

Tax Rep Live

Resolving Cases Like a Tax Rep Hero

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.
- ▶ Eric is a contributing columnist for Bloomberg Tax and 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").

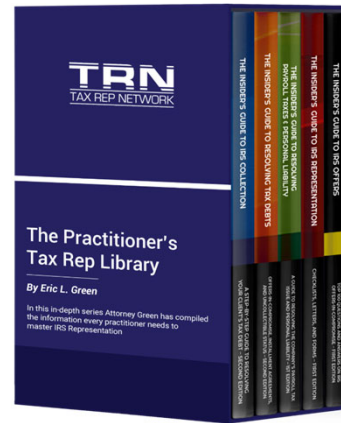


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Eric Green, Esq.

- Eric is the host of the weekly Tax Rep Network Podcast
- 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 Guides in IRS Representation
- Partnered with UConn and creator of the IRS Representation Certificate Program
- Creator of the Tax Rep App



Online Audience

- ▶ Please do the polls
- ▶ We will email you a link to claim your certificate tonight or tomorrow
- ▶ EAs – put your PTIN in when you claim your certificate
- ▶ Try to stick with us on our schedule (CST)
 - a. Coffee break around 10:30
 - b. Lunch at 12:00 pm
 - c. Coffee Break around 2:30 pm

Agenda

1. Onboarding the new Rep Client
2. The OIC for the Failed Business
Part 1 – Sep Property
3. The OIC for the Failed Business
Part 2 – Community Property
4. DATL for TFRP
5. Audit Recon - no records
6. The IA, Saving the House and Wiping Out
the Debt
7. Utilizing the State to Compromise the IRS
8. ETA Offer
9. DOJ Offer with a Future Income
Collateral Agreement
10. Offer-in-Compromise When There is
Criminal Restitution
11. Ethical Issues in Offers: The Inheritance
Part 1
12. Ethical Issues in Offers: The Inheritance
Part 2

Onboarding the new Rep Client

So the phone rings

- ▶ All calls and directed to Nicole
- ▶ Nicole completes the intake form
- ▶ Circulates the intake to Amanda and Eric



Questions

- ▶ Do we want this client?
 - a. Do we handle this?
 - b. Does it make economic sense?
 - c. Is this client crazy?
- ▶ Intake sent to Amanda and Eric

NEW CLIENT INTAKE FORM

Name: _____
Telephone Number: _____
Email: _____
Who referred you to us? _____
Who is your tax preparer? _____

Need tax help with:
Internal Revenue Service (IRS)
State (which one) _____

Define tax matter:
Personal Income Tax
Corporate, Partnership or other entity
Trusts and Estates
Foreign
Cryptocurrency
Tax planning

Have you received any written communications from the taxing authority? Yes ___/ No ___
Please attach the most recent correspondence from the taxing agency. [Completion of the form or submission of correspondence does not establish an attorney/client relationship.]

The Consult

What type is it?

- ▶ Transcript Analysis? \$1,500
- ▶ Collection Analysis? \$2,500
- ▶ Strategy Consult? \$500



Engagement Agreement Sent

September 2, 2020

CLIENT NAME
CLIENT ADDRESS
CLIENT STATE, CITY, ZIP

RE: Fee Agreement for Representation for the Limited Purpose

You have requested and Green & Sklarz LLC (the "Firm") has agreed to represent you with regard to the following legal service(s) only:

Consultation on your tax matter (the "Matter")

The scope of the Firm's representation of you will consist of a single consultation at which we will review the Matter and give our advice to you. Upon completion of the consultation, the Firm will no longer be your lawyer. Any future legal services will require a separate retainer agreement.

The Firm's fee for this service shall be \$500.00.

By executing this agreement, you acknowledge that there is uncertainty concerning the outcome of this matter and that the Firm and the undersigned attorneys have made no guarantees as to the disposition of any phase of this matter. All representations and expression relative to the outcome of this matter, are only expressions of the said attorney's opinions and do not constitute guarantees.

AGREED AND ACCEPTED

CLIENT NAME _____ Date: _____

May 31, 2019

Via email: (CLIENT)

Client Name
Client Address
City, State Zip

RE: Fee Agreement for Representation for the Limited Purpose

You have requested and _____ LLC (the "Firm") has agreed to represent you with regard to the following legal service(s) only:

Pull Internal Revenue Service transcripts for transcript analysis (the "Matter")

The scope of the Firm's representation of you will consist of the Matter, as described above at which we will review the Matter and explain its terms to you. Upon completion of the Matter, the Firm will no longer be your representative. Any future services will require a separate retainer agreement.

The Firm's fee for this service shall be \$1,500.00.

By executing this agreement, you acknowledge that there is uncertainty concerning the outcome of this matter and that the Firm and the undersigned representatives have made no guarantees as to the disposition of any phase of this matter. All representations and expression relative to the outcome of this matter, are only expressions of the said representative's opinions and do not constitute guarantees.

AGREED AND ACCEPTED

Client Name _____ Date _____

Rep's Name _____ Date _____



Sent via Anchor

Hi Eric! [+ Send an agreement](#)

Agreements pipeline

Pending proposals	16	Approved agreements	335
\$46,992		\$968,432.04	

Pending invoices

Require attention	8	Expected to be paid	33
\$734		\$11,398.50	

Expected earnings for January 2023 - only for issued invoices

In your bank account	Collected successfully	Pending verification	Future payments
\$92,368.67	\$1,058.50	\$1,310	\$0

TRN TAX REP NETWORK

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Tracks and follows-up automatically

Proposals [+ Send an agreement](#)

16 proposals awaiting approval, total annual value \$46,992

Search... Proposal status Clear

Company name	Annual income	Sent date	Status	Status update
Claro Books	\$4,630	1/16/2023	Reviewed by client	3 days ago
Perry Finance	\$490	1/13/2023	Reviewed by client	4 days ago
Mar Tech Legal Corp	\$5,910	12/18/2022	Reviewed by client	7 days ago
Steve Douglas CPA	\$1,418	12/9/2022	Reviewed by client	12 days ago Review
SureLine LLC	\$1,640	12/26/2022	Reviewed by client	1/4/2023
Levin,Gordan & Smoth Inc	\$5,910	12/16/2022	Reviewed by client	12/24/2022
Border Rock Consulting	\$3,224	12/18/2022	Reviewed by client	12/20/2022
Daglaso Construction LLC	\$2,210	3/18/2022	Reviewed by client	3/21/2022
Native Shield Tech	\$4,340	1/19/2023	Proposal sent to client	1 day ago
Green Wellness	\$5,910	1/16/2023	Proposal sent to client	4 days ago
Spring International	\$0	12/3/2022	Proposal sent to client	12/3/2022
KPG law	\$8,380	11/9/2022	Proposal sent to client	11/9/2022

TRN TAX REP NETWORK

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See everything that happens

The screenshot displays the Anchor dashboard interface. On the left is a dark blue sidebar with the Anchor logo and navigation options: My Dashboard, Agreements, Proposals, Drafts, Invoices (8), Payouts, Contacts (353), Services, Help, Notifications, and Add charge. The main content area is titled 'Hi Eric!' and features several data panels:

- Agreements pipeline:** A bar chart showing the flow from 'Sent' (8) to 'Reviewed' (8) to 'Payment method connected' (0) to 'Approved agreements' (335). Summary cards show 'Pending proposals' at \$46,992 and 'Approved agreements' at \$968,432.04.
- Pending invoices:** A summary card for 'Require attention' showing \$734 and a bar chart for 'Missing quantity' with a value of 1.
- Expected earnings for January 2023 - only for issued invoices:** Summary cards show 'In your bank account' at \$92,368.67, 'Collected successfully' at \$1,058.50, and 'Pending verification' at \$1,310. A bar chart below shows earnings over time from 01/01 to Today.
- Notifications center:** A list of recent events, including agreement approvals and payouts, with timestamps like '13 hrs ago' and '1 day ago'.

The bottom right corner of the dashboard shows a page number '13'.

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Client is sent...what?

- ▶ Retainer Agreement
- ▶ Payment Link
- ▶ Link to Smart Vault for Document Upload
- ▶ List of Documents (for Collection Analysis)
- ▶ Form 2848 (POA – for Transcript Analysis)

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When documents and payment come back

- ▶ Consult is arranged!
- ▶ Usually by either phone or Zoom



Client wants to move forward?

- ▶ New engagement letter
- ▶ Any additional information is requested
- ▶ New pay link is sent

Background:

Offers-in-Compromise

Offer Basics

- ▶ IRC § 7122 authorizes the IRS to accept a compromise on an amount owed
- ▶ IRC § 7122(c) provides that the Service shall set forth guidelines for determining when an offer in compromise (OIC) should be accepted

Current Landscape

- ▶ More than 10 million non-filers identified
- ▶ More than 15 million taxpayers in collection
- ▶ 8 million CP-14 Balance Due notices started going out to taxpayers the week of June 1st

Current Landscape



- ▶ Enforcement Notices (threat to levy) will start going at the end of August
- ▶ Soft notice to be sent first
- ▶ Tidal wave of work is coming

Doubt as to Collectability



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

Offer in Compromise

Lump Sum

- Paid in 5 or fewer payments
- Net Equity plus 12 Months of Future Income

Deferred

- Paid in more than 5 but less than 24 monthly payments
- Payments must be made starting when the OIC is filed
- Net Equity plus 24 Months of Future Income

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

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

Reasonable Collection Potential

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



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

Effective Tax Administration Offers

An ETA offer is an Offer where the taxpayer could full-pay the liability but where, for public policy reasons, the IRS should agree to accept less than the full-amount

Very rarely given

All ETA Offers are reviewed in Washington, DC

ETA vs. DCSC

- ▶ ETA is where RCP exceeds liability but hardship/public policy exists
- ▶ Doubt-as-to-Collectability with Special Circumstances is when they cannot fully pay the tax due but have proven special circumstances that warrant acceptance for less than RCP

Treatment

- ▶ Treat the couple as married and then allocate joint expenses
- ▶ Allocation is generally done based upon the percentage of household income

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Allocation Example

Joe & Mary + two kids
Future Income Analysis

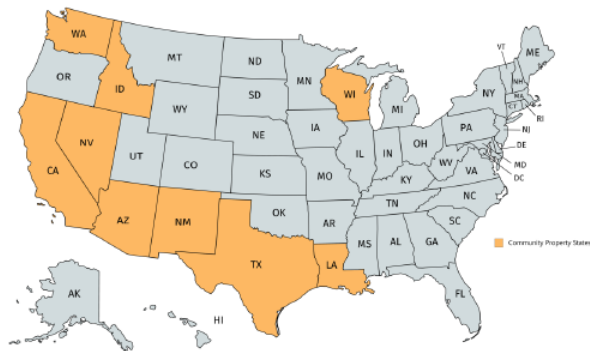
Income	<u>Actual</u>	Expenses	<u>Actual</u>	57%	
				<u>Allowable</u>	<u>Allocated</u>
Wages (yourself)	\$ 6,500	Food, Clothing and Misc	\$ 2,100	\$ 1,900	\$ 1,074
Wages (spouse)	\$ 5,000	Housing & utilities	\$ 3,200	\$ 2,931	\$ 1,657
Interest - Dividends	\$ -	Vehicle Ownership	\$ 450	\$ 450	\$ 450
Net Business Income	\$ -	Vehicle Operating Costs	\$ 800	\$ 630	\$ 315
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	
Distributions	\$ -	Health Insurance	\$ 1,200	\$ 1,200	\$ 678
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 200	\$ 425	\$ 240
Pension/Soc Sec (spouse)	\$ -	Court ordered prmts	\$ -	\$ -	
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	
Social Security (spouse)	\$ -	Life Insurance	\$ 100	\$ 100	\$ 50
Child Support	\$ -	Current Year Taxes	\$ 2,875	\$ 2,875	\$ 1,625
Alimony	\$ -	Secured Debts	\$ -	\$ -	
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	
	\$ -	Student Loans	\$ -	\$ -	
	\$ -	Total Living Expenses	\$ 10,925	\$ 10,511	\$ 6,089
Total	<u>\$ 11,500</u>	Net Difference	\$ 575	\$ 989	\$ 411

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Community Property States

The nine states that are "community property" jurisdictions include:

1. Arizona
2. California
3. Idaho
4. Louisiana
5. Nevada
6. New Mexico
7. Texas
8. Washington
9. Wisconsin



What's "Community" vs "Separate"

- ▶ Property obtained prior to marriage or inherited/gifted during marriage is separate property
- ▶ Property obtained during the marriage in a separate property state is separate property (ex. the vacation home in Florida)
- ▶ Property obtained during the marriage in the community property state is community property (ex. the home they buy in Dallas while married, regardless of whose name the title is in)

Community Property: Income & Assets

	Available
Earned Income of the Debtor Spouse	100%
Earned Income of the Non-Debtor Spouse	0%
Income from the Debtor Spouse's Separate Property	100%
Income from the Community Property	50%
Debtor Spouse's Assets - Separate Property	100%
Community Property Assets	100%*
Non-Debtor Spouse's Separate Property	0%

* - Texas is the exception, where its 75% of the community property assets (100% of the debtor-Spouse's half and 50-% of the non-debtor spouse's half)

Case Studies

Tom's Failed Business: Part 1

Meet Tom & Mary

- ▶ Live in New Haven, CT
- ▶ 2 Children, 17 and 14 years old
- ▶ Tom is 42 years old, Mary is 41
- ▶ Tom's business fails because of the pandemic and he has started a new W-2 Job as a manager earning \$60,000/year
- ▶ Mary works at Yale University as a Tenured Full Professor earning \$130,000/year

Meet Tom & Mary

- ▶ Tom's Olde LLC owes the IRS \$309,000 for 2020 - 2022:

941 Taxes: \$167,000

940 Taxes: \$12,000

Penalty: \$80,000

Interest: \$30,000

- ▶ Connecticut seized assets and cash for the withholding and sales tax it was owed, got full paid and forced it out of business



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Meet Tom & Mary

- ▶ Tom owes \$76,250 in Trust Fund Liability personally under IRC § 6672

Year	Balance Due	Remaining CSED
2015	\$22,800	36
2016	\$21,300	48
2017	\$2,700	60
2020	\$19,850	96



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Meet Tom & Mary

- ▶ The home is in Mary's name, bought during the marriage and transferred to Mary in 2010, in Orange CT (New Haven County) worth \$600,000 with a \$300,000 mortgage
- ▶ There is a \$50,000 HELOC that is fully utilized and has an outstanding balance of \$51,237 with interest. Minimum monthly payments are \$495
- ▶ Mortgage payment and utilities each month is \$3,750

Meet Tom & Mary

- ▶ Tom owns a Jeep Grand Cherokee that is 8 years old with \$127,800 miles on it
- ▶ Mary drives a leased Lexis E300 which costs \$525 a month
- ▶ Mary has life insurance on her and Tom and disability insurance on herself through Yale of \$200 per month deducted from her wages
- ▶ Mary has health insurance covering the entire family through Yale of \$1,600 per month deducted from her wages

Tom & Mary Assets

- ▶ Tom's Jeep is worth \$7,000
- ▶ Mary's 401(k) has \$450,000, and she can take up to \$50,000 as a loan
- ▶ They have \$11,000 in cash in the bank

Tom & Mary Assets

- ▶ Tom's Jeep: $\$7,000 \times 80\% = \$5,600 - \$3,450 \text{ exempt} = \$2,150$
- ▶ Tom's IRA: $\$12,000 \times 80\% = \$9,600$
- ▶ Cash: $\$11,000/2 = \$5,500 - \$4,180 \text{ (1 mos exp)} = \$1,320$
- ▶ Mary's 401(k): Excluded
- ▶ Home: Excluded

Can Tom Do An Offer?

Please Complete the Worksheet

Answer:

No!

Why?

Future Income Analysis

Tom & Mary

<i>Income</i>	Actual	<i>Expenses</i>	Actual	32%	
				Allowable	Allocated
Wages (yourself)	\$ 5,000	Food, Clothing and Misc	\$ 1,993	\$ 1,993	\$ 629
Wages (spouse)	\$ 10,833	Housing & utilities	\$ 3,750	\$ 3,097	\$ 978
Interest - Dividends	\$ -	Vehicle Ownership	\$ 629	\$ 525	\$ -
Net Business Income	\$ -	Vehicle Operating Costs	\$ 796	\$ 796	\$ 498
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -
Distributions	\$ -	Health Insurance	\$ 1,600	\$ 1,600	\$ 505
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 100	\$ 316	\$ 100
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ -	\$ -	\$ -
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	\$ -
Social Security (spouse)	\$ -	Life Insurance	\$ 200	\$ 200	\$ 63
Child Support	\$ -	Current Year Taxes	\$ 3,958	\$ 3,958	\$ 1,250
Alimony	\$ -	Secured Debts	\$ 495	\$ 495	\$ 156
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ -
	\$ -	Student Loans	\$ -	\$ -	\$ -
	\$ -	Total Living Expenses	\$ 13,521	\$ 12,980	\$ 4,180
Total	\$ 15,833	Net Difference	\$ 2,312	\$ 2,853	\$ 820

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Analysis – Future Income Only

	Balance	Cumulative Balance	Months Remaining on CSED	Future Income (\$820/month)
2015	\$ 22,800.00	\$ 22,800.00	36	\$ 29,520.00
2016	\$ 21,300.00	\$ 44,100.00	48	\$ 39,360.00
2017	\$ 2,700.00	\$ 46,800.00	60	\$ 49,200.00
2020	\$ 29,450.00	\$ 76,250.00	96	\$ 78,720.00

One-year cannot full-pay!

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Analysis – With the Assets Applied to 2015 First

	Balance	Cumulative Balance	Months Remaining on CSED	Future Income (\$820/month) + Assets
2015	\$ 22,800.00	\$ 22,800.00	36	\$ 42,590.00
2016	\$ 21,300.00	\$ 44,100.00	48	\$ 52,430.00
2017	\$ 2,700.00	\$ 46,800.00	60	\$ 62,270.00
2020	\$ 29,450.00	\$ 76,250.00	96	\$ 91,790.00

Analysis

<i>Analysis - Future Income</i>		
Income	\$ 5,000	
Expense	\$ 4,180	
Monthly Available	\$ 820	
Future Income	\$ 78,720	\$820 x months on CSED
Assets	\$ 13,070	Car + cash + IRA
RCP	\$ 111,483	
Ability to Pay (RCP)	\$ 111,483	
Tax Debt	\$ 76,250	
No OIC Available		

Now What?

- ▶ Full Pay IA, or
- ▶ Is there something we can do?

(hint – this is why we get paid \$6,000 for this!)



P qujpo t@

Options for Tom

- ▶ Move the expense number up?
- ▶ Disability Insurance for Tom? (quote is for \$225/month)
- ▶ New Car Payment of more than \$400 (new payment but lose older car \$200/mo)
- ▶ Both reduce the future income to \$395/month

Future Income Analysis

Tom & Mary

<i>Income</i>	<u>Actual</u>	<i>Expenses</i>	<u>Actual</u>	<u>Allowable</u>	32%	
					<u>Allocated</u>	
Wages (yourself)	\$ 5,000	Food, Clothing and Misc	\$ 1,993	\$ 1,993	\$ 629	
Wages (spouse)	\$ 10,833	Housing & utilities	\$ 3,750	\$ 3,097	\$ 978	
Interest - Dividends	\$ -	Vehicle Ownership	\$ 1,029	\$ 925	\$ 400	
Net Business Income	\$ -	Vehicle Operating Costs	\$ 596	\$ 596	\$ 298	
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -	
Distributions	\$ -	Health Insurance	\$ 1,600	\$ 1,600	\$ 505	
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 100	\$ 316	\$ 100	
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ -	\$ -	\$ -	
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	\$ -	
Social Security (spouse)	\$ -	Life Insurance + Disability	\$ 425	\$ 425	\$ 288	\$63 allocated life + \$225 disability
Child Support	\$ -	Current Year Taxes	\$ 3,958	\$ 3,958	\$ 1,250	
Alimony	\$ -	Secured Debts	\$ 495	\$ 495	\$ 156	
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ -	
	\$ -	Student Loans	\$ -	\$ -	\$ -	
	\$ -	Total Living Expenses	\$ 13,521	\$ 12,980	\$ 4,605	
Total	\$ 15,833	Net Difference	\$ 2,312	\$ 2,853	\$ 395	

Analysis – Reduced Future Income to \$395

	Balance	Cumulative Balance	Months Remaining on CSED	Future Income (\$395/month) + Assets
2015	\$ 22,800.00	\$ 22,800.00	36	\$ 27,290.00
2016	\$ 21,300.00	\$ 44,100.00	48	\$ 32,030.00
2017	\$ 2,700.00	\$ 46,800.00	60	\$ 36,770.00
2020	\$ 29,450.00	\$ 76,250.00	96	\$ 50,990.00

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Analysis

<i>Analysis - Future Income</i>		
Income	\$ 5,000	
Expense	\$ 4,605	
Monthly Available	\$ 395	
Future Income	\$ 37,920	\$395 x months on CSED
Assets	\$ 13,070	Car + cash + IRA
RCP	\$ 50,990	
Ability to Pay (RCP)	\$ 50,990	
Tax Debt	\$ 76,250	
OIC of \$17,810 (assets of \$13,070 + Future Income of \$4,740)		

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Other Options?

The IRA...

- ▶ Issue is its application to earliest year 2015
- ▶ Going to lose it anyway
- ▶ Cash it in and apply it to 2020?
- ▶ Revenue Procedure 2002-26

Analysis – With the IRA Applied to 2020

	Balance	Cumulative Balance	Months Remaining on CSED	Future Income (\$820/month) + Assets
2015	\$ 22,800.00	\$ 22,800.00	36	\$ 32,990.00
2016	\$ 21,300.00	\$ 44,100.00	48	\$ 42,830.00
2017	\$ 2,700.00	\$ 46,800.00	60	\$ 52,670.00
2020	\$ 19,850.00	\$ 66,650.00	96	\$ 82,190.00

\$9,600 IRA applied to 2020 balance

Applying the IRA Funds to 2020

- ▶ Offer is now $\$820 \times 12$ months or $\$9,840$
- ▶ Assets are the cash and the car = $\$3,470$
- ▶ OIC = $\$13,310$

Option 3 – Do Both

- ▶ Offer is now $\$395 \times 12$ months or $\$4,740$
- ▶ Assets are the cash and the car = $\$3,470$
- ▶ OIC = $\$8,210$

Tom & Mary: Part 2

Everything is the same but...

- ▶ They don't live in Connecticut but in California just outside of Sacramento (Sacramento County)
- ▶ Housing allowance goes up slightly
- ▶ Biggest change though: CA is a community property state – community assets are now included in the RCP

Community Property

- ▶ Civil penalties on Tom are considered a community debt because pursued to make money for the family
- ▶ Community property assets include now the house acquired during marriage and the 401K accumulated during marriage
- ▶ No OIC – the asset alone will full-pay
- ▶ No allocation of expenses – debt belongs to both of them

Updated RCP – Future Income

Tom & Mary					
					32%
Income	Actual	Expenses	Actual	Allowable	Allocated
Wages (yourself)	\$ 5,000	Food, Clothing and Misc	\$ 1,993	\$ 1,993	\$ 629
Wages (spouse)	\$ 10,833	Housing & utilities	\$ 3,750	\$ 3,129	\$ 988
Interest - Dividends	\$ -	Vehicle Ownership	\$ 629	\$ 525	\$ -
Net Business Income	\$ -	Vehicle Operating Costs	\$ 796	\$ 796	\$ 498
Net Rental Income	\$ -	Public Transportation	\$ -	\$ -	\$ -
Distributions	\$ -	Health Insurance	\$ 1,600	\$ 1,600	\$ 505
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 100	\$ 316	\$ 100
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ -	\$ -	\$ -
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	\$ -
Social Security (spouse)	\$ -	Life Insurance	\$ 200	\$ 200	\$ 63
Child Support	\$ -	Current Year Taxes	\$ 3,958	\$ 3,958	\$ 1,250
Alimony	\$ -	Secured Debts	\$ 495	\$ 495	\$ 156
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ -
	\$ -	Student Loans	\$ -	\$ -	\$ -
	\$ -	Total Living Expenses	\$ 13,521	\$ 13,012	\$ 4,190
Total	\$ 15,833	Net Difference	\$ 2,312	\$ 2,821	\$ 810

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Assets

- ▶ Tom's Jeep: $\$7,000 \times 80\% = \$5,600 - \$3,450 \text{ exempt} = \$2,150$
- ▶ Cash: $\$11,000 - \$13,012 \text{ (1 mos exp)} = \0
- ▶ Tom's IRA: $\$12,000 \times 80\% = \$9,600$
- ▶ Mary's 401(k): \$50,000 loan available, future expense for repayment allowed of \$500/month
- ▶ Home: $\$600,000 \times 80\% = \$480,000 - \$300,000 \text{ mortgage} - \$51,237 \text{ HELOC} = \$128,763$

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No OIC

- ▶ Future Income: \$810 - \$500 for 401K loan repayment
- ▶ Now only \$310 of future income
- ▶ \$310/mo x 12 months = \$3,270

No OIC

Assets of \$190,513

- ▶ Jeep: \$2,150
- ▶ Cash: \$0
- ▶ IRA: \$9,600
- ▶ Mary's 401(k): \$50,000
- ▶ Home: \$128,763

Proposed

Best Option for Tom

- ▶ Because of the TFRP his case will be with the field
- ▶ I would borrow \$31,000 from the 401K and pay down below \$50,000
- ▶ Set-up a streamlined IA of around \$700/month (beats the \$810 and the assets listed on the 433!)

The Trust Fund Challenge:

DATL

- ▶ Veronica comes to see us
- ▶ She has received a threat to levy for \$375,000
- ▶ She is the bookkeeper for high school friend Mike
- ▶ Mike pays her \$600 a month to come in weekly and do his Quickbooks and pay the bills

Mike's Construction Company

- ▶ Mike has three crews going, revenue is \$1.8 million
- ▶ He spends his days traveling between the three sites and meeting with the three supervisors and checking on the work
- ▶ Veronica updates the books every Friday, prepares checks to pay bills and calls Mike

Mike's Construction Company

- ▶ If Mike does not have enough cash to cover the bills and payroll he will tell her over the phone who to pay and who not to pay
- ▶ Veronica pays what Mike says and leaves the rest of the signed checks in the safe and leaves for the weekend
- ▶ Company fails to pay \$600,000 of payroll taxes, IRS assessed Mike and Veronica

Letter 1153

- ▶ Letter 1153 shows up and Veronica's husband, who is a corrections officer, calls and threatens to kill Mike
- ▶ Mike assures him he will deal with it and tries calling the IRS to take the blame
- ▶ 60 days to protest is gone
- ▶ Levy notice arrives for Veronica at their home...

Thoughts?

- ▶ Challenge it?
- ▶ She signed every check....
- ▶ Never filed a protest....



Gather Information

- ▶ FOIA
- ▶ Witnesses to Mike telling her who to pay who not to pay
- ▶ She earned \$7,200 a year from a company grossing \$1.8 million – how much authority could she have?

The info supports her

- ▶ Supervisors agree to sign affidavits
- ▶ FOIA has a written memo from Revenue Officer “taxpayer directed, not responsible” – Supervisor decided to assess anyway
- ▶ Appeals concedes and accepts the Offer of \$1.00

Audit Reconsideration: Lack of Records

Records

- ▶ No one has “nothing”
- ▶ This is laziness
- ▶ Records can be reconstructed, expenses estimated

Record Keeping and Reconstruction

- ▶ Supposed to maintain contemporaneous records
- ▶ Cohan Rule: When the TP establishes that the TP paid or incurred deductible expenses but does not establish the amount of the deduction to which TP is entitled, TP may be entitled to estimate the amount allowable. *Cohan v. Comm'r*, 39 F.2d 540 (2d. Cir. 1930)
- ▶ IRC § 7491(a) shifts burden of proof to IRS when the taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the taxpayer's liability and cooperates with the audit

Cohan vs Commissioner

- ▶ Cohan had originally been an actor, like his parents.
- ▶ Wrote many famous songs, including Yankee Doodle Boy, You're a Grand Old Flag, and Give my Regards to Broadway
- ▶ Audited by the IRS and had no records

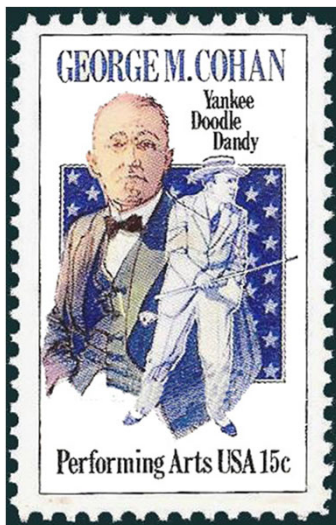


George Cohan

- ▶ In the production of his plays, Cohan was obliged to entertain actors, employees, and dramatic critics.
- ▶ He also had to travel a lot, often with his attorney. These expenses amounted to substantial sums, but he had no accounting of these expenses.
- ▶ At the trial, in 1930, Cohan estimated the amounts spent on putting on the shows.



Cohan Rule



- ▶ IRS refused to allow any expenses
- ▶ 2nd Circuit over-ruled – can't do that for expenses that the taxpayer **MUST** have incurred to generate the income (hence the COHAN RULE)
- ▶ Doesn't apply to expenses/credits by statute require documentation

What is there are no expenses?

- ▶ Administrator calls
- ▶ Deceased was unmarried, no children
- ▶ Owns a house, found a safe with \$50,000 in cash
- ▶ Has not filed a tax return in 20 years
- ▶ Dealt in cash
- ▶ Older pickup truck, no loan

The Deceased

- ▶ Administrator/Executor faces personal liability for distributions made when and if there is a tax liability
- ▶ Compliance: filed last 6 years of federal tax returns (see IRM § 1.2.1.6.18)
- ▶ Compliance: CT State Voluntary Disclosure is only 3 years

Great, and the returns?

- ▶ Wage & Earning Reports show nothing
- ▶ Almost no activity through the bank
- ▶ No credit cards
- ▶ CPA asks us what they should do about tax returns

The Deceased

What do you think?

The approach

- ▶ He must have spent cash to live
- ▶ He accumulated \$50,000 in cash in the safe
- ▶ His bank account moved up and down slightly

Think Cash-T Analysis

T-Account	
CASH RECEIVED	CASH EXPENDED
Gross Receipts (per Return)	Business Expenses (less depr.)
Gross Rents	Rental Expenses (less depr.)
Wages/Miscellaneous Income	Personal Living Expenses
Interest/Dividend Income	Purchase of Assets
Cash on Hand (at beginning)	Cash on Hand (at year end)
Cash in Bank (at beginning)	Cash in Bank (at year end)
Loans Received	Loan Payments
Nontaxable Income	
Accounts Receivable (at beginning)	Accounts Receivable (at year end)
Accounts Payable (at year end)	Accounts Payable (at beginning)
Total Cash Received	Total Cash Expended

Therefore: Total Cash Expended less Total Cash Received = Unidentified Income.

433 Approach

The Deceased					
Future Income Analysis					
Income			Expenses		
	Actual		Actual		
Wages (yourself)	\$ -		Food, Clothing and Misc	\$ 723	Standard
Wages (spouse)	\$ -		Housing & utilities	\$ 2,105	Actual
Interest - Dividends	\$ -		Vehicle Ownership	\$ -	
Net Business Income	\$ 3,244		Vehicle Operating Costs	\$ 274	Standard
Net Rental Income	\$ -		Public Transportation	\$ -	
Distributions	\$ -		Health Insurance	\$ -	
Pension/Soc Sec (taxpayer)	\$ -		Out of Pocket HealthCare	\$ 142	Standard
Pension/Soc Sec (spouse)	\$ -		Court ordered pmts	\$ -	
Social Security (taxpayer)	\$ -		Child/Dep Care	\$ -	
Social Security (spouse)	\$ -		Life Insurance	\$ -	
Child Support	\$ -		Current Year Taxes	\$ -	
Alimony	\$ -		Secured Debts	\$ -	
Other Income	\$ -		Delinquent State Taxes	\$ -	
Cash Accumulated (50k/72)	\$ 694		Student Loans	\$ -	
	\$ -		Total Living Expenses	\$ 3,244	
Total	\$ 3,938		Net Difference	\$ 694	

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Bank Balances

Bank Balances	Beginning Balance	Ending Balance	Change	433 Income	Tax Return
2014	\$ 3,700.00	\$ 6,400.00	\$ 2,700.00	\$ 47,256.00	\$ 49,956.00
2015	\$ 6,400.00	\$ 5,500.00	\$ (900.00)	\$ 47,256.00	\$ 46,356.00
2016	\$ 5,500.00	\$ 8,400.00	\$ 2,900.00	\$ 47,256.00	\$ 50,156.00
2017	\$ 8,400.00	\$ 4,500.00	\$ (3,900.00)	\$ 47,256.00	\$ 43,356.00
2018	\$ 4,500.00	\$ 5,800.00	\$ 1,300.00	\$ 47,256.00	\$ 48,556.00
2019	\$ 5,800.00	\$ 11,350.00	\$ 5,550.00	\$ 47,256.00	\$ 52,806.00

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Returns Filed

- ▶ Request for Prompt Assessment – Form 4810
- ▶ Request for Discharge from Personal Liability – Form 5495
- ▶ 18 months later never heard from the IRS (still haven't)

The House and the Loan

Note

- ▶ With Tom we were playing checkers
- ▶ It's time to play chess!



Meet Jay

- ▶ Jay makes \$325,000 as a commercial mortgage broker in NYC
- ▶ Married to Rachel, they have 5 children and live in Brooklyn (Kings County)
- ▶ Jay owes \$650,000 to the IRS, his wife owes nothing (MFS)
- ▶ His wife owns an apartment in NYC where they live full-time
- ▶ Rachel owns an apartment she rents to others that nets \$1000/mo (her whole family is in real estate and commercial lending)

Meet Jay

- ▶ Jay owns an investment property in Lakewood NJ worth \$215,000 with no mortgage on it
- ▶ Its February 2022
- ▶ The ten year CSED for his taxes will run soon:
 - 2010: \$270,000 expires August 2022
 - 2011: \$480,000 expires April 2023

Meet Jay

- ▶ Revenue Officer contacts Jay in April 2022 and explains they need a Financial statement because the CSED will expire in a few months
- ▶ Jay's financial shows he cannot full pay in time
- ▶ RO informs Jay they plan to levy and take the house*

* Its not a primary residence so the IRS can administratively levy and take it

Jay's Financial

Jay & Rachel & 5 children Future Income Analysis

<i>Income</i>	Actual	<i>Expenses</i>	96%		
			Actual	Allowable	Allocation
Wages (yourself)	\$ 27,083	Food, Clothing and Misc	\$ 3,061	\$ 3,061	\$ 2,952
Wages (spouse)	\$ -	Housing & utilities	\$ 5,100	\$ 4,367	\$ 4,211
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	\$ -
Net Business Income	\$ -	Vehicle Operating Costs	\$ 758	\$ 758	\$ 379
Net Rental Income (Rachel)	\$ 1,000	Public Transportation	\$ -	\$ -	\$ -
Distributions	\$ -	Health Insurance	\$ 2,500	\$ 2,500	\$ 2,411
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 200	\$ 553	\$ 533
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ -	\$ -	\$ -
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	\$ -
Social Security (spouse)	\$ -	Life Insurance	\$ 450	\$ 300	\$ 300
Child Support	\$ -	Current Year Taxes	\$ 8,125	\$ 8,125	\$ 7,836
Alimony	\$ -	Secured Debts	\$ -	\$ -	\$ -
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ -
	\$ -	Student Loans	\$ -	\$ -	\$ -
	\$ -	Total Living Expenses	\$ 20,194	\$ 19,664	\$ 18,622
Total	\$ 28,083	Net Difference	\$ 7,889	\$ 8,419	\$ 8,461

What do we do?

Any ideas?

Options

- ▶ OIC
- ▶ Sell House/apply proceeds and get into a PPIA
- ▶ Borrow against the house and leverage the debt for an OIC/CNC

OIC Option and Sell/PPIA Option

- ▶ Property: $\$215,000 \times 80\% = \$172,000$
- ▶ FI = $\$8,461 \times 14 \text{ months} = \$118,454$
- ▶ Total paid: $\$290,454$

Borrow and Leverage: The plan

- ▶ Rachel's family agrees to lend Jay \$160,000
- ▶ We approach the revenue officer with the proposal: his credit is bad with the lien
- ▶ Found a hard money lender willing to lend the \$160,000
- ▶ 24% interest and required to be paid back within 24 months at \$8,459.38 per month

With the new loan

Jay & Rachel & 5 children
Future Income Analysis

<i>Income</i>	Actual	<i>Expenses</i>	96%		
			Actual	Allowable	Allocation
Wages (yourself)	\$ 27,083	Food, Clothing and Misc	\$ 3,061	\$ 3,061	\$ 2,952
Wages (spouse)	\$ -	Housing & utilities	\$ 5,100	\$ 4,367	\$ 4,211
Interest - Dividends	\$ -	Vehicle Ownership	\$ -	\$ -	\$ -
Net Business Income	\$ -	Vehicle Operating Costs	\$ 758	\$ 758	\$ 379
Net Rental Income (Rachel)	\$ 1,000	Public Transportation	\$ -	\$ -	\$ -
Distributions	\$ -	Health Insurance	\$ 2,500	\$ 2,500	\$ 2,411
Pension/Soc Sec (taxpayer)	\$ -	Out of Pocket HealthCare	\$ 200	\$ 553	\$ 533
Pension/Soc Sec (spouse)	\$ -	Court ordered pmts	\$ -	\$ -	\$ -
Social Security (taxpayer)	\$ -	Child/Dep Care	\$ -	\$ -	\$ -
Social Security (spouse)	\$ -	Life Insurance	\$ 450	\$ 300	\$ 300
Child Support	\$ -	Current Year Taxes	\$ 8,125	\$ 8,125	\$ 7,836
Alimony	\$ -	Secured Debts	\$ 8,459	\$ 8,459	\$ 8,459
Other Income	\$ -	Delinquent State Taxes	\$ -	\$ -	\$ -
	\$ -	Student Loans	\$ -	\$ -	\$ -
Total	<u>\$ 28,083</u>	Total Living Expenses	<u>\$ 28,653</u>	<u>\$ 28,123</u>	<u>\$ 27,081</u>
		Net Difference	<u>\$ (570)</u>	<u>\$ (40)</u>	<u>\$ 2</u>

IRS Agrees

- ▶ In exchange for the \$160,000 cash they will subordinate their lien
- ▶ They make Jay CNC because of the payment on the property (have to allow the loan payment because proceeds went to the IRS)
- ▶ Jay paid \$160,000 and the CSED ran on the other \$490,000!
- ▶ Kept his investment property worth \$215,000



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Client was thrilled

BROOKLYN, NY 11234-3439442

Taxpayer ID number:
XXX-XX-1863

Case Closed -- Currently Not Collectible

We temporarily closed your collection case for the tax types and periods listed below. We determined you don't have the ability to pay the money you owe at this time.

Although we have temporarily closed your case, you still owe the money to the IRS. We may re-open your case in the future if your financial situation improves. Because you still owe money, we will continue to add penalties and interest to your account and it will be subject to other adjustments and offsets, such as applying future tax refunds to the amount you owe.

You don't need to take any action at this time. However, it is very important that you file all future tax returns and pay any amounts you owe on time. It is to your advantage to make voluntary payments towards the amount you owe, if possible, to minimize additional penalties and interest.



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The Strategies:

1. Using the State to Compromise the IRS

2. Our fees as an allowable expense

Delinquent State Payments

▶ Are allowed in full if the State is assessed before the IRS debt and the payment plan is established prior to the IRS

▶ If not it will be allocated based upon the total debt:

(State Tax debt/State Tax Debt + Federal Tax Debt) x
the available future income without factoring in the state
tax payment

Example

- ▶ Joe owes New York \$20,000 and owes the IRS \$80,000.
- ▶ He is paying \$500 per month to NY (IRS was assessed first)
- ▶ His 433 shows future income of \$800 without the NY payment factored in
- ▶ IRS will allow $\$800 \times 1/5$ ($\$20,000 \text{ NY} / \$100,000 \text{ NY and IRS}$), or \$160 for NY and expect the other \$640 to be paid to it. When NY is done it will increase to \$800.

So a non-filer walks in

- ▶ Prepare and file the state tax returns first
- ▶ When the bills show up call and establish an IA with the state
- ▶ Mail in the IRS returns
- ▶ Now, the IRS would have to allow the full \$500 paid to NY and take only \$300 per month until NY is full-paid

Strategy

- ▶ When possible, if the state is not already ahead of the IRS, file first and get them ahead of the IRS
 1. Because you can use them as leverage against the IRS
 2. Because the state doesn't care about what the IRS says and will demand payment anyway (in our experience)

What about our fees?

IRM 5.15.1.11

Expense Item
Accounting and legal fees

Expense is Necessary:

- The fees are for representation before the IRS (i.e., to resolve current balances due, delinquent returns, examinations, etc.), or
- The fees meet the necessary expense test.
- The amount should not be excessive and must be reasonable given the complexity of the case.

Notes/Tips

- Fees related to business operations (i.e., reported on Schedule C) should not be claimed as personal expenses.
- Fees may vary; an accountant will charge less for a wage earner with all returns filed that just needs a CIS completed, than he/she would charge for a self-employed individual that needs several returns prepared along with a CIS. Fees vary across the country so allowable amounts may also differ depending on where the taxpayer lives.

Does this work?

- ▶ Yes
- ▶ Must be a future expense
- ▶ We get paid up front
- ▶ How do we become a future expense?

Anatomy of a Murder



Future Expense

- ▶ Borrowing the money for our fees and for the Offer
- ▶ Must be repaid
- ▶ Start the repayment after the Offer is resolved

Dear Son

David,

Your dad and I are lending you the \$6,000 to resolve your tax issue. Please call or email me to confirm this, and that we can get paid back over the following year once the tax issue is resolved.

Love Mom

The IRS

- ▶ They allow this
- ▶ They hate this
- ▶ Will push back on the amount ($\$6,000 / 12 = \$500/\text{month}$)
- ▶ It becomes a negotiation

Disabled Executive: The ETA Offer

Facts

- ▶ Client is 55 years old and falls from a horse, breaking his neck
- ▶ Quadriplegic (wheelchair bound)
- ▶ They have to outfit their home for his disability: ramp, remodel the downstairs for a bedroom, bathroom
- ▶ Their home is valued at \$1 million, mortgage of \$600,000

Facts

- ▶ He has an IRA with \$300,000
- ▶ He owes the IRS \$275,000 from not paying his 2019 taxes when the injury occurred and he pulled money from his IRA to remodel the home
- ▶ He has disability income and social security of \$7,000
- ▶ Their allowable expenses are \$10,000
- ▶ She stays home to care for him

The ETA Offer

- ▶ An ETA Offer is an Offer where the IRS can get full-paid on paper but for public policy reasons should not
- ▶ Tough sell
- ▶ Taxpayer owes \$275,000
- ▶ His assets are \$200,000 from the home ($\$1,000,000 \times 80\% = \$800,000 - \text{Mortgage of } \$600,000$) and \$240,000 from the IRA ($\$300,000 \times 80\%$)

The ETA

- ▶ He is short \$3,000 a month
- ▶ Life Expectancy is 31.6 years
- ▶ Shortfall is:
$$\$36,000/\text{year} \times 31.3 \text{ years} = \$1,126,800$$
$$\text{Assets} = \$200,000 + \$240,000$$

Publication 590-B

Appendix B. Life Expectancy Tables

Table I (Single Life Expectancy) (For Use by Beneficiaries)			
Age	Life Expectancy	Age	Life Expectancy
0	84.6	30	55.3
1	83.7	31	54.4
2	82.8	32	53.4
3	81.8	33	52.5
4	80.8	34	51.5
5	79.8	35	50.5
6	78.8	36	49.6
7	77.9	37	48.6
8	76.9	38	47.7
9	75.9	39	46.7
10	74.9	40	45.7
11	73.9	41	44.8
12	72.9	42	43.8
13	71.9	43	42.9
14	70.9	44	41.9
15	69.9	45	41.0
16	69.0	46	40.0
17	68.0	47	39.0
18	67.0	48	38.1
19	66.0	49	37.1
20	65.0	50	36.2
21	64.1	51	35.3
22	63.1	52	34.3
23	62.1	53	33.4
24	61.1	54	32.5
25	60.2	55	31.6
26	59.2	56	30.6
27	58.2	57	29.8
28	57.3	58	28.9
29	56.3	59	28.0



The ETA

- ▶ Also, house should not be factored in given it is now outfitted for him and cannot be easily replicated
- ▶ No investment appreciation – conservative investment (bank) and interest eaten up by inflation
- ▶ IRS Offer: \$1,000
- ▶ IRS COIC rejected it. Appeals accepted it!



The ETA

- ▶ Take away:
- ▶ Need to have good facts
- ▶ If you can show the assets will be needed then can argue
- ▶ Had taxpayer had an extra \$2,000 a month over expenses this would not have been accepted

U i f ! G J D B ;

G v u v s f ! J o d p n f ! D p m b u f s b m !

B h s f f n f o u

When the income is all variable

▶ Example

2020: \$200,000

2021: \$50,000

2022: \$135,000

IRS can do any of the following

- ▶ Average the three years
- ▶ Refuse to accept an Offer
- ▶ Require a FICA

FICA

- ▶ Protects the government on the upside
- ▶ Don't want to accept an offer and find out the taxpayer immediately started making more money
- ▶ IRS HATES these, DOJ requires them

Example

In addition to any payments and other consideration under the settlement offer referred to above, the taxpayer will pay out of annual income for the years 2016 to 2022, inclusive:

- Nothing on the first \$150,000.00 of annual income;
- 20 percent of annual income in excess of \$150,000.00 and not in excess of \$200,000.00;
- 25 percent of annual income in excess of \$200,000.00 and not in excess of \$250,000.00;
- 30 percent of annual income in excess of \$250,000.00

Takeaways

- ▶ Consider a FICA when the government balks at accepting an Offer due to the taxpayer's income being hard to pin down
- ▶ Burden is on the taxpayer to contact the government each year
- ▶ Failure voids the Offer
- ▶ Beware phantom income....

The DOJ Letter

Dear Mr. Green:

I am writing with regard to the stipulation your clients entered into on March 11, 2016 in the above-captioned case. Under the stipulation, your clients were required to: (1) pay \$2,750 on the 15th day of every month until 84 consecutive monthly payments were made; (2) comply with an income collateral agreement under which they would pay 20% of annual income (defined as adjusted gross income plus certain deductions and credits which are excluded from the calculation) between \$150,000 and \$199,999, 25% of annual income between \$200,000 and \$249,999, and 30% of annual income in excess of \$250,000; and (3) remain current with their ongoing tax obligations.

Your clients are in violation of each of these provisions. With regard to the monthly payments, your clients have made successful payments for 37 of the 39 months for which they are required to make payments and, as such, are in arrears for \$5,500. With regard to the income collateral agreement, your clients' tax return for tax year 2017 reflects an adjusted gross income of \$272,812. As such, they were required to pay a minimum of \$44,568 to the Department of Justice at the time they filed their return, as well as providing the DoJ with a copy of their tax return and a statement showing how their annual income was calculated. No such payment was made. Finally, the stipulation required your clients to file all tax returns timely during the installment period and pay all taxes thereon timely. Your clients failed to file their 2017 tax return timely—filing it more than a month after the date on which it was due—and failed to timely pay the amounts shown on the return. The current unpaid tax balance is \$19,294.25, with penalties and interest continuing to accrue on that amount.

The DOJ Letter

Pursuant to Paragraphs 4(h) and 5 of the March 11, 2016 stipulation, your clients are in default of the stipulation and, as such, the United States is entitled to collect all remaining amounts due under the judgment entered in the above-captioned case, and is entitled to take any and all collection actions allowed by law in doing so.

The Response

- ▶ Review background
- ▶ State the taxpayer agreed to your terms and have struggled
- ▶ Here the gain that drove the income up was a paper gain (phantom income)

Paragraph

- ▶ The Government now claims that phantom income – a paper gain never actually received – should be included in settlement. This would fundamentally change the agreement post hoc and be a major departure from both Tax Division and IRS policy concerning future income collateral agreements (FICA). The phantom income was derived from the sale of property. The closing statement – showing that no funds were received by the Taxpayers is attached hereto as Exhibit 2. Another reason why the Government’s position is fundamentally unfair is that, the Taxpayers have to pay income tax on this phantom gain. Thus, the Government is seeking to inequitably “double dip” by including the non-cash allocation of income in the FICA.

Paragraph

- ▶ The Taxpayers, as part of their agreement with you, signed the FICA, which is designed to protect the government when it accepts an offer in case the taxpayer’s future income increases beyond what was presented on the financial statements. The IRS does not consider paper income as part of the Reasonable Collection Potential (RCP) calculation, as it is a cash flow analysis, not taxable income analysis. This is why non-taxable sources of income are eliminated from the cash flow analysis for calculating RCP. It is also why non-cash expenses (like depreciation) are not considered as an expense for purposes of RCP. As such, the gain from the sale for which they received no money should not be considered income under the FICA.

DOJ Response

- ▶ Agreed the paper gain should not be included
- ▶ Taxpayer made up the two missing payments
- ▶ Reinstated the agreement

P g g f s t x j u i ! D s j n j o b m !
S f t u j u v u j p o

Orders of Restitution

- ▶ Federal district courts may sentence a defendant to pay restitution upon conviction of certain criminal offenses.
- ▶ Criminal restitution in tax cases since 2010 may be assessed as a civil tax and collected by the IRS and DOJ .
- ▶ The amendment to IRC § 6204 requires the civil assessment to match the order of restitution made after August 16, 2010.
- ▶ The IRS will then charge the 75% fraud penalty and interest and bill the taxpayer

Orders of Restitution

- ▶ Neither the IRS nor Department of Justice has any authority to compromise the debt.
- ▶ The order of restitution may not be compromised by either agency (IRS Chief Counsel Memo CC-2011-018, Question 18).
- ▶ The court itself could theoretically modify the order if it can be shown that the amount ordered is incorrect.
- ▶ Inability to pay or a change of economic circumstances are not reasons to modify the court order.

Takeaways

- ▶ Restitution cannot be compromised
- ▶ Other taxes, interest and penalties may be
- ▶ We did the first case in the US on this

Facts

- ▶ Taxpayer is prosecuted for failure to pay over payroll taxes
- ▶ Owes the government \$202,500 of restitution
- ▶ Also owes some income tax, penalties and interest. Total is \$468,00
- ▶ Has a final notice of intent to levy and is at CDP

The OIC calculation

- ▶ RCP shows she can pay \$70,000 between assets and future income
- ▶ Brother, an attorney at a big Washington DC firms hires us
- ▶ Is willing to help his sister pay this and be done

What's the plan?

Je f b t @

The plan

- ▶ Submit the 656 and 433-OIC with all back-up to the Settlement Officer
- ▶ Explain her RCP is \$70,000
- ▶ Explain we know the restitution cannot be compromised so the brother is willing to lend her the money
- ▶ Offer is \$203,000

The Pitch

Dear Mr. Settlement Officer,

Enclosed please find the Offer for the taxpayer. As you will note her RCP is \$70,000. However, she has an order of restitution of \$202,500, which the IRS has no authority to compromise. Therefore, with the help of family, the taxpayer is offering to settle the tax debt for \$203,000, which will cover the restitution and exceeds her RCP.

IRS Response

- ▶ The S.O. thinks we can do this, but he and his manager don't know
- ▶ Sent to Washington DC to chief counsel for review
- ▶ Ultimately they agree and accept the \$203,000 offer – told us it was a first
- ▶ Were there other options? Use her assets and brothers help to pay the restitution and then file an Offer for close to \$0

Fui jdbm!Dpovo esvn t;!Qbsu!2

Meet Charles

- ▶ Charles submitted an Offer to the IRS for \$5,000
- ▶ His total debt to the IRS is \$103,000
- ▶ IRS contacts us 6 months later and we provide updates (its April)
- ▶ In July Charles calls me and tells me his sister died

Meet Charles

- ▶ He and his sister have not spoken for 20 years
- ▶ She died in a house fire, which consumed most of the house and the belongings
- ▶ We ask if she left a Will and he says she did not have any children, did not have an attorney anyone knows of, so no idea

Meet Charles

- ▶ Under the laws of intestacy he would inherit her assets (if she has no Will)
- ▶ We don't know what assets she had (insurance, investments, the property, etc)
- ▶ No idea if she had a Will or not

E p ! x f ! o f f e ! u p ! u f r m ! u i f ! J S T @

Charles – Epilogue

- ▶ Advised him there was nothing to tell the IRS yet as it was unknown and our financial was accurate when filed
- ▶ We advised him we could make a request for her will on the listserv for the CT Bar to see if any attorney had a will for her as a client
- ▶ Next day we received the Offer acceptance letter from the IRS so it was a non-issue
- ▶ Never found a Will and he inherited \$170,000

Fui jdbm!Dpovo esvn t;!Qbsu!3

Minister Smith

- ▶ Minister Smith is trying to work out an IA with the IRS
- ▶ We need to submit a financial to the Settlement Officer at CDP – he owes the IRS \$65,000
- ▶ The client sent us a 433 and we note the client left the questions blank about any estate or inheritance
- ▶ We email him the questions to which he replies “Call me”

Minister Smith

- ▶ He informs us on the phone his aunt passed away 6 months ago and his sister is handling the probate
- ▶ He will inherit somewhere around \$70,000

Explores the impact of the US Tax

What's the plan?

Je fbt@

Minister Smith

- ▶ Spoke with him and his sister
- ▶ She agreed to do an interim distribution of \$20,000
- ▶ Had him pay down the balance and with the S.O. we set up a streamlined IA (he was now under \$50,000)
- ▶ Did not need to submit the 433 or disclose the inheritance

Questions



TRN Live San Antonio

TRN Live Part 2 – San Antonio

- ▶ July 27th following NATP's Taxposium
- ▶ Register for in-person or webcast at <https://taxrepllc.com/2023-trn-live/>



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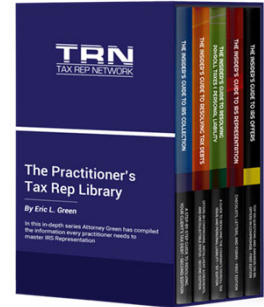


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Questions?

