

# Tax Rep Live: San Antonio

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").

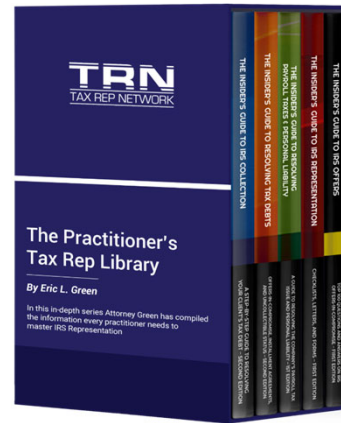


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## Eric Green, Esq.

- 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. Challenging the Collection Statute Expiration Date (CSED)
2. The Offer Analysis: What Needs to Happen Before the Offer is Filed?
3. The In-Business Offer-in-Compromise: Compromising the Company Debts
4. Notice of Deficiency – Avoiding the Fraud
5. Notice of Deficiency – using industry standards
6. S Corp Reasonable Compensation
7. Obtaining a refund after three years for financial disability
8. Collection against the Attorney's estate
9. The deceased with no records
10. The Estate's Offer-in-Compromise
11. Sale of interest to wife at a discount to set up the Offer-in-Compromise
12. Whistle While You Work

## 10<sup>th</sup> Annual NE IRS Rep Conference

- ▶ Back at Mohegan Sun
- ▶ 11/30/23 (QU) and 12/1/23 (Mohegan)
- ▶ Free for Members
- ▶ <https://irsrepconference.com>



## Vegas was a great time...



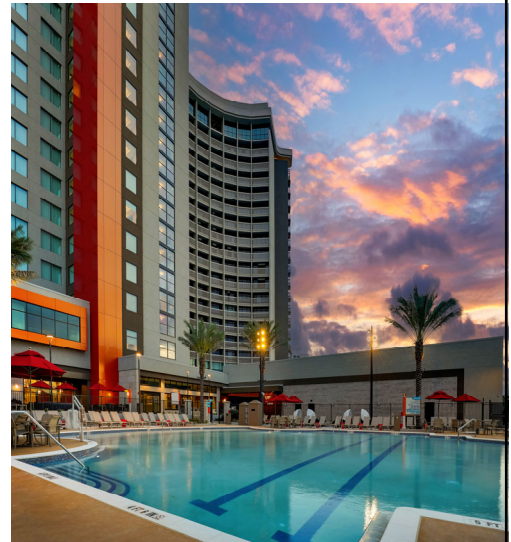
TAX REP NETWORK

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## Orlando will be even better!!!!

- ▶ 12/13/23 – 12/15/23
- ▶ Drury Plaza Hotel – Disney Springs
- ▶ Members pay cost
- ▶ Includes breakfast, cocktail reception and wifi
- ▶ <https://taxrepllc.com/2023-summit>



**TRN**  
TAX REP NETWORK

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# Coffee Break



# The Current IRS Landscape

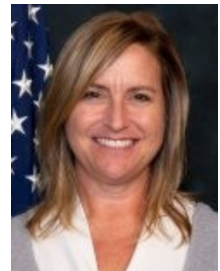
# Current Landscape



- ▶ 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

# Enforcement Is Ramping Up

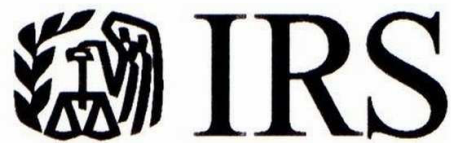
- ▶ The backlog of mail is now caught up;
- ▶ The CP-14 Notices (Balance Due) that have been paused will go out at the end of May to roughly 8 million taxpayers;
- ▶ The Taxpayers who owed balances before and are due for enforcement action will probably first receive a refresh notice before levy action is taken;
- ▶ The enforcement notices will be sent out in waves to avoid overwhelming the Collection Phone Lines, The Office of Appeals, and the Taxpayer Advocate, all of which will see their phone lines light-up when taxpayers start scrambling when they open the mail



# The IRS Collection Process

## 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



Department of the Treasury  
**Internal Revenue Service**

# Goal?

- ▶ Taxpayer should voluntarily file their own return
- ▶ Otherwise IRS will do it for them

Form **1040** Department of the Treasury—Internal Revenue Service **2022** U.S. Individual Income Tax Return OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

**Filing Status**  Single  Married filing jointly  Married filing separately (MFS)  Head of household (HOH)  Qualifying surviving spouse (QSS)  
Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent:

Your first name and middle initial	Last name	Your social security number
If joint return, spouse's first name and middle initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see instructions.		Apt. no.
City, town, or post office. If you have a foreign address, also complete spaces below.		State
Foreign country name		Foreign province/state/county
Foreign postal code		Foreign postal code

**Digital Assets** At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.)  Yes  No

**Presidential Election Campaign**  
Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.  
 You  Spouse

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# Assessment, Billing & Collection

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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



## 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)

# 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

# Pull Transcripts

This Product Contains Sensitive Taxpayer Data

### Account Transcript

Request Date: 12-22-2021  
Response Date: 12-22-2021  
Tracking Number: 10XXXXXXXXXX

FORM NUMBER: 1040  
TAX PERIOD: Dec. 31, 2017

TAXPAYER IDENTIFICATION NUMBER: XXX-XX-1111

R. Stannard  
25 Roa

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	43,282.76	
ACCURED INTEREST:	1,395.65	AS OF: Jan. 03, 2022
ACCURED PENALTY:	0.00	AS OF: Jan. 03, 2022
ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	44,678.41	

\*\* INFORMATION FROM THE RETURN OR AS ADJUSTED \*\*

EXEMPTIONS:	05
FILING STATUS:	Married Filing Separate
ADJUSTED GROSS INCOME:	153,163.00
TAXABLE INCOME:	120,213.00
TAX PER RETURN:	37,012.00
SE TAXABLE INCOME TAXPAYER:	55,983.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	6,565.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER): Oct. 11, 2018  
PROCESSING DATE: Nov. 19, 2018

TRANSACTIONS

# Calculate CSED Dates (THS)

## CSED CALCULATIONS

YEAR	CODE	ASSESSMENT	DATE	AMOUNT	ESTIMATED TOTAL TOLLING DAYS	ESTIMATED CSED	ESTIMATED 3 YEAR LOOK BACK*	ESTIMATED 2 YEAR FILING RULE*	ESTIMATED 240 DAY ASSESSMENT*	ESTIMATED ELIGIBLE BANKRUPTCY DISCHARGE DATE*
2012										
	170	Penalty for not pre-paying tax 01-28-2024	11/18/2013	\$388.00	65	01/22/24	10/15/16	10/14/15	07/16/14	10/15/16
	150	Tax return filed	11/18/2013	\$21,657.00	65	01/22/24	10/15/16	10/14/15	07/16/14	10/15/16
2013										
	170	Penalty for not pre-paying tax 12-28-2024	11/17/2014	\$407.00	35	12/22/24	10/15/17	10/14/16	07/15/15	10/15/17
	150	Tax return filed	11/17/2014	\$22,677.00	35	12/22/24	10/15/17	10/14/16	07/15/15	10/15/17
2014										
	170	Penalty for not pre-paying tax 12-23-2025	11/23/2015	\$399.00	30	12/23/25	10/15/18	10/14/17	07/20/16	10/15/18
	150	Tax return filed	11/23/2015	\$22,232.00	30	12/23/25	10/15/18	10/14/17	07/20/16	10/15/18
2015										
	170	Penalty for not pre-paying tax 11-07-2026	11/7/2016	\$354.00		11/07/26	10/15/19	10/12/18	07/05/17	10/15/19
	150	Tax return filed	11/7/2016	\$26,400.00		11/07/26	10/15/19	10/12/18	07/05/17	10/15/19
2016		No Assessments Present								
2017		No Assessments Present								



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# Transcripts

- ▶ Critically important to check these
- ▶ More often we find the Transcripts/Mod A are inaccurate
- ▶ There are ways to challenge



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## How do we know they are wrong?

- ▶ Can use THS..
- ▶ But confirming is critical
- ▶ Hand calculating is still our rule (after consulting with THS)

## Richard and the CSED Issue

## Meet Richard

- ▶ Richard is an attorney
- ▶ Runs up considerable debt between 07-2010 with PI cases and no estimated tax payments made
- ▶ He receives his Final Notice of Intent to Levy on 2/20/2012, does not request the hearing
- ▶ He submits a 433 on 2/17/2014

## Meet Richard

- ▶ He is deemed to be uncollectible on 7/1/2014
- ▶ He incurs another debt on 2015
- ▶ Receives a threat to levy and submits a new 433 on 3/21/2018
- ▶ Is placed in an IA for \$3,000 a month on 4/10/2018
- ▶ Has been paying religiously ever since

## Meet Richard

- ▶ Richard reads your blog entry about the 10 year statute
- ▶ Sets up a consult and pays the \$1,500 for the analysis
- ▶ Believes his debt has expired

## Meet Richard

- ▶ Review the transcript
- ▶ Take 15 minutes
- ▶ Let's discuss what you think?



## Great – we want to challenge

- ▶ What steps should we take to confirm the issue?
- ▶ What options are there to challenge?
- ▶ Next Steps....?

## Steps?

- ▶ File the FOIA (Exhibit) through the online portal:  
<https://foiapublicaccessportal.for.irs.gov/app/Home.aspx>
- ▶ Call ACS and submit the issue (Letter – Exhibit)
- ▶ 911 or DATL? (see Exhibits)
- ▶ All payments since 5/17/22 need to be applied to 2015  
(14 months x \$3,000 = \$42,000)

## Joe, The Tax Levy and CSED

## Now Meet Joe

- ▶ Joe files his 2007 tax return
- ▶ He owes \$28,869 plus penalty and interest on 11/17/08
- ▶ On 5/16/11 the IRS makes an adjustment adding \$16,051
- ▶ Joe read online that the debt is supposed to expire after ten years and believes this debt should be written off
- ▶ Comes to you for advice, and pays the \$1,500 consult fee



# IRS Balance

2011	Original	S	10/15/2012				\$0.00	\$0.01	1/27/2020
2010	Original	HOH	10/15/2011				\$0.00	\$0.00	1/27/2020
2009	Original	S	10/15/2010				\$0.00	\$0.00	1/27/2020
2008	Original	HOH	10/15/2009				\$0.00	\$0.00	1/27/2020
2007	Original	HOH	10/15/2008	Removed	12/13/2015	Closed	\$69,308.26	\$72,944.42	1/27/2020
2006	Original	MFS	10/15/2007	Removed			\$0.00	\$0.00	1/27/2020
2005	Original	MFJ	10/15/2006				\$0.00	\$0.00	1/27/2020
2004	Original	MFI	8/15/2005				\$0.00	\$0.00	1/27/2020

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# IRS Mod A

		2006 Total IA Payments							\$0.00
2007									
	150	Tax return filed	11/17/2008	\$28,869.00	\$8,650.64	464	2/25/20	0	\$0.00
	276	Penalty for late payment of tax	11/17/2008	\$1,154.76	\$1,154.76		2/25/20	0	\$0.00
		Penalty for not pre-paying tax 01-25-2020							
	176		11/17/2008	\$1,198.59	\$1,198.59	464	2/25/20	0	\$0.00
	196	Interest charged for late payment	11/17/2008	\$965.40	\$965.40		2/25/20	0	\$0.00
		Fees and other expenses for collection	7/6/2009	\$86.00	\$86.00		2/25/20	0	\$0.00
	300	Additional tax assessed by examination 05-10-2022	5/16/2011	\$16,051.00	\$16,051.00	389	6/10/22	28	\$615.85
		Miscellaneous penalty IRC 6662 (c), (d), (e), (f), (g), or (h) Accuracy-Related Penalty 05-10-2022							
	240		5/16/2011	\$3,210.20	\$3,210.20	389	6/10/22	28	\$123.17
	276	Penalty for late payment of tax	4/16/2012	\$7,828.09	\$7,828.09		2/25/20	0	\$0.00
	276	Penalty for late payment of tax	4/22/2013	\$1,926.12	\$1,926.12		2/25/20	0	\$0.00
	276	Penalty for late payment of tax	4/16/2018	\$321.02	\$321.02		2/25/20	0	\$0.00
	196	Interest charged for late payment	4/16/2018	\$23,322.34	\$23,322.34		2/25/20	0	\$0.00
	196	Interest charged for late payment	4/15/2019	\$4,594.10	\$4,594.10		2/25/20	0	\$0.00
		2007 Accrued Penalty			\$0.00		2/25/20	0	
		2007 Accrued Interest			\$3,636.16		2/25/20	0	
		2007 Total IA Payments							\$739.02

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**Review the transcript and do the  
analysis**

**Has it expired?**

# Analysis

Event	Date	Tolling (add. Days)
Original Assessment	11/17/08	
Collection Due Process	12/30/08	30 days
Pending IA - Established	3/19/09 - 6/2/09	75 days
Additional Assessment	5/16/11	
Pending IA - Established	10/31/13 - 12/6/13	36 days
Collection Due Process	2/3/15	30 days
Pending IA - Removed	3/25/15 - 12/13/15	263 days

# CSEDs

- ▶ Original Assessment CSED ran 3/2/2019
- ▶ Additional Assessment CSED will run 4/10/2022
- ▶ Went to TAS

## To TAS

Please see enclosed form 911 regarding TAXPAYER. The taxpayer filed a return with a balance due on tax year 2007. The IRS later audited and created an additional balance. The original return balance has since expired but the IRS continues to levy based on both the original return balance and audit balance.

We would like to request the IRS correct the balance due to reflect the audit balance, the funds levied after 3/2/19 be applied to the audit portion, and the levy be released. We would also like to request a hold on collection until the balance is corrected so the client can borrow funds and pay off the balance.



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## TAS Agrees

2013	Original	HOH	10/15/2014			Closed#	\$0.00	\$0.00	9/9/2020
2012	Original	HOH	10/15/2013				\$0.00	\$0.00	9/9/2020
2011	Original	S	10/15/2012				\$0.00	\$0.01	9/9/2020
2010	Original	HOH	10/15/2011				\$0.00	\$0.00	9/9/2020
2009	Original	S	10/15/2010				\$0.00	\$0.00	9/9/2020
2008	Original	HOH	10/15/2009				\$0.00	\$0.00	9/9/2020
2007	Original	HOH	10/15/2008	Removed	12/13/2015	Closed	\$16,746.73	\$16,746.73	9/9/2020
2006	Original	MFS	10/15/2007	Removed			\$0.00	\$0.00	9/9/2020
2005	Original	MFJ	10/15/2006				\$0.00	\$0.00	9/9/2020
2004	Original	MFJ	8/15/2005				\$0.00	\$0.00	9/9/2020



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W k h # R i i h u 0 l q 0 F r p s u r p l v h # D q d o | v l v

## Meet Joe

- ▶ Joe arrives with the following:
- ▶ He owes \$60,000 for tax year 2020
- ▶ He has a job now earning \$75,000/year
- ▶ He is single, no children, 45 years old
- ▶ He owns 3 LLCs: one for painting, one for house flipping, one for real estate management (all empty doing \$0)

## Meet Joe: Assets

- ▶ Cash of \$7,700
- ▶ IRA with \$5,000
- ▶ Toyota Camry, \$450/month lease
- ▶ 2008 Ford F150, worth \$4,000
- ▶ Camper, 20 years old, worth \$6,000

## Meet Joe: Expenses

- ▶ He rents his apartment in New Haven for \$2,200
- ▶ Utilities monthly are \$350
- ▶ He is in good health and has \$10/month of prescriptions
- ▶ His health insurance is \$500/month through his employer

# 433-A

Joe

**Income**

	Actual
Wages (yourself)	\$ 6,250
Wages (spouse)	\$ -
Interest - Dividends	\$ -
Net Business Income	\$ -
Net Rental Income	\$ -
Distributions	\$ -
Pension/Soc Sec (taxpayer)	\$ -
Pension/Soc Sec (spouse)	\$ -
Social Security (taxpayer)	\$ -
Social Security (spouse)	\$ -
Child Support	\$ -
Alimony	\$ -
Other Income	\$ -
Total	\$ 6,250

**Expenses**

	Actual	Allowable
Food, Clothing and Misc	\$ 841	\$ 841
Housing & utilities	\$ 2,550	\$ 2,245
Vehicle Ownership	\$ 450	\$ -
Vehicle Operating Costs	\$ 298	\$ 298
Public Transportation	\$ -	\$ -
Health Insurance	\$ 500	\$ 500
Out of Pocket HealthCare	\$ 10	\$ 79
Court ordered pmts	\$ -	\$ -
Child/Dep Care	\$ -	\$ -
Life Insurance	\$ -	\$ -
Current Year Taxes	\$ 1,563	\$ 1,563
Secured Debts	\$ -	\$ -
Delinquent State Taxes	\$ -	\$ -
Student Loans	\$ -	\$ -
Total Living Expenses	\$ 6,212	\$ 5,526
Net Difference	\$ 39	\$ 725

**RCP Analysis**

Income	\$ 6,250
Expense	\$ 5,526
Monthly Available	\$ 725
CSED - 96 months	\$ 69,552
Assets	
Cash	\$ 2,175
IRA	\$ 4,000
Ford 150	\$ 3,200
Camper	\$ 4,800
RCP	\$ 83,727

No OIC



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# Meet Joe: The Real Estate Mogul

- ▶ IRS will want a 433-A on Joe
- ▶ A 433-B on all three LLCs
- ▶ A P&L on all 3 LLCs
- ▶ Bank statements and support on Joe and all 3 LLCs



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## The Plan

**Ideas?**

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## Clean-Up

- ▶ Dissolve empty LLCs
- ▶ Sell camper and truck – use proceeds to pay us, and now Camry lease will be allowable

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# Joe Now:

## Joe - Cleaned Up

### Income

	Actual
Wages (yourself)	\$ 6,250
Wages (spouse)	\$ -
Interest - Dividends	\$ -
Net Business Income	\$ -
Net Rental Income	\$ -
Distributions	\$ -
Pension/Soc Sec (taxpayer)	\$ -
Pension/Soc Sec (spouse)	\$ -
Social Security (taxpayer)	\$ -
Social Security (spouse)	\$ -
Child Support	\$ -
Alimony	\$ -
Other Income	\$ -
	\$ -
Total	\$ 6,250

### Expenses

	Actual	Allowable
Food, Clothing and Misc	\$ 841	\$ 841
Housing & utilities	\$ 2,550	\$ 2,245
Vehicle Ownership	\$ 450	\$ 450
Vehicle Operating Costs	\$ 298	\$ 298
Public Transportation	\$ -	\$ -
Health Insurance	\$ 500	\$ 500
Out of Pocket HealthCare	\$ 10	\$ 79
Court ordered pmnts	\$ -	\$ -
Child/Dep Care	\$ -	\$ -
Life Insurance	\$ -	\$ -
Current Year Taxes	\$ 1,563	\$ 1,563
Secured Debts	\$ -	\$ -
Delinquent State Taxes	\$ -	\$ -
Student Loans	\$ -	\$ -
Total Living Expenses	\$ 6,212	\$ 5,976
Net Difference	\$ 39	\$ 275

### RCP Analysis

Income	\$ 6,250	
Expense	\$ 5,976	
Monthly Available	\$ 275	
CSED - 96 months	\$ 26,352	
Assets		
Cash	\$ 1,725	
IRA	\$ 4,000	
Ford 150 - Sell	\$ -	Use to pay our fees
Camper - Sell	\$ -	Use to pay our fees
RCP	\$ 32,077	OIC



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# Joe - Summary

- ▶ Analysis is partly for RCP
- ▶ Partly for identifying issues we need to clean up (LLCs, truck knocking out the car payment)
- ▶ Is compromising away \$25,000 worth the \$2,500 analysis?



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# In-Business Offers

## In-Business Offers

- ▶ Are extremely difficult
- ▶ IRS will also consider the “going-concern” value fo the business (i.e. business valuation: is the whole greater than its individual parts)
- ▶ Assets: income producing or non-income producing

## Income Producing Assets

If...	Then...
There is no equity in the assets	There is no adjustment necessary to the income stream.
There is equity and no available income stream (i.e. profit) produced by those assets	There is no adjustment necessary to the income stream. Consider including the equity in the asset in the RCP.
There are both equity in assets that are determined to be necessary for the production of income and an available income stream produced by those assets	<ul style="list-style-type: none"> <li>•Compare the value of the income stream produced by the income producing asset(s) to the equity that is available.</li> <li>•Determine if an adjustment to income or expenses is appropriate.</li> </ul>
An asset used in the production of income will be liquidated to help fund an offer	Adjusting the income to account for the loss of the asset may be appropriate.
A taxpayer borrows against an asset that is necessary for the production of income, and devotes the proceeds to the payment of the offer	Allow the loan payment as an expense and consider the effect that loan will have on the future income stream.

## Tricky About In-Business Offers

- ▶ Assets – Income Producing? – IRM 5.8.5.15
- ▶ As a general rule, equity in income producing assets will not be added to the RCP of a viable, ongoing business; unless it is determined the assets are not critical to business operations.
  - ~ Exception: Include equity in real property in the calculation of RCP.
- ▶ Business as a Going Concern – IRM 5.8.5.17

## Marc A. Case

- ▶ Meet Marc
- ▶ Marc runs a company that is being backed by Venture Capital (\$19 million to date with another \$50 million committed)
- ▶ The income is all over the place, swinging from \$2 million profit to \$3 million of loss, year to year

## Marc A. Case

- ▶ The company was appraised at \$976,066 a year before
- ▶ Current profit and loss shows a loss of over \$1.2 million
- ▶ Marc is allowed a draw by the VC of \$15,000 per month which barely covers his allowable expenses
- ▶ Marc owes \$5.7 million to the IRS due to phantom income on his K-1

# Marc A. Case

- ▶ He has two former companions who are the mothers of 4 other children
- ▶ His financial information is the following:

# 433-A OIC

## Future Income Analysis

<i>Income</i>	Actual	<i>Expenses</i>	Allowable
Wages (yourself)		Food, Clothing and Misc	\$ 1,650
Wages (spouse)		Housing & utilities	\$ 3,286
Interest - Dividends		Vehicle Ownership	
Net Business Income	\$ 15,000	Vehicle Operating Costs	\$ 500
Net Rental Income		Public Transportation	
Distributions		Health Insurance	
Pension/Soc Sec (taxpayer)		Out of Pocket HealthCare	\$ 1,773
Pension/Soc Sec (spouse)		Court ordered pmts	\$ 5,091
Social Security (taxpayer)		Child/Dep Care	\$ 1,413
Social Security (spouse)		Life Insurance	
Child Support		Current Year Taxes	\$ 2,539
Alimony		Secured Debts	
Other Income		Delinquent State Taxes	
		Student Loans	
		Total Living Expenses	\$ 16,252
Total	\$ 15,000	Net Difference	\$ (1,252)

## Marc A. Case

- ▶ The financial is nonsensical
- ▶ His paper income is meaningless
- ▶ Now what?

## Our thoughts

- ▶ P&L and Balance sheet make no sense
- ▶ Future income is Zero
- ▶ The only thing is the enterprise value – Offer based upon 80% of the appraised value
- ▶ VC Agrees to fund if accepted

## See attached OIC documents

- ▶ Submitted
- ▶ Denied because IRS averaged the income and came up with huge future income of over \$3 million
- ▶ See attached Income/Equity Tables

## Appeals

- ▶ Agreed future income was nonsensical
- ▶ Wanted confirmation in VC agreement that VC was not responsible for tax payments
- ▶ Once confirmed agreed to accept Offer!

# The Exam: Avoiding the Fraud

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## You get a call

- ▶ Potential client is an engineer
- ▶ Self-Employed, though works for one bank as an independent engineer
- ▶ Has received an audit notice

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# The Notice

Dear Taxpayer Name:

Your federal return for the period(s) shown above was selected for examination.

### What you need to do

Please call me on or before the response date listed at the top of this letter. You may contact me at the telephone number and times provided above.

### What we will discuss

During our telephone conversation, we will discuss:

- Items on your return that I will be examining.
- Types of documents I will ask you to provide.
- The examination process.
- Any concerns or questions you may have.
- The date, time and agenda for our first meeting.

The issues listed below are the preliminary items identified for examination. During the course of the examination, it may be necessary to add or reduce the list of items. If this should occur, I will advise you of the change.

- Other deductions (not listed)
- Returns & allowances
- Gross receipts or sales

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# His business

- ▶ Works from home, with a large home office
- ▶ His job is to review construction projects that the bank is lending for
- ▶ Travels constantly



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## Tells us the following

- ▶ CPA is away on vacation
- ▶ Realized his excel spreadsheet had a mistake and he has been under reporting his income by around \$300,000 per year (reporting \$400,000 instead of \$700,000)
- ▶ Ooops

## The CPA

- ▶ Is in Ireland
- ▶ Tells me on the call that he called the auditor and asked for more time as he was away
- ▶ She told him that if the taxpayer did not bring the records she would simply disallow the expenses and issue the Notice of Deficiency – he could go to court if he liked

So.....

## CPA Asks What to Do?

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## Step #1: Get a Criminal Tax Attorney



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## Ket to dealing with an Eggshell Audit

- ▶ Where's the fraud?
- ▶ How likely is it to be discovered
- ▶ Shadow investigation by Kovel is required

## Privilege

- ▶ Attorney
- ▶ Accountant – IRC Section 7525
- ▶ 5th Amendment



## Identifying the Sensitive Areas

- ▶ Beware too much information
- ▶ The shadow investigation
- ▶ Criminal? Maybe not ...
- ▶ The luckiest man in Connecticut!

## Kovel Accountants

- ▶ United States v. Kovel
- ▶ What is a Kovel accountant
- ▶ Timing Issues
- ▶ Issues with using the preparer
- ▶ Dummy Accountants

## US v. Kovel

- ▶ Kovel is a former RA
- ▶ Hired by a law firm to assist
- ▶ Government finds out and subpoena's Kovel
- ▶ He refuses to provide information, citing attorney-client privilege
- ▶ Government argues he's not an attorney, doesn't apply

## Appeals Court in Kovel

- ▶ Client speaking a foreign language, the interpreter hired by the attorney would be privileged
- ▶ Same analogy works here
- ▶ If the accountant is hired BY THE ATTORNEY, everything he/she learns from then on is privileged

## Kovel Letter

- ▶ This letter confirms your engagement, and that of your firm, \_\_\_\_\_, by my law firm to assist me in connection with a the tax issue and potential civil and criminal tax issues relating to the above-named client.
- ▶ You are hereby engaged to assist me under the terms agreed and pursuant to U.S. v. Kovel, 296 F.2d 918 (2d Cir. 1961). Any books, records, papers or documents belonging to the client and received by you shall remain the property of the client. All memoranda, work papers, or other documents received by you in the course of this engagement shall be and remain the property of my law firm.
- ▶ All memoranda, work papers, or other documents prepared by you in connection with this engagement shall become the property of my law firm immediately upon their preparation.....Upon completion of the engagement all such work papers, memoranda and other documents in your possession shall be returned to us
- ▶ For the three years following the closure of this assignment you agree to not take the taxpayer on as a client in any other capacity.

## If we meet with the auditor....

- ▶ Client/CPA will be asked if all income is properly reported, either admit or lie
- ▶ Bank deposits will be tied to the return, fraud will be obvious

## Ideas?

- ▶ Review everything – expenses missed? (rental property story)
- ▶ Present it as an ‘oops, sorry’ and hope it stays civil
- ▶ Do nothing

**Do Nothing!**



## What happens?

- ▶ Notice of Deficiency is issued
- ▶ All expenses are denied
- ▶ 90 days to file in Tax Court

## The Petition

5. Explain why you disagree with the IRS determination in this case (please list each point separately):

I disagree with the adjustments made to my 2014 and 2015 income taxes. With respect to 2014, I disagree with the following changes: (1) disallowance of \$11,215 in expenses for business use of home; (2) disallowance of \$48,859 in other expenses; (3) disallowance of \$20,690 in travel expenses; (4) disallowance of \$36,851 in car and truck expenses; (5) the \$3,742 adjustment in my self-employment tax deduction; (6) the statutory alternative minimum tax liability asserted in the amount of \$2,960; (7) the \$7,484 adjustment to self-employment tax; (8) the \$1,052 adjustment to prepayment credits subject to deficiency with respect to the American opportunity credit; and (9) the imposition of penalties in the amount of \$2,223.70 under IRC Section 6651(a)(1) and in the amount of \$9,061.20 under IRC Section 6662(a). With respect to 2015, I disagree with the following changes: PLEASE SEE ATTACHED

## Petition continued

### CONTINUATION OF TAX COURT PETITION

5. Explain why you disagree with the IRS determination in this case (please list each point separately) (CONTINUED):

(1) disallowance of \$9,104 in expenses for business use of home; (2) disallowance of \$6,146 in other expenses; (3) disallowance of \$9,192 in travel expenses; (4) disallowance of \$16,658 in car and truck expenses; (5) the \$551 adjustment to my self-employment tax deduction; (6) the statutory alternative minimum tax liability asserted in the amount of \$2,037; (7) the \$1,101 adjustment to self-employment tax; and (8) imposition of penalties under IRC Section 6651(a)(1) in the amount of \$2,878.55 and IRC Section 6662(a) in the amount of \$3,040.80.

## Petition continued

6. State the facts upon which you rely (please list each point separately):

I have documentation supporting the numbers provided in my tax returns. The auditor, however, did not allow sufficient time to gather and produce the appropriate documentation, which has resulted in erroneous adjustments to my income taxes.

## Receipt (in 2017)

<b>GREEN &amp; SKLARZ LLC</b> <small>Attorneys at Law www.gs-lawfirm.com</small>	RECEIVED UNITED STATES TAX COURT INTAKE #4
	2017 MAY -5 AM 11:42
	BY: <u>ML</u> DEPUTY CLERK
	May 3, 2017
<b><u>VIA FEDERAL EXPRESS</u></b>	
United States Tax Court Clerk of the Court 400 Second Street, N.W. Washington, DC 20217	9838-17

## Government's Response

Dear Mr. Green:

I am an Appeals Officer with the Internal Revenue Service and have been assigned responsibility for reviewing your above-referenced client's objections following an examination of their 2014 and 2015 F1040's. My role here is to provide you and your clients with an impartial and independent review of the matter.

I am writing you today to advise that I received your fax dated July 31, 2017. I contacted your office and we are now scheduled to have a conference on this matter via phone on Tuesday, August 15, 2017 at 2pm. Please contact me at that time and I, in turn, will have endeavored to have left my line free to receive your call. If you would like to meet with me here at our offices in East Hartford, please contact me by phone so I may reserve a conference room for us to use.

I received your F2848's on this matter and have forwarded them to our processing department.

Your letter indicates the Petition has been placed on the trial docket. Please note that I checked the Tax Court web page and did not see any appearance date assigned.

## Submit the Documents for the expenses

- ▶ Appeals will only look at what we raised – the expenses
- ▶ Income (or unreported income) is a non-issue



## The Result

Dear Mr. Green:

I am an Appeals Officer with the Internal Revenue Service and have been assigned responsibility for reviewing your above-referenced client's objections following an examination of their 2014 and 2015 F1040's. As I advised in my prior letter to you, my role here is to provide you and your clients with an impartial and independent review of the matter.

I am writing you today to advise that I received your fax dated July 31, 2017, your parcel under a cover letter dated August 8, 2017 and your fax dated September 6, 2017. I reviewed your client's objections and their supporting materials today. Set forth below is my position on the matter.

I am able to propose abating the two penalties for failing to timely file. These penalties total \$5,102.25, exclusive of interest. With interest the penalties likely total about \$6,000. I am not able to abate all or part of the accuracy-related penalties proposed by the Revenue Agent.

I am able to accept everything else you requested in your August 8, 2017 letter

## Stipulated Decision

### DECISION

Pursuant to the agreement of the parties in this case, it is

ORDERED and DECIDED: That there are deficiencies in income tax due from the petitioners for the taxable years 2014 and 2015 in the amounts of \$38,920.00 and \$2,453.00, respectively;

That there is a penalty due from the petitioners for the taxable year 2014 under the provisions of I.R.C. §6662(a) in the amount of \$7,784.00; and

That there is no penalty due from the petitioners for the taxable year 2015 under the provisions of I.R.C. §6662(a).

## Client is thrilled

- ▶ Avoided tax on \$900,000 of unreported income
- ▶ Avoided a 75% civil fraud penalty (or the accuracy penalty on 2015!)
- ▶ Avoided a criminal referral!

## The lesson

- ▶ Get a criminal tax attorney involved!
- ▶ If the audit is not in the taxpayers best interest, consider suing the IRS's aggressiveness against them
- ▶ Let them issue the NOD

## Industry Standards

## Industry standards

- ▶ One method of looking at reasonableness of the taxpayer's numbers
- ▶ Are unreliable
- ▶ Are often outdated
- ▶ Feel free to challenge them

## The Daycare that Did Not Respond

- ▶ Daycare owner had a stroke
- ▶ Audit notice was not responded to
- ▶ Auditor took an industry standard (day cares get 30% of their payments by credit card)

## The Daycare that Did Not Respond

### Explanation of Adjustment

Based on our findings, you haven't reported all gross receipts for your business. Your type of business in comparable locations consistently reports a range between 34.0 % and 58.0 % of gross receipts from Form 1099-K reportable transactions. Based on your tax return and Form(s) 1099-K received for your business, you reported 85.5 % of gross receipts from Form 1099-K reportable transactions. We contacted you for an explanation why your reported gross receipts fall outside this range. You did not respond to our requests. Since we haven't heard from you, we reconstructed your reportable gross receipts using the Payment Mix Method, an indirect method that computes gross receipts by dividing the amount reported to you on Form(s) 1099-K by 58.0 % (to bring your gross receipts within the lower end of the range). Therefore, based on the \$ 1,154,576.00 from Form(s) 1099-K reported to us for your business, we determined you should have reported \$ 1,990,648.28 in total gross receipts. The adjustment(s) to your tax return are shown below, as well as the total amount of tax due.



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## The Daycare that Did Not Respond

- ▶ We meet with them
- ▶ How to disprove the additional income?
- ▶ Daycares are licensed by the state – certain number of children



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## The Daycare that Did Not Respond

- ▶ Town has prints and layouts of the building
- ▶ Provided above plus proof of payments
- ▶ This day care is in an extremely wealthy area so parents just leave credit cards on file for monthly charging



## The Daycare that Did Not Respond

- ▶ Town has prints and layouts of the building
- ▶ State has documentation for limits on the number of children
- ▶ This allows us to prove the maximum number of children (our population)

## The Daycare that Did Not Respond

- ▶ Provided above plus proof of payments by month, matches to the names of the children, matched to the 1099-K
- ▶ This day care is in an extremely wealthy area so parents just leave credit cards on file for monthly charging
- ▶ File the Tax Court Petition

## Response

- ▶ Government Responds
- ▶ Sent to Appeals
- ▶ Submit documentation

## Documentation

- ▶ State and town paperwork – setting the population
- ▶ The proof that the children’s care was paid for by credit card
  1. The rolls for the children
  2. The charges for each child
  3. The 1099-K tied into the charges

## Result

- ▶ Appeals abates the adjustments
- ▶ No change audit

## The Pizza Shop Observation



- ▶ Shop open 6:00 am – 11:00 pm
- ▶ Audited
- ▶ Auditor shows up at 8:00 am and leaves at 11:00 am
- ▶ Comes up with 90% cash
- ▶ Projects this vs 1099-K and comes up with \$300,000 if income tax due with penalties and interest

## Industry Standards

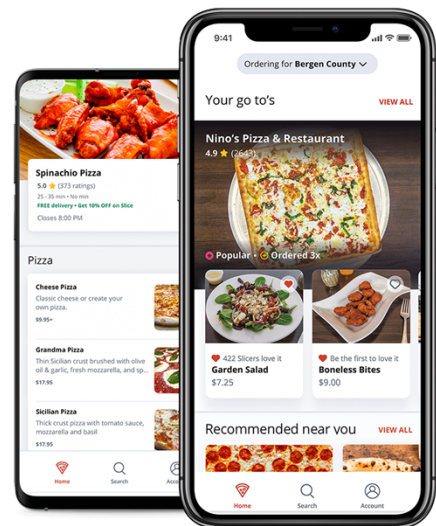
- ▶ Auditor noted that pizza places are “cash intensive”
- ▶ Found an article online from the prior year that due to online ordering pizza restaurants are now 92% credit card
- ▶ First Issue is the Audit
- ▶ Observations are great but the auditor must observe the ENTIRE TIME, otherwise it is skewed

# The Pizza Shop Observation

- ▶ Morning is bagels, newspapers, coffee (Cash)
- ▶ Lunch is slices, sandwiches, sodas (mix of cash and credit)
- ▶ Night is pizzas, salads, dinner platters, beer and wine (almost entirely credit)
- ▶ The vast majority of the dollars in are credit
- ▶ Appeals reduced the liability to \$8,900, no penalty

# A Comment on Industry Standards

- ▶ Helpful, but
- ▶ Must be up to date
- ▶ Technology is changing everything
- ▶ Cash businesses are not really anymore (cabs/uber/lyft, Pizza/slice, arcades/laundromats now have credit cards, etc)



# Reasonable Comp and S Corps

## S Corporations

- ▶ Distributions of S Corp profits are generally preferred by owners over wages due to the absence of payroll taxes on distributions.
- ▶ However, the IRS mandates that S Corp shareholders that provide substantial services receive reasonable compensation.
- ▶ If an S Corp owner provides services, they must receive payment equivalent to the replacement cost or fair market value for those services.

## Meet Bob

- ▶ Had a substantial practice where he prepared corporate and individual tax returns.
- ▶ He did not do any bookkeeping or payroll for his clients.
- ▶ Among his clients were around twenty S Corporations that did not take any salary.
- ▶ Bob sent annual reminder letters about the IRS's requirement for reasonable compensation.

## Meet Bob

- ▶ Instead of targeting the taxpayers, the IRS focused on Bob himself.
- ▶ The IRS used the letters against him.
- ▶ Claimed it showed he knew the returns were false.
- ▶ This is nonsense – it's not the CPAs job to make the client take a reasonable salary – returns were accurate as filed.

## Meet Bob

- ▶ The IRS charged him with negligence and reckless disregard penalties under IRC § 6694 totaling \$126,000.
- ▶ Although the entire situation seemed baseless, Bob was forced to defend himself, incurring significant legal fees of \$25,000.
- ▶ Ultimately the case was settled with the government keeping the 15% he paid down and sought as a refund.
- ▶ Total cost:  $\$126,000 \times 15\% = \$18,900 + \$25,000$  in legal fees = \$43,900

## Lesson

- ▶ Don't send letters to clients who don't take reasonable comp.
- ▶ Fire them.
- ▶ Clients need to take reasonable comp.
- ▶ They pay for this.



## How do you determine Reasonable Comp?

- ▶ Requires careful consideration of the shareholder employee's qualifications,
- ▶ Employee's responsibilities, and
- ▶ The services rendered.
- ▶ Arbitrary salary figures without credible research or documentation are unlikely to be considered reasonable by the courts – *David E. Watson, P.C., v. United States*

## Lesson

- ▶ We use RCReports
- ▶ <https://trn.rcreports.com> (Save \$100)
- ▶ Clients pay for this (\$500 - \$1,000/year). If you relationship bill, build this into your monthly/annual fee
- ▶ Audit? Need the report to see how bad the salary is off...
- ▶ Creates the annuity....
- ▶ Sample Report is included

# Refund Statute: Three Years/Two Years...?

## A Tax Court Story

- ▶ Taxpayer comes to see me and Bob Percy
- ▶ They are in Tax Court and are arguing with the IRS that they are owed \$50,000. IRS says they owe \$70,000
- ▶ They did not file 2002 – 2008.
- ▶ IRS pursues them and they file them all in November 2009
- ▶ Balances are as follows:

## A Tax Court Story

Tax Year	Balance Due
2002	(\$30,000)
2003	(\$25,000)
2004	(\$47,000)
2005	(\$18,000)
2006	\$(2,000)
2007	\$40,000
2008	\$32,000

## A Tax Court Story

- ▶ Wife, the bookkeeper, never filed because she knew they were overpaid so why worry about it
- ▶ They add everything up and come out with a \$50,000 refund
- ▶ IRS disagrees
- ▶ We ask if there were any health issues or other issues that arose that would explain the non-compliance, they deny there was anything

## A Tax Court Story



- ▶ IRS disallows 2002 – 2005, as beyond three years
- ▶ IRS adds up 2006 – 2008 and comes out with a balance of \$70,000 owed
- ▶ IRS is correct
- ▶ Was not a happy day for them

## Meet Arlene

- ▶ Arlene comes to us after the IRS has been chasing her for her tax returns
- ▶ The taxpayer files her 2011 tax return, showing a refund of \$11,744, long with 2012 – 2015 in early 2017
- ▶ IRS denies the refund as being past 3 years of the return due date or two years after payment (IRC § 6511(a))

# What questions do/should we ask?

## Questions

- ▶ Filing history before 2011? (Pull Transcripts)
- ▶ What caused this?
- ▶ Do you have documentation?
- ▶ You didn't file your taxes. What about your other bills – were they paid on time?

## Meet Arlene

- ▶ Arlene had a long history of tax compliance – never a problem prior to 2011
- ▶ She had a history of being abused as a child and was getting help for PTSD
- ▶ Had issues with managing details and paperwork – her husband took care of all this
- ▶ In 2011 her husband and her best friend die within a couple days of each other

## Meet Arlene

- ▶ She has a nervous breakdown
- ▶ Has a major depressive episode and is unable to handle many aspects of her life, including her finances
- ▶ Stops paying her bills
- ▶ Does not file her tax returns (despite being owed a large refund)

## The Argument

### ▶ She was financially disabled under IRC § 6511(h)

(h) **Running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability.--**

(1) **In general.--**In the case of an individual, the running of the periods specified in subsections (a), (b), and (c) shall be suspended during any period of such individual's life that such individual is financially disabled.

(2) **Financially disabled.--**

(A) **In general.--**For purposes of paragraph (1), an individual is financially disabled if such individual is unable to manage his financial affairs by reason of a medically determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require.

## Support

- ▶ Medical documentation – prove she actually had a medical issue that caused this
- ▶ Credit report/Past due notices – it wasn't just the taxes that she didn't take care of, but she was disabled and could do nothing financially related
- ▶ Proof of husband's death/friend's death – triggering events were real

## The Letter

- ▶ Submitted the attached letter
- ▶ No response from IRS
- ▶ However a refund check was sent to the client four months later



## Takeaway

- ▶ Refunds may be obtained beyond three years
- ▶ Client has to prove financial disability
- ▶ Look at other financial matters beyond just the taxes for consistency



# The Attorney's Estate

## Bill was an attorney

- ▶ Was an IP Attorney
- ▶ Traveled frequently back and forth to China
- ▶ Returns from China and within 2 days does not feel well
- ▶ Dies suddenly on March 4, 2012

## Bill was an attorney

- ▶ He owes the IRS \$298,967 on his 2011 tax return, which is filed October of 2012, Married Filing Separate
- ▶ At the time of his death his wife receives \$4,000,000 from his term life insurance policies
- ▶ She receives his IRA worth \$37,900
- ▶ 401K valued at \$110,000 – loan o/s of \$31,256

## Bill was an attorney

- ▶ Probate is done, showing an insolvent estate
- ▶ Revenue Officer ultimately is assigned and threatens to go after the assets in the wife's name because they clearly belong to the estate
- ▶ Do they?
- ▶ File 12153 for CDP

## Initial Review

- ▶ Tax return was due 4/15, filed in October (on extension)
- ▶ Tax Lien under IRC § 6321 arises upon demand for payment – can the taxpayer delay this by late filing?
- ▶ IRA, 401K and insurance pass outside of probate...are they assets?

**What do you think the  
IRS is Entitled to?**

## Eric's analysis

- ▶ I thought the IRS was entitled to the net IRA funds as those could have been cashed and there would be \$10,000 remaining roughly after final expenses
- ▶ The term life insurance had no value that the IRS could have attached to, so bypassed the taxpayer and estate
- ▶ 401K after the loan probably could not have been borrowed against

## IRS concludes

- ▶ Sent to DC to IRS Counsel
- ▶ They concluded the estate is insolvent and IRS gets nothing – wont take the \$10,000
- ▶ No conveyance by the taxpayer, both assets (IRA and Insurance) bypassed the probate estate

## SO closes as CNC

### Case Closed -- Currently Not Collectible

We have temporarily closed your collection case for the tax types and periods listed below. We have determined that you do not 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. Also, since 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. Also, it is to your advantage to make voluntary payments towards the amount you owe, if possible, to minimize additional penalties and interest.

## Estate

- ▶ Would need to file an OIC if wanted it to go away
- ▶ Surviving spouse wanted no part in filing an Offer and having yet more IRS employees review this
- ▶ Notices will be showing up for 10 years but CSED will ultimately expire

# The Decedent with No Records

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## The Deceased

- 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

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## Personal liability

- 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
- Request for Prompt Assessment – Form 4810
- Request for Discharge from Personal Liability – Form 5495

## Now What?

**Any ideas?**

# Familiar with a 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.

# The Returns

- Used a 433-A (CIS) approach
- The IRS Collection standards
- Hard for IRS to argue with those!

Form 433-A (Rev. 2-2019) Page 4

If you are self-employed, sections 6 and 7 must be completed before continuing.

**Section 5: Monthly Income and Expenses**  
Monthly Income/Expense Statement (For additional information, refer to Publication 1854.)

Total Income		Total Living Expenses		IRS USE ONLY
Source	Gross Monthly	Expense Items <sup>6</sup>	Actual Monthly	Allowable Expenses
20 Wages (Taxpayer) <sup>1</sup>	\$	35 Food, Clothing and Misc. <sup>7</sup>	\$	
21 Wages (Spouse) <sup>1</sup>	\$	36 Housing and Utilities <sup>8</sup>	\$	
22 Interest - Dividends	\$	37 Vehicle Ownership Costs <sup>9</sup>	\$	
23 Net Business Income <sup>2</sup>	\$	38 Vehicle Operating Costs <sup>10</sup>	\$	
24 Net Rental Income <sup>3</sup>	\$	39 Public Transportation <sup>11</sup>	\$	
25 Distributions (K-1, IRA, etc.) <sup>4</sup>	\$	40 Health Insurance	\$	
26 Pension (Taxpayer)	\$	41 Out of Pocket Health Care Costs <sup>12</sup>	\$	
27 Pension (Spouse)	\$	42 Court Ordered Payments	\$	
28 Social Security (Taxpayer)	\$	43 Child/Dependent Care	\$	
29 Social Security (Spouse)	\$	44 Life Insurance	\$	
30 Child Support	\$	45 Current year taxes (Income/FICA) <sup>13</sup>	\$	
31 Alimony	\$	46 Secured Debts (Attach list)	\$	
Other Income (Specify below) <sup>5</sup>	\$	47 Delinquent State or Local Taxes	\$	
32	\$	48 Other Expenses (Attach list)	\$	
33	\$	49 Total Living Expenses (add lines 35-48)	\$	
34 Total Income (add lines 20-33)	\$	50 Net difference (Line 34 minus 49)	\$	



### 2021 Allowable Living Expenses National Standards

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$400	\$724	838	\$955
Housekeeping supplies	\$41	\$76	69	\$79
Apparel & services	\$92	\$150	191	\$259
Personal care products & services	\$42	\$76	72	\$89
Miscellaneous	\$148	\$266	303	\$358
<b>Total</b>	<b>\$723</b>	<b>\$1,292</b>	<b>1,473</b>	<b>\$1,740</b>

More than four persons	Additional Persons Amount
For each additional person, add to four-person total allowance:	\$341

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### 2021 Allowable Living Expenses Housing Standards

County	State Name	2021 Published Housing and Utilities for a Family of 1	2021 Published Housing and Utilities for a Family of 2	2021 Published Housing and Utilities for a Family of 3	2021 Published Housing and Utilities for a Family of 4	2021 Published Housing and Utilities for a Family of 5
Autauga County	Alabama	1,281	1,504	1,585	1,767	1,796
Baldwin County	Alabama	1,416	1,663	1,752	1,953	1,985
Barbour County	Alabama	1,070	1,256	1,324	1,476	1,500
Bibb County	Alabama	1,206	1,416	1,492	1,664	1,690
Blount County	Alabama	1,227	1,441	1,518	1,693	1,720
Bullock County	Alabama	1,100	1,293	1,362	1,519	1,543
Butler County	Alabama	1,102	1,294	1,364	1,521	1,545
Calhoun County	Alabama	1,147	1,348	1,420	1,583	1,609
Chambers County	Alabama	1,070	1,256	1,324	1,476	1,500
Cherokee County	Alabama	1,232	1,447	1,525	1,700	1,728
Chilton County	Alabama	1,144	1,344	1,416	1,579	1,604
Choctaw County	Alabama	1,034	1,215	1,280	1,427	1,450
Clarke County	Alabama	1,232	1,447	1,525	1,700	1,728
Clay County	Alabama	1,110	1,304	1,374	1,532	1,557
Cleburne County	Alabama	1,255	1,474	1,553	1,732	1,760
Coffee County	Alabama	1,234	1,449	1,527	1,703	1,730
Colbert County	Alabama	1,140	1,339	1,411	1,573	1,599
Conecuh County	Alabama	970	1,140	1,201	1,339	1,361
Coosa County	Alabama	1,001	1,176	1,239	1,381	1,404
Covington County	Alabama	1,088	1,277	1,346	1,501	1,525
Crenshaw County	Alabama	1,098	1,290	1,359	1,515	1,540
Cullman County	Alabama	1,154	1,355	1,428	1,592	1,618

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2021 Allowable Living Expenses Transportation Standards

<i>Public Transportation</i>		
National	\$217	
<i>Ownership Costs</i>		
	One Car	Two Cars
National	\$533	\$1,066
<i>Operating Costs</i>		
	One Car	Two Cars
<b>Northeast Region</b>	\$274	\$548
Boston	\$271	\$542
New York	\$355	\$710
Philadelphia	\$293	\$586
<b>Midwest Region</b>	\$201	\$402
Chicago	\$226	\$452

2021 Allowable Living Expenses Health Care Standards

	Out of Pocket Costs
Under 65	\$68
65 and Older	\$142

# The Returns

- Took the 50K in the safe and added it to income evenly over the 6 years
- Based upon the bank balance we increased or decreased income accordingly



## The Deceased Future Income Analysis

<i>Income</i>		<u>Actual</u>	<i>Expenses</i>		<u>Actual</u>
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	\$	<u>3,938</u>	Net Difference	\$	<u>694</u>

### 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

433 Income is  $\$3,938 \times 12 = \$47,256$

## Aftermath

- Filed returns with cover letter
- Certified mail slip came back, filed Request for Prompt Assessment (Form 4810) and Discharge of Personal Liability (5495)
- Waited 18 months than Administrator filed for court approved distribution
- Never heard from the IRS

# The Estate's Offer-in-Compromise

## Taxpayer Dies

- ▶ The “Estate” takes over in place of the taxpayer: it owns what they owned and it owes what they owed
- ▶ So taxpayer Jeff passes away in February 2023. He owed the IRS \$270,000 and the state of Connecticut \$25,000
- ▶ His probate court filings are the following

## Inventory: List of Assets

- ▶ Principal home: FMV \$410,000, mortgage of \$296,000
- ▶ Checking account: \$19,000
- ▶ Miscellaneous personal property: \$6,400

## List of Claims: Debts

- ▶ Utility bills: \$800
- ▶ Visa Credit Card: \$1,673
- ▶ Federal Income Tax Debt: \$270,000
- ▶ State Income Tax Debt: \$25,000

## Probate Court: Priority of Claims (CT)

- (1) Funeral expenses;
- (2) Expenses of settling the estate;
- (3) Claims due for the last sickness of the decedent;
- (4) All lawful taxes and all claims due the state of Connecticut and the United States;
- (5) All claims due any laborer or mechanic for personal wages for labor performed by such laborer or mechanic for the decedent within three months immediately before the decease of such person;
- (6) other preferred claims; and
- (7) all other claims allowed in proportion to their respective amounts.

## What's left

- ▶ Cash is wiped out with funeral and attorney fees
- ▶ Miscellaneous household goods are donated
- ▶ Taxes are next, and IRS is in first position
- ▶ Home is the only asset left

## Options – which one?

- ▶ Estate files an Offer-in-Compromise with IRS
- ▶ Son purchases the home for fair-market value (i.e. estate seeks a lien discharge to sell the home)

## If Estate does an OIC

- ▶ It would be filed on a 433-A OIC, by the way (replaces the individual)
- ▶ OIC would be for:  $\$410,000 \times 80\% = \$328,000 - \$296,000$  mortgage, or  $\$32,000$
- ▶ But what about CT?



## If Estate sells the property

- ▶ No 80% QSV – probate court will want FMV
- ▶ \$410,000 - \$296,000 mortgage = \$114,000

## Resolution

- ▶ Filed a compromise with CT for \$1,000, settled it for \$10,000
- ▶ Then filed an Offer with IRS for \$32,000, which they accepted

# Selling the Interest to the Spouse

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## Facts

- ▶ Taxpayer has resolved their issue with the IRS
- ▶ Needs to sell his half of the condo to get the \$ for his Offer
- ▶ We propose the sale to the lien unit, arguing for 80% QSV

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## IRS Response

- ▶ Agree to sale
- ▶ Do not agree to the reduction
- ▶ Plus look online and realize the condo went up in value

## IRS Counter-Offer

- ▶ They will agree, want the 50% of the current value of \$102,226.50
- ▶ No QSV reduction
- ▶ Rationale – they have already seized it with the lien before the OIC was accepted

## Taxpayer and Wife Agree

- ▶ Money is sent
- ▶ He quitclaims his interest
- ▶ IRS sends the release

## BONUS:

# Whistle While You Work

# Whistleblower

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.



# Claim Process

- 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.

# Form 211

<b>Form 211</b> (July 2018)		Department of the Treasury - Internal Revenue Service <b>Application for Award for Original Information</b>		OMB Number 1545-0409 Date Claim received Claim number (completed by IRS)
<b>Section A - Information About the Person or Business You Are Reporting</b>				
1. Is this <input checked="" type="checkbox"/> New submission or <input type="checkbox"/> Supplemental submission If a supplemental submission, list previously assigned claim number(s)		2. Last 4 digits of Taxpayer Identification Number(s) (e.g., SSN, ITIN, or EIN) 1111		
3. Name of taxpayer (include aliases) and any related taxpayers who committed the violation Name of Target				
4. Taxpayer's address, including ZIP code XXXX Green Avenue, City, State Zip			5. Taxpayer's date of birth or approximate age Approx 60 years old	
6. Name and title and contact information of IRS employee to whom violation was first reported, if known Special Agent In-Charge's Name, Boston Field Office				
7. Alleged Violation of Tax Law (check all that apply)				
<input checked="" type="checkbox"/> Income Tax <input checked="" type="checkbox"/> Employment Tax <input type="checkbox"/> Estate & Gift Tax <input type="checkbox"/> Tax Exempt Bonds <input type="checkbox"/> Employee Plans <input type="checkbox"/> Governmental Entities <input type="checkbox"/> Exempt Organizations <input type="checkbox"/> Excise <input type="checkbox"/> Other (identify) _____				
8. Describe the Alleged Violation. State all pertinent facts to the alleged violation. (Attach a detailed explanation and include all supporting information in your possession and describe the availability and location of any additional supporting information not in your possession.) Explain why you believe the act described constitutes a violation of the tax laws Taxpayer to avoid income tax and employment tax, is cashing checks and paying undocumented workers in cash, and employees partially in cash				
9. Describe how you learned about and/or obtained the information that supports this claim. (Attach sheet if needed) I am an employee of the target				
10. What is your relationship (current and former) to the alleged noncompliant taxpayer(s)? Check all that apply. (Attach sheet if needed) <input checked="" type="checkbox"/> Current Employee <input type="checkbox"/> Former Employee <input type="checkbox"/> Attorney <input type="checkbox"/> CPA <input type="checkbox"/> Relative/Family Member <input type="checkbox"/> Other (describe) _____				
11. Do you still maintain a relationship with the taxpayer <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
12. If yes to number 11, describe your relationship with the taxpayer I continue to be his part-time employee				
13. Are you involved with any governmental or legal proceeding involving the taxpayer <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
14. If yes to number 13, explain in detail. (Attach sheet if needed) N/A				
15. Describe the amount of tax owed by the taxpayer(s). Provide a summary of the information you have that supports your claim as to the amount owed (i.e. books, ledgers, records, receipts, tax returns, etc). (Attach sheet if needed) Estimated cash paid per year is \$300,000. Income tax and employment tax would be roughly \$190,000 per year				
16. Fill in Tax Year (TY) and Dollar Amount (\$), if known TY 2019 \$ 190,000 TY 2018 \$ 190,000 TY 2017 \$ 190,000 TY 2016 \$ 190,000 TY 2015 \$ 190,000				



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# What to Expect

- If the information is speculative, not credible, not specific, the IRS will send the whistleblower a claim rejection.
- If the IRS decides the claim should be further investigated, it will be forwarded to a Subject Matter Expert for review.
- An expert may or may not debrief the whistleblower about the information submitted.
- On average, it is taking 10 years or longer to complete the claim process.



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# Claim Received

ERIC GREEN  
C/O GREEN & SKLARZ LLC  
ONE AUDUBON STREET 3<sup>RD</sup> FLOOR  
NEW HAVEN, CT 06511-6431

Claim Number: 2020-XXXXXX  
RE: Target Last Name  
Contact Representative Number: 801-620-2169  
(This is not a toll-free number)  
Contact Address: Internal Revenue Service  
1973 N Rulon White Blvd, MS 4110  
Ogden, UT 84404

Dear Eric Green:

We received your Form 211 with the information you furnished and have assigned the above claim number(s). We will evaluate the information you provided to determine if an investigation is warranted and an award is appropriate. Please retain this notice for future reference.

If we initiate an investigation as a result of your information, it is important to understand that it could take several years until final resolution of all tax matters. This is especially true if the taxpayer exercises all administrative and judicial appeal rights. In addition, before we can pay an award, we must collect any additional taxes, penalties, or fines, assessed by reason of your information. Collection action could also take several years.

At the conclusion of our review and/or investigation, we will only be able to tell you whether or not the information you provided met our criteria for paying an award. Unfortunately, we cannot tell you specific details about what actions we took, if any, using the information you gave us. Internal Revenue Code Section 6103 protects the tax information of all taxpayers and prevents us from



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# Case Referred



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

Whistleblower Office

ERIC GREEN  
C/O GREEN & SKLARZ LLC  
ONE AUDUBON STREET 3<sup>RD</sup> FLOOR  
NEW HAVEN, CT 06511-6431

**Date:** February 7, 2020  
**Claim Number:** 2020-XXXXXX  
**Contact Number:** (801) 620-2169  
**Contact Address:** Internal Revenue Service  
Whistleblower Office / ICE M/S 4110  
1973 N Rulon White Blvd  
Ogden, UT 84404

Dear Eric Green:

We are writing to inform you that the taxpayer referenced in claim number listed above has been referred for an audit or examination. This does not mean that an audit or examination has been or will be opened.



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# Status Update

Whistleblower Office

Whistleblower Name  
Street Address  
City, State Zip

**Date:**

March 2, 2022

**Claim Number:**

2020-XXXXXX

**Contact Number:**

801-620-2169 (Not a toll-free number)

**Contact Address:**

Internal Revenue Service  
M/S 4110  
1973 N Rulon White Blvd  
Ogden, UT 84404

Dear Whistleblower Name:

We are responding to your request for information on the status and stage of your claim referenced above. Internal Revenue Code (IRC) section 6103(k)(13) requires that the Whistleblower Office provide this notice to you. Your claim is currently open. The subject of your claim is currently in the OD Field/Investigation stage.



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# Claim Rejected

WHISTLEBLOWER OFFICE

Date: 01/26/2021

ERIC GREEN  
ONE AUDUBON STREET 3<sup>RD</sup> FLOOR  
NEW HAVEN, CT 06511-6431

Re: Claim Number(s) 2020-XXXXXX

Dear Eric Green:

**FINAL DECISION UNDER SECTION 7623(a)**

The Whistleblower Office has considered your Form 211, Application for Award for Original Information, dated 12/19/2019. Internal Revenue Code section 7623 provides that an award may be paid only if the information provided results in the collection of tax, penalties, interest, additions to tax, or additional amounts. The Whistleblower Office has made a final decision to reject your claim for an award.

The claim has been rejected because the IRS decided not to pursue the information you provided.



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# Collections Happening!



Department of the Treasury  
Internal Revenue Service  
Whistleblower Office

**Date:**

06/27/2023

**Contact telephone number:**

(801) 620-2169

**Contact Address:**

Internal Revenue Service  
Whistleblower Office - ICE  
M/S 4110  
1973 N Rulon White Blvd  
Ogden, UT 84404

Eric Green  
One Audubon Street 3<sup>rd</sup> Floor  
New Haven, CT 06511-6431

Re: Claim Number: 2020-XXXXXX

Dear Eric Green:

We are writing to inform you that a total of 16 separate payments of tax have been received between 08/01/2019 - 05/31/2023 with respect to tax liabilities, and tax periods, to which the information you provided in your Form 211 submitted on 12/19/2019, relates.

Internal Revenue Code (IRC) Section 6103(k)(13) requires that the IRS provide this notice to you; however, IRC Section 6103 generally limits the Whistleblower Office from providing additional information. It is important to understand that it could take several years until a determination can be reached on this claim. This notification does not mean the claim will receive an award.



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# Takeaways

- ▶ Government does not have to act
- ▶ These things take a long time
- ▶ Based upon what is exactly collected
- ▶ You may not get anything
- ▶ IRS almost always wins in Tax Court – complete discretion



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## 10<sup>th</sup> Annual NE IRS Rep Conference

- ▶ Back at Mohegan Sun
- ▶ 11/30/23 (QU) and 12/1/23 (Mohegan)
- ▶ Free for Members
- ▶ <https://irsrepconference.com>



**TRN**  
TAX REP NETWORK

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## 3<sup>rd</sup> Annual Tax Rep Summit

- ▶ 12/13/23 – 12/15/23
- ▶ Drury Plaza Hotel – Disney Springs
- ▶ Members pay cost
- ▶ Includes breakfast, cocktail reception and wifi
- ▶ <https://taxrepllc.com/2023-summit>



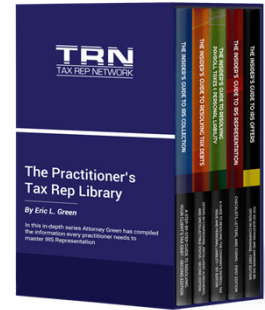
**TRN**  
TAX REP NETWORK

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## Get Certified: <https://taxrepllc.com/ctrc/>

- ▶ Have the rights back from UConn
- ▶ Twenty-Hours of training
- ▶ Hundreds of forms and exhibits
- ▶ Enhance your Tax Rep visibility and marketing
- ▶ Register before 7/31 and get the complete **Tax Rep Library (\$600)** and three months of **Tax Rep Gold Level Membership (\$945 value)** as our free gift to help you take your practice to the next level!



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## Questions?



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[www.gs-lawfirm.com](http://www.gs-lawfirm.com)



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