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# **VOLUNTARY IRS COLLECTIONS – BASIC LEVEL**

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Howard is a frequent contributor to both law journals and the NAEA Journal on tax controversy issues. Howard also maintains a weekly IRS blog at [howardlevyirslawyer.com/blog](http://howardlevyirslawyer.com/blog) with posts and updates on solutions to IRS problems.

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## **I. Initial Case Analysis – Client Checklist.**

### **a. What Should Your Client Bring to the Initial Meeting?**

1. All IRS correspondence received.
2. 3 months paystubs or year-to-date profit and loss if self employed for entire household income, including for a non-liable spouse.
3. 3 months bank statements.
4. Itemization of monthly living expenses.
5. Itemization of autos, stocks, retirement plans with valuation

### **b. What to Look For From All of These Documents?**

1. Look for Final Notice of Intent to Levy from the client's IRS correspondence. IRS cannot take any collection action until this notice is issued. If it has been issued, you have 30 days to file an appeal staying collection action by law, or up to one year by IRS administrative discretion.
2. Where is your client in the collection system?
3. Who are you dealing with?
4. Review IRS correspondences – try to make an initial determination of what type of tax your client owes, what tax periods, and how much is owed.

### **c. Make an Initial Financial Analysis.**

1. Review paystubs and monthly living expenses to make initial determination of cash flow. Apply IRS living standards to expenses.
2. Review assets – anything of equity with a risk of seizure or that could be liquidated voluntarily by your client.
3. Make sure client is current on estimated tax payments if self-employed. IRS will not negotiate until client is current, usually

requiring 6 months. Review finding cash flow to become current.

4. What is the current risk to your client of immediate collection action?

Wages? Bank accounts? Subcontractor pay? Retirement accounts?  
Social Security? Nothing?

**d. Power of Attorney and Initial IRS Contact.**

1. Have client review and sign IRS Power of attorney, Form 2848, authorizing your representation before the IRS.
2. Contact IRS Practitioner Priority Service at 866-860-4259 for transcripts of account to verify balances due, age of liabilities, collection limitations period remaining (can also be obtained online via IRS Transcript Delivery Service at [www.irs.gov](http://www.irs.gov)).

**e. Understand the IRS by the Numbers.**

1. IRS reports over \$16 billion in delinquent tax dollars are written off as uncollectible. This is 85 times the amount it accepted from offers.
2. Collection cases over 24 months past due yield 15 cents on the dollars, and after three years are practically uncollectible.
3. As of September, 2006, approximately 65% of IRS's open collection accounts involved tax years over three years old.
4. Over 40% of withdrawn and rejected offers in compromise are ultimately reported as uncollectible.
5. The number of levies issued by the IRS increased from 504,403 in 2000 to 2,743,577 in 2008.
6. The number of property seizures by the IRS increased from 74 in 2000 to 610 in 2008, but that is below the 10,000 from the 1980s and 1990s.
7. The number of property seizures by the IRS increased from 74 in 2000 to 610 in 2008, but that is below the 10,000 from the 1980s and 1990s.
8. We are in the bank and wage levy defense business.
9. The IRS accepts about 25% of offers and are in declined by 70% since 2001.

## **II. Understanding where your client is in the IRS collection system.**

### **a. IRS Collection Notices.**

In most cases, the IRS will send up to five computer generated notices to your client before it commences enforcement. These notices are, in order:

1. First Notice - Balance Due.

**“Balance Due (Notice CP 14)”**

“According to our records, you have an amount due on your income tax. Please compare your tax return against the figures below. If you’ve already paid your tax in full or arranged for an installment agreement, please disregard this notice. (Calculation follows).”

2. Second Notice – Reminder.

**“Reminder We show you still owe: {amount due} (Notice CP 501)”**

“According to our records, you haven't paid all you owe for tax period **{date}**. To avoid additional penalty and interest, please pay the full amount you owe within ten days from the date of this notice. We can file a Notice of Federal Tax Lien if your balance owed is not paid within 10 days from the date of this notice. If you already paid your balance in full or arranged for an installment agreement, please disregard this notice.”

3. Third Notice – Important.

**“IMPORTANT!! Immediate action is required. (Notice CP 503)”**

“We previously wrote to you about your unpaid account, but you haven't contacted us about it. Penalties and interest on the unpaid balance are continuing to increase. Please pay the amount you owe within ten days from the date of this notice. If you can't pay now, call us at the number show below. You may be qualified for an installment agreement or payroll deduction agreement. We want to help you resolve this bill. However, if we don't hear from you, we will have no choice but to proceed with steps required to collect the amount you owe.”

4. Fourth Notice – Urgent.

**“Urgent!! We intend to levy on certain assets. Please respond NOW. (Notice CP 504)”**

Our records indicate that you haven't paid the amount you owe. The law requires that you pay your tax at the time you file your return. This is your notice, as required by Internal Revenue Code Section 6331(d), of our intent to levy (take) any state tax refunds that you may be entitled to if we don't receive your payment in full. In addition, we will begin to search for other assets we may levy. We can also file a Notice of Federal Tax Lien, if we haven't already done so. To prevent collection action, please pay the current balance now. If you've already paid, can't pay, or have arranged for an installment agreement, it is important that you call us immediately at the telephone number show below.”

5. Fifth Notice - Final Notice (Notice CP 90/CP 297)

**Notice Of Intent To Levy And Notice Of Your Right To A Hearing**

*Please Respond Immediately*

We previously asked you to pay the federal tax shown on the next page, but we haven't received your payment. This letter is your notice of our intent to levy under Internal Revenue Code (IRC) Section 6331 and your right to appeal under IRC Section 6330.

We may also file a Notice of Federal Tax Lien at any time to protect the government's interest. A lien is a public notice to your creditors that the government has a right to your current assets, including any assets you acquire after we file the lien.

If you don't pay the amount you owe, make alternative arrangements to pay, or request an appeals hearing within 30 days from the date of this letter, we may take your property, or rights to property. Property includes real estate, automobiles, business assets, bank accounts, wages, commissions, social security benefits, and other income.

*Notes:*

1. These notices are usually issued five to six weeks apart. It can take six months to complete the notice and demand cycle. On high dollar cases, repeat offenders and employment taxes, the IRS often skips the cycle and goes from a Reminder notice to the Final Notice of Intent to Levy.
2. The Final Notice of Intent to Levy is one of the most important documents issued in a collection case. Do not confuse it with the other IRS collection notices. It is the only notice giving the IRS legal rights to levy or seize. And it gives your client the right to file an appeal disputing the levy before it happens.

**b. IRS Risk Scores Rating System.**

While the collection notices are being sent, the IRS Inventory Delivery System is ranking each delinquent account for further handling. This is internally referred to as Risk Based Collection criteria.

The IRS risk scores take into consideration the amount of tax owed, the age of the account and the type of tax involved. Some types of tax delinquencies, such as trust fund employment taxes, are assigned a high risk score. Newer accounts are often assigned a higher risk factor than older accounts.

Based on the risk scores, cases are placed in a holding queue and are either sent to the **Automated Collection System** or to a **Revenue Officer**.

**c. Automated Collection System.**

Automated Collection System (ACS) is a series of 15 centralized telephone call centers. ACS collection representatives spend the majority of their time responding to inbound calls from taxpayers, many of which are in response to the previously issued collection notices.

*Notes:*

1. **66% of ACS resources are spent on inbound calls, with 30% working inventory and 4% on outbound calls.** It has been reported that medium risk ACS cases are deemed to be currently uncollectible if not resolved within 52 weeks, while low risk cases are temporarily written off after 65 weeks in ACS.
2. If your client is in ACS, it is unlikely that a call will be received from the IRS. The “hit” will likely be from a computer generated wage or bank garnishment. Based on its impersonal and remote nature, **ACS representatives do not engage in more complex seizures, such as those involving retirement plans, personal residences, transferee liability and business seizures.**
3. **Unbelievable but True:** In the first half of 2008, the IRS moved approximately 1,000 of the reported 2,000 ACS staffers from a collection function to telephone support services answering questions about the Economic Stimulus Rebates.

**d. Revenue Officers.**

The Revenue Officer function is localized, with the Revenue Officers located in the city in which the taxpayer resides.

*Notes:*

1. Revenue Officers are the most experienced and sophisticated collection employees within the IRS. They work high dollar cases deemed to be of significance. Revenue Officers have the ability to closely watch and monitor a target's activities and can act swiftly, if necessary.
2. Revenue Officers can make life very difficult. Revenue Officers visit the taxpayer's place of business or residence and often require face to face meetings and negotiations. The visits are often on Fridays, often before holidays. **A Revenue Officer has the ability to seize houses, automobiles, accounts receivable, equipment and retirement plans.**

**e. Financial Statements Required by ACS and Revenue Officers.**

ACS and Revenue Officers will require your client to complete a financial statement to negotiate a solution to a tax liability. The financial statements are dissected by the IRS for a determination of (1) your client's equity in assets and (2) how much your client can pay on a monthly basis from income and expenses.

*Citations:*

1. **Internal Revenue Manual 5.14.1.2, Installment Agreements and Taxpayer Rights (Collection Procedures).**
  - A. Request full payment of the tax liability. Encourage the taxpayer to pay off the tax liability as quickly as possible. If the taxpayer cannot pay the liability in full, encourage them to pay within 120 days.
  - B. Request some payment from the taxpayer. Taxpayers may be required to make a payment (see IRM 5.14.1.5(6)) or payments (see IRM 5.14.3.1) while securing documentation to determine the proper disposition of accounts.
  - C. When taxpayers are unable to pay a liability in full, an installment agreement (IA) should be considered.



2. Form 433A, Collection Financial Statement for Individuals and Self-Employed. <http://www.irs.gov/pub/irs-pdf/f433a.pdf>.
3. Form 433B, Collection Financial Statement for Businesses. <http://www.irs.gov/pub/irs-pdf/f433b.pdf>.
4. IRS Collection Financial Standards. <http://www.irs.gov/individuals/article/0,,id=96543,00.html>

*Notes:*

1. **The IRS can issue a summons for the information if not voluntarily provided.** If negotiations breakdown after financial statements are provided, the IRS has obtained the information it needs to commence collection action, which is always a risk to your client.
2. The IRS will not need a financial statement if your client qualifies for a streamlined installment agreement or guaranteed installment agreement.

### **III. IRS Collections: What Can The IRS Really Do?**

#### **a. Equity Seizures Only.**

The IRS cannot seize assets in which there will be no net recovery after expenses of sale. The IRS is prevented from taking property that would not result in any reduction of the liability.

*Citations:*

1. **IRC Section 6331(f). Uneconomical levy.** No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.
2. **Internal Revenue Manual 5.10.1.2.** Where the taxpayer has insufficient equity in the property - **there must be sufficient net proceeds from the sale to provide funds to apply to the taxpayer's unpaid tax liabilities.**

*Notes:*

1. The rule against no equity seizures eliminates the majority of potential IRS asset seizures, including those involving automobiles, personal

residences and business equipment and machinery. If a Revenue Officer is threatening to take your client's property, whether it is business or personal, and there is no equity, respectfully question the authority to do so.

2. The IRS will shy away from items of small value that may individually have equity. For example, it is unlikely the IRS will seize used office equipment, such as desks, phones, tables, etc. This type of equipment may technically have equity, but its overall value makes it unattractive when compared with the effort and costs of sale. The same applies to an automobile worth \$2,000 that will be reduced in value to a \$1,600 quick sale equity valuation. This equity is likely to be insufficient to result in a seizure and sale.

**b. Determining Equity.**

Equity is the fair market value of the asset, reduced to quick sale value, less deductions for any loans that are outstanding and the costs of sale.

*Citations:*

1. **Internal Revenue Manual Section 5.15.1.16(2).** The FMV is the price set between a willing and able buyer and the seller in an arms length transaction with full knowledge of the relevant facts.
2. **Internal Revenue Manual Section 5.15.1.16(2).** Quick Sale Value (QSV) is an estimate of the price a seller could get for the asset in a situation where financial pressures motivate the seller to sell in a short period of time, usually 90 days or less. **Generally, QSV is calculated at 80% of fair market value.** A higher or lower percentage may be appropriate depending on the type of asset and current market conditions.

*Notes:*

1. What if the IRS is threatening to seize your client's pick-up truck valued at \$12,500, and the truck is "upside down" as it has an outstanding loan of \$14,000 against it? An IRS seizure will only get the bank paid on its priority financing loan. The result is the truck has no equity for the IRS, and will not be seized. The same analysis applies to personal residences, business equipment and machinery.

**c. Assets Jointly Owned with a Nonliable Spouse.**

If the asset is jointly owned between spouses, but only one spouse owes the taxes, the equity is allocated between the owners so the nonliable spouse's interest is protected.

*Citations:*

1. **Internal Revenue Manual 5.15.1.17. When taxpayers own assets jointly with others, allocate equity in the assets equally between the owners**, unless the joint owners demonstrate their interest in the property is not equally divided. In this case, allocate the equity based on each owner's contribution to the value of the asset.

*Notes:*

1. Your client, a contractor, has a personal residence purchased jointly with his wife. The house is worth \$200,000, and there is a \$150,000 mortgage. Only your client owes the IRS as his wife had withholding and filed separately. The quick sale value of the house is \$180,000 (20% of the fair market value). Of the remaining \$30,000 in equity, the IRS allocates 50% to your client for a \$15,000 interest.

**d. Exemptions in Property.**

Even if an asset has equity, it cannot be taken by the IRS if it is listed as exempt by law.

*Citations:*

1. **Internal Revenue Code 6334(a). Property Exempt from Levy.**  
There shall be exempt from levy--
  - (1) **Wearing apparel** and school books. Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;
  - (2) So much of the fuel, provisions, **furniture, and personal effects in the taxpayer's household**, and of the arms for personal use, livestock, and poultry of the taxpayer, as **does not exceed \$ 7,900 in value**;
  - (3) So many of the books and **tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$ 3,950 in value**;
  - (4) **Any amount payable to an individual with respect to unemployment** (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

- (5) Undelivered mail. Mail, addressed to any person, which has not been delivered to the addressee.
- (6) Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code
- (7) Any amount payable to an individual as **workmen's compensation** (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.
- (8) If the taxpayer is required by **judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children**, so much of his salary, wages, or other income as is necessary to comply with such judgment.
- (9) **Minimum exemption for wages, salary, and other income**. Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).
- (10) Certain service-connected disability payments.
- (11) Any amount payable to an individual as a recipient of public assistance under--  
(A) title IV or title XVI (relating to **supplemental security income for the aged, blind, and disabled**) of the Social Security Act [[42 USCS §§ 601](#) et seq. or [1381](#) et seq.], or  
(B) **State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test**.
- (12) **If the amount of the levy does not exceed \$ 5,000--**  
(i) any real property used as a **residence** by the taxpayer; or  
(ii) any real property of the taxpayer (other than real property which is rented) **used by any other individual as a residence**.

*See also:*

**Internal Revenue Code 6334(c).** Notwithstanding any other law of the United States (including section 207 of the Social Security Act [[42 USCS § 407](#)]), **no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).**”

**e. IRS Levy on Funds in Retirement Plans.**

If your client can get to funds in a retirement account, so can the IRS. Retirement accounts that the IRS can reach include qualified pension, profit sharing, and stock bonus plans, IRAs, and self-employed plans like SEP-IRAs and Keogh plans. Remember, if it is not listed as exempt under IRC 6334, and it will yield a recovery to the IRS, they can get to it.

*Citations:*

1. **Internal Revenue Manual 5.11.6.2, Funds in Pension or Retirement Plans.** Because retirement vehicles provide for the taxpayer's future welfare, levy on the assets in a retirement account (as contrasted with income from the account) after following the procedures set forth below.
  - a. If there is property other than retirement assets that can be used to collect the liability, or if a payment agreement can be reached, **consider alternatives before issuing a levy on retirement accounts.**
  - b. The second step in deciding whether to levy on a retirement account is to **determine whether the taxpayer's conduct has been flagrant.** If the taxpayer has not engaged in flagrant conduct, do not levy on retirement accounts.

The following are some examples of flagrant conduct: Making contributions to the retirement account while the unpaid taxes were accruing, a history of severe employment tax problems, continuing to incur trust fund taxes or responsibility for the Trust Fund Recovery Penalty on more than one occasion, uncooperative or unresponsive behavior (failing to meet established deadlines, to attend scheduled appointments, or to respond to Revenue Officer attempts to make contact).
  - c. The final step in deciding whether to levy on retirement assets **is to determine whether the taxpayer depends on the money in the retirement account** (or will in the near future) for necessary living

expenses. If the taxpayer is dependent on the funds in the retirement account (or will be in the near future), do not levy the retirement account. Also, consider any special circumstances in the taxpayer's specific situation, such as extraordinary expenses or additional sources of income that will be available to pay expenses during retirement.

- d. The taxpayer may be able to withdraw money in a lump sum from a plan. If the taxpayer has the right to do so, a levy can reach that right. However, **remember that a levy only reaches the taxpayer's present rights and the amount of those rights.**

*Examples from Internal Revenue Manual:*

1. The taxpayer has \$10,000 in a plan but can only withdraw it later. The taxpayer may have a present right to the money, although it can not be withdrawn immediately. A levy may reach that right, but the money can be not paid over until the taxpayer can withdraw it. At that time, there may be \$30,000 in the plan. Without a new levy, though, only \$10,000 could be paid over.
2. The taxpayer has money in a plan. The terms of the plan do not allow for any lump sum withdrawal. The plan provides a right in the future to receive monthly payments, but the taxpayer has not paid into it long enough yet to qualify for any future payments. A notice of levy attaches nothing, because the taxpayer has no present property rights.

*Notes:*

1. The most effective method of defending retirement plans is to argue “**If the taxpayer can't get to it, the IRS can't get to it.**”
2. Many retirement plans do not give taxpayers present rights to the money, allowing access only at separation from service, retirement or death/disability. Review the terms of the plan – **if your client is still employed, for example, and has no right to access the money, neither does the IRS.**

**f. IRS Levy on Income from Retirement Plans.**

The IRS can reach current or future income payments from retirement plans. A levy issued today attaches to a future retirement benefit if there is a fixed right to it. IRS is cautious and will try to avoid this type of seizure.

*Citations:*

1. **Internal Revenue Manual 5.11.6.1. Retirement Income.** Use discretion before levying retirement income...**As long as the taxpayer has a fixed and determinable right to property, a levy attaches that right. Therefore, a levy on retirement income can reach payments in the future whether the taxpayer has begun receiving payments when the levy is served or not.** This often means that a levy on retirement income reaches future payments. Because this type of levy may begin attaching payments long after the levy is served, follow-up when the taxpayer is expected to become eligible to receive payments. If the taxpayer has the right to receive future payment but has not opted to do so, the levy attaches that right.

*Notes:*

1. If your client's rights to the money do not accrue until after the statute of limitations on collection ends, the IRS will never reach the money.

**g. IRS Levy on Bank Accounts**

IRS bank levies apply to money in the bank at the time the levy is processed. Future deposits require a future levy. Bank holds money after deduction for 21 days before sending to IRS, allowing window of time for release. Money deposited after the bank processes the levy is retained by the taxpayer.

*Citations:*

1. **Internal Revenue Code 6332(c) Special Rule for banks.** Any bank (as defined in section 408(n) shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank **only after 21 days after service of levy.**
2. **Internal Revenue Manual 5.11.4.1. Holding Period.** A bank must wait 21 calendar days after a levy is served before sending payment. Then, on the next business day, it must turn over the taxpayer's money".
3. **Internal Revenue Manual 5.11.4.3. Amount that Must be Surrendered.** The notice of levy only reaches the amount on deposit when the levy is received. **Money deposited later is not surrendered, including deposits during the holding period.** Another levy must be served to reach this money. Also, the levy only reaches deposits that have cleared and are available for the taxpayer to withdraw.

**h. IRS Levy on Wages, Salaries and Subcontractor Income.**

IRS levy on wages is continuing and applies to future work yet to be performed by the employee.

IRS levy on subcontractor income applies only to work performed and for which there is a fixed and determinable right.

If your client quits employment without release of levy and then went back to work, technically the levy is still active.

*Citations:*

1. **Internal Revenue Code 6331(e). Continuing levy on salary and wages.** The effect of a levy on salary or wages payable to or received by a taxpayer shall be **continuous from the date such levy is first made until such levy is released under section 6343.**
2. **Internal Revenue Manual 5.11.5.3. Continuous Effect of Levy on Salary and Wages.** Unlike other levies, a levy on a taxpayer's wages and salary has a continuous effect. It attaches future paychecks, until the levy is released. Wages and salary include fees, bonuses, and commissions. **All other levies only attach property and rights to property that exist when the levy is served.**

*Examples from IRM 5.11.5.3:*

1. When other income is levied, the levy only reaches money the taxpayer has a fixed and determinable right to.
2. A levy is served to take an author's royalties. The author has a fixed and determinable right to royalties for books that have already been published. The levy reaches royalties for sales of those books in the future. The levy does not reach royalties for books that are written and published later. A new levy must be served to take those royalties.

**i. IRS Levy on Accounts Receivables.**

If there is a right to the receivable, the levy reaches it.

*Citations:*



1. **Internal Revenue Manual 5.11.6.7. Receivables.** Accounts receivable are assets representing money due to a taxpayer for products and services provided on credit...Consider issuing a summons to the taxpayer's bank for deposited items to obtain information on possible accounts receivable on which to levy...**A notice of levy reaches future payments, only if the taxpayer already has a right to them.**

**j. IRS Levy on Social Security Benefits.**

IRS can levy social security benefits based on retirement, survivorship or disability. IRS does not levy supplemental social security income. IRS can impose a 15% continual levy on social security benefits.

*Citations:*

1. **Internal Revenue Manual 5.11.6.1.1. Social Security.** The Social Security Administration (SSA) makes payments for Retirement, Survivors, and Disability Insurance (RSDI) and Supplemental Security Income (SSI). RSDI is based on social security taxes during a person's working years. **RSDI payments are not based on need, and they can be levied.** SSI payments are for needy people who are elderly, blind, or disabled. **Although IRC Section 6331(h) permits the service to levy on up to 15 percent of SSI payments, the Service will not pursue these levy sources at this time.**
2. **Internal Revenue Code 6331(h). Continuing Levy on Certain Payments.** A levy under this subsection... shall be continuous from the date such levy is first made until such levy is released. Notwithstanding section 6334, **such continuous levy shall attach to up to 15 percent of any specified payment** due to the taxpayer.  
(T)he term "specified payment" means--
  - (A) **any Federal payment other than a payment for which eligibility is based on the income or assets (or both) of a payee,**
  - (B) any payment described in paragraph (4)(unemployment benefits), (7) (workers compensation), (9)(exemption for wages), or (11)(public assistance benefits) of section 6334(a)

**k. Seizures of Personal Residences**

The IRS is prohibited from seizing any personal residence if the balance owes is less than \$5,000. This applies not only to your client's own personal residence but to any real

estate your client is renting to another as that person's residence.

Any seizure of a personal residence requires the IRS to petition a U.S. District Court for an order permitting the seizure and sale. The IRS cannot seize your client's house on its own administrative decision. The IRS will usually seize a personal residence in egregious cases only.

*Citations:*

1. **Internal Revenue Code 6334(a)(12). Residences in small deficiency cases.** If the amount of the levy does not exceed \$ 5,000--
  - (i) any real property used as a residence by the taxpayer; or
  - (ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.
  
2. **Internal Revenue Code 6334(e)(1). Principal residences. Approval required.** A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.
  
3. **Internal Revenue Manual 5.10.2.15, Judicial Approval for Principal Residence Seizures.** The Service must secure judicial approval prior to seizing a principal residence (Internal Revenue Code (IRC) section 6334(e)(1)). This includes any real property used as a principal residence by any of the following individuals:
  - Taxpayer
  - Taxpayer's spouse or former spouse
  - Taxpayer's minor children

Note: For a principal residence seizure, the liability must exceed \$5,000 IRC 6334(a)(13)(A).

4. **Internal Revenue Manual 5.10.2.2, Tangible Personal Property or Real Property (Other than Real Property Which is Rented) Used in the Trade or Business of an Individual Taxpayer.** The prior written approval of the area director must be secured for seizure of these types of assets unless collection of tax is in jeopardy. The revenue officer must document the history that the taxpayer's other assets subject to collection are insufficient to satisfy the liability and expenses of the proceeding (see IRM 5.17.3.1.3.8, Seizure of Business Assets).

**1. Releasing an IRS Levy.**

*Citations:*

1. **Internal Revenue Code 6343(a). Release of Levy and Notice of Release.** (T)he Secretary shall release the levy...if:
  - (A) the liability for which such levy was made is **satisfied or becomes unenforceable by reason of lapse of time,**
  - (B) release of such levy will **facilitate the collection of such liability,**
  - (C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability **by means of installment payments,** unless such agreement provides otherwise,
  - (D) the Secretary has determined that such levy is creating an **economic hardship** due to the financial condition of the taxpayer, or
  - (E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.
  
2. **Internal Revenue Code 6343(e). Release of levy upon agreement that amount is not collectible.** In the case of a levy on the salary or wages payable to or received by the taxpayer, **upon agreement with the taxpayer that the tax is not collectible, the Secretary shall release such levy as soon as practicable.**

*Notes:*

1. To release a levy, the IRS will require a financial statement (either Form 433A or 433B) detailing your client's income, expenses and assets to arrive at a resolution of the account.

Exceptions: Guaranteed installment agreements for liabilities under \$25,000 and bankruptcy will release a levy without financial disclosures.

**m. Liability for Failure to Enforce Levy.**

Failure of an employer or other recipient to honor a levy subjects that person personal liability for the amount not paid over.

*Citations:*

1. **Internal Revenue Code 6332(d). Enforcement of levy. Extent of personal liability.** Any person who fails or refuses to surrender any property or rights to property, subject to levy...**shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered,** but not exceeding the amount of

taxes for the collection of which such levy has been made, together with costs and interest on such sum at the underpayment rate established under section 6621 from the date of such levy...

**n. The Most Common IRS Seizures.**

The most common assets that the IRS will seize are the simplest: Wages, Subcontractor Pay and Bank Accounts.

*Notes:*

1. Why? Easy to reach  
Quantifiable, identifiable and readily available  
Require minimal managerial approval  
Gives quick results and immediate feedback
2. A continuing wage garnishment or loss of large account receivable can be extremely damaging to your client.
3. The loss of wages can cripple your client as much as other more intrusive and difficult seizures. A business having its bank accounts continually seized and receivables garnished will not be able to operate regardless of how much equity it has in its assets.
4. In most cases, an uncooperative taxpayer never have real and tangible equity assets seized, but he also may never see a full paycheck or be able to use a bank account.

**o. The Least Common IRS Seizures.**

The least likely seizures are those that most clients have the most anxiety over: Seizures of houses, household goods, equipment, machinery and automobiles.

**p. IRS Seizures: Real Life.**

To see what the IRS is seizing, go to <http://www.ustreas.gov/auctions/irs>.

Steel Hull Tugboat in Beaufort, North Carolina valued at \$7,100

2001 Mercedes-Benz E430 Sedan, 85,000 miles, Philadelphia, Pennsylvania, value 6,240

Septic Tank Business, Balch Springs, Texas, consisting of 1988 Kenworth Vacuum Truck, Mileage: 45,810 and 1981 GMC Vacuum Truck, Mileage: 177,210, values \$9,000

Designer' woman's handbags, shoes, boots, heels, blouses, skirts, suits and other accessories, Men's 'Designer' suits, neckties, pants, shoes, various jewelry pieces, digital camera, video recorder, plasma TV, Sommerville, NJ value \$3,000

Vacant 2,143 square foot restaurant in Parma (Cleveland), Ohio. Valued at \$109,620 with prior encumbrance of \$4,521 in real estate taxes.





# IRS Collection Enforcement

Fiscal Year	Total Number of:		
	Levies	Liens	Seizures
1992	3,252,682	1,452,634	11,033
1993	2,584,774	959,356	9,626
1994	2,935,059	812,819	10,166
1995	2,721,823	798,677	10,707
1996	3,108,926	750,225	10,449
1997	3,659,417	543,613	10,090
1998	2,503,409	382,755	2,307
1999	504,403	167,867	161
2000	219,778	287,517	74
2001	674,080	426,166	234
2002	1,283,742	482,509	296
2003	1,680,844	544,316	399
2004	2,029,613	534,392	440
2005	2,743,577	522,887	512
2006	3,742,276	629,813	590
2007	3,757,190	683,659	676

2008 Levies: 2,743,577

2008 Liens: 768,168

2008 Seizures: 610

Source: TRAC, Internal IRS collection reports and IRS Data Books

## IV. IRS Collection Appeal Rights.

### a. Final Notice of Intent to Levy and Collection Appeals.

Absent jeopardy situations, the IRS cannot take collection action (levies, seizures) until it issues a Final Notice of Intent to Levy to your client. This puts your client on notice of the IRS's intent to take property, and gives your client important rights to dispute the action by means of filing a Collection Due Process Appeal.

#### *Citations:*

1. **Internal Revenue Code 6331(d). Requirement of Notice Before Levy. Levy may be made...** upon the salary or wages or other property of any person with respect to any unpaid tax **only after the Secretary has notified such person in writing of his intention to make such levy.**  
  
**30-day requirement.** The notice required...shall be--
  - (A) given in person,
  - (B) left at the dwelling or usual place of business of such person, or
  - (C) sent by certified or registered mail to such person's last known address,no less than 30 days before the day of the levy.
2. **Internal Revenue Code 6330(a). Notice and Opportunity for Hearing Before Levy. No levy may be made** on any property or right to property of any person **unless the Secretary has notified such person in writing of their right to a hearing** under this section before such levy is made. Such notice shall be required only once for the taxable period to which the unpaid tax... relates.
3. **Internal Revenue Code 6330(b)(1) and (b)(3). Right to Fair Hearing. Impartial officer.** If the person requests a hearing in writing...and states the grounds for the requested hearing, such hearing shall be held by the Internal Revenue Service Office of Appeals. **The hearing under this subsection shall be conducted by an officer or employee who has had no prior involvement with respect to the unpaid tax.**
4. **Internal Revenue Code 6330(b)(2). One Hearing Per Period.** A person



shall be entitled to **only one hearing** under this section with respect to the taxable period to which the unpaid tax...relates.

5. **Internal Revenue Code 6330(c)(2)(B). Underlying Liability.** The person may also raise at the hearing challenges to the existence or amount of the underlying tax liability for any tax period **if the person did not receive any statutory notice of deficiency** for such tax liability or did not otherwise have an opportunity to dispute such tax liability.
6. **Internal Revenue Code 6330(c)(3). Basis for the Determination.** The determination by an appeals officer under this subsection shall take into consideration...**whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.**
7. **Internal Revenue Manual 5.17.3.3.2. The Service need not send the taxpayer a CDP notice prior to levy in three circumstances: (1) if the Service has levied on a state tax refund; (2) if the Service has made a jeopardy determination; and (3) if the liability is for an employment tax period beginning within 2 years after an employment tax period included in a previous request for a CDP hearing.** However, the Service must provide the taxpayer with a notice containing substantially the same information as is contained in the pre-levy notice within a reasonable time after the levy (i.e., post-levy CDP notice). IRC § 6330(f); Treas. Reg. § 301.6330-1(a)(2).
8. **Internal Revenue Manual 5.1.9.3.5(1), Levy Action during the Period of the CDP or Equivalent Hearing.** If the taxpayer files a timely request for a CDP hearing during the IRC 6330 notice period, **levy actions on the periods that are the subject of the CDP notice, except in jeopardy situations or levies on state income tax refunds, must be suspended during the appeal period and while any court proceedings are pending.**

*Notes:*

1. Use Form 12153, Collection Due Process Hearings, to file the appeal request for both timely CDP hearings and equivalent hearings. <http://www.irs.gov/pub/irs-pdf/f12153.pdf>.
2. As part of the stay on collection, ACS or a Revenue Officer will generally take the case off their desk and send it to appeals. This takes the heat off and provides time for resolution without the continual threat of adverse collection

action.

3. The statute of limitations on collection is suspended while the appeal is pending.
4. Common collection alternatives for appeals to consider include offer in compromise, installment agreement, uncollectible status, innocent spouse and expiration of the statute of limitation on collection.
5. The IRS appeals function has been transformed into a collection resolution office. In 2006, of the 97,138 cases received by appeals, 32,517 were collection due process cases. Examination/audit work, the traditional place for appeals, had 32,649 cases.

**b. What to Expect in Appeals.**

*Notes:*

1. The administrative appeal portion of a collection due process appeal generally can take anywhere from six to twelve months. The average collection appeal took 241 days in 2004, down from 274 days in 2002 and 253 days in 2003. This is valuable time to the collection target; it is time ticking to the IRS (although only 1% of all final notices are appealed).
2. Once the Appeals Officer has the case file and is ready to work the case from inventory, a notice will be sent out to the target setting a hearing date and time. The notice will set a day and time for the hearing.
3. The hearing is often conducted by phone, but an in person conference is permitted if necessary.
4. Many appeals officers are former Revenue Officers with a background in collection enforcement.
5. The IRS will require substantiating financial documentation for the resolution sought (either a Form 433A or 433B collection financial statement). Supporting documentation must also be submitted of the information on the financial statement (bank statements, car titles, paystubs, deeds, mortgages, proof of living expenses) to verify the proposed collection alternative.

**c. Equivalent Hearing (Late filed collection due process appeals).**

The IRS will process late-filed collection appeals if they are filed within a year after issuance of the Final Notice of Intent to Levy.

*Citations:*

1. **Internal Revenue Manual 5.1.9.3.2.3(1), Equivalent Hearing and Timeliness of Equivalent Hearing Requests.** If the request for the CDP hearing is made after expiration of the...IRC 6330 notice period, the taxpayer may request an administrative hearing with Appeals, which is referred to as an "**equivalent hearing.**"  
  
**The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing.** Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter and the taxpayer is not entitled to judicial review.
2. **Internal Revenue Manual 5.1.9.3.2.3(1), Equivalent Hearing and Timeliness of Equivalent Hearing Requests.** The taxpayer must submit a written request for an equivalent hearing **within the one-year period commencing the day after the date of the CDP Notice is issued** under IRC 6330 (CDP levy notice).
3. **Internal Revenue Manual 5.1.9.3.2.3(8), Equivalent Hearing and Timeliness of Equivalent Hearing Requests** Following an equivalent hearing, the appeals officer sends the taxpayer a letter explaining the results of the hearing. **In an equivalent hearing, the decision by Appeals is final. The taxpayer cannot appeal the decision to Tax Court.**
4. **Internal Revenue Manual 5.1.9.3.2.3(8), Equivalent Hearing and Timeliness of Equivalent Hearing Requests.** **The statute of limitations on collection is not suspended during the equivalent hearing.**
5. **Internal Revenue Manual 5.1.9.3.5(8), Levy Action during the Period of the CDP or Equivalent Hearing.** Levy action during an equivalent hearing is not required to be suspended. However, as a general rule, even when not required by statute, **levy action is suspended pending the appeals determination.**

*Notes:*

1. Consider how close the statute of limitations is to expiring in filing timely or late, and the need to preserve Tax Court rights. You can file late, get the benefits of an appeals hearing, stop collection, and still gain time on the limitation period.

2. Any period that is not part of the timely appeal or equivalent hearing may be retained by collection for enforcement action. Revenue Officers are proceeding with collection on these liabilities while the CDP is pending.

**d. Concluding the Collection Hearing.**

After the Appeals hearing is concluded, your client will receive a Notice of Determination describing the findings of the appeals officer. If you disagree with the findings in the Notice of Determination, and the appeal was timely filed, a petition can be filed to the U.S. Tax Court.

*Citations:*

1. **Internal Revenue Manual 5.1.9.3.10(2), Appeals Determination. For a timely filed due process hearing, the taxpayer will receive a Notice of Determination letter that explains the taxpayer's right to petition Tax Court within 30 days of the date of the letter.**
2. **Internal Revenue Code 6330(d) Proceeding after hearing. (1) Judicial review of determination. The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court** (and the Tax Court shall have jurisdiction with respect to such matter).
3. **Internal Revenue Manual 5.1.9.3.9.1, CDP and Offer in Compromise Cases.** During a CDP or an equivalent hearing assigned to Appeals, an offer in compromise (OIC) may be submitted by the taxpayer as a collection alternative resolution. See IRM Section 8.13.2.10 for procedures on offers submitted during CDP or EH hearing...**Appeals will generally work the offer investigation internally** using electronic research sources and taxpayer documentation, particularly when the offer is not complex or does not require any field verification. If complex financial analysis issues surface, either regarding particular asset(s) or the offer as a whole, Appeals may send an Appeals Referral Investigation (ARI) to Collection for assistance. Appeals will retain jurisdiction of the offer in these instances.

*Notes:*

1. If no Tax Court petition is filed and resolution cannot be obtained with appeals, the case will go back into the IRS collection queue consistent with the recommendations of the appeals officer for collections enforcement.

**e. Taking the IRS to Court in a Collection Case.**

The purpose of instituting Tax Court or District Court tax collection litigation is to have an impartial third-party review the proposed IRS enforcement action. Up to that point, your client has had the IRS reviewing the collection decisions of the IRS.

The IRS remains prohibited from proceeding against your client while the case is in court. The litigation portion of a collection appeal generally lasts at least one year.

*Notes:*

1. Your client should not place much hope on having the Tax Court overturn the IRS's administrative collection decision. Taxpayers prevail in approximately 1-3% of all collection cases that make it to Tax Court. You must show that the proposed IRS collection action is not an efficient collection of taxes and that it is more intrusive than necessary. **The standard of review is an abuse of discretion by the IRS in their collection enforcement decision.**

**f. Additional Collection Appeal Rights.**

In addition to collection due process appeals and equivalent hearings, there are other collection appeal rights for denials of requested installment agreements, terminated installment agreements, and under the IRS collection appeals program:

*Citations:*

1. **Installment Agreements --Internal Revenue Manual 5.1.9.4(3), Collection Appeals Program.** The time frame for filing a CAP appeal for an installment agreement is as follows:
  - A. For rejected installment agreements — The taxpayer has **30 days to request an appeal after the proposed installment agreement is rejected. Levy is prohibited during this time** and is systemically stayed 15 additional days to allow for mailing and receipt of the request. **If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed.**
  - B. For defaulted/proposed termination of an installment agreement — The taxpayer has **30 days to request an appeal after termination of an installment agreement is proposed. Levy is prohibited during this time** and is systemically stayed 15 additional days to allow for mailing and receipt of the request. **If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed.**

C. For terminated installment agreements — The taxpayer has **30 days to request an appeal after an installment agreement is terminated.** Levy is prohibited during this time and is systemically stayed 15 additional days to allow for mailing and receipt of the request. **If the taxpayer timely appeals, levy continues to be prohibited until the appeal is closed.**

See also IRC 7122(d) for statutory mandatory appeals on installment agreements.

2. **Lien/Levy Collection Action (No CDP or EH) -- Internal Revenue Manual 5.1.9.4.1, Request for a CAP Appeal.**

A. **The taxpayer must first discuss the case with the Collection manager.**

B. If agreement is not reached at the manager conference, advise the taxpayer that he or she can have the issue addressed by the Office of Appeals by filing a request in writing. **Advise the taxpayer to use Form 9423, Collection Appeal Request, and explain that the completed request needs to be submitted within two business days from the manager conference or collection action may resume,** except for appeals related to installment agreements. Due to the short time frame taxpayers may want to submit the Form 9423 at the conference or via fax. Collection must send the case to Appeals within two business days of receipt of the taxpayer's Form 9423 request. Local Appeals and field Collection functions have worked out their own procedures for prompt transmittal of cases to the local Appeals Office.

C. While the stay of collection is no longer required two business days after the conference, **taxpayers are still entitled to a CAP appeal if their Form 9423 (or other written request) is received in a reasonable time after the manager conference, i.e., ten business days.**

3. **Appeals Handling of Lien/Levy Collection Appeals (No CDP or EH) Internal Revenue Manual 5.1.9.4.2, CAP Process.**

A. **The Appeals organization tries to resolve CAP cases within 5 business days** unless there are case complexities that require more time for quality case consideration. **Appeals will attempt to hold a conference with the taxpayer within 2 days of receipt** of the case. However, if the taxpayer requests a conference delay, and it is warranted, then a reasonable delay will be allowed. Usually, such a delay should not exceed 5 business days. If the taxpayer

does not elect a conference within the time limits given, Appeals will return the case to Collection as a premature referral.

- B. The short time frames have been set to give taxpayers an almost immediate decision on liens, levies, seizures, and rejection or termination of installment agreements. It also helps to ensure that taxpayers do not appeal solely to delay collection.

- 4. **Internal Revenue Manual 5.1.9.1 Overview of Collection Appeal Rights.** Taxpayers have additional appeal rights, including those related to assessment of the trust fund recovery penalty (IRM 5.7.6.1.3, Appealing the Proposed Assessment), offers in compromise (IRM 5.8.7.6.5, Rejection Appealed), abatement of penalty assessments due to reasonable cause (IRM 20.1, Penalty Handbook), and jeopardy levies (IRM 5.11.3.6, Appeals the Jeopardy Levy).

*Notes:*

- 1. Collection appeals on terminated installment agreements usually come from an Automated Collection Service notices; denials can come from ACS or a Revenue Officer.
- 2. Collection appeals on terminated and denied installment agreements are not subject to the CAP lien levy timeframes and will take much longer for the IRS to process (all with stay on collection action).
- 3. Form 9423, Collection Appeal Request: <http://www.irs.gov/pub/irs-pdf/f9423.pdf>
- 4. Which one to file: Use a Collection Due Process Appeal first, Equivalent Hearing if CDP not timely, and CAP only if other rights exhausted. CAP for when in no man's land.
- 5. Notice of Defaulted Installment Agreement (IRS Notice CP 523)

**Notice of Intent to Levy!!**

You Defaulted On Your Installment Agreement.

This is a formal notice of our intent to terminate your installment agreement 30 days from the date of this notice. You defaulted on your agreement because you didn't make your payments as agreed. The agreement states that we may terminate your agreement and collect the entire amount of your tax liability if you don't meet all the conditions. This is your notice, as required by Internal Revenue Code Section 6331(d), of our intent to levy

(take) any state tax refunds that you may be entitled. We can also file a Notice of Federal Tax Lien, if we haven't already done so. In addition we will begin to search for other assets we may levy. To prevent collection action, you must bring your account up to date by paying your past due amount, as well as any current payments due. We will charge a reinstatement fee that we will take from your first payment. If don't agree with this decision, you have a right to request Appeals consideration by calling the number listed below within 30 days from the date the agreement is terminated.

**g. Appeal to Taxpayer Advocate Service.**

When the system breaks down, appeal can be made to the Taxpayer Advocate Service as an intermediary.

*Citations.*

**1. Internal Revenue Service 13.1.7.2, TAS Case Criteria.**

Type	TAS Criteria	Description
Economic Burden	1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Economic Burden	2	The taxpayer is facing an immediate threat of adverse action.
Economic Burden	3	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
Economic Burden	4	The taxpayer will suffer irreparable injury or long term adverse impact if relief is not granted.
Systemic Burden	5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Systemic Burden	6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Systemic Burden	7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	8	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair taxpayers' rights.
Public Policy	9	The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers.

**2. Internal Revenue Manual Part 13, Exhibit 13.1.7-1, General Response Time Guidelines.**

Response time is generally slow, with 5-7 timeframe for case intake alone. This is not the place for quick resolution of a time sensitive matter.

**3. Form 911, Request for Taxpayer Assistance Order.**



<http://www.irs.gov/pub/irs-pdf/f911.pdf>

*Notes:*

1. Taxpayer Advocate generally will not provide a result you can't get direct. Will be frustrated if you go to the TAS to get an RO or ACS to do something you could not do directly. TAS is an intermediary.
2. Contact the Taxpayer Advocate at 1-877-777-4778, or go to IRS website to search for a local office near you. <http://www.irs.gov/advocate>
3. A telephone call, Form 911 or a letter explaining the problem and request for relief can be used to open a TAX case file.

## V. **Solutions to IRS Collection Problems.**

### a. **Installment agreements.**

The IRS will grant reasonable installment agreements to make monthly payments to repay the liability. The amount of the installment is based on the monthly available cash flow from an analysis of the taxpayer's financial statements.

*Citations:*

2. **Internal Revenue Manual 5.14.5.2, Streamlined Installment Agreements.**  
Streamlined installment agreements may be approved for taxpayers under the following circumstances:
  - A. **The aggregate unpaid balance of assessments is \$25,000 or less.**  
The unpaid balance of assessments includes tax, assessed penalty and interest, and all other assessments on the tax modules. It does not include accrued penalty and interest.
  - B. **The aggregate unpaid balance of assessments will be fully paid in 60 months,** or the agreement will be fully paid prior to the CSED, whichever comes first.
2. **Guaranteed Installment Agreements, Internal Revenue Manual 5.14.5.3.**  
Internal Revenue Code (IRC) section 6159(c) requires the Service to accept proposals of installment agreements under certain circumstances:
  - A. **owe income tax only of \$10,000 or less;**

- B. have filed and paid all tax returns during the five years prior to the year of the liability;
- C. cannot pay the tax immediately (see (2) below);
- D. agree to fully pay the tax liability within 3 years;
- E. file and pay all tax returns during agreements; and,
- F. have not had installment agreements during the prior five year period.

*Notes:*

1. No managerial approval required.
2. No financial statements or disclosures required.
3. Taxpayers qualifying for a guaranteed installment agreement would generally also qualify for a streamlined installment agreement. IRS will use streamlined installment agreement procedures first.
4. Lien filing is discretionary. Before voluntarily calling the IRS to set-up a streamlined agreement, consider if a lien has already been filed, and the collection risk of no contact to avoid the lien.
5. Most installment agreements make it very difficult to repay the liability as interest continues to accrue on the liability. Paying \$100 per month on a \$20,000 will barely pay the interest portion.

**b. Currently Not Collectible.**

An account will be determined by the IRS to be uncollectible if financial statements can prove that the taxpayer has no equity in assets and cannot afford to make any installment payments under IRS collection standard guidelines.

*Citations:*

1. **Internal Revenue Manual 5.16.1, Currently Not Collectible, Overview.** Policy Statement P-5-15 (formerly P-5-71) provides the authority for reporting accounts currently not collectible. See IRM 5.1.2.1. Accounts can be removed from active inventory after taking the necessary steps in the collection process.

**Accounts may be reported currently not collectible (CNC) for a variety**

**of reasons.**

- inability to locate the taxpayer or assets
- death of an individual with no collection potential from the decedent estate or no collection potential for estate taxes
- accounts below tolerance
- inability to contact a taxpayer although the address is known and there is no means to enforce collection
- collection of the liability would create an undue hardship for taxpayers by leaving them unable to meet necessary living expenses

*Notes:*

1. Interest will continue to accrue and the liability will continue to grow as it sits.
2. Uncollectible is often useful when combined with seeking an expiration of the 10 year limitation on collection.
3. The IRS will not take any action to collect the debt as long as the financial status does not improve and the taxpayer remains current on his or her taxes.

**c. Statute of Limitations on Collections (CSED).**

The IRS has 10 years to collect a tax liability, beginning with the date the tax was assessed. After 10 years, the IRS cannot legally collect the tax and, in most cases, voluntarily makes an entry into its account database reflecting the account balance has been cleared to zero from expiration of the statute of limitations on collection.

*Citations:*

1. **Internal Revenue Code 6502, Collection after assessment.**  
Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, **such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun within 10 years after the assessment of the tax.**

See also Internal Revenue Manual 5.1.19, Collection Statute Expiration

*Notes:*

1. This option is appropriate for those in an uncollectible status or taxpayers in year 7, 8, or 9 of the 10 year period (close to the end).
2. Call the IRS and get transcripts to analyze to determine CSED.
3. The IRS Practitioner Priority Service (866-860-4259) and they will give you their version of the CSED (Collection Statute Expiration Date). It is in the IRS computer system.
4. Substitute returns will count as returns as running on the CSED.
5. Any action that stops IRS collection activity (collection appeals, offer in compromise, innocent spouse claim, bankruptcy) extends the 10 year period for the timeframe that the IRS is barred from taking action.
6. Be careful in taking any action that extends the collection timeframe without a thorough analysis of the benefits of the action and how much time is left to collect.
7. Federal tax liens will automatically self-release and be invalid at the expiration of the CSED.

**d. Offer in Compromise.**

Effective July 16, 2006, the offer in compromise program underwent a substantial overhaul intended to lower the volume of compromises being submitted to the IRS. The “Anti-Pennies on the Dollar Act”.

There is a lot of hype over offers in compromise. The IRS does not share in the hype. Be very careful before submitting an offer – only about 20% are accepted.

The best offer candidates are a client who is broke on income and assets. Make sure your client can pay any anticipated value of the offer. It is one thing to qualify for an offer for less than what is owed; it is another thing to be able to afford that number.

Between 2001 and 2007, offer submissions declined by 63% and offer acceptances declined by 70%.

2007 offers submitted: 46,270	2001 offers submitted: 125,390
2007 offers accepted: 11,618	2001 offers accepted: 38,643

Notes:

1 Lump Sum Offers.

**Any lump sum offer in compromise now requires payment with the submission of the offer of an amount equal to 20% of the value of the compromise.** Lump sum offers make payment of an offer within 90 days after acceptance.

The IRS has given the taxpayer some limited flexibility on lump sum offers in permitting the offer to be processed with only part of the 20% paid with its submission. The IRS will then write to the taxpayer requesting the remainder. If it is not paid upon request, the offer will be returned.

A lump sum offer is defined, for purposes of the upfront payment, as any offer in which there are five or fewer payments to be made.

2. Deferred Payment Offers.

**Any offer with more than five installment payments requires the submission of the first installment payment with the compromise. Every payment due under the deferred offer must be made while the compromise is pending.**

If any deferred payment is not remitted, the IRS will contact the taxpayer and provide one opportunity to remedy the default prior to returning the offer.

The new payment conditions are not applicable to offers as to doubt to liability.

**ALL PAYMENTS MADE WHILE THE OFFER IS PENDING ARE NONREFUNDABLE AND WILL BE LOST IF THE OFFER IS NOT ACCEPTED.**

3. A condition of an offer as to collectibility is that your client will lose refunds for any year offer is pending. This is a back end cost to the offer. If there are refunds, adjust your client's withholding.

4. Submission of the offer stops any IRS collection while it is pending. However, the statute of limitations on collection is also extended during the time frame the offer is pending, including appeals.

**Consider this:** Most offers take 6-12 months for initial investigation. If the initial investigation results in a recommendation to reject or a number your

client disagrees with, an appeal can be filed. The appeal can take 6-12 months. If an agreement is ultimately reached, then payment of the offer can be made over as much as 24 months. That can be as much as 48 months for an offer to go through in certain circumstances.

Make sure the offer pushes your client forward, not backward.

**e. Bankruptcy.**

Eliminating taxes in bankruptcy is a two part analysis: (1) What type of tax is involved and (2) When the taxes were filed

*Notes:*

1. The following taxes can be eliminated in a bankruptcy:

- Income taxes
- Interest
- Penalties
- Non trust fund portion of employment tax liabilities

The trust fund portion of employment taxes cannot be eliminated.

2. Taxes will only be eliminated in a bankruptcy if they are aged as follows:

The Three Year Rule. The original tax return must have been due to be filed (including extensions) three years before the bankruptcy was filed.

The Two Year Rule. The tax return must actually have been filed at least two years before the bankruptcy was commenced.

Original Return Rule. A return must be filed to qualify for a Chapter 7 discharge. Additionally, substitute returns prepared by the IRS do not qualify as returns for bankruptcy purposes.

Example of Timing Rules: Your client has an unpaid income tax liability from 2001. The return was filed timely on April 15, 2002. Client owes for 2002 as well, filing that return on June 1, 2004. Your client also has an unpaid tax liability from 2005, the return being filed on October 15, 2006 with extensions.

<u>Year</u>	<u>Date Due</u>	<u>3 Year Rule</u>	<u>Date Filed</u>	<u>2 Year Rule</u>	<u>Discharge Date</u>
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2001	04/15/02	04/15/05	04/15/02	04/15/04	04/15/05
2002	04/15/03	04/15/06	06/01/04	06/01/06	06/01/06
2005	10/15/06	10/15/09	10/15/06	10/15/08	10/15/09

Other timing rules include the mandate that the taxes must have been assessed at least 240 days prior to the filing of the bankruptcy petition (usually audit situations - if the 2001 tax liability was as the result of an audited and a tax was assessed as a result of the audit on August 27, 2006, this tax would not be dischargeable until April 26, 2007, 240 days after assessment.

Care should also be taken in submitting offers in compromise with a bankruptcy in mind. Any offer in compromise submitted 240 days after assessment and before a bankruptcy petition is filed extends the 240 day period by the time frame the offer is pending plus 30 days.

**f. Abatement of Interest.**

Interest will be abated by the IRS only for their errors in performing a ministerial or managerial act.

*Citations:*

1. **Internal Revenue Code 6404(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service.** in the case of any assessment of interest on (a) any deficiency attributable in whole or in part to **any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act,** or (b) any payment of any tax described in section 6212(a) to the extent that any **unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act,** the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, **an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved,** and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

