

Everything You Always Wanted to Know About Tax Controversy



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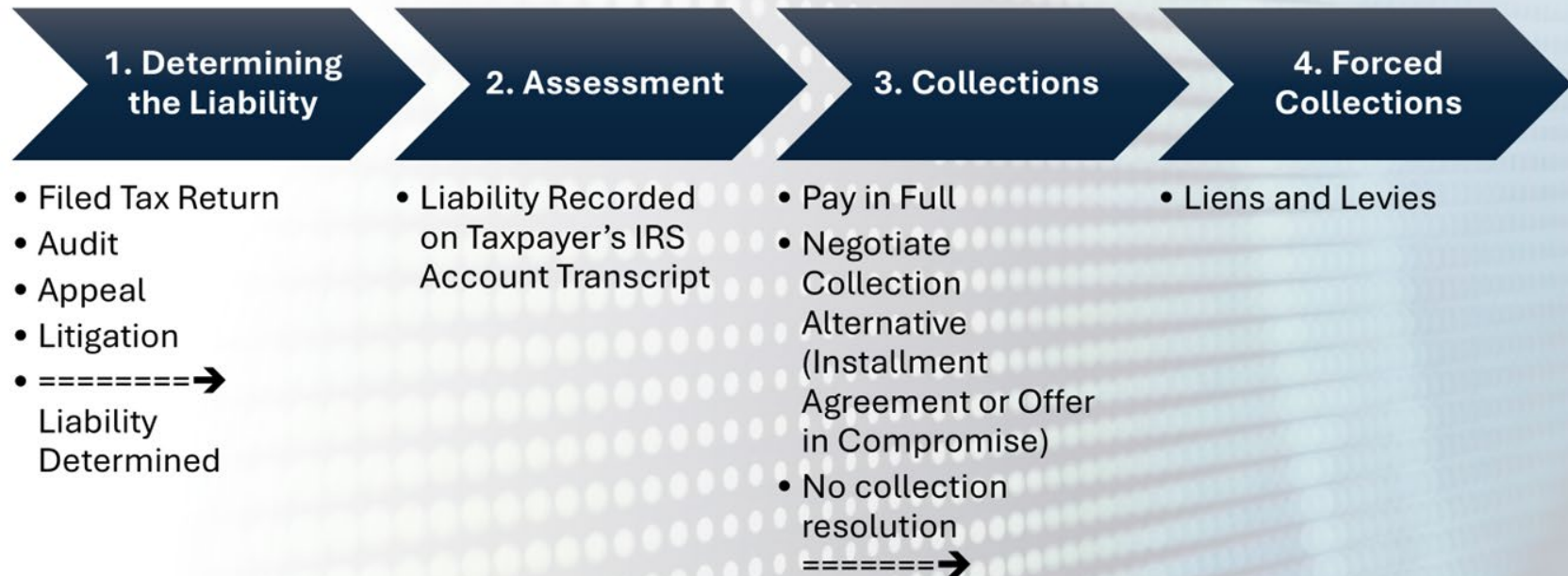
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What do we mean by Tax Controversy?

Disputes between a taxpayer and a tax authority over a tax matter

This can cover a wide variety of matters— covers the start of an audit to litigation in court to collections

Tax Controversy Continuum



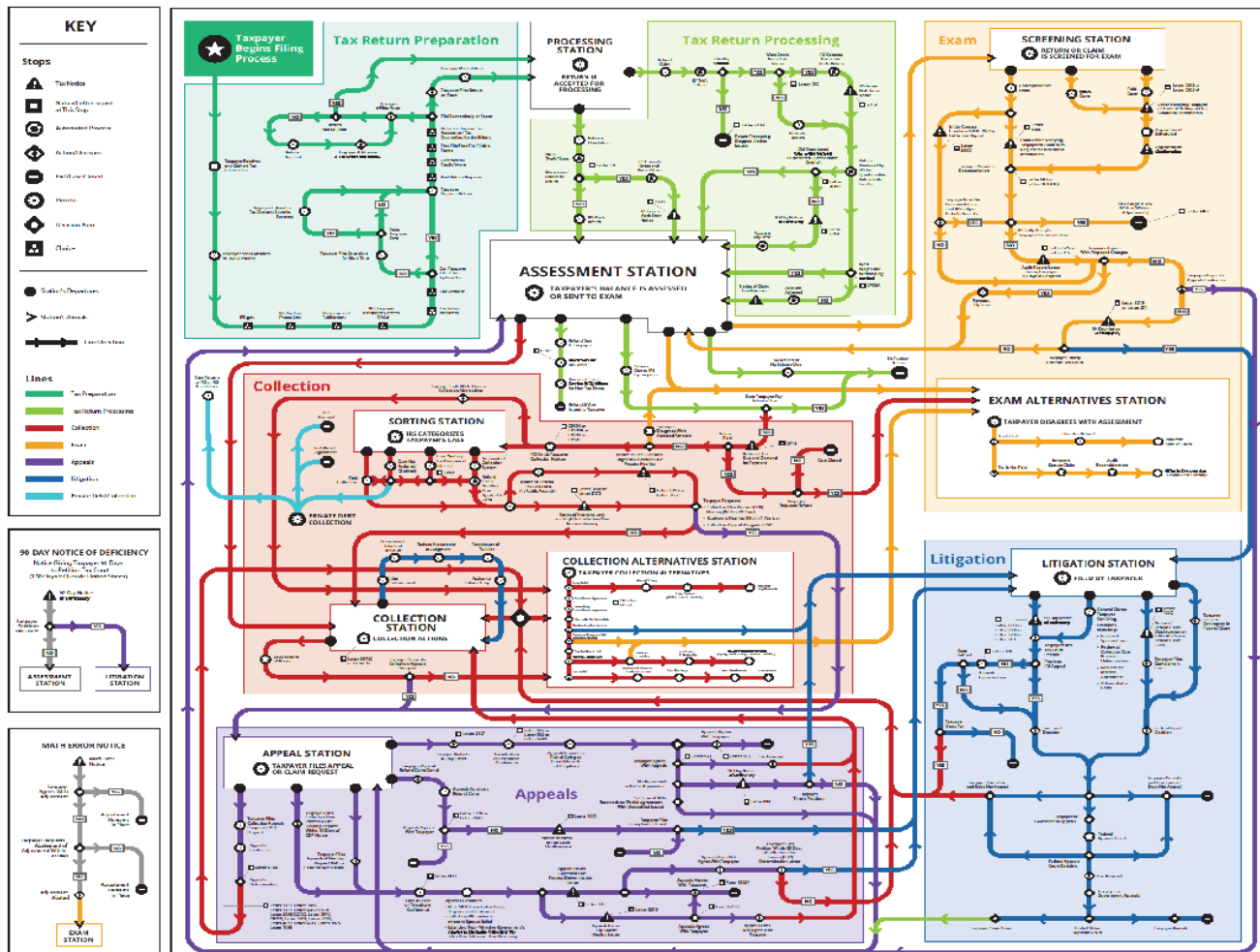
The Taxpayer Roadmap

An Illustration of the Modern United States Tax System

The map below illustrates, at a very high level, the stages of a taxpayer's journey from getting answers to tax law questions, all the way through audits, appeals, collection, and litigation. It shows the complexity of tax administration, with its connectors and overlaps, and repetitions between stages. As you can see from its numerous shortcuts and turns, the road to compliance is not always easy to navigate. But our Report has map helps taxpayers find a fair way. A product of the Taxpayer Advocate Service.

For more information visit [TaxpayerAdvocate.irs.gov](https://www.irs.gov/taxpayeradvocate)

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ADVOCATE
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YOUR VOICE AT THE IRS



If you don't know how to interpret the map, the IRS has a handy glossary to help...

[illegible][illegible][illegible]

TAS is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you.

**TAXPAYER
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How to get help at the IRS

Visit TaxpayerAdvocate.irs.gov
or call 1-877-777-4778

- YourVoiceAtRS
- YourVoiceAtRS
- TASNTA
- taspower-advocate-service

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Appeals		Appeals (Collection Due)	
1	Letter 101, Single-Channel Collection Due Notice	1	Letter 101, Single-Channel Due Notice
2	Letter 102, Single-Channel Collection Due Notice	2	Letter 102, Single-Channel Due Notice
3	Letter 103, Single-Channel Collection Due Notice	3	Letter 103, Single-Channel Due Notice
4	Letter 104, Single-Channel Collection Due Notice	4	Letter 104, Single-Channel Due Notice
5	Letter 105, Single-Channel Collection Due Notice	5	Letter 105, Single-Channel Due Notice
Collection		Task Return Processing	
1	Letter 101, Single-Channel Collection Due Notice	1	Letter 101, Single-Channel Due Notice
2	Letter 102, Single-Channel Collection Due Notice	2	Letter 102, Single-Channel Due Notice
3	Letter 103, Single-Channel Collection Due Notice	3	Letter 103, Single-Channel Due Notice
4	Letter 104, Single-Channel Collection Due Notice	4	Letter 104, Single-Channel Due Notice
5	Letter 105, Single-Channel Collection Due Notice	5	Letter 105, Single-Channel Due Notice
Item		New Item	
1	Letter 101, Single-Channel Collection Due Notice	1	Letter 101, Single-Channel Due Notice
2	Letter 102, Single-Channel Collection Due Notice	2	Letter 102, Single-Channel Due Notice
3	Letter 103, Single-Channel Collection Due Notice	3	Letter 103, Single-Channel Due Notice
4	Letter 104, Single-Channel Collection Due Notice	4	Letter 104, Single-Channel Due Notice
5	Letter 105, Single-Channel Collection Due Notice	5	Letter 105, Single-Channel Due Notice

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TAXPAYER ROADMAP

An Illustration of the Modern United States Tax System



State of the IRS

- Workforce has shrunk by at least 25% -
 - Combination of firings and voluntary departures
- Audits were abandoned –
 - Agent working on the audit left the IRS
 - Many cases where the IRS resolved the audit with a “no change”
- Longer timeline to get things done
- Could result in fewer returns selected for audit
- Can present difficulties to taxpayers trying to resolve their collection matters

Determining the Liability

- Filed Tax Return
- Audit
- Appeal
- Litigation
- Liability Determined
=====➔
- Assessment



Types of IRS Audits

Correspondence Audit

Communication conducted by mail; IRS requests documents; live person not directly involved – generally no meetings or phone calls

Office Audit

Conducted at an IRS office; in-person meeting (or phone call or virtual)

Field Audit

At the taxpayer's home, business, or representative's office
Most comprehensive –
Usually involves multiple meetings and information and document requests and responses



Audit Selection/Risk

Randomly Selected

Taxpayer claimed deduction that was a high percentage of their total income

Taxpayer engaged in a transaction that the IRS is pursuing

E.g. Dirty Dozen

IRS Dirty Dozen list comparisons 2023-2025

2025	2024	2023
Email Phishing Scams	Bogus Tax Avoidance Strategies:	Bogus Tax Avoidance Strategies:
Bad Social Media Advice	Syndicated Conservation Easements	Micro-Captive Insurance Arrangements
IRS Individual Online Account Help from Scammers	Micro-Captive Insurance Arrangements	Syndicated Conservation Easements
Fake Charities	Schemes Involving International Elements:	Schemes with International Elements:
False Fuel Tax Credit Claims	Maltese Pension Plans	Offshore Accounts and Digital Assets
Improper Credits for Sick Leave and Family Leave	Transactions involving Digital Assets	Maltese Individual Retirement Arrangements Misusing Treaty
Bogus Self-Employment Tax Credit	High Income Filers Vulnerable to Tax Schemes face risk from:	Puerto Rican and Foreign Captive Insurance
Improper Household Employment Taxes	Improper Art Donation Deductions	Schemes Aimed at High Income Filers:
Overstated Withholding Scam	Charitable Remainder Trust Abuse	Charitable Remainder Annuity Trust
Misleading Offers in Compromise	Monetized Installment Sales	Monetized Installment Agreement
Ghost Tax Return Preparers	Spearphishing attacks	Spearfishing and Cybersecurity for Tax Professionals
New Client Scams and Spear Phishing	Tax Advice on Social Media	Social Media: Fraudulent Form Filing and Bad Advice
	Ghost' Tax Preparers	Unscrupulous Tax Return Preparers
	Fake Charities Exploiting	Fake Charities
	OIC Mills	
	False Fuel Credit Claims	False Fuel Tax Credit Claims
	Helpful scammers offering to set up an online account	Online Account Help from Third Party Scammers
	Aggressive/Fraudulent ERC Claims and Promoters	ERC Claims
	Phishing and smishing scams	Phishing and Smishing

The Beginning of an Audit



IRS sends an official letter in the mail

Never by phone or email – if you receive such a communication not by postal mail – it's probably a phishing scam – do not respond – or at least engage a tax professional to determine if it is authentic



Letter will include:

Year(s) under audit

Often identifies specific issues that will be audited

Will usually request a telephonic response and possible set a scheduled meeting

May include some preliminary information and document requests

Preparing for the Audit



Gather relevant documents and information

Receipts and invoices for deductions

Appraisals for items requiring valuation

Bank statements



Review your return carefully.



Consult and/or retain a tax professional's representation for the audit – tax attorney, CPA, and/or enrolled agent

The Audit Process

- Stay calm and professional
- If you are represented, cease all your interactions with the IRS – your representative will be your one voice with the IRS
- Work with your representative to educate your representative about your business dealings and let them know if there are any questionable issues –
 - Need to determine your risk of exposure in the audit
 - Addressing problematic issues at the beginning can sometimes be the best route to a better result – but that needs to be analyzed and approached with caution
- Make sure all documents and information submitted to the IRS is accurate and cannot be construed as being false or misleading
 - Backdating documents is a fraudulent acts
- Keep copies of all documents sent to the IRS during the audit
- Send documents and info by a traceable method such as certified mail, fax, or the IRS' upload tool (the letter from the IRS will provide instructions about how to access the tool)

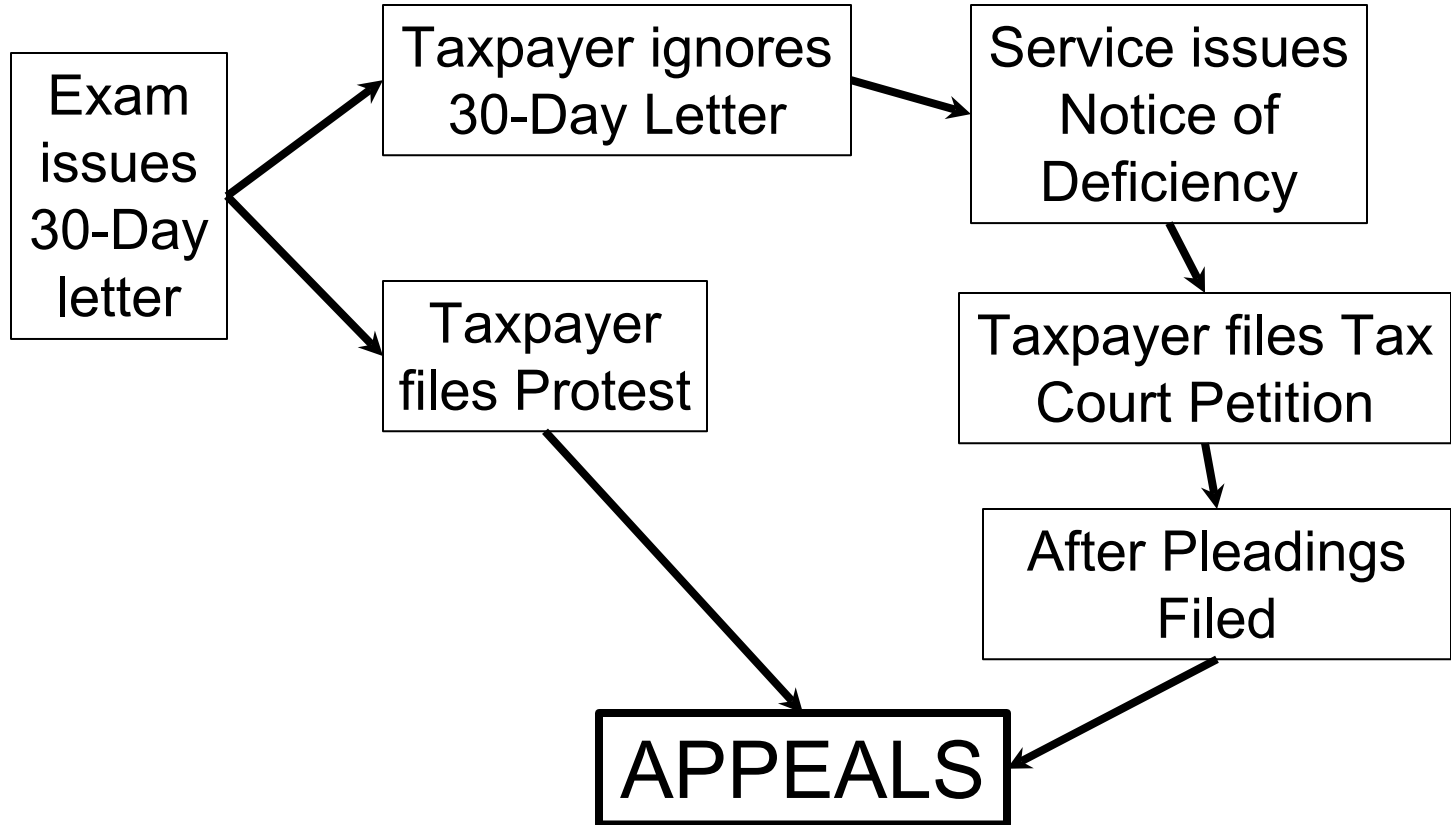
The Audit Process – Part 2

- Can be a grueling process
- Can involve multiple information and document requests from the IRS
- Gather information and documents to the extent possible
- The Best Response is the Goldilocks response –
 - Just enough to respond to the IRS' request but not oversharing
- May require obtaining old documents –
 - The taxpayer has an obligation to substantiate the position taken on their return
- Some issues can be resolved before the close of the audit
- Work with your tax professional to help contain the scope of the audit

Possible Audit Outcomes

- No Change – Return accepted as filed
- Agreed Change – Taxpayer accepts an increased amount of tax or IRS accepts a refund
- Disagreed Change -
 - Taxpayer can dispute the IRS' determinations
- If there are unagreed issues, the IRS will issue a
"30-Day Letter"
 - Letter gives taxpayer 30 days to respond that includes filing a protest and, if the taxpayer wants, to request a hearing with IRS Appeals
- If no timely response to the 30-day letter → IRS issues:
 - **Statutory Notice of Deficiency** – gives the Taxpayer 90 days to file a petition in Tax Court to dispute the IRS' determinations
- If no timely response to the Notice of Deficiency -> the IRS determination will be assessed on the taxpayer's account and the taxpayer's account will go to IRS Collections for payment/collection enforcement

Paths to IRS Appeals





Filing a Petition in U.S. Tax Court (versus other courts)

- Main Prepayment forum for tax litigation
 - Do NOT need to pay tax before going to Tax Court
- Tax Court judges are tax attorneys
 - They are experts in tax law.
 - Many worked as IRS Counsel attorneys or in private practice as tax controversy attorneys before becoming judges.
- Much more informal than other federal courts.
 - Requirement for informal discovery (more on this later).
 - Depositions are disfavored.
 - Trial is much less formal, even though governed by Federal Rules of Evidence.
- Tax Court judges based in Washington DC.
 - Tax Court judges travel around the country for Tax Court calendars
 - Larger cities have more calendars (for example, Los Angeles has the most with 1-2 every month except for July and August).
 - Judges only in town for the calendars.
 - Hearings can be held virtually.

Tax Court Case Outcomes



- A Tax Court case can be settled with Appeals or Counsel.
- Counsel will accept a settlement with Appeals as a resolution of the case.
- Appeals and Counsel will focus on the individual adjustments and usually settle the case adjustment by adjustment.
 - Exception: Counsel attorneys have the authority to enter into flat-dollar settlements for smaller cases (usually under \$50,000 at issue).
- After parties reach a basis for settlement on the adjustments, IRS will request computations from another department inside the IRS.
- Parties then file a stipulated decision document with the Court.
 - In deficiency case, decision states the additional amount of tax and penalties (if any) determined through the settlement.
 - In CDP case, decision states whether settlement officer abused or did not abuse their discretion.

Other Fora: District Court and Court of Claims

- For U.S. district court or Federal Court of Claims:
 - Need to pay the tax and sue for a refund
 - Judges don't necessarily have expertise in tax (in fact, sometimes judges would much rather avoid tax cases).
 - IRS represented by Department of Justice (not IRS Counsel attorneys).
 - District court litigation can be much more expensive than Tax Court litigation (maybe twice as much).
 - Much more likely to have extensive discovery and depositions in district court.
 - Much more likely for government to attempt to resolve through a motion for summary judgment in district court.



IRS Independent Office of Appeals during a Tax Court Case

- After IRS files its answer in a deficiency case, the following will happen:
 - If Notice of Deficiency was issued by IRS Examinations (not Appeals):
 - Case forwarded to IRS Appeals to pursue settlement
 - IRS Appeals analyzes hazards of litigation
 - If petitioner presents new information to Appeals that petitioner did not previously present to IRS Examinations:
 - Appeals sends information back to IRS Examination for review and consideration
 - IRS Examinations has 75 days to provide its views on the new records and to inform IRS Appeals whether new information changed IRS Examination's position.
 - If Appeals and petitioner do not resolve the case, then IRS Appeals will send it back to IRS Counsel for trial preparation.
 - If Appeals issued the Notice of Deficiency, then Tax Court case remains with IRS Counsel for trial preparation.
Taxpayer/petitioner does not get two opportunities with Appeals.
- In CDP Tax Court case, Appeals issues Notice of Determination =
 - Need to petition Appeals' notice
 - Go back to Appeals only if case is remanded



Right to Appeal a Tax Court Decision



- Four steps to end of Tax Court case after trial and briefing:
 - First, Tax Court issues an opinion (this could take years).
 - Second, if the Court does not rule entirely in favor of one party, then the parties must agree on Rule 155 computations for the additional amount of tax based on the opinion.
 - Third, parties file the Rule 155 computations.
 - Fourth, Court enters a decision.
- Either party can appeal a Tax Court decision.
 - Appeals from the decision.
 - Do not appeal from the Tax Court's opinion after trial and briefing. Must wait for decision.
- Appeal lies with Circuit Court of Appeal that would have jurisdiction over petitioner at the time that petitioner filed the petition
- Address listed on the petition is important for determining which Circuit's law applies to the case. *See Golsen v. Commissioner*, 54 T.C. 742 (1970).



Assessment

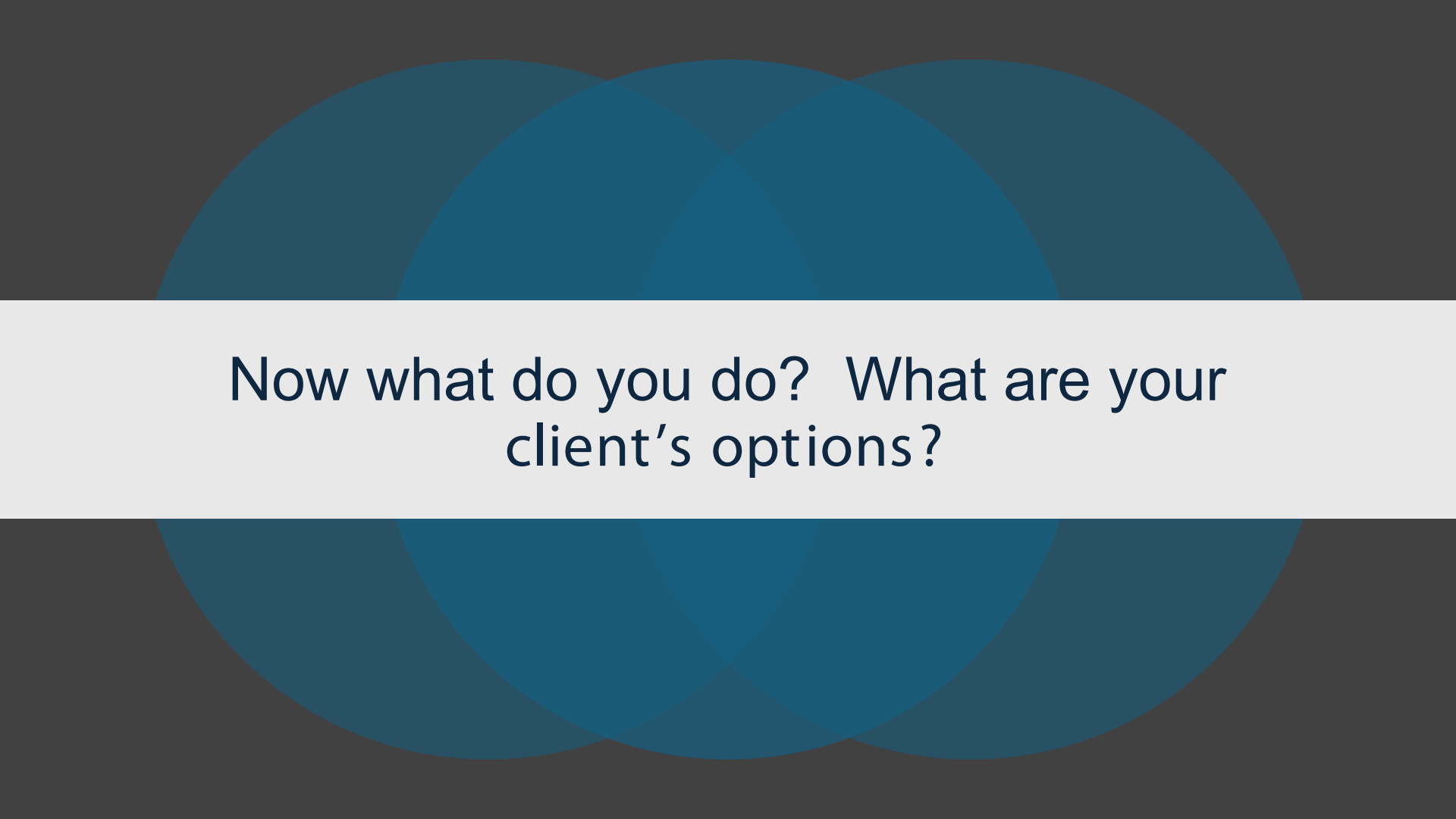
- Liability Determined

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- Recorded on Taxpayer's IRS Account Transcript

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Account Moves to IRS Collections

The background of the slide features three large, overlapping teal-colored circles arranged horizontally. These circles are set against a dark gray background. A white horizontal band cuts across the middle of the circles, containing the text.

Now what do you do? What are your
client's options?

IRS Collections



- Automatic Collections or Revenue Officer
- Pay in Full
- Negotiate Collection Alternative
 - Installment Agreement
 - Offer in Compromise
- No Collection Resolution
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- Forced Collections





Introduction to IRS Collections

Assessment – the moment that a taxpayer's tax liability is recorded on the taxpayer's account –

Collection Statute Expiration Date ("CSED")

IRS = 10 years from the date of assessment –

Collection statute tolled for certain actions such as the time period during which a taxpayer negotiates a collections alternative or while the taxpayer's bankruptcy action is pending

Collection Alternative based on Ability to Pay

Calculation of net monthly income =
gross income
less allowable expenses

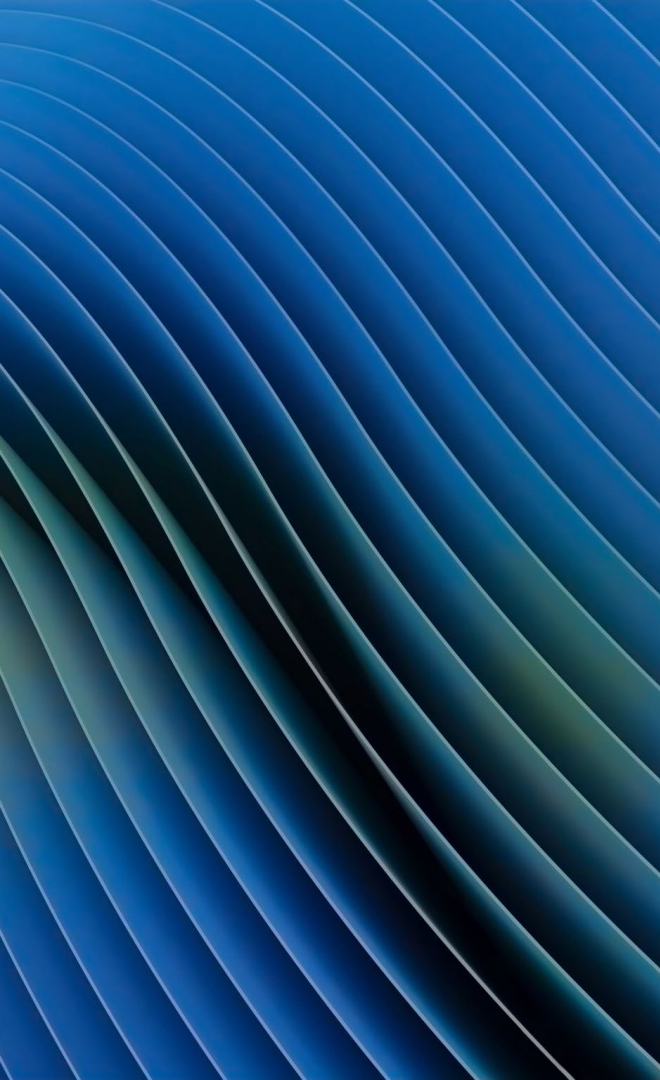
Calculation of net equity in assets

Personal Liability > \$50,000:

taxpayer be certified to the State Department for US passport revocation

passport revocation reversed when taxpayer becomes collection compliant =

either full paid or enters into a collection alternative accepted by the IRS



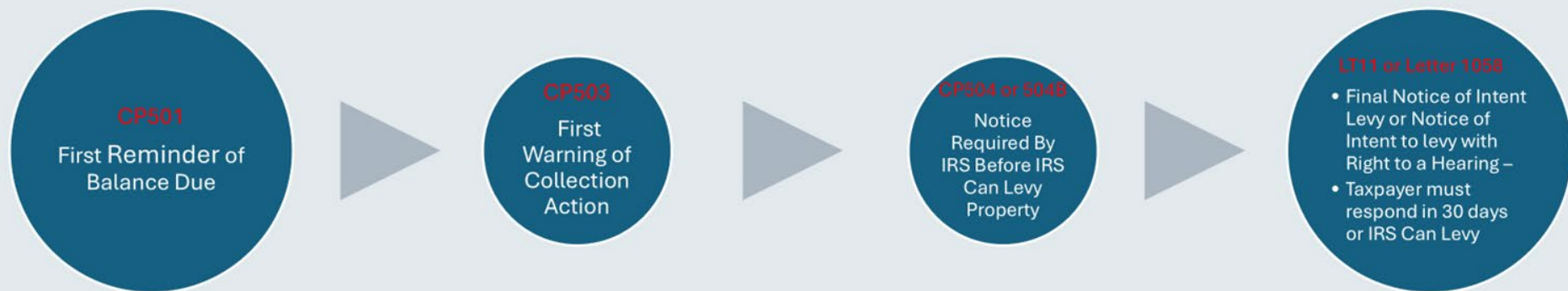
If the taxpayer is assessed a balance due...

They can always pay it (of course)

If the taxpayer does not pay the balance due,

- IRS issues Notice of Tax Due and Demand for Repayment
- Options??
 - Taxpayer can pay it and request a refund
 - Taxpayer can disagree with assessment
 - Request audit reconsideration
 - Offer in Compromise (Doubt as to Liability)
 - Innocent Spouse Claim
- If the Taxpayer does nothing, the IRS will start to send a set of escalating collection notices:
 - CP 501 First Reminder
 - CP 503 First Warning of Collection Action
 - CP 504 and CP504B Final notice before IRS can legally seize property via levy

Collection Notices: Escalating Notices of Balances Due



Collection notices give you an opportunity to pursue collection alternatives with the IRS

Collection Alternatives:

- Wrongful Levy/ Release
- Installment Plans
- Offers in Compromise
- Offer in Compromise (Doubt as to Liability)
- Innocent Spouse
- Currently Not Collectible Status
- Lien Relief

If the Taxpayer doesn't respond:

- IRS internally categorizes the case for forced collections:
 - Send for Field Collection
 - Shelve It (Not Assigned)
 - Queue It
 - Automated Collection



Offer in Compromise (“OIC”)

- Negotiated amount that is less than the liability
- Pennies on the dollar? Depends on the taxpayer’s financial profile
- Calculation is based on:
 - Net equity in assets +
 - 12 times net monthly income
 - If taxpayer will pay full OIC within 5 months from the date OIC is accepted
 - Must include 20% of offer with OIC submission
 - 24 times net monthly income
 - If taxpayer will pay full OIC within 2 years from the date OIC is accepted
 - Must include monthly payment with OIC submission and continue to make monthly payments while the OIC is pending
- The higher the amount due and the shorter the CSED, the more likely that OIC will be accepted
- Taxpayer must remain tax compliant for 5 years after OIC is accepted. If not, OIC will default and taxpayer back to being non-compliant
- Refunds will be taken by taxing authority from the time the OIC is submitted and until full paid; however, the refund will not be credited to the taxpayer for the OIC

Installment Agreement

- Full Pay = full tax liability will be paid on or before the CSED if taxpayer makes all the agreed payments
 - Taxing authorities tend to like it knowing they will ultimately be full paid
- Partial Pay = full tax liability will not be paid on before the CSED even if taxpayer makes all the agreed payments
 - Similar to an OIC
- Taxpayer considered tax compliant from the time submits offer and throughout the tenure of the agreement = no levies taken
- BUT taxing authority will likely file a lien





Bankruptcy

- Taxes can be discharged if they are old and cold =
 - Tax return must have been due at least 3 years before
 - Debtor must have filed a valid return at least 2 years before
 - Tax assessment must have occurred at least 240 days before bankruptcy filing
 - Muddier if a lien has been filed for the liability
- Can discharge consumer debt, as well
- If only have tax debt, not always the recommended option
- Bankruptcy case filings are public
- Can affect debtor's credit

What is a notice of lien or intent to levy?

Notice of Federal Tax Lien (NFTL)

- NFTL is a filed public record
- Once filed in the appropriate office, the lien is secured
- A notice of filed lien is then sent to Taxpayer

Notice of Intent to Levy

- Just that an intention
- The levy is not actually completed until appeal rights lapse or appeals decides against the Taxpayer

Why did your
client receive a
notice of lien or
intent to levy?
How did they get
here?

They ignored
several prior
notices

They couldn't
agree on a
proposed
assessment

They couldn't
agree on a
collection
alternative

Taxpayer Collection Rights

Collection Due
Process Hearing
(CDP)- Request
within 30 days

Collection
Equivalent Hearing

Collection Appeals
Program (CAP)

Taxpayer will be granted an Appeals Conference

Appeals Officers can consider a broad range of remedies:

- Whether all procedures were correctly followed
- Collection Alternatives
- Whether the collection action is no more intrusive than necessary

Appeals will issue a determination letter:

- If it is a CDP hearing, and Appeals does not agree with Taxpayer, the Taxpayer can file a Petition with the Tax Court within 30 days of the determination letter
- If it is an equivalent hearing, and Appeals does not agree with Taxpayer, the Taxpayer can still have collection alternatives considered
- If it is a CAPs hearing, and Appeals does not agree with Taxpayer, the Taxpayer can still have collection alternatives considered

Freezing Collections

- Collection Freeze =
 - IRS will not take new collection actions from the time they are submitted and until they are resolved
- Taxpayer actions that will Freeze Collections:
 - Submit an OIC
 - Propose an installment agreement
 - Request innocent spouse relief
 - File for bankruptcy
- Taxpayers should weigh concerns about any publicity surrounding their pursuit of a collection alternative

Forced Collections



Liens Filed



Levies Enforced

Foreclosure

Seized Financial Accounts

Questions?????

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