

2023 NATIONAL INCOME TAX WORKBOOK

CHAPTER 8: IRS ISSUES



IRS ISSUES

P. 249

1. Information Return Intake System
2. Mailing and Received Date
3. Statute of Limitations on Assessments
4. When the IRS Pays Interest
5. Correspondence Audits and Secure Messaging
6. Offer in Compromise
7. Tax Scams
8. Written Information Security Plan

ISSUE 1: INFORMATION RETURN INTAKE SYSTEM (IRIS) P. 251

E-Filing Requirements (T.D. 9972)

- Years ending on or after 12/31/2023 (i.e., documents filed on or after 1/1/2024)
- E-filing required if filing 10 or more information returns
 - 10 or more determined by aggregating all forms listed on page 251
- E-file any corrected form if original e-filed
- Hardship waiver program still exists

ISSUE 1: INFORMATION RETURN INTAKE SYSTEM (IRIS) P. 251-252

IRIS Features:

- Key in information or upload a .csv file, no special software needed
- No Form 1096 transmittal needed
 - Create, edit, view, and file 1099 forms
 - Download and print recipient copies

ISSUE 1: IRIS - FEATURES

PP. 251-252

- Maintain a record of completed, filed, and distributed Forms 1099
- Perform basic validation of data before submitting
- File up to 100 forms per submission
- Participate in the Combined Federal/State Filing Program
- Request automatic extensions
- File certain corrected information returns

Note: Not initially intended to replace FIRE

ISSUE 1: ACCESSING IRIS

PP. 252-253

1. User validates identity (IRS currently using ID.me)
2. User applies for an IRS Transmitter Code (TCC) ≠ FIRE TCC
 - User = payer business, transmitter, software developer
 - Authorized users must have an account and an E-Services PIN
 - User creates a 5-digit PIN at start of application for a TCC
 - TCC application requirements listed on P. 252
 - Must sign terms of agreement
 - Application processing can take up to 45 days

ISSUE 1: IRIS DASHBOARD

PP. 253-254

- **Notifications**
- **Start New Form**
- **Upload SCV with Form Data**
- **View Unsubmitted Forms**
- **View Submitted Forms**
- **Request Automatic Extension** (N/A for Form 1099-NEC)
- **Help**
- **Issue Management**

ISSUE 2: MAILING AND RECEIVED DATE

PP. 255-256

- **General Rule: Postmark deemed date of delivery**
 - Timely mailed = Timely filed
 - N/A to court filings other than Tax Court
 - N/A if required delivery is other than mailing

ISSUE 2: MAILING AND RECEIVED DATE

PP. 255-256

- **Due date or end of period ends on Saturday, Sunday, legal holiday**
 - Next succeeding date is treated a due date or last day of period
 - Legal holiday
 - Legal holiday in D.C.
 - Legal holiday in state where action to be performed
 - Next succeeding date applies to military or disaster relief

ISSUE 2: MAILING REQUIREMENTS – GENERAL RULE PP. 256-257

Applies if:

1. Postmark date falls w/in prescribed period or on prescribed date
AND
2. Deposited in US mail timely, properly addressed with postage prepaid
 - Sent to wrong person/place → rec'd when gets to right person/place
 - Per §7502, N/A if mailed outside the US, territories, possessions, Army P.O.
 - Postmark by service other than USPS, must be \leq last day prescribed & must be received no later than if sent through USPS*

ISSUE 2: MAILING REQUIREMENTS – GENERAL RULE PP. 256-257

*May be received when postmarked if sender establishes:

1. Deposited in US mail before last collection of mail and timely deposit
2. Delay in receiving due to delay by US mail
3. Cause of the delay

ISSUE 2: MAILING REQUIREMENTS – GENERAL RULE P. 257

Privately Metered Mail: Timely filed if meter date within time prescribed and document received within ordinary USPS time

Foreign Postmark: Timely filed if postmarked within time prescribed or given to designated delivery service before midnight on last date prescribed

Registered or Certified Mailing:

- Registration considered prima facie evidence that delivery made
 - Date of registration = postmark date
- For certified mail date of postmark on receipt = postmark of document

ISSUE 2: MAILING REQUIREMENTS – GENERAL RULE

P. 257-258

Privately Delivery Service

- General Rule Applies
- IRS designates (currently Notice 2016-30) if
 - Service available to general public
 - Service is at least as timely and reliable as the USPS
 - Must either electronically record the date received from customer or mark date on cover of document
 - Meets other criteria as the IRS requires
- Currently specific services of DHL Express, FedEx and UPS

ISSUE 2: ELECTRONICALLY FILED DOCUMENTS

P. 258

Deemed filed on date of electronic postmark

- Initially based on transmitter's time zone, but TP's time zone determines timeliness
- Washington D.C. time zone for Tax Court filings

ISSUE 2: ELECTRONICALLY FILED DOCUMENTS

PP. 258

Rejected: 10-day (1120, 1065) or 5-day (1040, 1041) period for retransmission

- Retransmission period never extended
- Timely retransmitted returns deemed received on first date of rejection
- Paper after rejection timely if postmarked by due date or w/in 5 or 10 days
- KEEP COPY of REJECTED ADKNOWLEDGMENT

ISSUE 2: MAILING AND RECEIVED DATE

PP. 258

Tax Deposits

- Mailed payment deemed received on the date the deposit was made
(N/A to deposit of $\geq \$20,000$ when deposits required $>$ once per month)
- Must show mailing date falls on/before the 2nd day before prescribed date

ISSUE 2: MAILING AND RECEIVED DATE

PP. 258-259

Actual Delivery

- Timely mailing rule N/A unless document/payment delivered where required
 - Document by registered/certified mail w/proper address = delivered
 - Document by private delivery service = delivered
- Certificate of mailing may be proof of mailing in only 8th and 9th Circuits (even when document not received)

ISSUE 2: MAILING AND RECEIVED DATE

P. 259

Filing Before Due Date

- Return filed before original due date considered filed on the due date
- Return filed before an extended due date considered filed on received date
- Quarterly 941s treated as filed April 15 of the following calendar year

ISSUE 3: STATUTE OF LIMITATIONS ON ASSESSMENTS PP. 260-261

General Assessment Period:

- 3 years from the original due date or filing date, whichever is later
- See Practitioner Note re: COVID-19 due dates
- Return is considered filed only if it is a valid return

ISSUE 3: STATUTE OF LIMITATIONS ON ASSESSMENTS

PP. 261

Valid Return (Beard test)

1. Sufficient data on return to calculate tax
2. Document must claim to be a return (name, address, TIN)
3. Honest & reasonable attempt to satisfy tax law requirements
4. Executed under penalties of perjury (no alterations)

An unsigned return is not a valid tax return – no statute starts running

ISSUE 3: STATUTE OF LIMITATIONS (SOL)

P. 261

Substitute for return

- Does not start a statute running
- Statute starts only when TP files a valid return

Superseding return

- Return filed after original return but before the original or extended due date
- If filed before original due date, SOL runs from due date
- If filed after original due date but before extended due date, the original return filed controls statute (for assessment and for refund)
- See *2022 National Income Tax Workbook*

ISSUE 3: STATUTE OF LIMITATIONS (SOL)

P. 262

Joint Return after Separate Return

- SOL runs 3 years from deemed filing date but at least 1 year from joint filing
- Joint return deemed filing date based on filing of separate returns
 - *Both filed*: Filing date of last separate return
 - *One filed, other not required to file*: Filing date of separate return
 - *One filed, both required to file*: Filing date of joint return

ISSUE 3: EXCEPTIONS TO 3-YEAR RULE

P. 262

False or Fraudulent Return

- Tax may be assessed at any time
- Filing nonfraudulent return later will not start a statute running
- Exception possible if someone else committed the fraud (such as a preparer)
- If IRS does not prove, statute runs from time return was filed

ISSUE 3: EXCEPTIONS TO 3-YEAR RULE

PP. 262-263

No Return Filed

- No statute running until TP files the return

Extension by Agreement

- Specific date (F872) or open-ended (F872-A), restricted issues
- Existing SOL must still be open at time extension executed

ISSUE 3: EXCEPTIONS TO 3-YEAR RULE

PP. 263-264

Certain Amended Returns

- Amended return with additional tax filed within 60 days of SOL expiration
- Assessment for additional tax extended for 60 days from IRS receipt

Substantial Omission of Items

- 6-year statute applies
- Income Tax: Omission of > 25% of gross income or omission of > \$5,000 income from a foreign financial asset required to be reported
- Estate Tax: Omission from gross estate of > 25% of reported gross estate
- Gift Tax: Omission of includable gifts of > 25% of reported gifts
- Excise Tax: Omission of includable tax > 25% of reported tax

ISSUE 3: EXCEPTIONS TO 3-YEAR RULE

P. 264

Gross Income Omission

- For trade or business, gross income = total received or accrued from sale of goods and services with no reduction for CGS or services
- Understatement of gross income due to overstatement of cost or other basis is an omission of gross income
- Gross income of a partner includes PN's distributive share of PS gross income
- Gross income of S corp SH includes SH's pro rata share of S corp gross income

Example 8.4

- Omission of \$30,000 gain on sale of land = 25% omission

ISSUE 3: NOL AND CAPITAL LOSS C/BS

P. 264

- Statute of credit/loss year control assessment of related deficiencies
- IRS may make other adjustments in carryback year to offset

Example 8.5

- Loss carried back to otherwise closed year
- IRS can make general adjustment in the carryback year up to amount of loss carried back

NOTE: An NOL carried to a subsequent year is subject to audit when any of the carryover years are audited regardless of the loss year statute

ISSUE 3: INVOLUNTARY CONVERSION

P. 265

- Property converted due to theft, seizure, requisition, or condemnation
- TP may elect to recognize gain only to extent property not replaced
 - General Rule: Replace within 2 years of close of conversion gain year
 - Business/Investment Property: Replace w/in 3 years of close of gain year
- Assessment for any taxable gain runs 3 years from date IRS is notified of TP's replacement, TP's intention not to replace, or TP's failure to replace

ISSUE 3: INVOLUNTARY CONVERSION

P. 265

Example 8.6

- Investment property taken for expansion of airport in 2018 – received \$260,000
- Basis in property of \$52,000 – replacement period ran to 12/31/2021
- Replaced in 2022 - discovered during audit of 2022 return – IRS has 3 years to make assessment for gain on 2018 return

ISSUE 3: MITIGATION OF STATUTE

P. 265

- Mitigation allows a closed year to be reopened (very limited circumstances)
- Year reopened must be affected by a determination in an open year
- Statute for assessment on closed year runs 1 year from determination in open year
- Requires a qualified determination – closing agreement, Tax Court decision, or other final decision by a court

ISSUE 3: SUSPENSION OF STATUTE

P. 266

- Under Section 6503 certain events suspend the running of the SOL
- **Statutory Notice of Deficiency**
 - Suspended for 90 days beginning on date notice mailed
 - If TP petitions the Tax Court suspension runs until 60 days after decision is final
- **Third-Party Summons Subject to Notice Requirements or John Doe Summons**
 - Suspended starting 6 months from service of the summons and ending on date of final resolution of the summons
 - Extended further if there are judicial proceedings regarding the summons

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 267

- Interest is allowed and paid on any overpayment of tax at overpayment rate
- Any interest paid by IRS is taxable and Form 1099-INT issued if required
- See list of overpayments on page 267

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 267

Availability Date

- Overpayment available for offset/refund on availability date
- Availability date determined by make up the overpayment
- For refunds, payments & credits applied on a LIFO basis (minimizes interest)
- Late filed return → interest may be computed from other than availability date

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 267

• **Prepayment Credits**

- Made before due date of return → deemed paid as of due date
- Estimated tax, w/h'g, credit elect from prior year, payments < due date
- Interest allowed from the later of return due date (w/o extension), delinquent return received date or the date the return became processible
- Interest can accrue no earlier than original due date of return

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 268

Payments On/After Due Date

- Available as of date payment is received
- Return timely filed: Interest from date payment made
- Return late filed: Interest allowed from later of
 - Received date of payment,
 - Received date of delinquent return or
 - The return processible date

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 268

Offsets

- Overpayment applied to an outstanding liability
- Deemed a payment at the time the credit is allowed
- Liability due after overpayment date → interest from overpayment availability date to the due date of liability

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 268

Overpayment Applied to Other TP's Return

- Interest from overpayment availability date to actual date of credit transfer
- If payments from > 1 year involved, IRS applies on LIFO basis

• **PN: Re: Credit Elect**

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 269

Refunds

- Refunds after all outstanding balances satisfied
- Interest from overpayment availability date to refund schedule date

Original Return

- *Filed on/before due date*: No interest if paid within 45 days after due date
- *Filed after due date or before extended date*: No interest if paid within 45 days of the return filing date

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 269

- Refunds of prepayments & refund after 45 days → interest from later of:
 - Unextended due date
 - Delinquent return received date
 - The date the return becomes processible (See PN and Example 8.8)

ISSUE 3: WHEN THE IRS PAYS INTEREST

PP. 269-270

Amended Returns

- After timely filed original return:
 - If w/in 45 days of filing → Due date to date amended filed (less back-off)
 - If not w/in 45 days of filing → Due date to date refunds made (less back-off)
- After late-filed original return
 - Same 45-day rules but interest begins on date original return was filed

ISSUE 4: WHEN THE IRS PAYS INTEREST

PP. 269-270

Example 8.9

- Timely original return - Amended filed 8/14/22
- Issued 9/21/22: w/in 45, interest from 4/15/21 to 8/6/22 (6 - day backoff)
- If Issued > 45 days: interest from 4/15/21 to refund date (less up to 30 days)

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 270

IRS Initiated Adjustments

- Overpayment interest allowed less 45 days

Example 8.10

- Overpayment from 2019 audit applied to 2021 liability
- Interest from 3/15/2020 to 1/30/2022 (3/25/2022 less 45 days)

ISSUE 4: WHEN THE IRS PAYS INTEREST

P. 270

Interest on Carrybacks (Treated as overpayment for the loss year)

- 45-day rule applies - uses later of:
 - loss year due date,
 - loss year received date,
 - date loss year processible,
 - date claim received,
 - date claim processible
- After 45 days – from loss year due date or loss year received date

ISSUE 4: WHEN THE IRS PAYS INTEREST

PP. 270-271

Interest Rates

- Federal short-term rate plus 3%
- Corporations: Federal short-term rate plus 2% (.5% if > \$10,000 overpayment)
- Figure 8.2 p. 271

ISSUE 4: SPECIAL IRS INTEREST RULES

P. 271

Seized Property

- Wrongful levy of others → date of seizure to refund date (w/back-off)
- Property of others sold → date of sale to refund date on proceeds
- Levied amount back to TP or excess sale proceeds to TP → No interest

Reissued Refund Checks

- Interest paid only if error was government's fault

I.R.C. §6603 Deposits (deposit to stop interest on pay disputed tax)

- TP withdraws any part → Interest Federal ST rate – deposit date to refund date (back-off)
- After tax assessed & deposit applied, regular overpayment rules apply

ISSUE 4: SPECIAL IRS INTEREST RULES

P. 272

Net Rate of Zero

- Overlapping periods of underpayment & overpayment interest for same TP
- TP can request by filing Form 843

Overpaid Overpayment Interest

- IRS cannot assess to get interest back
 - Right to offset to recover
 - Voluntary payment by TP
 - Erroneous refund suit

ISSUE 4: SPECIAL IRS INTEREST RULES

P. 272

Underpaid Overpayment Interest

1. Form 843 within 6 years of overpayment date
2. File civil suit within 6 years of refund date

ISSUE 5: CORRESPONDENCE AUDITS/SECURE MESSAGING PP. 273-274

The Audit Process

- IRS Letter
 - Issues, documents needed, contact number, address
- Taxpayer Response
 - Submit documentation by deadline – mail, fax, document upload tool
 - Name, SSN, tax year on each page w/index if substantial number of pages
 - IRS acknowledges receipt within 30 days
- IRS Determination
 - Submit additional documentation
 - Agreement, Manager Conference, Appeals, Statutory Notice of Deficiency

ISSUE 5: DOCUMENT UPLOAD TOOL (DUT)

P. 274

- One-way communication tool: TP to the IRS
- TP can upload all but documents requiring physical signatures
- Applicable Notices – See list page 274
- Available to Collection employees and expanding to others

ISSUE 5: DOCUMENT UPLOAD TOOL (DUT)

PP. 274-275

Process

- Notice gives TP link and unique access code
- No online account needed – access through smartphone or computer
- No user authentication
- TP opens link, inputs code provides name and TIN, then uploads
 - JPEG, PNG, PDF – max size 15 MB each – 40 files possible
- IRS mails acknowledgement of receipt

ISSUE 5: SECURE MESSAGING

P. 275

- Electronic communication among all parties – TP, REP and IRS
- IRS (LB&I, SBSE, TEGE, Appeals) invites TP to use – use is optional
- TPs must authenticate their identities
- TPs can upload documents (up to 1 GB)
- TP/Rep are notified by email when secure message is sent

ISSUE 5: SECURE MESSAGING

P. 276

- Emails within the system can be printed but cannot be forwarded
- All emails are saved as a digital record of communications
- Once TP has registered for SM and a POA is on file, Rep can register
- TP can opt out at any time by requesting through SM
 - Will not affect time for responses or change status of case
 - May use again in future case

ISSUE 5: SECURE MESSAGING

P. 276

What TPs need to know about SM

- IRS timeliness dependent on case type and resources available
- System outages do not affect TP's response deadlines
- SM communications are discoverable in legal proceedings
- TP must protect the information once it is on TP's device
- TPs must log out of platform when session is finished and close browser
- Misuse (violation of Rules of Conduct, fraudulent activity) may terminate SM
- If account is terminated, TP will still be able to access existing records
- Account termination does not close any existing case or change deadlines

ISSUE 6: OFFER IN COMPROMISE

P. 277

Types of Offers

- Doubt as to Liability (DATL)
- Doubt as to Collectability (DATC)
- Effective Tax Administration (ETA)

Doubt as to Liability

- Genuine dispute as to existence or amount of liability
- N/A if final court decision or judgment

ISSUE 6: OFFER IN COMPROMISE

P. 277

- **Example 8.11** – Audit assessment discovered when lien discovered
 - If reconsideration denied, a DATL could be filed
- **Example 8.12** – Claim filed – stock options valued too high based on fraud
 - Claim denied – can file DATL

ISSUE 6: OFFER IN COMPROMISE - DATL

P. 278

Not Qualified for DATL

- TP in open bankruptcy
- Liability is result of a final court decision
- TP paying restitution
- TP's debt is in litigation with the DOJ
- TP already has accepted DATL for same tax, same year
- TP made election under I.R.C. §965(i) for liability at issue

ISSUE 6: OFFER IN COMPROMISE - DATL

P. 278

IRS will reject offers filed to delay collection activity

- Claims unfair operation of law
- Based on divorce decree that stipulates split to each spouse
- Does not provide a reason
- Based on transferee, nominee, alter ego lien situation when there is no assessment against filer
- Frivolous or patently groundless offers
- Not materially different from a previously considered offer

ISSUE 6: OFFER IN COMPROMISE

P. 278

Doubt as to Collectability

- TP's assets and income are less than full liability
- Computation allows funds for basic living expenses
- Reasonable Collection Potential (RCP) determines amount to pay
- Generally, not accepted if can pay through IA or asset equity

ISSUE 6: OFFER IN COMPROMISE

P. 278

Effective Tax Administration

- TP can pay full amount but:
 - Would create an economic hardship
 - Compelling public policy/equity considerations give basis for compromise
- No ETA compromise if undermines compliance with tax laws

ISSUE 6: OFFER IN COMPROMISE - ETA

PP. 278-279

Hardship

- Payment of tax makes TP unable to pay reasonable basic living expenses
 - Unable to make a living – health issue – money needed for care/support
 - Income exhausted providing care for dependents
 - Has assets –unable to borrow, liquidation makes unable to meet expenses

ISSUE 6: OFFER IN COMPROMISE - ETA

PP. 278-279

Determining Basic Living Expenses

- TP age, employment and history, ability to earn, dependents
- Amount reasonably necessary for basic living
- Cost of living in TP's geographic area
- Amount of property exempt from levy available to pay expenses
- Extraordinary circumstances – special ed, natural disaster, medical catastrophe

ISSUE 6: OFFER IN COMPROMISE - ETA - HARDSHIP

P. 279

Example 8.13

- Cannot work – provides full-time care to seriously ill daughter
- Assets sufficient to satisfy liability but equity needed for living and medical

Example 8.14

- Retired – pension income only, only asset is retirement account
- Retirement account could pay liability but needed for basic living expenses

Example 8.15

- Disabled living on fixed income, home modified for disability
- Equity could pay tax, but she cannot borrow, forced sale would be hardship

Compelling Public Policy/Equity

- Collection in full would undermine public confidence that laws are being administered in a fair and equitable way
 1. IRS processing error caused the liability
 2. Liability because TP followed erroneous advice from IRS
 3. IRS actions/inaction delayed & interest/penalty abatement not available

ISSUE 6: OFFER IN COMPROMISE - ETA

P. 280

Compelling Public Policy/Equity

4. Third party's criminal/fraudulent act directly caused the liability
 5. Pursuing collection would have significant negative impact on community
 6. TP incapacitated/unable to comply with tax laws and other financial matters
 7. Reasonable 3rd party would agree offer fair, equitable, and promotes ETA
- No approval: Abusive tax transaction or claims that law is unfair

ISSUE 6: OFFER IN COMPROMISE - ETA

PP. 280-281

Example 8.16

- Illness with hospitalization over several years – unable to manage finances
- Health improved and promptly started to attend to tax and other matters
- Found IRS prepared SFR for 2015

Example 8.17

- Prior to moving IRA funds, emailed IRS for steps to avoid penalty
- IRS responded that funds withdrawn had to be deposited w/in 90 days
- TP withdrew and redeposited on 63rd day – taxes, penalties, etc.

ISSUE 6: OFFER IN COMPROMISE - ETA

P. 281

Compromise Undermines Compliance – IRS will reject

- History of noncompliance
- Has taken deliberate actions to avoid payment of taxes
- Has encouraged others to refuse to comply with tax laws

Example 8.18

- Submitted ETA offer on economic hardship
- Found after tax assessed, transferred home to son for \$100
- Acceptance would undermine compliance

ISSUE 6: FILING THE OFFER IN COMPROMISE - DATL

P. 281

- No financial information is required
- Must provide written statement explaining why debt is incorrect
- Provide supporting documentation
- If there is also doubt as to collectability, doubt as to liability comes first
- Must make an offer that is \$1 or more

ISSUE 6: FILING THE OFFER IN COMPROMISE – DATL

PP.281-282

- No payment, deposit, or application fee is required
- Offer is treated as pending until acceptance, rejection, return, withdrawal – if appealed, until Appeals accepts or rejects (+ 30 days) – IRS cannot levy
- If IRS fails to decide in 24 months, offer is accepted

ISSUE 6: FILING THE OFFER IN COMPROMISE - DATC

P. 282

- Form 656, Form 433-A(OIC) and Form 433-B(OIC)
- Two Forms 656 needed if:
 - Filing for both individual and business
 - Offer for SMLLC, DE, employment taxes > 1/1/09, excise > 1/1/08

ISSUE 6: FILING THE OFFER IN COMPROMISE – DATC

P. 282

- Joint liability (see PN)
 - May file joint offer or separate offers
 - If separate debt also involved, both spouses file a separate Form 656
 - One spouse can file an offer on joint debt
- \$205 application fee & initial offer payment (can designate how applied)
 - No fee or initial payment if meet low-income certification limit

ISSUE 6: FILING THE OFFER IN COMPROMISE - DATC PP. 282-283

Pre-Qualifier Tool

- Individual taxpayers only – helps determine eligibility
- Calculates a preliminary offer amount and payment options
- Does not automatically populate Form 656

Low-Income Certification

- AGI from most recent return or monthly income on Form 433-A(OIC) x 12
- Must be \leq 250% federal poverty level for family size
- If qualifies, makes no payment until offer accepted

ISSUE 6: FILING THE OFFER IN COMPROMISE – DATC

P. 283

Complete Form 433-A and/or B(OIC)

- Detailed financial information with documentation
- Computes RCP and minimum offer amount

ISSUE 6: FILING THE OFFER IN COMPROMISE - DATC

P. 283

Processing the Offer

- IRS will return the offer (returning fee but applies initial fee to liability) if:
 - Filed to delay collection
 - Offer is incomplete
 - TP does not timely submit requested information
 - TP is not compliant at time of application or during consideration
- Offer is treated as pending until acceptance, rejection, return, withdrawal – if appealed, until Appeals accepts or rejects (+ 30 days) – IRS cannot levy
- If IRS fails to decide in 24 months, offer is accepted

ISSUE 6: FILING THE OFFER IN COMPROMISE - ETA

P. 283

- Same forms as for DATC
- Calculates RCP and minimum offer
- RCP will exceed tax liability indicating ability to pay
- TP attaches detailed statement to show economic hardship, public policy, or equity considerations to justify compromise

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 283-284

- Based on net equity in assets and monthly income after expenses
- Section 2: Wage-Earner Employment Information
- Section 3: Personal Asset Information
 - Cash and Investments – CSV life ins., \$1,000 bank account exemption, Quick sale value (80%) for investments, Retirement accounts reduced by 20% (tax/penalties on withdrawal), Values reduced by any loan balances
 - Real Property – Quick sale value (80% market) reduced by loans
 - Address, purchase date, how title held, mortgage, date of final payment, description

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 284-285

- Section 4: Self-Employed Information
 - General info on the business – Name, address, EIN, website, frequency of deposits, average monthly payroll
 - Ownership interests in other businesses
- Section 5: Business Asset Information (for Self-Employed)
 - Same assets as for personal with 80% quick sale reduced by loans
 - No \$1,000 bank nor \$3,450 car exemptions
 - \$4,600 deduction from total net value

ISSUE 6: REASONABLE COLLECTION POTENTIAL

P. 285

- Section 6: Business Income and Expenses
 - Enter detail or only total income and expenses and attach P&L statement
- Section 7: Monthly Household Income/Expense
 - Income of TP, spouse, children, anyone contributing to household income
 - Taxable and nontaxable
 - Household expenses – Actual and amounts from National/Local Standards
 - Necessary test: Necessary to provide for family's health and welfare and/or production of income
 - See Practitioner Note

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 286-287

- Section 7: Monthly Household Income/Expense
 - National Standards for Allowable Living Expenses
 - Based on family size
 - Can use actual if standard not sufficient – must be able to document
 - See Figure 8.3, P 286
 - National Standards for Health Care Expenses
 - Allowed regardless of TP's actual expenses
 - Monthly: Under 65 – \$79, ≥ 65 - \$154
 - Can claim actual if more but must provide documentation

ISSUE 6: REASONABLE COLLECTION POTENTIAL

P. 287

- Section 7: Monthly Household Income/Expense
- Local Standards for Housing and Utilities – See Figure 8.4
 - Include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable TV and internet
 - TP uses the lesser of actual or Standards
 - If claims > standard, must provide documentation

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 287-288

- Section 7: Monthly Household Income/Expense
- Transportation Standards
 - National Ownership Costs – See Figure 8.5
 - Loan or lease payments
 - Lesser of actual or Standards

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 288-289

- Section 7: Monthly Household Income/Expense
 - Transportation Standards
 - Regional Operating Costs – See Figure 8.6
 - Maintenance repairs, insurance, fuel registrations, licenses, inspections, parking, tolls
 - Lesser of actual or Standards
 - Regional amount unless lives in listed county – See Figure 8.7, P. 289
 - Public Transportation - \$218/month/household – actual not needed
 - Train, bus, taxi, ferry, etc.

Section 7 result: Remaining monthly income (total income less total expenses)

ISSUE 6: REASONABLE COLLECTION POTENTIAL

P. 289

- Minimum Offer Amount
 - RCP computation: Total of asset net equity and future remaining income
 - Future remaining income
 - Offer of ≤ 5 payments in 5 months: remaining net monthly income $\times 12$
 - Offer of payments over 6-24 months: remaining net monthly income $\times 24$
 - If cannot pay offer amount, include an explanation

ISSUE 6: REASONABLE COLLECTION POTENTIAL

PP. 290-293

Example 8.19

- Figure 8.8 – Personal Assets – P. 290
- Figure 8.9 – Monthly Household Income and Expenses- P. 292
- Figure 8.10 – Minimum Offer Amount – P. 293

ISSUE 6: OFFER IN COMPROMISE

P. 294

Payment Options

- Lump-sum cash payment: Paid over 5 or fewer installments
 - Nonrefundable 20% paid with the offer – balance over 5 consecutive months
- Periodic payment: Paid over 6-24 months
 - Nonrefundable first payment made with the offer
 - Monthly payments must continue while IRS considers the offer
 - TP gets chance to make missed payment but if does not, offer treated as withdrawn

Avoiding Default

- Make all payments, stay compliant for 5 years – if not, original tax reinstated

Employee Retention Credit

- Email or text, promoted on radio and online, promising up to \$26,000/EE
- Charge large upfront fees or contingent fee
- May not inform TP of need to reduce wages by credit amount

ISSUE 7: TAX SCAMS

P. 296

W-2 Scam

- Advising use of tax software to manually fill out Form W-2 w/large withholding figures from a fake employer and file for the refund
- Using Form 7202 with employee income for credits available only for SE individuals for 2020/2021
- Making up fictional household employees using Schedule H to try to claim refund based on false sick and family wages never paid

Employee Retention Credit

- Con ineligible TPs to claim the credit
- Advertise solely to collect the TP's PII in exchange for false promises

Email and Text Scams

- Re: refunds or tax issues to trick disclosure of PII
- Phishing – Claim to be IRS or other legitimate organization – threaten, alarm
- Smishing – text message with same technique as phishing
- Messages appearing to be from friends/family but not
 - Verify by using another communication method
- Do not open or click!

Online Account Setup Scam

- “Helpful” third party offers to help setup online account to get TSP’s PII
- Use only approved IRS authentication process through IRS.gov

False Fuel Tax Credit Claims

- Pushing improper fuel tax credits
- Inflated fees, refund fraud, identity theft
- IRS watching for these claims

Fake Charities

- Use names that sound like well-known charities
- May spoof caller ID to be charity's number, may text or email
- Ask for name, address & confirm – give no PII, bank or credit card numbers

ISSUE 7: TAX SCAMS – 2023 IRS DIRTY DOZEN

P. 299

Shady Tax Professionals

- Charging fee based on size of refund
- Requesting cash payment and giving no receipt
- Ghost preparers who refuse to sign return
- Should check IRS directory of preparers

Social Media Advice

- Advising W-2 prep with false information
- Advising use of Form 9844 (Preparer E-file waiver request) to receive a refund

ISSUE 7: TAX SCAMS – 2023 IRS DIRTY DOZEN

PP. 299-300

Spearphishing

- Tailored phishing attempt to specific business
- Trying to steal client data, preparer identity, look legitimate with IRS logo
- New Client Scam – if practitioner responds, scammer sends malicious attachment or URL that enables access to computer system

Offer in Compromise Mills

- “Can settle a tax debt for pennies on the dollar” – radio, TV ads
- Charge excessive fees for into TPs can obtain themselves

Schemes Aimed at High-Income Filers

- Charitable Remainder Trusts
- Monetized Installment Sales

Abusive Tax Avoidance Strategies

- Micro-captive insurance arrangements – lack attributes of legitimate insurance
- Syndicated conservation easements – Claiming FMV significantly > investment

International Tax Schemes

- Hiding cash and digital assets offshore-promoters claim “out of IRS reach”
- Maltese foreign retirement accounts – no limit on contributions, improperly calls is pension fund, and misconstrues treaty provisions to exempt from tax
- Foreign captive insurance-generally involve excessive premiums, implausible risks covered (or duplicative coverage of commercial insurance), lack of business purpose for entering the arrangements

ISSUE 7: TAX SCAMS – 2023 IRS DIRTY DOZEN

P. 302

Reporting Tax-Related Fraud and Scams

- Email or Text: Send a copy as an attachment to phishing@irs.gov
 - Include caller ID (email or phone number), date, time, time zone, number that received the message
- Report scams to Treasury Inspector General for Tax Administration or Internet Crime Compliant Center – See IRS.gov “Report Phishing and Online Scams”
- Report abusive tax schemes or a tax return preparer : Mail/fax Form 14242 to the IRS Lead Development Center in the Office of Promoter Investigations
 - Address and Fax # on P. 302
- Send information to the IRS Whistleblower Office
- Tax-related illegal activities – Form 3949-A, Information Referral

ISSUE 8: WRITTEN INFORMATION SECURITY PLAN

P. 303

Safeguard Rule (FTC)

- Requires financial institutions have a written information security plan (WISP)
- Tax and accounting professionals are considered financial institutions
- Each firm must:
 - Designate one or more employees to coordinate the plan
 - Identify & assess risks to customer information & evaluate current safeguards
 - Design and implement a safeguards program and regularly monitor and test
 - Select service providers that can maintain appropriate safeguards
 - Evaluate and adjust as needed with changes and results of testing
- WISP should be available to all employees and contractors

ISSUE 8: WRITTEN INFORMATION SECURITY PLAN

PP. 303-306

Sample WISP

- Objective
- Purpose
- Scope
- Identified Responsible Official
- Mitigating Internal Risks
- Mitigating External Risks
- Reportable Event Policy

IRS ISSUES

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QUESTIONS??

