

Tax Liens & Tax Levies Workshop

How to Navigate IRS Enforcement



Presented by:
Eric L. Green, Esq.



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Eric Green, Esq.

- Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- Has served as a columnist for CCH's Journal of Practice & Procedure.
- Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- Eric is a Fellow of the American College of Tax Counsel ("ACTC").






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Eric Green, Esq.





- Eric is the host of the weekly Tax Rep Network Podcast, available in iTunes, Apple Podcasts and Google Podcasts
- Eric is the founder of Tax Rep Network, an online community designed to help tax professionals build their IRS Representation Practice
- He is the author of the Accountant's Guide to IRS Collection, the Accountant's Guide to Resolving Tax Issues, and the Accountant's Guide to Resolving Payroll Taxes and Personal Liability

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Today's Program

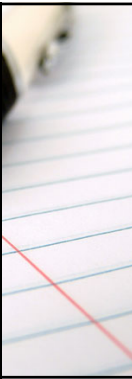
- 4 hours
- Coffee/Bathroom breaks at the top of each hour
- Try and stay on schedule with us for ce/cpe reasons



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CE/CPE

- 16 Attendance Check Words
- Write them down
- Get link at the end for claiming your certificate



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QUICK BREAK

We will resume the program in a moment.

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IRS Collection Process


- Assessment of the tax
- 10-Year Collection Statute
- Billing Notices
- Threat to levy and right to a hearing
- Appeals: CDP, Equivalent and CAP

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Liens—Authority



- The federal tax lien, under IRC §6321, arises when any “person” liable to pay any federal tax fails to pay the tax after a demand by the government for payment
- The “Silent Lien”



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Liens—Authority

IRC §6321 authorizes the IRS to file a Notice of Federal Tax Lien (NFTL) in favor the United States to protect the Government’s interest in the taxpayer’s property against third parties





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Notice of Federal Tax Lien





- Effective from date of assessment
- No requirement to file NFTL
- Filing of NFTL “perfects” the tax lien and provides priority over subsequent liens



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Notice of Federal Tax Lien

- Prior to 2012 would file NFTL if the taxpayer owed >\$5,000
- Increased the threshold to \$10,000





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Notice of Federal Tax Lien





- IRC §6320 requires notice and a hearing
- Land records
- Secretary of the State



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Federal Tax Lien

- Under IRC §6322, the federal tax lien continues until satisfied or expires
- 10 years to collect—
IRC §6502





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Dealing with Tax Liens




- Discharge
- Subordination
- Withdrawal



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Lien Subordination


- A “subordination” is where the IRS will allow another creditor to take a higher priority position over the IRS lien
- Partially pay the IRS debt
- Improve collection
- Make your pitch!



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Lien Discharge


- Lien is meant to protect the government's interest
- Not meant to prevent the sale of assets
- Clients can still sell but IRS gets its equity



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Lien Discharge

- Full paid
- All the equity
- No equity
- Form 14135



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Lien Discharge

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6. Monetary Information

Proposed sales price

Expected proceeds to be paid to the United States in exchange for the certificate of discharge (Enter NA if no proceeds are anticipated)

7. Basis for Discharge: Check the box below that best addresses what you would like the United States to consider in your application for discharge. (Publication 781 has additional descriptions of the Internal Revenue Code sections listed below.)

6325(b)(1) Value of property remaining attached by the lien(s) is at least double the liability of the federal tax lien(s) plus other encumbrances senior to the lien(s).


6325(b)(2)(A) The United States receives an amount not less than the value of the United States' interest. (Note: If you are applying under 6325(b)(2)(A) and are the property owner but not the taxpayer, see also section 16.)

6325(b)(2)(B) Interest of the United States in the property to be discharged has no value.

6325(b)(3) Proceeds from property sale held in escrow subject to the liens and claims of the United States.

6325(b)(4) Deposit made or bond furnished in an amount equal to the value of the United States' interest. (Note: This section provides a remedy under 7425(a)(5) for return of deposit but is exclusively for a property owner not named as the taxpayer on the lien.)

8. Description of property (for example, 3 bedroom rental house, 2002 Honda Acura engine, airplane, serial number A7191000000000000, etc.)



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Withdrawal – IRM 5.12.9.3.2.1(3-10)

- Direct Debit Installment Agreement for \$25,000 or less may request withdrawal (includes penalty and interest at the time of the request for withdrawal)
- IA will be completed within 60 months
- Must have made three consecutive direct debit payments
- Use Form 12277



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Multiple NFTLs

- New tax debts require new liens be filed by the IRS with a new lapse date
- It is not uncommon for taxpayers with a history of tax problems to have multiple IRS liens filed



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IRS Collection Tools: *Liens*



- Liens are self-releasing
- If the lien becomes unenforceable due to the expiration of the 10-year collection statute, the IRS will not issue a release
- If the tax is paid or compromised, the IRS will issue a release



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The Power of the Federal Tax Lien

- Drye – The Disclaimer
- Craft – Tenancy by the Entireties
- Joe “Girls Gone Wild” Francis – The Redemption



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United States vs. Drye

- In 1994, Irma Drye died intestate leaving a \$233,000 estate (“Mom”)
- Petitioner Rohn Drye, her son, was sole heir (Drye) with one daughter
- Drye was insolvent at the time of Mom’s death and owed the IRS \$325,000
- IRS filed NFTL against all of Drye’s “property and rights to property” pursuant to 26 U. S. C. §6321.
- Several months after his mother’s death Drye filed in the Probate Court and county land records a written disclaimer of all interests in the estate.
- A disclaimer creates the legal fiction that the disclaimant predeceased the decedent; consequently, the disclaimant’s share of the estate passes to the person next in line, Mr. Drye’s daughter



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United States vs. Drye

- Supreme Court decided in favor of the IRS
- Drye’s disclaimer did not defeat the federal tax liens
- State law defines rights or interests in the property, federal law determines whether those rights or interests constitute “property” or “rights to property” under §6321
- Mr. Drye had a right to the property under the Arkansas state intestacy laws, and the federal tax lien attached to those rights at that time
- The disclaimer after the fact is invalid as to the tax lien under §6321



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United States vs. Drye

- So what could have been done?
- Estate documents
- Transfer all assets so held in the name of a Trust
- Spendthrift language



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U.S. vs Craft

- Mr. Craft owned a business and failed to pay the payroll taxes
- Mr. Craft is assessed the TFRP
- He and his wife own their home in Tenancy by the Entirety
- After the notice of the lien was filed they executed a quitclaim deed transferring to her his interest in the real property
- IRS agreed to release the lien and allow Ms. Craft to sell the property with half the net proceeds to be held in escrow pending determination of the Government's interest in the property
- She brought an action to quiet title to the escrowed proceeds



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U.S. vs Craft

- The Government claimed, among other things, that its lien had attached to the husband's interest in the tenancy by the entirety.
- US Supreme Court agreed
- "Bundle of sticks" approach to rights to the property
- The rights Michigan law granted respondent's husband qualify as "property" or "rights to property" under § 6321



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Joe Francis


Became famous for the Girls Gone Wild videos



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Joe Francis


- Because famous and rich for the Girls Gone Wild video series
- 11/2002, pays \$5.45 million for a 6,000+ sq. ft. modern mansion in Bel Air
- In 2007, the U.S. DOJ filed charges against him for — among other things — more than \$20 million in false corporate tax deductions, hiding money in offshore bank accounts, and unpaid federal taxes for the years of 2002 and 2003
- Didn't go to trial for some time because was already in prison on felony charges of filming underage girls.



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Joe Francis

- Francis is released and greeted with a \$34 million federal tax lien by the IRS.
- JP Morgan Chase began foreclosure proceedings against him for a \$5 million home loan
- Owed Steve Wynn \$2 million for gambling debts and Wynn sued him
- Francis countersued, claiming his losses only occurred after Wynn slyly plied him with booze and hookers



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Joe Francis

- Jury decided in Wynn's favor
- Francis then accused Wynn — on a primetime TV interview, no less — of trying to kill him, so Wynn sued him again
- Wynn sues for defamation and wins a \$40 million judgement against Francis (reduced on appeal to \$19 million.)
- Francis stated that the “mentally retarded” jury should be “shot dead.”


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Joe Francis

- In 2018, DOJ took possession of the Bel Air property and sold it to Steve Wynn for \$6.7 million
- IRS redeemed the property from Steve Wynn, paying him back the \$6.7 million he spent with closing costs
- Four months later the IRS then flipped the house to the wealthy neighbor, Kuwaiti Billionaire Bassam Alghanim, for \$8.65 million, turning an almost \$2 million profit

Steve Wynn acquires the Bel Air home of Joe Francis

By JAMES MCCORMY • February 25, 2020





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Redemption of an IRS Lien

- IRS may redeem a property that is sold at a foreclosure sale
- If a judicial foreclosure – 28 USC 2410
- If administrative foreclosure – 26 USC 7425
- IRS has 120 days from the date of sale to give notice its redeeming
- Must repay what the buyer spent
- Form 5597 Notices Buyer of redemption


Dear _____

We have received information that you purchased the property identified above at a foreclosure sale. The Internal Revenue Service has the right to redeem the property from you because the property is subject to a federal tax lien (prior to the foreclosure sale).

If we redeem the property, we will pay the sum of:

- The amount you paid for the property at the foreclosure sale, including the amount of the obligation secured by the foreclosure lien to the extent satisfied by the sale if you were the holder of that lien.
- The amount of interest paid at the rate of six percent a year for the period from the date of the sale to the date of redemption.
- An amount equal to the expenses you incurred to maintain the property, less any income received from the property. Income includes a reasonable rental value of the property but the rental value is limited to use of the property by you, use with your consent, or rental use at less than the property's reasonable rental value.

* Payments you make to any vendor are subject to the property after the foreclosure sale, if you provide the us with a timely verification request and we approve that request.



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Why Redemption is VERY Rarely Done

Before redeeming a property the IRS must:

1. Consider if the property is toxic
2. Consider senior liens and the amounts owed
3. Independently appraise the property
4. Consider how much the buyer needs to be reimbursed
5. Secure a guaranteed bidder for an IRS redemption sale
6. How much the IRS is owed and potential collectibility



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Tax Levy Basics

- The seizure of a taxpayer's property
- Generally issued when a taxpayer has either failed to respond to IRS requests or failed to provide the collection division information



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IRS Levy

- Before property can be levied, the taxpayer must be given a:
 - Notice and demand
 - Notice of intent to levy, and
 - Notice of a right to a Collection Due Process (CDP) hearing
- The levy can be served in person, left at the person's residence or mailed via certified mail to the taxpayer.



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Property Exempt from Levy

- 85% of unemployment benefits (up to 15% may be levied)
- Certain annuity and pension payments
- 85% of workers compensation payments
- Judgments for support of minor children



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Property Exempt from Levy

- Certain military service-connected disability payments
- 85% of certain public assistance payments
- Assistance under the Job Training Partnership Act
- A portion of wages are exempt equivalent to: the taxpayer's standard deduction plus their personal exemptions divided by the pay periods.



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How to Avoid an IRS Levy

Best way to avoid an IRS Levy?


Respond!



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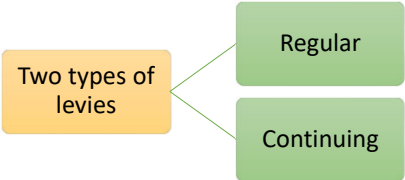
IRS Levy

- Threatened when non-responsive
- Form 12153 for CDP or Equivalent
- **Must file Form 12153!**




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IRS Collection Tools: Levies




```

graph LR
    A[Two types of levies] --> B[Regular]
    A --> C[Continuing]
  
```




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IRS Collection Tools: Regular Levies



- A regular levy seizes whatever the taxpayer owns at that moment
 - Examples: bank accounts, receivables, retirement accts, etc.
- Banks will hold funds for 21 days before sending them to the IRS - IRC § 6332
- Interest that accrues on money held also belongs to the IRS - Regulation § 301.6331-1(a)(1)



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IRS Collection Tools: *Continuing Levies*

- A continuing levy is a levy that remains in effect until it is released by the IRS
 - Examples include wages and regularly paid commissions
- IRS will allow the taxpayer a standard deduction and personal exemptions divided by the pay periods (Reg. §301.6334-3)
- Everything above the exempt amount will be taken



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Levy on Retirement Accounts

- Pension and tax qualified accounts may be levied
- The anti-alienation provisions of ERISA have no effect against an IRS levy. See IRC § 6331 and IRC § 72(t)(2)(vii)
- IRS prefers to have the taxpayer take the money



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IRS Collection Tools: *Obtaining a Release of Levy*

- The first step in obtaining a levy release is to provide information requested by the IRS Collection Division, including:
 - Missing tax returns
 - Collection Information Statements
 - Supporting documentation



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12153

Form 12153 Request for a Collection Due Process or Equivalent Hearing
(Rev. 12-2015)

6. Basis for Hearing Request (Both boxes can be checked if you have received both a lien and levy notice):
 Filed Notice of Federal Tax Lien Proposed Levy or Actual Levy

7. Equivalent Hearing (See the instructions for more information on Equivalent Hearings):
 I would like an Equivalent Hearing - I would like a hearing equivalent to a CDP Hearing if my request for a CDP hearing does not meet the requirements for a timely CDP Hearing.

8. Check the most appropriate box for the reason you disagree with the filing of the lien or the levy. See page 4 of this form for examples. You can add more pages if you don't have enough space.
 If, during your CDP Hearing, you think you would like to discuss a Collection Alternative to the action proposed by the Collection Function it is recommended you submit a completed Form 433A (Individual) and/or Form 433B (Business), as appropriate, with this form. See www.irs.gov for copies of the forms. Generally, the Office of Appeals will ask the Collection Function to review, verify and provide their opinion on any new information you submit. We will share their comments with you and give you the opportunity to respond.
 Collection Alternative Installment Agreement Offer in Compromise I Cannot Pay Balance


Lien Subordination Discharge Withdrawal

Please explain: _____

My Spouse Is Responsible Innocent Spouse Relief (Please attach Form 9857, Request for Innocent Spouse Relief, to your request.)

Other (For examples, see page 4)


Reason (You must provide a reason for the dispute or your request for a CDP hearing will not be honored. Use as much space as you need to explain the reason for your request. Attach extra pages if necessary.)




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Tax Compliance

- Must be in compliance
- Making all current payments
- All returns filed that are due for last 6 years
 – IRM 1.2.14.1.18






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Disqualified Employment Tax Levy


- Authorized for years but not used
- If TP has had a CDP hearing for payroll taxes within last 2 years, instant levy
- CDP Notice sent but no 45 day wait
- Collection being urged to expand its use of DETL**



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Getting a levy released?


- See avoiding a levy
- Call IRS
- Get Into Compliance
- Get IRS documents
- Proposed a collection alternative



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Collection Alternatives?


- Uncollectible
- Installment Agreements
- Offers-in-Compromise



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Uncollectible


- Provide a 433
- Shows taxpayer's income is completely absorbed by allowable expenses
- No equity that can be tapped (different from an OIC)



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Installment Agreements

- Automatic (<10K)
- Streamlined/Non-Streamlined – <https://www.irs.gov/pub/foia/ig/sbse/sbse-05-0320-0413-redacted-0uo.pdf>
- Regular
- Partial-Pay



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Practitioner Secret




1-year rule & 6-year rules: IRM 5.14.1.4.1
(not if a partial pay)




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Doubt as to Collectability




- Most common Offer
- Based upon the taxpayers inability to full pay the liability
- It's a request or the government to accept less than the full amount owed because of the taxpayer's financial situation



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Offer in Compromise

- Lump Sum**
 - Paid in 5 or fewer payments
- Deferred**
 - Paid in more than 5 but less than 24 monthly payments
 - Payments must be made starting when the OIC is filed



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Offer in Compromise




- \$205 application fee
- 20% deposit with a lump sum offered
- Monthly payments with deferred offers start when the offer is filed and continue until accepted or rejected



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CASE STUDIES



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Case Studies

- Sale of the home
- Clearing the trucks
- The streamlined IA with FTA
- Levy release with stepped up IA



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Sale of the home

- Taxpayer owes the IRS \$200,000 for 2017 and 2018
- Is remarried and owns their home jointly with her new husband, who is not liable
- She finds a buyer for their home
- Couple will net \$244,328
- IRS filed a Tax Lien for 2017 for the original amount of \$105,000



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Case Study #1: Plan

- IRS will allow the house to be sold if they receive the taxpayer's equity, up to what is owed
- Of the \$244,328 received, 50% belongs to the taxpayer so we offer \$122, 164 and file a 14135, Request for Discharge



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Case Study #3: Streamlined IA

- Client calls, bank account was levied, IRS took \$400
- Owes for 2017 (\$27,000) and 2018 (\$17,800)
- Have an IRA with \$100,000
- Have a home with \$75,000 of equity available
- 433-A analysis shows \$2,000 a month available or the IRS based upon allowable expenses, \$920 a month based on actual expenses



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Case Study #3: Streamlined IA

- No OIC: \$70,000 from an IRA and \$75,000 of equity in the house
- Owe \$44,800
- Streamlined would be roughly \$446 a month plus interest, so say \$500 to the client - \$281.25 (\$27,000/96 mos) + \$164.81 (\$17,800/108 mos) + \$54 for FTP and Interest (best guess)
- \$500/month is better than the 433 analysis, and avoids sharing the financial detail (like the IRA), which IRS will demand



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Case Study #3: Streamlined IA

- Called the IRS (using ENQ), and asked 2 questions:
 1. Does the Taxpayer qualify for First Time Penalty Abatement?
 2. TP wants a streamlined agreement. How much will that be a month?
- Knocked \$8,700 off 2017 for the FTA!
- Payment plan was \$398 a month, no disclosures or financials
- Levy was released when 433-D was submitted

The image shows a portion of Form 433-D, 'Installment Agreement'. The form includes fields for 'Name of taxpayer or transferee', 'Filing status', 'Date of agreement', and 'Number of payments per month'. It also contains a section for 'The amount you pay the balance each month' and a table for 'Monthly payments'.

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Case Study #4: Stepped Up IA

- Client calls, bank account was levied, IRS took \$400
- Owes for 2017 (\$27,000) and 2018 (\$17,800)
- No equity available in assets
- 433-A analysis shows \$750 a month available or the IRS based upon allowable expenses, \$0 a month based on actual expenses (uncollectible if actual could be used)
- Call and obtain FTA and knock off the same \$8,700 as in Case Study #3
- TP now owes \$36,100



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Case Study #4: Stepped Up IA

- \$750 a month x 96 months = \$72,000, so can full pay, no OIC available
- 2 Options
 1. Submit a 433-A and agree to pay \$750 a month
 2. Submit a 433-A, propose the following:
 - a. IA of \$30 a month for 12 months
 - b. IA steps up to \$750 a month
- Pursued #2, 433-D signed, levy released
- Cite IRM 5.14.1.4.1 (1-year rule)



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TRN
TAX REP NETWORK

THE TOTAL PPP WORKSHOP:

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Due to the in-depth nature of this workshop, **attendance is limited** so all attendee questions can be answered.

This program will discuss the implementation of the current PPP, discuss how to complete the loan forgiveness application, and the ramifications if forgiveness is disallowed, review potential future legislative and regulatory changes, and discuss tax issues related to PPP loans and the CARES Act, and discuss how the Main Street Business Program, which is now funding loans, can be used.

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Eight Money-Making Tips to Build and Grow Your Tax Representation Practice



- Several Thousand have already sat in
- 25 Million in trouble before COVID-19
- 1 in 3 cant pay their 2019 taxes
- Check it out – its FREE on-demand
- <https://taxrepllc.com/8-money-making-tips/>




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Questions?



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