and Your Right to a Hearing under IRC 6320.
- ▶ Final Notice - Notice of Intent to Levy and Notice of Your Right to a Hearing.
- ▶ Notice of Jeopardy Levy and Right of Appeal.
- ▶ Notice of Levy on Your State Tax Refund – Notice of Your Right to a Hearing.
- ▶ Post Levy Collection Due Process (CDP) Notice.

Requesting a hearing. Complete Form 12153, Request for a Collection Due Process Hearing, and send it to the IRS at the address shown on a lien or levy notice within 30 days. T/P must identify all of his or her reasons for disagreeing with the IRS on the Form. The T/P may raise issues relating to the unpaid tax including the following:

- ▶ Collection alternatives such as installment agreement or offer in compromise.
- ▶ Subordination or discharge of lien.
- ▶ Withdrawal of Notice of Federal Tax Lien.
- ▶ Appropriate spousal defenses.
- ▶ The existence or amount of the tax, but only if the T/P did not receive a notice of deficiency or did not otherwise have an opportunity to dispute the tax liability.
- ▶ Collection of the tax liability is causing or will cause an economic or other hardship.

The Collection Process

Taxpayer Rights

Collection Appeals Program (CAP). The CAP procedure is available under more circumstances than the CDP hearing procedure. However, the T/P cannot go to court if the T/P disagrees with the CAP decision. The following collection action can be appealed under the CAP procedure:

1. Notice of Federal Tax Lien. T/P can appeal before or after the IRS files a lien. T/P may also appeal denied requests to withdraw a lien notice.
2. Notice of Levy. T/P can appeal before or after the IRS places a levy on wages, bank accounts or other property.
3. Seizure of Property. T/P can appeal before or after the IRS makes a seizure. If the appeal request is made after the IRS makes a seizure, the appeal may be made to the collection manager within 10 business days after the Notice of Seizure is served.
4. Rejection, termination, or modification of an installment agreement. T/P may appeal when notified that the IRS intends to deny an installment agreement or proposes to terminate or modify an installment agreement.

Note: The IRS will stop collection action for the tax period the Appeal Officer is considering the appeal, unless the IRS believes the collection of the tax is at risk.

The Collection Process

Spousal Relief of Joint Liability

In some cases, one spouse may be relieved of joint liability for tax, interest, and penalties on a joint return for items of the other spouse that were incorrectly reported on the joint return. A T/P can ask for relief no matter how small the liability. There are three types of relief available:

1. **Innocent spouse relief.** T/P must meet all of the following conditions to qualify for innocent spouse relief:
 - a) Filed a joint return which has an understatement of tax due to erroneous items of T/P's spouse (or former spouse).
 - b) Establish that at the time T/P signed the joint return T/P did not know, and had no reason to know, that there was an understatement of tax.
 - c) Taking into account all the facts and circumstances, it would be unfair to hold T/P liable for the understatement of tax.
2. **Separation of liability.** Applies to joint filers who are divorced, widowed, legally separated, or have not lived together for the 12 months ending on the date election of this relief is filed.
3. **Equitable relief.** Applies to all joint filers who do not qualify for innocent spouse relief or separation of liability and to married couples filing separate returns in community property states.

The Collection Process

Spousal Relief of Joint Liability

Community property laws. A T/P must follow community property laws when filing a tax return if married and live in a community property state. Generally, community property laws provide that the T/P and spouse are both entitled to one-half of your total community income and expenses. If the T/P and spouse filed a joint return in a community property state, both spouses are jointly and severally liable for the total liability on the return. However, community property laws are not taken into account in determining whether an item belongs to the T/P or spouse (or former spouse) if requesting relief from joint and several liability.

Relief From Liability for Tax Attributable to an Item of Community Income. A T/P is not responsible for the tax relating to an item of community income if all the following conditions exist.

1. Did not file a joint return.
2. Did not include the item of community income in gross income.
3. The item of community income did not include (a) spouse's wages, salaries or other compensation; (b) spouse's business income; (c) spouse's share of partnership income; (d) spouse's income from separate property; and (e) any other income belonging to spouse under community property law.
4. T/P established that he or she did not know of, and had no reason to know of, that community income.
5. Under all facts and circumstances, it would not be fair to include the items of community property in the T/P's gross income.

Basic records. The following is a list of basic records that a taxpayer (T/P) should keep:

For items concerning	Keep as basic records
Income	<ul style="list-style-type: none">▶ Form(s) W-2▶ Bank statements▶ Form(s) K-1▶ Form(s) 1099▶ Brokerage statements
Expenses	<ul style="list-style-type: none">▶ Sales slips▶ Invoices▶ Receipts▶ Cancelled checks or other proof of payment▶ Written communication from qualified charities
Home	<ul style="list-style-type: none">▶ Closing Statements▶ Purchases and sales invoices▶ Proof of payment▶ Insurance records▶ Receipts for improvement costs
Investments	<ul style="list-style-type: none">▶ Brokerage statements▶ Mutual fund statements▶ Form(s) 1099▶ Form(s) 2439

Recordkeeping for Taxpayers

Proof of payment. One of the basic records is the proof of payment. Proof of payment alone is not proof that the item claimed on the return is allowable. Other supporting documents that should be kept:

If payment is by	Then the statement must show the...
Cash	<ul style="list-style-type: none">▶ Amount▶ Payee's name▶ Transaction date
Check	<ul style="list-style-type: none">▶ Check number▶ Amount▶ Payee's name▶ Date the check was posted to the account by the financial institution
Debt or credit card	<ul style="list-style-type: none">▶ Amount charged▶ Payee's name▶ Transaction date
Electronic funds transfer	<ul style="list-style-type: none">▶ Amount transferred▶ Payee's name▶ Date the transfer was posted to the account by the financial institution
Payroll deduction	<ul style="list-style-type: none">▶ Amount▶ Payee code▶ Transaction date

Specific records. The following are specific records that should be kept in addition to basic records:

Item of deduction	Records to keep
Tip Income	► Daily records that accurately reports tip income.
Alimony	► Copy of a written separation agreement, or the divorce, separate maintenance, or support decree. ► If paying alimony, the former spouse's social security number.
HSA and MSA	► For each qualified medical expense, keep a record of the name and address of each person paid and the amount and date of the payment.
IRAs	► Form 5498, IRA Contribution Information ► Form 1099-R, Distributions From Pensions, Annuities, and IRAs ► Form 8606, Nondeductible IRAs

Specific records (cont.)

Item of deduction	Records to keep
Education Expenses	<ul style="list-style-type: none">▶ Form 1098-T, Tuition Statement.▶ Transcripts or course descriptions that shows periods of enrollment.▶ Cancelled checks and receipts for tuition, books, and other educational expenses.
Medical and Dental Expenses	<ul style="list-style-type: none">▶ The name and address for each medical provider.▶ The amount and date of each payment for medical expenses.▶ A statement or invoice showing:<ul style="list-style-type: none">• What medical care was received.• Who received the care.• The nature and purpose of the medical expenses.
Taxes	<ul style="list-style-type: none">▶ Form(s) W-2 and Form 1099-R showing state income tax withheld.▶ Form 1099-G, Certain Government Payments.▶ Mortgage statements, tax assessments, or other documents as records for the real estate and personal property taxes paid.

Specific records (cont.)

Item of deduction	Records to keep
Mortgage Interest	▶ Form 1098, Mortgage Interest Statement.
Casualty loss	<ul style="list-style-type: none">▶ The type of casualty and when it occurred.▶ Records that prove that the loss was a direct result of the casualty.▶ Records that prove ownership of the property.
Theft loss	<ul style="list-style-type: none">▶ Records showing when the property was discovered missing.▶ Records proving that the property was stolen.▶ Records that prove ownership of property.
Contributions	<ul style="list-style-type: none">▶ Cash contributions:<ul style="list-style-type: none">• Canceled check, bank statement, or credit card statement.• Receipt from charitable organization.• Payroll deduction records.▶ Noncash contributions:<ul style="list-style-type: none">• Receipt from charitable organization.• Written appraisal if deduction for property donated is over \$5,000.▶ Out-of-pocket expenses:<ul style="list-style-type: none">• Records that prove the amount of the expenses.

Specific records (cont.)

Item of deduction	Records to keep
Employee business expenses	<p>Keep all records needed to prove the employee business expense including:</p> <ul style="list-style-type: none">▶ Canceled checks, credit card and bank statements.▶ Log book accounting for meals, entertainment, and business miles.▶ Employment reimbursement policies.▶ Written statements providing business purpose of an expense.
Gambling winnings and losses	<ul style="list-style-type: none">▶ Date and type of gambling activity.▶ Name and address or location of the gambling establishment.▶ Names of other persons with the T/P at the gambling establishment.▶ Amount won or lost.▶ Proof of winnings and losses (e.g., Form W-2G, wagering tickets, canceled checks, bank withdrawals, credit records, etc.).
Business Use of the Home	<ul style="list-style-type: none">▶ Records that show the part of the house used for business and the expense related to that use.
Child Care Credit	<ul style="list-style-type: none">▶ Records providing the name, address, and tax identification number for all persons or organizations that provided care to T/P's child or dependent.

How long to keep records. The following are periods of limitations that apply to income tax returns. The years refer to the period beginning after the due date of the return.

1. Did not report income that was more than 25% of the gross income shown on return. 6 years
2. Filed a fraudulent return No limit
3. Did not file a return..... No limit
4. Owed additional tax on return and (1), (2), and (3) above do not apply 3 years
5. File a claim for credit or refund after filing the return..Later of 3 years or 2 years after tax paid
6. Filed a claim for a loss from worthless securities 7 years

Property. Keep records relating to property until the period of limitations expires for the year in which the property is in a taxable disposition.

Copies of tax returns. T/Ps should keep copies of their tax returns as part of their tax records. They can help in preparing future tax returns, and will be needed if an amended return needs to be filed. Copies of the returns and other records can be helpful to the T/P's survivor or the executor or administrator of the T/P's estate.

Electronic records. The electronic storage system must index, store, preserve, retrieve, and reproduce the electronically stored books and records in a legible, readable format. All electronic storage systems must provide a complete and accurate record of data that is accessible to the IRS. Electronic storage systems are also subject to the same controls and retention guidelines as those imposed on original hard copy books and records. The original hard copy books and records may be destroyed provided that the electronic storage system has been tested to establish that the hard copy books and records are being reproduced in compliance with IRS requirements for an electronic storage system and procedures are established to ensure continued compliance with all applicable rules and regulations.

Incomplete records. If a T/P has incomplete records to prove an element of an expense, then the T/P must prove the element with:

- ▶ T/P's own written or oral statement, containing specific information about the element, and
- ▶ Other supporting evidence that is sufficient to establish the element.

Destroyed records. If T/P cannot produce a receipt because of reasons beyond T/P's control, T/P can prove a deduction by reconstructing his or her records or expenses. Reasons beyond T/P's control include fire, flood, and other casualty.

Form 1099-MISC. Use Form 1099-MISC, Miscellaneous Income, to report certain payments made in a trade or business. These payments include the following items:

1. Rent payments of \$600 or more, other than rents paid to real estate agents.
2. Prizes and awards of \$600 or more that are not for services, such as winnings on TV or radio shows.
3. Royalty payments of \$10 or more.
4. Payments to certain crew members by operators of fishing boats.

Form 1099-NEC. Use Form 1099-NEC, Non-Employee Compensation to report payments of \$600 or more for services performed by someone who is not an employee or if federal tax was withheld under the backup withholding rules regardless of the amount of the payment.

Form 8300. A T/P must file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, if received more than \$10,000 in cash in one transaction or two or more related business transactions. Cash includes U.S. and foreign coin and currency. It also includes certain monetary instruments such as cashier's and traveler's checks and money orders. When the cash payments total more than \$10,000, Form 8300 must be filed within 15 days.

Form 1098-C. Generally, a charity must furnish Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes to a T/P no later than 30 days after the date it sold the donated vehicle or 30 days after the date of the contribution if the vehicle was not sold and was used by the charity.

Information Returns

Form W-2 and Form 1099-R (What to Do if Incorrect or Not Received). Employers/payers have until January 31 to issue certain informational documents. If a T/P does not receive the Form W-2 or Form 1099-R by January 31, or the information is incorrect on these forms, the T/P should contact his or her employer/payer. If the T/P does not receive the missing or corrected form by February 14 from the employer/payer, the T/P should call the IRS for assistance. After February 14, the IRS will contact the employer/payer for the T/P and request the missing form. IRS will also send the T/P a Form 4852, Substitute for Form W-2 or Form 1099-R, along with a letter containing instructions. If the missing form is not received in sufficient time to file the tax return timely, use the Form 4852 to complete the return. If the missing or corrected Form W-2 or Form 1099-R is received after the return is filed and a correction is needed, use Form 1040X, Amended U.S. Individual Income Tax Return.

Form 1099-MISC (What to do if incorrect). If Form 1099-MISC is incorrect or has been issued in error, contact the payer. If the taxpayer cannot get this form corrected, attach an explanation to the tax return and report the income correctly.

E-file mandate. Any tax return preparer who anticipates preparing and filing 11 or more Forms 1040 and Form 1041 during a calendar year must use IRS e-file (unless the preparer or a particular return is administratively exempt from the e-file requirement or the return is filed by a preparer with an approved hardship waiver).

Request a hardship waiver. A tax return preparer may request an undue hardship waiver from the e-file requirement using Form 8944, Preparer e-file Hardship Waiver Request. Form 8944 generally must be submitted to the IRS no later than February 15 of the year for which a waiver is being requested.

Preparer explanation for not filing electronically. Form 8948 is used only by a tax return preparer to explain why a particular return is being filed on paper. Attach this form to the paper tax return prepared and furnish to the taxpayer for the taxpayer's signature. File Form 8948 with the tax return that is filed on paper.

Become an authorized IRS e-file provider. There are 3 steps to becoming an IRS e-file provider. An individual should submit a completed application no later than 45 days prior to the date the individual intends to begin filing returns electronically. The following are the three steps:

1. **Create an IRS e-service account.** Before beginning the e-file application, an individual must have an IRS e-service account which facilitates electronic interaction with the IRS.
2. **Complete and submit the IRS e-file application.** A firm can begin the IRS e-file application once all Principals have created their e-service accounts. The IRS may take up to **45 days** to approve an application.
3. **Pass a suitability check.** The IRS will conduct a suitability check on the applicant. The suitability check may include: a criminal background check, a credit history check, a tax compliance check to ensure that all required returns are filed and paid, and to identify fraud and preparer penalties, and a check for prior non-compliance with IRS e-file requirements.

Reporting changes to an IRS e-file application. Providers must revise their IRS e-file application within 30 days of a change of any information on the current application. Changes that may be updated by letter using the firm's official letter are the following:

1. All address.
2. All phone and fax numbers.
3. E-mail addresses.
4. Contact persons.
5. Add remove Provider Options.
6. Transmission protocols.

Note: A provider must revise the IRS e-file application for a change in a principle of the firm or a responsible official.

Denial to participate in IRS e-file. The IRS reviews each firm or organization, Principal, and Responsible Official listed on the IRS e-file Application. An applicant may be denied participation in IRS e-file for a variety of reasons that include but are not limited to the following:

1. An indictment or conviction of any criminal offense under the revenue laws of the U.S. or of a state or other political subdivision, or an active IRS criminal investigation.
2. Failure to file accurate Federal, state, or local tax returns.
3. Failure to pay any Federal, state, or local tax liability.
4. Assessment of fraud penalties.
5. Suspension/disbarment from practice before the IRS or before a state or local tax agency.
6. Disreputable conduct or other facts that may adversely impact IRS e-file.
7. Misrepresentation on an IRS e-file Application.
8. Unethical practices in return preparation.
9. Non-compliance with §6695(g) of the IRC.
10. Stockpiling returns prior to official acceptance to participate in IRS e-file.
11. Knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual denied participation in IRS e-file, or suspended or expelled from participating in IRS e-file.
12. Knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual denied participation in IRS e-file, or suspended or expelled from participating in IRS e-file.
13. Enjoined from filing returns by a Federal or State court injunction or prohibited from filing returns by any Federal or State legal action that prohibits them from participating.

Administrative review process for denial. An applicant denied participation in IRS e-file has the right to an administrative review. An applicant may mail a written response to the address shown in the denial letter, within **30 days** of the date of the denial letter. The applicant's response must address the IRS' reason(s) for denial and have supporting documentation attached. Upon receipt of an applicant's written response, the IRS will reconsider its denial of the applicant's participation in IRS e-file. The denial may either be withdrawn and the applicant accepted for participation in IRS e-file or a second denial letter will be issued. An applicant who receives a second denial letter is entitled to an appeal, which must be submitted in writing to the attention of the Office of Appeals. The appeal must be mailed to the address shown in the second denial letter within 30 days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, along with documentation supporting why the denial should be reversed. Failure to respond within 30 days of the date of any denial letter irrevocably terminates the applicant's right to an administrative review or appeal.

Acceptance. After suitability is passed and the application is processed, an acceptance letter will be mailed. The provider will be assigned an Electric Filing Identification Number (EFIN) that will appear in the letter. Transmitters, Software Developers and Online Providers are assigned an Electronic Transmitter Identification Number (ETIN). Authorized IRS e-file Providers do not have to reapply each year as long as they continue to e-file returns. However, if a provider does not e-file returns for **1 year**, the IRS will notify the provider of removal from the IRS active Provider list. The IRS may reactivate a Provider if the Provider replies within **60 days**. Otherwise, the provider will have to submit a new application.

Responsibilities of the Electronic Return Originator (ERO). The following are the responsibilities of the ERO:

1. ***Safeguarding IRS e-file from fraud and abuse.*** All Providers must be on the lookout for fraud and abuse of IRS e-file. EROs must be particularly diligent while acting in their capacity as the first contact with T/Ps filing a return. An ERO must be diligent in recognizing fraud or abuse, reporting it to the IRS and preventing it when possible. Providers must cooperate with the IRS' investigation by making available to the IRS upon request, information and documents related to the returns with potential fraud or abuse.
2. ***Verifying taxpayer identity and Taxpayer Identification Numbers (TINs).*** To safeguard e-file from fraud and abuse, an ERO should confirm identities and TINs of T/P, spouses, and dependents listed on the returns. To confirm this, an ERO should ask T/Ps not known to them to provide two forms of identification (picture IDs are preferable) that include the T/P's name and current address. Also, seeing Social Security cards, ITIN letters and other documents avoids including incorrect TINs for T/P, spouse, and dependents on returns.

The TIN entered in Form W-2 of the electric return record must be identical to the TIN on the version provided by the T/P.

When imputing Form W-2 information, EROs should enter T/P's social security number exactly as shown on the Form W-2 issued by the employer. It is possible to e-file a return with an ITIN/SSN mismatch.

Continued on next card

Responsibilities of the ERO (cont.)

3. ***Be aware of non-standard information documents.*** An ERO should be on the lookout for suspicious or altered Forms W-2, W-2G, and 1099-R and forged or fabricated documents. EROs must enter the “non-standard form” code in the electronic record for Forms W-2, W-2G, and 1099-R that are altered, handwritten or typed. EROs must never alter the information after the T/P has given the forms to them. EROs should report questionable Forms W-2 if they observe or become aware of them.
4. ***Be careful with addresses.*** Addresses on Forms W-2, W-2G, and 1099-R, Schedule C, or on other tax forms supplied by the T/P that differ from the T/P’s current address must be input into the electronic record of the return. EROs must input addresses that differ from the T/P’s current address even if the addresses are old or if the T/P has moved. An ERO address must never be put in fields reserved for T/P’s address in the electronic return record or on Form 8453 unless the ERO is the T/P or the address of a power of attorney for the T/P is the same as the address of the ERO.
5. ***Avoiding refund delays.*** EROs should advise T/Ps that they can avoid refund delays by having all of their taxes and obligations paid and providing current and correct information to the ERO, ensuring that all bank account information is up-to-date, ensuring that their Social Security Administration records are current and carefully checking their tax return information before signing the return.

Sanctioning. Violations of IRS e-file requirements may result in warning or sanctioning Principals, Responsible Officials and the Provider. The IRS may sanction any Provider when the firm or any of its Principals or Responsible Officials fails to comply with any requirements that govern IRS e-file. Sanctioning may be a written reprimand, suspension or expulsion from participation from IRS e-file, or other sanctions, depending on the seriousness of the infraction.

Levels of infraction. The IRS categorizes the seriousness of infractions as Level One, Level Two and Level Three.

Level one infraction. Level one Infractions are violations of IRS e-file rules and requirements that, in the opinion of the IRS, have little or no adverse impact on the quality of electronically filed returns or on IRS e-file. The IRS may issue a written reprimand for a level one infraction.

Level two infraction. Level Two Infractions are violations of IRS e-file rules and requirements that, in the opinion of the IRS, have an adverse impact upon the quality of electronically filed returns or on IRS e-file. Level two Infractions include continued level one infractions after the IRS has brought the level one infraction to the attention of the Authorized IRS e-file Provider (Provider). Depending on the infractions, the IRS may either restrict participation in IRS e-file or suspend the Provider from participation in IRS e-file for a period of one year beginning with the effective date of suspension.

Continue on next card

Level three infraction. Level three infractions are violations of IRS e-file rules and requirements that, in the opinion of the IRS, have a significant adverse impact on the quality of electronically filed returns or on IRS e-file. Level three infractions include continued level two infractions after the IRS has brought the level two infraction to the attention of the Provider. A level three infraction may result in suspension from participation in IRS e-file for two years beginning with the effective date of the suspension year, or depending on the severity of the infraction, such as identity theft, fraud or criminal conduct, it may result in expulsion without the opportunity for future participation. The IRS reserves the right to suspend or expel a Provider prior to administrative review for level three infractions.

Administrative Review. The firm, Principals and Responsible Officials of sanctioned Providers are entitled to an administrative review. The administrative review process is usually a two-step process. The firm, Principals or Responsible Officials must request an administrative review by the office that sanctioned them. If the reviewing office affirms the sanction, and it is not a written reprimand, the firm, Principals or Responsible Officials may appeal the sanction by submitting a written signed appeal request to the IRS Office of Appeals. Failure to request an administrative review within 30 calendar days of the date of any sanction letter terminates the right to an administrative review or appeal.

Signing an Electronic Tax Return

Electronic signature methods. There are two methods of electronically signing a tax return. Both methods allow T/Ps to use a Personal Identification Number (PIN) to sign the return:

1. Self-Select PIN. This method requires T/Ps to provide their prior year adjusted gross income (AGI) amount or prior year PIN for use by the IRS to authenticate the T/P. This method is completely paperless if the T/Ps enter their own PINs directly into the electronic return record using key strokes after reviewing the completed return.
2. Practitioner PIN. This method does not require the T/P to provide their prior year AGI amount or prior year PIN. A declaration document and signature authorization form (Form 8879) must be completed when using the practitioner PIN method.

Note: T/Ps must sign and date Form 8879 prior to the transmission of the return to the IRS.

Electronic signatures for EROs. EROs must also sign with a PIN. EROs should use the same PINs for the entire tax year. The ERO may manually input or the software can generate the PIN in the electronic record in the location designated for the ERO Electronic Filing Identification Number (EFIN)/PIN.

Submitting the electronic return to the IRS. EROs cannot electronically file returns prior to receiving Forms W-2, W-2G or 1099-R. If the T/P is unable to secure and provide a correct Form W-2, W-2G, Certain Gambling Winnings, or 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., the ERO may electronically file the return after the T/P completes Form 4852, Substitute for Form W-2, Wage and Tax Statement or 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., in accordance with the use of that form. If Form 4852 is used, the non-standard W-2 indicator must be included in the record, and the ERO must maintain Form 4852 in the same manner required for Forms W-2, W-2G and 1099-R.

Transmission of return. If a return is transmitted (e-filed) before the due date but the IRS does not receive the transmission until after the due date, the IRS treats the return as timely filed.

Submission of paper documents to the IRS (Form 8453). Use Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return, to send any required paper forms or supporting documentation listed on Form 8453 to the IRS. Do not attach any form or document that is not shown on Form 8453. If required to mail in any documentation not listed on Form 8453, the return cannot be file electronically. Form 8453 must be mailed to the IRS within 3 business days after receiving acknowledgement that the IRS has accepted the electronically filed tax return. The follow is a list of these supporting documents:

1. Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes (or equivalent contemporaneous written acknowledgement).
2. Form 2848, Power of Attorney and Declaration of Representative (or POA that states the agent is granted authority to sign the return).
3. Form 3115, Application for Change in Accounting Method.
4. Form 3468 – attach a copy of the first page of NPS Form 10-168, Historic Preservation Certification Application (Part 2—Description of Rehabilitation), with an indication that it was received by the Department of the Interior or the State Historic Preservation Officer, together with proof that the building is a certified historic structure (or that such status has been requested).

Continued on next card

Submission of paper documents to the IRS (Form 8453) (cont.)

5. Form 4136 – attach the Certificate for Biodiesel and, if applicable, Statement of Biodiesel Reseller or a certificate from the provider identifying the product as renewable diesel and, if applicable, a statement from the reseller.
6. Form 5713, International Boycott Report.
7. Form 8283, Noncash Charitable Contributions, Section A, (if any statement or qualified appraisal is required) or Section B, Donated Property, and any related attachments (including any qualified appraisal or partnership Form 8283).
8. Form 8332, Release / Revocation of Release of Claim to Exemption for Child by Custodial Parent (or certain pages from a divorce decree or separation agreement, that went into effect after 1984 and before 2009).
9. Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
10. Form 8864 – attach the Certificate for Biodiesel and, if applicable, Statement of Biodiesel Reseller or a certificate from the provider identifying the product as renewable diesel and, if applicable, a statement from the reseller.
11. Form 8949, Sales and Other Dispositions of Capital Assets, (or a statement with the same information), if electing not to report transactions electronically on Form 8949.

ERO Duties after Submitting the Return

Record keeping and document requirements. EROs must retain and make available to the IRS upon request, until the end of the calendar year in which the return was filed, the following documents at the business address from which the return was originated. An ERO may retain the required records at the business address of the responsible official during any period of time the office is closed.

1. A copy of Form 8453, and supporting documents that are not included in the electronic records submitted to the IRS.
2. Copies of Forms W-2, W-2G, and 1099-R.
3. A copy of signed IRS e-file consent to disclosure forms.
4. A complete copy of the electronic portion of the return that can be readily and accurately converted into an electronic transmission that the IRS can process.
5. The acknowledgment file for IRS accepted returns.

Note: Forms 8879 and 8878 must be available to the IRS for 3 years from the due date of the return or the IRS received date whichever is later.

Electronic image. The ERO may electronically image and store all paper records that are required to be retained for the IRS e-file. This includes Form 8453 and paper copies of Forms W-2, W-2G, and 1099-R as well as any supporting documents not included in the electronic record and Forms 8879 and 8878. The storage system must satisfy the requirements of Revenue Procedure 97-22.

Providing information to the taxpayer. The ERO must provide a complete copy of the return to the T/P. EROs may provide this copy in any media, including electronic, that is acceptable to both the T/P and the ERO. The ERO must, at the request of the T/P, provide the Declaration Control Number (DCN) and the date the IRS accepted the electronic tax return data. The ERO must also, if requested, supply the electronic postmark if the Transmitter provided one for the return.

E-file return acknowledge as rejected. Rejected e-filed returns can be corrected and retransmitted without new signatures or authorizations if changes do not differ by more than \$50 to “total income” or “AGI”, or more than \$14 to “total tax,” “federal income tax withheld,” “refund,” or “amount owed.” The ERO must give T/Ps copies of the new electronic return data.

Resubmission of rejected tax returns. If the IRS rejects the electronic portion of a T/P’s return, and the ERO cannot rectify the reason for the rejection, the ERO must take reasonable steps to inform the T/P of the rejection within 24 hours. When the ERO advises the T/P that it has not filed the return, the ERO must provide the T/P with the reject code(s) accompanied by an explanation. If the T/P chooses not to have the electronic portion of the return corrected and transmitted to the IRS, or if the IRS cannot accept the return for processing, the T/P must file a paper return. In order to timely file the return, the T/P must file the paper return by the later of the due date of the return or 10 calendar days after the date the IRS gives notification that it rejected the electronic portion of the return or that the return cannot be accepted for processing. The T/P should include an explanation in the paper return as to why the return was filed after the due date.

Direct Deposit of refunds. T/Ps can have their refund directly deposited into the following accounts:

- ▶ Checking account
- ▶ Savings account
- ▶ Individual retirement account (IRA)
- ▶ TreasuryDirect online account
- ▶ Health savings account (HSA)
- ▶ Archer (MSA)
- ▶ Coverdell education saving account

IRA account. T/P can have his or her refund (or part of it) directly deposited to a traditional IRA, Roth IRA, or SEP-IRA, but not a SIMPLE IRA.

Form 8888. Use Form 8888, Direct Deposit of Refund to More Than One Account, if:

- ▶ Directly depositing a refund (or part of it) to two or three accounts, or
- ▶ Using a refund to buy up to \$5,000 in paper or electronic series I savings bonds.

EROs cannot charge a separate fee for Direct Deposit and must accept any direct deposit election by a T/P to any financial institution. T/Ps should be cautioned that some financial institutions do not permit the deposit of joint individual tax refunds into individual accounts. The IRS is not responsible if Direct Deposits are refused for this reason.

Balance due returns. T/Ps have the following choices for paying any taxes owed on their tax returns as well as estimated tax payments:

- ▶ Pay by check or money order payable to the “United States Treasury.” Use Form 1040-V, Payment voucher.
- ▶ Electronic funds withdrawal (direct debit).
- ▶ IRS Direct Pay (online at IRS.gov or with the IRS2Go app)
- ▶ Credit or debit card.
- ▶ Electronic Federal Tax Payment System (EFTPS).
- ▶ Installment agreement request (Form 9465).

Advertising standards for e-file providers. The following are advertising standards that must be followed by an authorized e-file provider:

1. Must comply with advertising and solicitation provision in circular 230.
2. Must adhere to all relevant federal, state, and local consumer protection laws.
3. Must not use improper or misleading advertising in relation to IRS e-file.
4. An e-file provider using promotional materials or logos provided by the IRS must comply with all service instructions pertaining to the promotional material or logos.
5. Advertising materials cannot carry the FMS, IRS, or other Treasury Seals.
6. Advertising for a cooperative electronic return project (public or private sector) must clearly state the names of all cooperating parties.
7. In advertising the availability of a RAL, the e-file provider must make it clear in the advertising that the T/P is borrowing against the anticipated refund and not obtaining the refund itself from the financial institution. The advertisement on a RAL or other financial product must be easy to identify, and in readable print.
8. If an e-file provider uses radio or TV broadcasting, internet, signage, or other methods to advertise IRS e-file, the provider must retain a copy of the text or, if prerecorded, the record advertisement until the end of the calendar year and provide it to the IRS upon request.
9. A Provider must not use the IRS' name, "Internal Revenue Service," or "IRS" within a firm's name. However, once accepted to participate in IRS e-file, a firm may represent itself as an "Authorized IRS e-file Provider." **Continued on next card**

Advertising standards for e-file providers (cont.)

10. A Provider may use the IRS e-file logo only to indicate that a Provider offers this service to T/Ps or has performed it on behalf of a T/P. Providers must not use the logo to portray any other relationship between the IRS and any Provider. In using the IRS e-file logo, the Provider must use the following guidelines:
 - Do not combine the logo with the IRS eagle symbol, the word “Federal”, or with other words or symbols that suggest a special relationship between the IRS and the logo user.
 - Do not place text closer than ¼ inch from the logo.
 - Do not overprint other words or symbols on the logo.
 - Do not change the letter spacing or type style.
11. A Provider must not advertise that tax returns may be electronically filed prior to the Provider's receipt of Forms W-2, W-2G and 1099-R, as the Provider is generally prohibited from electronically filing returns prior to receipt of Forms W-2, W-2G, and 1099-R. Advertisements must not imply that the Provider does not need Forms W-2, W-2G and 1099-R, or that it can use pay stubs or other documentation of earnings to e-file individual income tax returns.
12. In using the Direct Deposit name and logo in advertisement, the Provider must use the name "Direct Deposit" with initial capital letters or all capital letters, use the logo/graphic for Direct Deposit whenever feasible and may change the color or size of the Direct Deposit logo/graphic when it uses it in advertising pieces.

Refund Anticipation Loans. A Refund Anticipation Loan (RAL) is money borrowed by a T/P from a lender based on the T/P's anticipated tax refund. The IRS is in no way involved in or responsible for RALs or other financial products.

Responsibilities of the provider. A provider that assists a T/P with an RAL must:

1. Ensure the T/Ps understand that by agreeing to a RAL they will not receive their refund from the IRS as the IRS will send their refund to the financial institution.
2. Advise T/Ps that RALs are interest bearing loans and not a quicker way of receiving their refund from the IRS.
3. Advise T/Ps that if a direct deposit is not received within the expected time frame for whatever reason, the T/P may be liable to the lender for additional interest and other fees, as applicable for the RAL.
4. Advise T/Ps of all fees and other known deductions to be paid from their refund and the remaining amount the T/Ps will actually receive.
5. Secure the T/P's written consent as specified in Treas. Reg. § 301.7216-3(a) to disclose tax information to the lending financial institution in connection with an application for a RAL.
6. Ensure that if it is also the return preparer that it is not a related T/P to the financial institution that makes a RAL and adhere to the fee restrictions below.

Fee restriction. Authorized IRS e-file providers cannot base their fees on a percentage of the refund amount or compute their fees using any figure from the tax return. When assisting a T/P in applying for a RAL, the provider may charge a flat fee identical for all customers.

Entities required to e-file. The following entities are required to e-file their tax returns:

1. Corporations with \$10 million or more in total assets and that file 250 or more returns a year are required to electronically file their Form 1120, 1120S, and 1120-F.
2. Partnerships with more than 100 partners (Schedules K-1) are required to electronically file their Form 1065.
3. Tax-exempt organizations with total assets of \$10 million or more who file at least 250 returns annually are required to file Forms 990 electronically.
4. Private foundations and charitable trusts are required to file Forms 990-PF electronically regardless of their asset size, if they file at least 250 returns annually.
5. Most small tax-exempt organizations whose annual gross receipts are normally \$50,000 or less are required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ instead.
6. Excise tax return. Any taxpayer who files a Form 2290 with respect to 25 or more vehicles for any taxable period shall file such returns electronically.

Note: The electronic filing requirements apply only to entities that file at least 250 returns, including income tax, excise tax, employment tax, and information returns (including Forms W-2 and 1099), during a calendar year.

Return eligible for electronic filing

Filing individual income tax returns using IRS e-file is limited to tax returns with due dates in the current and two previous tax years. A taxpayer can electronically file an individual income tax return year round except for a short cut over period at the end of the calendar year.

Returns Not Eligible for Electronic Filing

1. Tax returns with fiscal year tax periods.
2. Returns containing forms or schedules that cannot be processed by IRS e-file other than those forms and schedules that are required to be submitted with Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return.
3. Tax returns with Taxpayer Identification Numbers within the range of 900-00-0000 through 999-99-9999 except Adopted Taxpayer Identification Numbers (ATIN) and Individual Taxpayer Identification Numbers (ITIN) which have the following characteristics:
 - ▶ The fourth and fifth digits of valid ATINs are 93
 - ▶ The fourth and fifth digits of valid ITINs are 70 through 88, 90 through 92 and 94 through 99.
4. Tax returns with rare or unusual processing conditions or that exceed the specifications for returns allowable in the IRS e-file program.

Note: Amended returns for tax years 2019 or later (Form 1040 and 1040-SR) can be e-filed.
No amended returns for earlier years can be e-filed.

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 23 , Application for Enrollment to Practice Before the IRS	Application for Enrollment to Practice Before the IRS.	N/A
Form 433-A , Collection Information Statement for Wage Earners & Self-Employed Individuals	Individuals must file this form with an Offer in Compromise based on the doubt as to collectability or promotion of effective tax administrative.	N/A
Form 433-B , Collection Information statement for Businesses	Businesses must file this form with an Offer in Compromise based on the doubt as to collectability or promotion of effective tax administrative.	N/A



2023 Study Cards



SEE

Special Enrollment Exam
Part 3 - Representation, Practice and Procedures

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 433-F , Collection Information Statement	A T/P may be required to fill this form if he or she owes more than \$25,000 and wants to set up an installment agreement (Form 9465).	N/A
Form 656 , Offer in Compromise (OIC)	An OIC is an agreement between the T/P and the government that settles a tax liability for less than the full amount owed.	N/A
Form 656-L , (Offer in Compromise (Doubt as to Liability))	An OIC based on a legitimate doubt that T/P owes any part of the tax debt.	N/A
Form 843 , Claim for Refund and Request for Abatement	To file a claim for refund of certain overpaid taxes, interest, penalties, and additions to tax.	N/A

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 911 , Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)	If T/P is suffering or about to suffer a significant hardship because of the collection of the tax liability, T/P may request assistance from the IRS on Form 911.	N/A
Form 1098-C , Contributions of Motor Vehicles, Boats, and Airplanes	Charitable organizations must send this form to donor of a vehicle, boat or airplane with value over \$500.	Sent to donor within 30 days of sale of vehicle, boat, and plane.
Form 2848 , Power of Attorney	To authorize an individual to represent a T/P before the IRS.	N/A
Form 4506 , Request for Copy of Tax Return	Request for Copy of Tax Return.	

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 4506-T , Request for Transcript of Tax Return	Request for Transcript of Tax Return.	N/A
Form 8300 , Report of Cash Payments Over \$10,000 Received in a Trade or Business	Any T/P in a trade or business who receives more than \$10,000 in cash in a single or in related transactions must report the transaction to the IRS using Form 8300.	By the 15th day after the date the cash was received.
Form 8453 , U.S. Individual Income Tax Transmittal for an IRS e-file Return	File this form if attaching forms or supporting documents to an e-filed tax return.	ERO must mail Form 8453 to the IRS within 3 business days after receiving acknowledgement of acceptance of e-filed return.

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 6118 , Claim for Refund of Income Tax Return Preparer and Promoter Penalties	A preparer uses this form to claim a refund of preparer penalties paid but preparer believes were incorrectly charged.	Within 3 years from the date the penalties were paid
Form 8554 , Application for Renewal of Enrollment to Practice Before the Internal Revenue Service	Renewal of Enrollment to Practice Before the IRS.	EAs must renew their license between 11/1 - 1/31 in the year of expiration.
Form 8821 , Tax Information Authorization	Authorize the T/P's designated person to receive T/P's confidential information from the IRS.	N/A
Form 8879 , IRS e-file Signature Authorization	Authorize an ERO to e-file a T/P tax return when using Practitioner PIN method.	The ERO must retain Form 8879. Do not send to IRS.

Forms & Schedules at a Glance

Representation, Practice & Procedures

Form	Purpose of Form	Filing Deadline of Form
Form 9423 , Collection Appeal Request	To appeal a collection action (Liens, levies, seizures, and denial or termination of installment agreement).	T/P must let Collection office know within 2 business days of T/P's conference with the collection manager that he or she will submit Form 9423. Form 9423 must be received or postmarked within 3 business days after the conference.
Form 9465 , Installment Agreement Request	To request monthly installment payments on taxes owed.	N/A