

# The Civil & Criminal Tax Consequences of a Complicated Relationship

The Workshop

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").
- ▶ Founder of Tax Net Network



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Eric Green, Esq.



Instagram

IRS REPRESENTATION  
Conference



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Follow us on Instagram....Ericl.green



- ▶ Follow me on Instagram and like the posts
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CPE

- ▶ There will be 32 attendance check words
- ▶ Please write these down
- ▶ You will need them at the end when you click on the link and go get the certificate
- ▶ They are in the program (no polls)
- ▶ See the Word Tracker we gave you



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Schedule

- ▶ Stick to our schedule
- ▶ 15 Minute break in the morning and another in the afternoon
- ▶ 45 minutes for lunch
- ▶ Go to the restroom and refill your coffee (or drink of choice)



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Background	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ This is based upon an actual case</li><li>▶ We will be covering criminal tax, Appeals and United States Tax Court, IRS Collections, Innocent Spouse and Offers-in-Compromise</li><li>▶ Please do refer back to the exhibits</li></ul>	
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Meet Tony & Marie Antonetti	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Tony and Marie Antonetti own a very successful restaurant called 'Lilith's' after their oldest daughter</li><li>▶ They have 3 children: Lilith (17), Anthony Jr. (15) and Louise (14)</li><li>▶ The restaurant has been grossing revenue of over \$1.2 million per year, reporting net income of about \$180,000 a year to Tony</li><li>▶ They live in New Haven, Connecticut, and the restaurant is located in downtown New Haven</li></ul>	
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Meet Tony & Marie Antonetti	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ In reality, Tony, with the help of their bookkeeper Tina, has been skimming almost \$100,000 a year from the register in cash</li><li>▶ Tina has been booking the revenue so the Point-of-Sales System is correct (and the sales tax is properly reported) but booking the cash out as a phony expense to cost of goods sold to reduce the net income and avoid paying tax on the cash taken</li><li>▶ Now here is where things get complicated</li></ul>	
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The complication

- ▶ Unbeknownst to Marie, Tony was carrying on an affair with Tina
- ▶ In 2015 Tony found a new girlfriend, breaking up with Tina
- ▶ In the midst of the heated breakup in the restaurant's back office, Tony ultimately fires Tina, grabbing the stuff from her desk and tossing it out the back door of the restaurant, all over the parking lot
- ▶ Tina scrambles around the parking lot picking up her stuff and goes home furious and, after mulling it over for a few days, picks up the phone and makes a fateful call...

**TRN**  
TAX REP NETWORK 10

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Knock Knock...

- ▶ For the next several months everything is quiet while Tony decides he will do his own bookkeeping. How hard could it be?
- ▶ Then on a Tuesday morning at 6:45 am Tony and Marie are woken up by the doorbell
- ▶ Putting on a bathrobe Tony opens the window of the bedroom and looks down
- ▶ Marie hears someone below state they are IRS and want to talk with Tony, to which Tony replies "I don't think so." Marie hears the people at the door say something to which Tony replies "No thanks, send a letter."

**TRN**  
TAX REP NETWORK 11

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The Special Agents

- ▶ The word subpoena comes through loud and clear and Tony steps back, closes the window and heads downstairs
- ▶ Opening the door Tony finds a man and a woman standing there in business attire
- ▶ They both pull out badges and show them to Tony
- ▶ They explain they are special agents from the IRS Criminal Investigation Division and they want to speak with him about his taxes ....

**TRN**  
TAX REP NETWORK 12

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<b>Criminal Tax and Whistleblowing</b>	<input type="checkbox"/>
<p>The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation’s tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.</p> <p>~ Federal Sentencing Guidelines Manual</p>	
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<b>The Tax Crimes</b>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ 7201 – Tax Evasion (liability and collectability)</li><li>▶ 7202 – Willful Failure to Collect or Pay Over Tax (Payroll Tax)</li><li>▶ 7203 – Failure to File a Tax Return, Supply Information or Pay Tax</li><li>▶ 7206 – Fraud &amp; False Statements</li><li>▶ 7212 – Corruptly Endeavoring to Interfere with Administration of the Internal Revenue Laws</li></ul>	
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<b>Other “Tax Crimes”</b>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Aiding &amp; Abetting – 18 USC § 2</li><li>▶ Conspiracy to Defraud the Government – 18 USC § 286</li><li>▶ False, Fictitious or Fraudulent Claims – 18 USC § 287</li><li>▶ Conspiracy to Defraud the US – 18 USC § 371 (also known as a Klein conspiracy)</li></ul>	
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Related Crimes

- ▶ Identity Theft – 18 USC § 1028(a)(7)
- ▶ Wire Fraud – 18 USC § 1341
- ▶ Bank Fraud – 18 USC § 1344
- ▶ Perjury – 18 USC § 1001/1621
- ▶ False declarations before a grand jury – 18 USC § 1623
- ▶ Money Laundering – 18 USC § 1956
- ▶ Structuring – 31 USC § 5324

**TRN**  
TAX REP NETWORK 16

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True or False?

- The IRS, for those cases investigated and referred for prosecution, since 1913 has never had a less than 90% conviction rate of those defendants that go to trial.



**TRN**  
TAX REP NETWORK 17

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True! Why?

- ▶ Amount of time spent building a case
- ▶ Witnesses, paper trail, taxpayer statements
- ▶ DOJ review
- ▶ AUSA Review
- ▶ Grand Jury Review
- ▶ Also, taxpayers do not do well in front of a Jury

**TRN**  
TAX REP NETWORK 18

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Back to Tony...

- ▶ Marie, standing at the top of the stairs immediately calls the CPA Julie on her cell phone, waking her up
- ▶ Marie cuts off Julie's annoyed complaining about being woken up and tells her that IRS criminal agents are waiting at their door, and have questions about their tax returns
- ▶ Julie immediately asks Marie "What are they talking about?"
- ▶ Marie says she has no idea. Julie tells her to tell Tony to say nothing and call an attorney immediately.

**TRN**  
TAX REP NETWORK 19

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Julie the CPA

- ▶ Julie the CPA hangs up and hears her doorbell ring
- ▶ Heading downstairs she is confronted by two IRS Special Agents, two women
- ▶ The agents show Julie their badges and explain they have questions about her client Tony
- ▶ Julie politely declines to speak with them and asks for their business cards
- ▶ Receiving them she says her attorney will be in touch with them and closes the door

**TRN**  
TAX REP NETWORK 20

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Marie Shuts Tony Up

- ▶ Meanwhile, Marie immediately goes downstairs and cuts off Tony's explanation that he has no bookkeeper right now to the agents by announcing they don't want to talk with them but want their lawyer involved
- ▶ The agents cease asking questions, and hand Tony and Marie business cards, telling them to have their attorney call them
- ▶ At that the agents leave, and Marie closes the door
- ▶ She notices Tony looks like he is going to be sick

**TRN**  
TAX REP NETWORK 21

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So, how bad is it....

- ▶ So what crimes do we think we are looking at here?
  - a. Evasion (the skimmed cash)
  - b. False Statements (knock knock)
- ▶ What do we do about it?

**TRN**  
TAX REP NETWORK

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Defending Taxpayers of Tax Crimes

- 1. They did not commit the crime
- 2. Attack the tax loss number
- 3. Plan for a good sentencing



**TRN**  
TAX REP NETWORK

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Tax Evasion

- ▶ Elements:
  - Additional tax due and owing
  - Affirmative act
  - Willfulness
    - Intentional violation of a known legal duty
    - Element of every tax crime
- ▶ Tax crimes are specific intent crimes – there must be ‘mens rea’

**TRN**  
TAX REP NETWORK

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### Tax Evasion



2 ways to violate this statute:

- ☐ Attempt to evade assessment
- ☐ Attempt to evade payment
- Note: the statute makes criminal any *attempt in any manner* to evade or defeat the assessment or payment of taxes!



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### Affirmative Acts of Evasion

An affirmative act is “any conduct, the likely effect of which would be to mislead or conceal.” *Spies v. United States*, 317 U.S. 492, 499 (1943)

*Examples:*

*“Keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one’s affairs to avoid making the records usual in transactions of the kind,”*



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### Evasion of Collection

- ▶ Almost always involve some form of concealment of assets or the taxpayer’s ability to pay the tax due and owing
- ▶ Placing assets in the names of others, dealing in cash, using nominees for businesses
- ▶ Signing and submitting false financial statements (Forms 433) to the IRS
- ▶ Structuring! (like dealing in cash to avoid civil tax levies)
- ▶ **Passive non-payment of taxes is not enough**



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So, how bad is it?

- ▶ “So how much did you skim?” asked Lisa
- ▶ “I’m not sure, but close to \$100,000 a year” replies Tony
- ▶ “Does your wife know?” asks Lisa
- ▶ “Sort of...” says Tony, turning red.
- ▶ “What does ‘sort of’ mean?” says Lisa

**TRN**  
TAX REP NETWORK 28

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How bad is it?

- ▶ Tony goes on to explain that Marie probably knew about the cash – it was hard to hide – but she doesn’t know about the false returns, or that Tina was his girlfriend and helped him cover all this up
- ▶ In fact, he is pretty sure she might have been the one to blow the whistle on him
- ▶ Lisa explains that we need to review everything and see if we can limit the damage.

**TRN**  
TAX REP NETWORK 29

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How bad is it?

- ▶ She wants to bring in a forensic accountant to work under attorney-client privilege, called a Kovel Accountant
- ▶ She also explains that we will need \$25,000 as a retainer to get started, and the Kovel will want \$15,000 to get started
- ▶ “Do you take cash” says Tony, completely seriously



**TRN**  
TAX REP NETWORK 30

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United States v. Kovel - 296 F.2d 918 (2d Cir. 1961)

- ▶ Kovel (defendant), an accountant employed by a law firm that specialized in tax law, was called before a grand jury to testify against a client for whom defendant had done work
- ▶ The law firm advised the Assistant United States Attorney that since Kovel was an employee under the direct supervision of the partners Kovel could not disclose any communications by the client of the result of any work done for the client, unless the latter consented

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United States v. Kovel - 296 F.2d 918 (2d Cir. 1961)

- ▶ Government argued attorney-client privilege did not apply to one who was not an attorney
- ▶ Kovel appealed a sentence of the United States District Court for the Southern District of New York that was imposed upon him for criminal contempt after he refused to answer a question asked in the course of an inquiry by a grand jury
- ▶ Court agreed with the law firm – The presence of defendant while the client was relating a complicated tax story to a lawyer would not destroy the attorney-client privilege, as long as the communication was made in confidence for the purpose of obtaining legal advice

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See Exhibit # 5, page 18

- ▶ We want the Kovel accountant involved to keep privilege
- ▶ Kovel does NOT cover anything related to the preparation of a tax return
- ▶ Best to have the letter signed and in place prior to the forensic accountant finding anything out
- ▶ Forensic cannot be the person who does or did the tax returns
- ▶ Forensic accountant cannot take the client as a 1040 client afterward for 3 years

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The conflict of Interest with Marie

- ▶ Tony asks if we can keep this from Marie
- ▶ Lisa explains that might not be possible, especially if Tina is working with the IRS. Tony explains he broke up with the new girlfriend the day before just to try and keep his life simple for now
- ▶ Lisa then explains the potential conflict of interest and suggests Marie get independent representation as she will probably want to pursue an innocent spouse claim Lisa also explains that it is standard practice to send a request for a conference to the Department of Justice Tax Division in case the investigation is referred there for prosecution.
- ▶ The next day the IRS Target letter arrives from IRS Criminal Investigation.

**TRN**  
TAX REP NETWORK

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Exhibits

- ▶ Law Firm retainer agreement #4, page 14
- ▶ Power of Attorney, #6, page 20
- ▶ IRS Criminal Target Letter, #7, page 22
- ▶ Letter to request the conference with DOJ, #8, page 23

**TRN**  
TAX REP NETWORK

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The Shadow Investigation

- ▶ “Tony said he thought around \$100,000 a year” stated Walter, the forensic accountant.
- ▶ “That’s right” agreed Lisa
- ▶ “He and Tina skimmed way more than \$100,000” says Walter. “It looks like \$200,000 is closer.
- ▶ “Really?” asked Lisa
- ▶ “Yup, about \$100,000 in cash. But the question is was Tony in on the other \$100,000 that Tina stole through the phony payroll checks?”
- ▶ “What phony payroll checks?” asked Lisa, suddenly sitting up straighter.

**TRN**  
TAX REP NETWORK

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## The Shadow Investigation

- ▶ Walter explains that he can come pretty close to the \$100,000 of cash, but that there is another \$110,000 of checks, recorded as payments for federal and state withholding taxes in Quickbooks that were actually made out to Tina.
- ▶ “She only got a W-2 for \$45,000 but really made close to \$160,000. Also, Tony is not her only client. I wonder who else she is embezzling from? And that was only one year, I need to go and finish up the other years, but I am betting Tina stole more than half a million from Tony. How did they spend the money?”
- ▶ “Tony spent a lot of it on her....her car, her house.....” Says Lisa, starting to smile.

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## Meeting with the government



- ▶ There are proffers and then there are reverse proffers
- ▶ This is a reverse proffer: Government – show us what you have
- ▶ Government does not always agree to this (but usually they do)
- ▶ Here they ended up with tunnel vision....

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## Meeting with the Government

- ▶ “Thank you for seeing us” says Lisa
- ▶ “Of course. This should be fairly quick. We have a source who walked us through your client’s skimming money to the tune of almost \$100,000 a year” says Maria.
- ▶ Maria then goes on to explain how Tony would take the money, how he instructed the source to book bogus expenses to avoid picking up the income, and how he would spend it on a lavish lifestyle.

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## Meeting with the Government

- ▶ So our source knows he has been doing this for at least seven years they have been present.
- ▶ We are looking at \$700,000 of unreported income, resulting in \$230,000 of tax loss.
- ▶ If you client is prepared to accept responsibility and plead then we can stop and not bother with the false returns, wire fraud, etc, that we can also charge them with and avoid a grand jury indictment” Anastasia states bluntly while Maria smiles at Lisa and Eric.

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## The Guidelines

- ▶ “At that level they would be at level 16. Acceptance brings it down to level 13, or 12-18 months in Zone C.”
- ▶ “We would not be pursuing any enhancements, like sophisticated means” adds Maria, sliding across a draft information for Lisa and Eric to review.
- ▶ See Exhibits 9 (page 26) and 10 (page 28)

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## Information vs. Indictment

- ▶ Information is where client agrees to plead and be done
- ▶ Acceptance of responsibility
- ▶ See sample for preparer case in Exhibits
- ▶ Indictment is where government goes to the grand jury and gets a charge against the taxpayer



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## QUICK BREAK

We will resume the program in a moment.

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### Tax Table

The Tax Table - §274.1

Tax Loss (Apply the Greatest)	Offense Level
§1.25 (A) \$2,500 or less	6
§1.25 (B) More than \$2,500	8
§1.30 (C) More than \$6,500	10
§1.20 (D) More than \$15,000	12
§1.25 (E) More than \$40,000	14
§1.25 (F) More than \$100,000	16
§1.25 (G) More than \$250,000	18
§1.38 (H) More than \$550,000	20
§1.50 (I) More than \$1,500,000	22
§1.40 (J) More than \$3,000,000	24
§1.26 (K) More than \$9,500,000	26
§1.25 (L) More than \$25,000,000	28
§1.30 (M) More than \$65,000,000	30
§1.50 (N) More than \$150,000,000	32
§1.25 (O) More than \$250,000,000	34
§1.38 (P) More than \$550,000,000	36



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### Sentencing Table

#### SENTENCING TABLE (in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12) (13 or more)	VI
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B 10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
Zone C 13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57



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Lisa's Proffer back to the Government...

- ▶ "Interesting," says Lisa, taking notes while Eric starts flipping through the draft Information/Plea.
- ▶ "Why do you think our client took the money, and did your source say anything about the other \$800,000 she embezzled through the phony payroll checks she cut to herself?"
- ▶ Anastasia and Maria both stop smiling and look at each other.
- ▶ Anastasia and Marie, now both taking rapid notes, ask Lisa and Eric to send over any information the forensic accountant can share with them, and promise to look into this further.



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Now, Lets Get Back to Tina



The IRS will pay money to people who blow the whistle on persons who fail to pay the taxes they owe. If the IRS proceeds with an administrative or judicial action, against a taxpayer, based on information provided by the whistleblower, it can award up to 30% of the additional tax, penalty and other amounts collected, including criminal fines and civil forfeitures, and violations of reporting requirements.



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Whistleblowing

- ▶ Tina is obviously our whistleblower
- ▶ On the MOI she is called "C.S." for confidential source
- ▶ See her 211 (Exhibit 1) and MOI (Exhibit 2)
- ▶ Also lets just look at Tony's MOI (Exhibit 3)



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## How Whistleblowing Works

- The whistleblower must submit IRS Form 211 "Application for Award for Original Information" that is signed and submitted under penalties of perjury.
- The Form 211 should contain the following:
  1. A description of tax noncompliance including a written narrative explaining the issue
  2. Information to support narrative such as location of assets, ledger sheets, receipts, bank records, contracts, emails, copies of books and records.
  3. Description of documents or supporting evidence not in whistleblower's possession, and their location.
  4. Explanation of how whistleblower became aware of information.
  5. Description of the whistleblowers present or former relationship to the subject of claim.

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## The Whistleblower Office

- ▶ Gets about 1,000 claims per month
- ▶ Has about 40 employees
- ▶ They claim they review them all
- ▶ Detailed ones get the best shot
- ▶ Average time to payout: 8-10 years



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## Claim received



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
November 19, 2019

Dear Sir/Madam:  
Dear Whistleblower:  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20548

Dear Sir/Madam:  
We received your Form 211 with the information you provided and have assigned the above case number. We are pleased to have your information and will begin the review process as soon as possible. We will contact you again as we progress through the review process.  
We appreciate your contribution to the work we do and will continue to work hard to ensure that the IRS is the most efficient and effective it can be.  
If you have any questions or need more information, please contact the Whistleblower Office at 1-800-829-1040. We will be happy to assist you.  
Thank you for your contribution to the work we do. We will continue to work hard to ensure that the IRS is the most efficient and effective it can be.  
Sincerely,  
Whistleblower Office  
Internal Revenue Service

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<b>Tina's Exposure</b>	
<ul style="list-style-type: none"> <li>▶ Think about IRC § 7206(2): The defendant aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return, affidavit, claim, or other document which involved a matter arising under the Internal Revenue laws.</li> <li>▶ What about her income? IRC § 7201...?</li> <li>▶ So we did she call the government?</li> <li>▶ William Congreve, in his 1697 tragedy, <i>The Mourning Bride</i>: "Hell hath no fury as a woman scorned."</li> </ul>	
	
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<b>Tony's case</b>	
<ul style="list-style-type: none"> <li>▶ A week after their meeting Lisa sends over Walters report detailing the \$1.5 million he believes was embezzled to benefit Tina.</li> <li>▶ A month later a letter arrives at Lisa's office and Tony's home closing the criminal investigation and informing them the case has been referred back to the civil function for it to deal with (Exhibit 11, page 40)</li> <li>▶ Meanwhile Tony informs Lisa that he told Marie about the infidelity and they are now getting a divorce. "As long as she is not responsible for the taxes she is okay with just splitting everything."</li> <li>▶ Lisa informs Tony that they signed joint tax returns and therefore Marie will be responsible for the liability on the return. Tony groans.</li> </ul>	
	
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<b>Civil Exam Report</b>	
<ul style="list-style-type: none"> <li>▶ Several weeks later a draft audit report arrives showing the additions to income from the criminal investigation, adding \$1,500,000 to income to the last 6 years of tax returns, along with a 75% civil fraud penalty and interest. The balance due is close to \$1,000,000.</li> <li>▶ Lisa and Eric meet with Tony and explain what the IRS civil function did and that they disagree with the adjustments for the \$800,000 Tina embezzled for herself and that the other \$700,000 also should be attributed to Tina because it benefited her, though this second piece will be an uphill battle.</li> <li>▶ See Exhibit 12 (page 41)</li> </ul>	
	
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Civil Exam Report

- ▶ Tony asks about getting rid of the penalties. Lisa and Eric both agree that, given Tony's complicity in the under-reporting, that there is little to no chance of penalty abatement.
- ▶ They also discuss with him the fact that Marie should seek independent representation because she will certainly want to raise an innocent spouse claim.
- ▶ Three days later the Notices of Deficiency arrives from the IRS. Exhibit 13 (page 45)

**TRN**  
TAX REP NETWORK 61

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**TRN**  
TAX REP NETWORK

**LUNCH BREAK**

**See You in 45 minutes!**

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RCP Calculation

- ▶ As Lisa works on drafting the United States Tax Court petition, Eric and Amanda begin working on a 433 Reasonable Collection Potential analysis for just Tony to see what his collectability is (now that he will be getting divorced)
- ▶ The goal is to try and determine, depending upon the outcome with Appeals, if the case is worth litigating or not
- ▶ They get a new POA for the civil exam and collection (Exhibit 14)
- ▶ Eric and Amanda interview Tony and then have the checklist of documents sent over to him to begin gathering (Exhibit 15)

**TRN**  
TAX REP NETWORK 63

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## RCP Calculation

- ▶ In working up Tony's RCP analysis Eric and Amanda determine that, depending upon the valuation of their home, Tony can at most afford to pay almost \$98,000 (Exhibit 16)
- ▶ More problematic is that he can full-pay if they get stuck with the \$750,000 of income Tony took and spent on Tina
- ▶ They call Tony and meet with him to review the analysis and discuss making some changes

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## The Initial RCP Analysis

Tony Antonelli Future Income Analysis					
Income	Actual	Expenses	Actual	Allowable	
Wages (tonelli)	\$ -	Food, Clothing and Misc	\$ 718	\$ 718	
Wages (spouse)	\$ -	Housing & utilities	\$ 4,000	\$ 1,959	
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	
Net Business Income	\$ 31,250	Vehicle Operating Costs	\$ -	\$ -	
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	
Distributions	\$ -	Health Insurance	\$ -	\$ -	
Pension/Soc Sec (employer)	\$ -	Out of Pocket HealthCare	\$ 50	\$ 50	
Pension/Soc Sec (spouse)	\$ -	Court ordered pens	\$ 13,000	\$ 13,000	
Social Security (employer)	\$ -	ChildDep Care	\$ -	\$ -	
Social Security (spouse)	\$ -	Life Insurance	\$ 100	\$ 100	
Child Support	\$ -	Current Year Taxes	\$ 9,375	\$ 9,375	
Alimony	\$ -	Secured Debts	\$ -	\$ -	
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	
	\$ -	Student Loans	\$ -	\$ -	
Total	\$ 31,250	Total Living Expenses	\$ 27,248	\$ 25,205	
		Net Difference	\$ 4,002	\$ 6,045	
Analysis - Future Income		Future Income 120 mos		\$ 725,400	
Income	\$ 72,540	Asset - house (50%)		\$ 25,000	
Assets	\$ 25,000	Asset - 401k loan		\$ -	
Monthly Available	\$ 97,540	Asset - 750,400		\$ 750,400	
		Amount owed		\$ 758,180	

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## RCP Calculation

- ▶ Amanda explains that Tony ALMOST shows the ability to full-pay the liability (its really close); he has \$6,045 a month left over (with 120 months to pay) plus an additional \$25,000 of assets because of his share of the equity in the home. Remember – "Not in the best interest of the government"
- ▶ The 401(k) has nothing available because Tina convinced Tony to borrow and use it on her (it bought her a new car)
- ▶ Amanda and Eric explain that, if some or all of the exam changes are ultimately upheld, Tony will be required to file amended returns with Connecticut.

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## RCP Calculation

- ▶ Worse, Connecticut will come in after the IRS, it will charge 1% statutory interest and has no collection statute expiration, so Tony will pay Connecticut off after the IRS gets paid
- ▶ There is a planning opportunity, says Amanda. If they quickly file amended returns and set up a payment plan with Connecticut BEFORE the bill comes out from the IRS, they may be able to get Connecticut ahead of the IRS in priority and use Connecticut to leverage an Offer with the IRS.

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## RCP Calculation



- ▶ They calculate his RCP will be just under \$90,000 before any payment plan with Connecticut.
- ▶ If they set up Connecticut for a \$4,000 a month plan, they can knock the IRS below \$50,000 and make sure the Offer is accepted by the IRS (Exhibit 17)
- ▶ What else did Eric miss? (Hint...our retainer)

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## The Analysis

Tony Antonetti		Future Income Analysis				
Income	Actual	Expenses	Actual	Before Allowable	After Allowable	
Wages (yourself)	\$ -	Food, Clothing and Misc	\$ 715	\$ 715	\$ 715	
Wages (spouse)	\$ -	Housing & Utilities	\$ 4,000	\$ 13,959	\$ 13,959	
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	\$ -	
Net Business Income	\$ 31,250	Vehicle Operating Costs	\$ -	\$ -	\$ -	
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -	
Distributions	\$ -	Health Insurance	\$ -	\$ -	\$ -	
Pension/Soc Sec (Employer)	\$ -	Out of Pocket HealthCare	\$ 56	\$ 56	\$ 56	
Pension/Soc Sec (Spouse)	\$ -	Court ordered pmts	\$ 13,000	\$ 13,000	\$ 13,000	
Social Security (Employer)	\$ -	Child/Due Care	\$ -	\$ -	\$ -	
Social Security (Spouse)	\$ -	Life Insurance	\$ 100	\$ 100	\$ 100	
Child Support	\$ -	Current Year Taxes	\$ 9,375	\$ 9,375	\$ 9,375	
Alimony	\$ -	Secured Debts	\$ -	\$ -	\$ -	
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ 4,000	
	\$ -	Student Loans	\$ -	\$ -	\$ -	
Total	\$ 31,250	Total Living Expenses	\$ 27,245	\$ 25,205	\$ 29,205	
		Net Difference	\$ 4,004	\$ 6,045	\$ 2,045	
<b>Analysis - Future Income</b>		Future Income 120 mos	\$ 245,400			
Income	\$ 24,540	Asset - House (50%)	\$ 25,000			
Assets	\$ 25,000	Asset - 401K loan	\$ -			
RCP	\$ 49,540		\$ 270,400			
		Amount owed	\$ 708,160			

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### Eric's Miss...Had I argued for retainer fees

Tony Antonelli  
Future Income Analysis

Income	Actual	Expenses	Actual	Before		After
				Allowable	Allowable	
Wages (yourself)	\$ -	Food, Clothing and Misc	\$ 715	\$ 715	\$ 715	
Wages (spouse)	\$ -	Housing & Utilities	\$ 4,000	\$ 1,959	\$ 1,959	
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	\$ -	
Net Business Income	\$ 31,250	Vehicle Operating Costs	\$ -	\$ -	\$ -	
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -	
Distributions	\$ -	Health Insurance	\$ -	\$ -	\$ -	
Pension/Soc Sec (employer)	\$ -	Out of Pocket Health Care	\$ 56	\$ 56	\$ 56	
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ 13,000	\$ 13,000	\$ 13,000	
Social Security (employer)	\$ -	Child Day Care	\$ -	\$ -	\$ -	
Social Security (spouse)	\$ -	Life Insurance	\$ 100	\$ 100	\$ 100	
Child Support	\$ -	Current Year Taxes	\$ 9,375	\$ 9,375	\$ 9,375	
Alimony	\$ -	Secured Debts	\$ -	\$ -	\$ -	
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ 4,000	
	\$ -	Representation Fees	\$ -	\$ -	\$ 1,842	
Total	\$ 31,250	Total Living Expenses	\$ 17,246	\$ 25,206	\$ 30,247	
		Net Difference	\$ 4,004	\$ 6,045	\$ 1,003	
<b>Analysis - Future Income</b>			Future Income 120 mos	\$ 120,400		
Income	\$ 12,040	Asset - house (50%)	\$ -	\$ 25,000		
Assets	\$ 25,000	Asset - 401K loan	\$ -	\$ 145,400		
RCF	\$ 37,040	Amount owed	\$ 758,160			



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### Marie hires Frank

- ▶ Marie has hired an attorney, Frank the Attorney, to represent her.
- ▶ Frank feels it best for Tony's firm to continue its representation of them jointly into Tax Court but will review everything they do.
- ▶ Tony's attorneys Lisa and Eric prepare and file the United States Tax Court petition to challenge the liability (Exhibit 18). The arguments are that:
  1. None of the \$700,000 of cash taken is income to Tony but rather only benefited Tina and therefore should be treated as compensation to Tina, not to Tony
  2. None of the \$800,000 stolen by Tina through the payroll scheme is income because it was already reported as income and deducted for payroll.
  3. The penalty is inappropriate because Tony was a victim and Tina was the bad actor



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### Marie hires Frank

- ▶ After filing the case Lisa and Eric received the receipt confirming the Court has the filing (Exhibit 19)
- ▶ 45 days later they are alerted by an email that the Government's answer was filed (Exhibit 20)
- ▶ A few weeks later they receive the letter from IRS Appeals (Exhibit 21)



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## The Appeals Hearing

- ▶ Tony's attorney Eric takes the Appeals hearing.
- ▶ The Appeals officer agrees that the \$800,000 of payroll stolen by Tina is not additional income – it was already picked up and went to an employee.
- ▶ The \$700,000, however, is income to Tony.



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## The Appeals Hearing

- ▶ Appeals decides that, based upon the fact that Tony took the cash himself and then spent it on Tina or for Tina, it is his income.
- ▶ The money spent on Tina's behalf were gifts to her. He finds that Tony has the additional income and failed to file Gift Tax returns.
- ▶ He refuses to consider the abatement of penalty request because, as he puts it, "Tony is lucky he is not in an orange jump suit."

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## The Appeals Hearing

- ▶ The issue to decide now is whether to concede or litigate.
- ▶ Eric and Lisa both believe that the Appeals Officers decision will not be overturned through litigation, and Tony and Marie are probably stuck with the income.
- ▶ They agree with Frank that his client Marie should seek innocent spouse and agree to make sure Tony does not intervene in her case.

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The Appeals Hearing	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Given the RCP analysis, and the time has passed with the asset and expense changes, Tony agrees with Lisa and Eric to sign the stipulated decision and close the case.</li><li>▶ They agree to file the amended tax returns with Connecticut that day and file the Offer-in-Compromise as soon as the bill shows up in a few months.</li><li>▶ The Appeals Officer sends over a stipulated decision a month later (Exhibit 22)</li></ul>	
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Marie....	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Marie, very upset by the turn of events</li><li>▶ Moves out of the family home and is living with her sister</li><li>▶ Marie files for divorce and hires another attorney Frank to represent her in her IRS issue</li><li>▶ Frank, after hearing everything, believes an innocent spouse filing for Marie is appropriate.</li><li>▶ Frank prepares the 8857 to request relief and interviews 2 employees of Lolith's to bolster Marie's case with affidavits (Exhibits 23, 24 and 25)</li><li>▶ Frank files his POA with the CAF Unit and with the 8857 (Exhibit 26)</li></ul>	
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Marie....	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Marie does not work outside the house has focused her attention on raising their children.</li><li>▶ Marie has little to do with the restaurant and had no knowledge of the underreporting.</li><li>▶ Marie never saw the tax returns.</li><li>▶ Frank has her see an EA that he knows and has her returns prepared as Married Filing Separate and files them with the IRS knowing they will be refused, but to show his client has no liability.</li></ul>	
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Marie....

- ▶ As part of the 8857 filing Frank gets two former employees of the restaurant to sign affidavits that they never saw Marie at the restaurant, and it was always Tony and Tina that ran things.
- ▶ Frank also argues that Marie not only did not benefit from the unreported income but was harmed because it all went to provide for a 3rd party.
- ▶ Marie's divorce agreement states that Tony is solely responsible for the underreported tax and he never gave Marie the tax returns but instead forged her name
- ▶ Frank warns Marie that it is most likely they will have to take the case to Tax Court in order to win.

**TRN**  
TAX REP NETWORK 79

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Innocent Spouse

- ▶ Spouses may file a joint tax return. I.R.C. § 6013
- ▶ Both spouses are individually liable for the taxes due on a **joint** tax return regardless of who earned the income and the IRS can collect from both spouses. I.R.C. § 6013(d)(3)
- ▶ May lead to inequitable results
  - Death
  - Separation or divorce
  - Returns filed without consent
- ▶ You can MFS and amend to go joint. You cannot amend a joint to go separate once its filed

**TRN**  
TAX REP NETWORK 80

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The Divorce Decree

- ▶ Paragraph inserted into divorce agreements making one spouse liable is not binding on the IRS
- ▶ This is really grounds for suing your former spouse when the IRS seizes assets and/or income
- ▶ It will be one item considered for equitable relief in innocent spouse

**TRN**  
TAX REP NETWORK 81

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**Green & Sklarz's Perceived Conflict of Interest**

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▶ Practitioners Generally

- ❑ Circular 230 forbids a tax practitioner from representing a client before the IRS if the representation involves a conflict of interest. 31 C.F.R. § 10.29(a).
  - A conflict of interest exists if, among other situations, the representation of one client will be directly adverse to another.
- ▶ A practitioner may represent a client despite the conflict of interest if the practitioner obtains the informed consent of each affected client. Model R. Prof'l Conduct, 1.7(b); 31 C.F.R. § 10.29(b); Tax Ct. R. Prac. & Proc. R. 24(g).

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**TRN**  
TAX REP NETWORK 82

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**First Issue: The Return**

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General Rule: The most important factor in deciding whether a return qualifies as a joint return is whether the couple intended to file a joint return.

- ▶ Marie never saw it
- ▶ Her signature was forged
- ▶ She had no filing requirement
- ▶ She never knew about the income
- ▶ She never benefited from the income

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**TRN**  
TAX REP NETWORK 83

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**Tacit Consent**

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Tacit Consent

- ❑ Did the requesting spouse have a filing requirement?
- ❑ Did the requesting spouse file a joint return for prior years?
- ❑ Did the requesting spouse participate in preparation of return?
- ❑ Did the requesting spouse receive a tax benefit?
- ❑ Did the requesting spouse have a non-tax reason to file a joint tax return?

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**TRN**  
TAX REP NETWORK 84

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Duress	<input type="checkbox"/>
<p>▶ <u>Returns Signed Under Duress</u>: A return signed under duress is not a joint return</p> <ul style="list-style-type: none"> <li>❑ <u>Proving Duress</u>: To prove duress, the spouse must show that he or she:           <ol style="list-style-type: none"> <li>(1) was unable to resist the demands to sign the return, and</li> <li>(2) would not have signed the return but for the constraint applied to his or her will.</li> </ol> </li> </ul>	
<div style="display: flex; justify-content: space-between; align-items: center;">  <span style="font-size: 8px;">85</span> </div>	

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Forged Returns	<input type="checkbox"/>
<p>▶ <u>Forged Returns</u></p> <ul style="list-style-type: none"> <li>❑ Requesting spouse did not sign the return and there was no tacit consent.</li> <li>❑ There is no ASED for the requesting spouse, until he or she files a return.</li> <li>❑ The ASED for the non-requesting spouse begins when the joint return was due to be filed, or was filed, whichever occurred later</li> <li>❑ If the signature was forged, but the return is also unlawful or invalid, process as a forgery.</li> </ul>	
<div style="display: flex; justify-content: space-between; align-items: center;">  <span style="font-size: 8px;">86</span> </div>	

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Innocent Spouse	<input type="checkbox"/>
<p>IRC 6015 Creates 3 types of innocent spouse relief</p> <ul style="list-style-type: none"> <li>▶ B – Innocent Spouse Relief</li> <li>▶ C – Separation of Liability Relief</li> <li>▶ F – Equitable Relief</li> </ul>	
<div style="display: flex; justify-content: space-between; align-items: center;">  <span style="font-size: 8px;">87</span> </div>	

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IRC 6015(b) Relief	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Understatement is due to an erroneous item</li><li>▶ Innocent spouse did not know or have reason to know of the understatement</li><li>▶ Inequitable to hold them responsible for the tax</li><li>▶ Requested relief within 2 years of when collection activity began</li><li>▶ Allocation of the liability</li><li>▶ Refund is available if granted within 3 years of the return filing</li></ul>	
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IRC 6015(c) Relief	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Must be divorced or legally separated for at least 12 months</li><li>▶ No actual knowledge of the understatement of the item giving rise to the liability</li><li>▶ Must be requested within two years of collection activity beginning</li><li>▶ Will be treated as if they filed separately</li><li>▶ No refund available here, but liability is separated</li></ul>	
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Erroneous Item	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Improper deductions (cheating husband)</li><li>▶ Omitted income (gambling accountant)</li></ul>	
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IRC 6015(f) Relief

- ▶ Revenue Procedure 2013-34 lays out the IRS approach to evaluating claims for equitable relief
- ▶ Takes into account all facts and circumstances
- ▶ For underpayments you must use equitable relief (ex-husband's bogus estimated payments)
- ▶ Liability is apportioned
- ▶ Refunds are available

**TRN**  
TAX REP NETWORK 91

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Factors Considered by IRS

- ▶ Collectability – 433 analysis
- ▶ CNC is good but not necessary
- ▶ Number of factors

**TRN**  
TAX REP NETWORK 92

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9 Factors under Rev Proc 2013-34

1. Marital status.
2. Economic hardship.
3. Knowledge or reason to know.
4. Non-requesting spouse's legal obligation.
5. Significant benefit.
6. Compliance with income tax laws.
7. Abuse
8. Physical/mental health
9. Financial dominance

**TRN**  
TAX REP NETWORK 93

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<p><b>The Request</b></p> <ul style="list-style-type: none"> <li>▶ Made on Form 8857</li> <li>▶ The Form must be filed within two years after the IRS begins collection activity for the tax return in question in order to obtain relief under either IRC § 6015(b) or IRC § 6015(c)</li> <li>▶ For 6015 § 6015(f) its available as long as the statute is open for collection</li> </ul>	<input style="width: 20px; height: 20px;" type="checkbox"/>
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<p><b>8857</b></p> <p style="font-size: small;">Form <b>8857</b> Request for Innocent Spouse Relief OMB No. 1545-1046</p> <p style="font-size: x-small;"> <small>             Department of the Treasury,              Internal Revenue Service (IRS)           </small> </p> <p style="font-size: x-small;">▶ Information about Form 8857 and its separate instructions is at <a href="http://www.irs.gov/form8857">www.irs.gov/form8857</a>.</p> <p style="text-align: center; font-weight: bold; font-size: small;">Important things you should know</p> <ul style="list-style-type: none"> <li>• Do not file this form with your tax return. See <i>Where To File</i> in the instructions.</li> <li>• Review and follow the instructions to complete this form. Instructions can be obtained at <a href="http://www.irs.gov/form8857">www.irs.gov/form8857</a> or by calling 1-800-TAX-FORM (1-800-426-3676).</li> <li>• While your request is being considered, the IRS generally cannot collect any tax from you for the year(s) you request relief. However, filing this form extends the amount of time the IRS has to collect the tax you owe, if any, for those years.</li> <li>• The IRS is required by law to notify the person on line 5 that you requested this relief. That person will have the opportunity to participate in the process by completing a questionnaire about the tax years you enter on line 3. This will be done before the IRS issues preliminary and final determination letters.</li> <li>• The IRS will not disclose the following information: your current name, address, phone numbers, or employer.</li> </ul> <p style="font-weight: bold; font-size: small;">Part I Should you file this form?</p> <p style="font-size: x-small;">Generally, both you and your spouse are responsible, jointly and individually, for paying any tax, interest, or penalties from your joint return. If you believe your current or former spouse should be solely responsible for an erroneous item or an underpayment of tax from your joint tax return, you may be eligible for innocent spouse relief.</p> <p style="font-size: x-small;">Innocent spouse relief may also be available if you were a resident of a community property state (see list of community property states in the instructions) and did not file a joint federal income tax return and you believe you should not be held responsible for the tax attributable to an item of community income.</p>	<input style="width: 20px; height: 20px;" type="checkbox"/>
<span style="float: right; font-size: x-small;">95</span>	

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<p><b>Requesting Innocent Spouse Relief</b></p> <ul style="list-style-type: none"> <li>▶ Prepare to support your case with documentation</li> <li>▶ Consider whether the returns were actually signed by the innocent spouse (E-Filed)</li> <li>▶ Focus on inability to pay if they are CNC</li> <li>▶ Prepare to Appeal the centralized units decision</li> </ul>	<input style="width: 20px; height: 20px;" type="checkbox"/>
<span style="float: right; font-size: x-small;">96</span>	

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<b>Collection Activity</b>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▶ IRS off-sets the taxpayer's income tax refund;</li> <li>▶ The filing of a claim by the IRS in a court proceeding;</li> <li>▶ The filing of a suit by the United States against the taxpayer to collect the joint liability;</li> <li>▶ The issuance of an IRC § 6330 notice of the IRS's intent to levy and the taxpayer's right to a Collection Due Process (CDP) hearing</li> <li>▶ Can raise at your CDP hearing (See Form 12153)</li> </ul>	
	
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<b>The Divorce is Final</b>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▶ Tony and Marie's divorce is final.</li> <li>▶ Based on the \$375,000 of actual income the restaurant produces, Tony moves out of the family home and gives up his interest and any equity in it, which is not much. He agrees to pay Marie \$5,000 of child support per month, and another \$8,000 per month of Alimony.</li> <li>▶ The agreement is signed in 2018 so the alimony is deductible to Tony and income to Marie.</li> <li>▶ Tony is also required to get a \$1 million term life insurance policy on his life and name Marie as beneficiate until his youngest child turns 21.</li> <li>▶ He is also required to carry health insurance to cover the whole family.</li> </ul>	
	
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<b>Innocent Spouse Decision</b>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>▶ It takes nearly 7 months but Marie finally receives a decision from the Centralized Innocent Spouse Unit denying her claim, stating that she signed a valid joint return (she didn't) and she does not qualify for IRC § 6015(c) relief (she does). Exhibit 27, page 98</li> <li>▶ After ranting and raving at Frank for several minutes she calms down and recalls Frank telling her this would happen, and now it is time to file the appeal, which they do. Exhibit 28, page 101, and Exhibit 29, page 102</li> </ul>	
	
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Tony and the State of Connecticut

- ▶ “Eric, we will get the returns processed tomorrow.”
- ▶ The call with CT DRS Director of Collections goes very well. CT agrees they want to be in front of the IRS and agrees to establish a \$4,000 a month payment plan.
- ▶ With Connecticut in place, the assessment being done, and an agreement in writing, Tony’s attorneys assure him they are ready to file the IRS Offer once the billing notices arrive from the IRS

**TRN**  
TAX REP NETWORK

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Tony’s Offer



- ▶ Amanda and Eric do need to address Tony’s compliance
- ▶ Tony has historically just paid with his 1040 and been penalized
- ▶ Amanda explains the need for tax compliance to him

**TRN**  
TAX REP NETWORK

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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, CAP)
- Resolution



**TRN**  
TAX REP NETWORK

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**Step #1: Tax Compliance**

- All returns filed that are due as of this date
- Current tax period payments being made
  - a) Proper withholding
  - b) Estimated tax payments
  - c) Payroll tax deposits

**TRN**  
TAX REP NETWORK

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**Inside Secret**

- What is compliance for tax returns?
- Last 6 years – IRM 1.2.14.1.18



**TRN**  
TAX REP NETWORK

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**IRS Collection Process: Assessment**

- The IRS will assess the tax when the return is received and processed or it creates a “substitute for return” (SFR) for the taxpayer
- Pull transcripts to determine the exact date of assessment



**TRN**  
TAX REP NETWORK

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IRS Collection Process: *10-Year Statute*

- Pursuant to IRC §6502 the IRS has 10 years to collect a tax debt
- The 10-year statute begins upon the date of assessment, not the date of filing
- There are a number of actions that will toll, or suspend, the collection statute



**TRN**  
TAX REP NETWORK

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IRS Collection Process: *10-Year Statute*

- Taxpayer files bankruptcy—IRC §6503(h)
  - The time for a bankruptcy plus six months!
- Filing of a Collection Due Process hearing request—Regulation §301.6330-1(g)
- Filing of an Offer in Compromise—Regulation §301.7122-1(i)
- Pending Installment Agreement — IRC §6331(i)(5)

**TRN**  
TAX REP NETWORK

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Transcripts

- This is why we pull transcripts
- How much time remains will drive the decision on how to resolve the tax debt
- Need to review the Transcripts for things the taxpayer has done that may have tolled (extended) the statute

**TRN**  
TAX REP NETWORK

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**IRS Collection Tools: Levies**

- 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



**TRN**  
TAX REP NETWORK

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**Two types of Levy**

- Regular Levy (bank, vendors)
- Continuing (wages or routinely paid commissions)
  - ~ IRS allows standard deduction divided by the pay periods and takes the amount above that



**TRN**  
TAX REP NETWORK

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**Avoiding/Dealing with a Levy**

Do what taxpayer should have done!

- Compliance
- Call IRS
- Propose a resolution

**TRN**  
TAX REP NETWORK

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**IRS Collection Tools: Liens**

- Pursuant to IRC §6321, a lien arises automatically whenever demand for payment is made and the taxpayer fails to pay
- No other action is required of the IRS
- IRS may file a Notice of Federal Tax Lien, COIC Unit will when they see one has not been filed
  - Though the lien arises without any further IRS action, the IRS filed the Notice to inform third-party creditors of the IRS lien on the taxpayer's assets to protect its (the IRS's) interest

**TRN**  
TAX REP NETWORK

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**Notice of Federal Tax Lien for Tony**

**IRS** Department of the Treasury  
Internal Revenue Service  
COP-10 ACS CORRESPONDENCE  
P. O. BOX 148844, STOP 8130 CDC  
CINCINNATI, OH 45250-5544

**CERTIFIED MAIL**  
930711975640794308405

Letter Date: 08/23/2014  
Taxpayer Identification Number: XXX-XX-XXXX  
Person to Contact: P. A. BELTON  
Contact Telephone Number: 18887-829-3913  
Employee Identification Number:

TAXPAYER NAME  
PO BOX  
HARTFORD, CT 06102

891042

**Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320**

Dear TAXPAYER NAME:

We filed a Notice of Federal Tax Lien on [REDACTED]

Type of Tax	Tax Period	Assessment Date	Amount on Lien
CTDP	12/31/2011	12/29/2014	38429.87

**TRN**  
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**IRS Collection Tools: Liens**

- IRC §6320 grants the taxpayer the right to a hearing to contest the filing of a notice of federal tax lien
- Pursuant to IRC §6322 the lien will continue in force until the tax is either paid, compromised, or the 10-year collection statute expires

**TRN**  
TAX REP NETWORK

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<b>Tax Liens</b>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ Discharge (sell out from under the lien)</li><li>▶ Withdrawal (statute expired and bank is an idiot)</li><li>▶ Subordination (house that burned down)</li></ul>	
<b>TRN</b> TAX REP NETWORK	118

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<b>Inside Secret to Liens</b>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ The IRS just wants the equity it could get if it seized</li><li>▶ Release: IRS is getting whatever its interest is</li><li>▶ Subordination: it get the IRS cash or improves collection</li><li>▶ Withdrawal: under 25K in a direct debit IA which full pays in 60 months or less (IRM 5.12.9.3.2.1)</li></ul>	
<b>TRN</b> TAX REP NETWORK	119

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<b>Offer Basics</b>	<input type="checkbox"/>
<ul style="list-style-type: none"><li>▶ IRC § 7122 authorizes the IRS to accept a compromise on an amount owed</li><li>▶ IRC § 7122(c) provides that the Service shall set forth guidelines for determining when an offer in compromise (OIC) should be accepted</li></ul>	
<b>TRN</b> TAX REP NETWORK	120

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**Offer Basics**

- ▶ Congress explained that these guidelines should allow the Service to consider:
  - a. Hardship,
  - b. Public policy, and
  - c. Equity
- ▶ Treasury Regulation § 301.7122-1 authorizes the Service to consider OIC's raising these issues.
- ▶ These Offers are called Effective Tax Administration (ETA) offers. See IRM § 5.8.11.1

**TRN**  
TAX REP NETWORK 121

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**Offer in Compromise**

Form 656 Booklet  
**Offer in Compromise**



**Three types of Offers:**

- ▶ Doubt as to liability
- ▶ Doubt as to collectability  
~ DCSC
- ▶ Effective Tax Administration

**TRN**  
TAX REP NETWORK 122

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**Doubt-as-to-Liability Offer**

Doubt as to Liability

Challenging the underlying liability  
(Form 656-L)

↓

Not about ability to pay but if the taxpayer can prove they do not owe the money

**TRN**  
TAX REP NETWORK 123

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### Doubt as to Collectability



- ▶ Most common Offer
- ▶ Based upon the taxpayer's 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**

**Deferred**

- Paid in 5 or fewer payments

- 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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**Analysis**

- Are they an Offer candidate or not?
- This is why we charge for consultations
- Taxpayer will get benefit just from the meeting



**TRN**  
TAX REP NETWORK

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**Reasonable Collection Potential**

- Gross monthly income
- Allowable expenses
- Determine future income
- Net equity in assets (QSV)
- $FI + NE = RCP$



**TRN**  
TAX REP NETWORK

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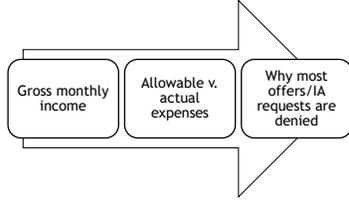
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**Financial Guidelines**



<https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>

**TRN**  
TAX REP NETWORK

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## Transportation – Operating Regions

### MSA Definitions by Census Region

**Northeast Census Region:** Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Pennsylvania, New York, New Jersey

MSA	Counties
<b>Boston</b>	MA: Essex, Middlesex, Norfolk, Plymouth, Suffolk
	NH: Rockingham, Strafford
<b>New York</b>	NY: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Westchester
	NJ: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union
	PA: Pike

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## Out of Pocket Health Care Costs

	Out of Pocket Costs
Under 65	\$56
65 and Older	\$125

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## Financial Guidelines

Expense	Actual or Allowable
Food, Clothing and Misc	National Standard
Housing and Utilities	Lesser of Actual or Local Standard
Automobile - Ownership	Lesser of Actual or National Standard
Automobile - Operating	Local Standard
Public Transportation	National Standard
Health Insurance	Actual
Out of Pocket Health Care Costs	Higher of Actual or National Standard
Court Ordered Payments	Actual
Child/Dependent care expenses	Actual (must be necessary)
Life Insurance	Actual (must be reasonable)
Current Year Taxes	FIT, FICA or SE, SIT, Local
Secured Debts	Actual
Delinquent State Taxes	Percentage of State v. Federal Debt

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## Why RCP is so important

- ▶ What is the point of working on an OIC the taxpayer cannot pay?
- ▶ Are there strategies we can utilize to reduce the RCP?
- ▶ Is another alternative more attractive (like CNC)

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## The Offer

Tony Antonetti  
Future Income Analysis

Income	Actual	Expenses	Before		After
			Actual	Allowable	Allowable
Wages (youself)	\$ -	Food, Clothing and Misc	\$ 716	\$ 716	\$ 716
Wages (spouse)	\$ -	Housing & utilities	\$ 4,000	\$ 1,959	\$ 1,959
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	\$ -
Net Business Income	\$ 31,250	Vehicle Operating Costs	\$ -	\$ -	\$ -
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -
Distributions	\$ -	Health Insurance	\$ -	\$ -	\$ -
Pension(Soc Sec (taxpayer))	\$ -	Out of Pocket HealthCare	\$ 56	\$ 56	\$ 56
Pension(Soc Sec (spouse))	\$ -	Court ordered/judgments	\$ 13,000	\$ 13,000	\$ 13,000
Social Security (taxpayer)	\$ -	Child/Day Care	\$ -	\$ -	\$ -
Social Security (spouse)	\$ -	Life Insurance	\$ 100	\$ 100	\$ 100
Child Support	\$ -	Current Year Taxes	\$ 9,375	\$ 9,375	\$ 9,375
Alimony	\$ -	Secured Debts	\$ -	\$ -	\$ -
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ 4,000
	\$ -	Student Loans	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ 31,250</b>	<b>Total Living Expenses</b>	<b>\$ 27,298</b>	<b>\$ 25,205</b>	<b>\$ 29,205</b>
		<b>Net Difference</b>	<b>\$ 4,052</b>	<b>\$ 6,045</b>	<b>\$ 3,045</b>
<b>Analysis - Future Income</b>		<b>Future Income 120 mos</b>	<b>\$ 245,400</b>		
Income	\$ 24,540	Asset - House (50%)	\$ 25,000		
Assets	\$ 25,000	Asset - 401K loan	\$ -		
RCP	\$ 49,540	Asset - 270,400	\$ 270,400		
		Amount owed	\$ 758,160		

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## The Offer Package

- The Forms
- The Support
- The Cover Letter
- The Payment
- The IRS Responses
- The Appeal



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**Offer Documents**

- ▶ Offer Booklet is Form 656-B
- ▶ Inside is the Form 656 (The Offer)
- ▶ Form 433-A (OIC) – Personal Financial
- ▶ Form 433-B (OIC) – Business Entity Financial



**TRN**  
TAX REP NETWORK

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**Supporting Documents**

- ▶ Cover Letter
- ▶ Checks
- ▶ IRS Form 2848 – Power of Attorney
- ▶ Any Last Minute filings for compliance (estimated tax payments, missing 1040s filed, etc)
- ▶ Back-up documents for any income or expense item claimed that is not a national standard

**TRN**  
TAX REP NETWORK

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**The Cover Letter**

- ▶ Highlight anything you want the IRS to know and consider
- ▶ Disclose anything that you believe requires disclosure
- ▶ You may want to walk the IRS through your RCP argument

**TRN**  
TAX REP NETWORK

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Meanwhile....

- ▶ The Appeals decision on Marie is no better than the Centralized Innocent Spouse unit's decision.
- ▶ The Appeals Officer spent all of 60 seconds informing Frank that because she lived a high lifestyle she must have known about the money and upheld the centralized group's decision.
- ▶ Marie and Frank prepare for Tax Court.

**TRN**  
TAX REP NETWORK

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Offer was received

Department of the Treasury Internal Revenue Service Centralized OIC PO Box 9011 Stop 482 Moltenville, NY 11742	Date of this letter: 10/10/2017 Person to Contact: Mr. Danjiloye Employee # 00000000 Phone# (845)211-4131 08:00am-08:00pm Mon-Fri Taxpayer ID# ****-**-xxxx Offer Number: 1911000000
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Taxpayer Name  
Taxpayer Address  
City, CT xxxxxx

Dear Mrs. Taapayer,

We received your Offer in Compromise. You will be contacted by 01/04/2017.

While investigating your offer, we will determine whether a notice of federal tax lien should be filed in order to protect the government's interests. If we determine to file a notice of federal tax lien we will provide you with notification within five days of the filing. You will have the opportunity to request a hearing with Appeals at which you may propose alternative methods for protecting the government's interest.

If you have any questions, please contact the person whose name and telephone number are shown in the upper right hand corner of this letter.

**TRN**  
TAX REP NETWORK

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COIC Decision on Tony

- ▶ The Offer specialist calls and informs Amanda that they are recommending denial of the Offer because they found notes that there was another \$800,000 of income that was not reported (the money Tina stole)
- ▶ The client can full pay with that sort of income, and that a denial letter is on its way.
- ▶ They fax over the tables which indicate another \$800,000 of income and that Tony can full pay.
- ▶ Amanda drafts and files the Appeal of the denial.

**TRN**  
TAX REP NETWORK

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**Offer rejected**

Department of the Treasury  
Internal Revenue Service  
Controlled OIC  
PO Box 9511 Strip 662  
Holtville, NY 11742

Date of this Letter:  
Person to Contact:  
Mr. Employee  
Employee # 100XXXXXX  
Phone# : (846)931-4131 EXT.  
3346 08:00am-01:30pm Mon-Fri  
Taxpayer ID# : \*\*\*-\*\*-XXXX  
Offer Number: 1001XXXXXX

Anthony Antonetti  
1214 Street  
New Haven, CT 06511

Dear Mr. Antonetti,

We have investigated your offer dated 11/28/2016 in the amount of \$49,540.00.

We are rejecting the offer for the following reason(s):  
The amount offered is less than your reasonable collection potential. Copies of worksheets showing our calculations are enclosed for your review.

Based on the financial information you submitted, we have determined you can pay the amount due in full.

We have considered the special circumstances you raised but they did not warrant a decision to accept your offer.

If you disagree with our findings, please provide any additional information in writing to support your position within 30 days of the date of this letter. If you also want your case considered by the Office of Appeals, you must include a written statement in your response asking that your case be sent to the Office of Appeals after our reconsideration. If you do not send this written statement within 30 days of the date of this letter you will not receive consideration by the Office of Appeals.

**TRN**  
TAX REP NETWORK

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**Asset/Equity Table**

ASSET/EQUITY TABLE (AET) (Rev. 3-2014)				
ASSETS	Fair Market Value	Quick Sale Premium Percentage	Quick Sale Value	Net Realizable Equity
1. Cash/Bank Accounts	\$91,000		\$1,000.00	\$90,000.00
2. Other Cash				
3. Loan Value Life Insurance				
4. Pensions/IRAs/401(k)				
5. Real Estate	\$500,000.00	30	\$350,000.00	\$150,000.00
6. Partners/Personal Effects				
7. Vehicles	20			
8. Accounts Receivable				
9. Equipment				
Other - Other Value of 1/3 business bank acct				
Corp assets	\$5,000.00	20	\$4,000.00	\$1,000.00
Future Income (Use Date Income and Expense Table (ET) attached)				\$1,300,400
<b>TOTAL REALIZABLE VALUE</b>				<b>\$1,300,400</b>

**TRN**  
TAX REP NETWORK

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**Income/Expense Table**

INCOME/EXPENSE TABLE (ET) (Rev. 1-2014)				
Source	Income	Necessary Living Expenses		
		Current	Allowed	
20. Wages (TP)		39 Food, Clothing & Misc	\$775.00	\$775.00
21. Volunte (Spouse)		36 Housing and Utilities	\$1,859.00	\$1,859.00
22. Interest (Spouse)		37 Vehicle Operating Costs	\$100	\$100
23. Net Business Income	\$31,250.00	38 Vehicle Operating Costs		
24. Net Rental Income		39 Public Transportation		
25. Distributions		40 Health Insurance		
26. Pensions/Ret. (TP)		41 Out of Pocket Health Care Costs	\$66.00	\$66.00
27. Pensions/Ret. (Spouse)		42 Court ordered payments	\$13,000	\$13,000
28. Social Security (Taxpayer)		43 Child/spouse care		
29. Social Security (Spouse)		44 Life Insurance	\$100.00	\$100.00
30. Child Support		45 Current Year Taxes (Spouse)	\$8,015.00	\$8,015.00
31. Alimony		46 Secura Debt (Spouse)	\$4,000	\$4,000
Other Income (Specify below)	\$8,300.00	47 Out. State or Local Taxes		
32. Total Income	\$43,550	48 Other Expenses (Spouse)	\$30,300.00	\$30,300.00
33. Total Expenses		49 Total Living Expenses	\$11,845	\$11,845
34. Total Income	\$43,550	50 Net Difference		\$32,705
35. Net Difference (Total In & E) - Amount that could be paid for Non-Future income				
Net difference = 11,845		MM 120	Amount that could be paid = \$1,225,480	

**TRN**  
TAX REP NETWORK

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Marie Parts Ways with Frank

- ▶ Marie fires Frank the attorney and contacts Eric and Lisa and asks if they would take her case.
- ▶ Eric explains that Frank did nothing wrong and the IRS is just screwed up but Marie doesn't want to hear about that.
- ▶ Concerned about a potential conflict of interest, they speak with Tony, who readily agrees to wave any conflict.

TRN TAX REP NETWORK 148

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Marie Parts Ways with Frank

- ▶ Tony believes that if they can clear Marie then it will go along way in keeping family peace.
- ▶ After Tony signed the conflict waiver Eric files Marie's innocent spouse case in the United States Tax Court. Exhibits 37 and 38
- ▶ 45 days later the government's response is filed. Eric receives a call the following week asking about a resolution. 144
- ▶ John, the attorney for the government, offers to split the liability.

TRN TAX REP NETWORK 149

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Conflict Waiver

Anthony Antonetti  
1 Elm Street  
New Haven, CT 06511

Marie Antonetti  
1 State Street  
New Haven, CT 06511

Re: Potential Conflict of Interest and Waiver

Dear Mr. Antonetti and Mrs. Antonetti

You are divorced and both dealing with joint liability from joint tax returns filed for years 2010 through and including 2015. Ms. Antonetti would like us to handle her innocent spouse case in the United States Tax Court. Mr. Antonetti, after discussions, has agreed that he does not oppose this and is prepared to waive the potential conflict of interest.

Though we believe right now that there is no conflict due to the fact you both agree with Ms. Antonetti's claim of being an innocent spouse, there is the potential for a conflict.

**In signing this letter, you are acknowledging that we have discussed the potential conflict of interest with both of you and you are aware of the potential conflict, and you are waiving this conflict of interest and want us to continue representing both of you in this matter. You also agree that if a conflict does arise between you regarding this matter we will have no choice but to withdraw and have you both seek independent representation.**

Very truly yours,

Eric L. Green

Acknowledged and Consented

TRN TAX REP NETWORK 150

Anthony Antonetti Marie Antonetti

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The call with Tony and Marie

- ▶ On a call with Tony and Marie, Eric explains the IRS response.
- ▶ As Marie gets wound up and starts yelling about the IRS Tony cuts her off and asks what it would take to settle it.
- ▶ Eric explains how qualified Offers work and suggests a qualified Offer of \$25,000.

**TRN**  
TAX REP NETWORK 154

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The call with Tony and Marie

- ▶ It's not small money, and it amps up the pressure of the IRS. It can also be justified because its probably what the legal fees will be if the case does need to be litigated.
- ▶ Tony tells Eric to Offer the \$25,000 and then assures Marie he will pay the \$25,000 to clear her of this.
- ▶ Marie seems satisfied and agrees that Eric should make the Offer.

**TRN**  
TAX REP NETWORK 155

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Qualified Offers

- ▶ IRC §7430 Qualified Offer
- ▶ Anytime from Appeals until 30 days before trial
- ▶ Sets the bar for who is the prevailing party
- ▶ Obtain costs from the IRS
- ▶ Legal fees
- ▶ Help settle your case!

**TRN**  
TAX REP NETWORK 156

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**Tony's OIC Appeal**

- ▶ Amanda calls Tony who quickly agrees.
- ▶ The Appeals Officer sends over an Addendum for Tony to sign and submit the additional 20% for the increase of \$8,796.
- ▶ After she receives it, the Appeals Officer submits it for Approval.

**TRN**  
TAX REP NETWORK

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**Offer Addendum - Exhibit**

Form 14640 Department of the Treasury Internal Revenue Service  
(January 2018) **Addendum to Form 656**

**Part 1**  
 Taxpayer Name: ANTHONY ANTONIETTI  
 Offer Number: 10148XXXX  
 Primary Taxpayer SSN/EIN (see if apply): XXXX  
 Secondary Taxpayer SSN/EIN (see if apply): XXXX  
 Offer submitted on offer date 12/01/2014 in the amount of \$ 45,543.00  
 to compromise unpaid income tax plus statutory additions for the tax periods 12/31/2013, 12/31/2014 and 12/31/2015. The purpose of this addendum is to amend the above offer amount they are offering to pay and/or to specify the payment terms if the offer is accepted.

**Part 2. Revised Offer in Compromise Amount**  
 Accordingly, this offer to pay \$ 54,339, which includes the following amounts already paid or included with this addendum:  
 A. \$ 1,188 paid with original offer dated \_\_\_\_\_  
 B. \$ \_\_\_\_\_ paid with an amended/revoked Form 656 dated \_\_\_\_\_  
 C. \$ 3,229.20 additional payment, if any, to be included with this addendum.  
 D. \$ \_\_\_\_\_ periodic payments, if any, made since original offer was submitted.

**Part 3. Revised Offer in Compromise Payment Amount**  
 E. \$ 45,455.80 payable within 5 months after acceptance  
 F. \$ \_\_\_\_\_ payable within \_\_\_\_\_ months after acceptance  
 G. \$ \_\_\_\_\_ payable within \_\_\_\_\_ months after acceptance  
 H. \$ \_\_\_\_\_ payable within \_\_\_\_\_ months after acceptance  
 I. \$ \_\_\_\_\_ payable within \_\_\_\_\_ months after acceptance.

**Part 4. Revised Offer in Compromise Payment Terms—Periodic Payment Offer payable in 3-24 installments**

**TRN**  
TAX REP NETWORK

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**Marie's United States Tax Court Case**

- ▶ Eric calls Marie to let her know that the IRS has accepted the proposal and is sending a stipulated decision document or them to review and sign.
- ▶ Marie is extremely thankful and reminds Eric that Tony is going to pay, which Eric agrees was the deal.
- ▶ Eric calls Tony who is also relieved so he can stop hearing about it from Marie.
- ▶ Eric signs the document and submits it back to the IRS, closing Marie's case.

**TRN**  
TAX REP NETWORK

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In Real Life....

Two years later Tina the Bookkeeper (Rebecca Block), pleads guilty to embezzlement and is sentenced to a year and a day in federal prison by Judge Underhill in Bridgeport, Connecticut.

Department of Justice  
U.S. Attorney's Office  
District of Connecticut

FOR IMMEDIATE RELEASE Tuesday, May 22, 2018

**Windsor Woman Who Embezzled \$190,000 from Employer Sentenced to Prison**

John H. Durham, United States Attorney for the District of Connecticut, announced that REBECCA BLOCK, 45, of Windsor, was sentenced today by U.S. District Judge Underhill H. Underhill in Bridgeport to 12 months and one day of imprisonment, followed by one year of supervised release, for embezzling approximately \$190,000 from her former employer and failing to pay federal income taxes on the embezzled income.



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Questions?



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