

What to do when the dog ate your client's records

Eric L. Green, Esq.

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TAX REP NETWORK

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").



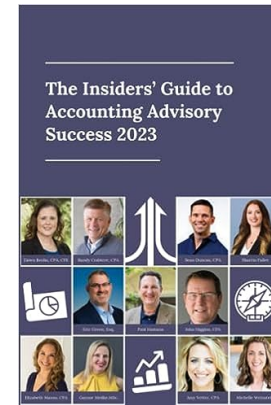
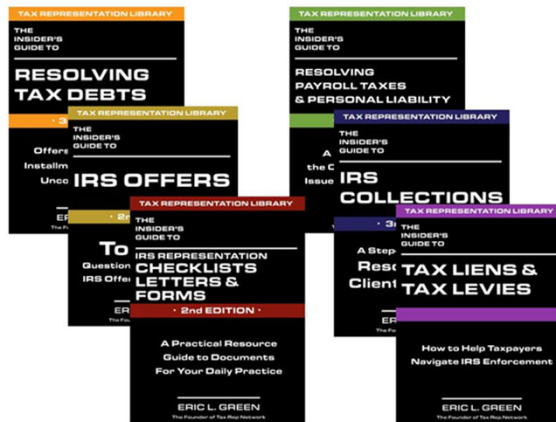
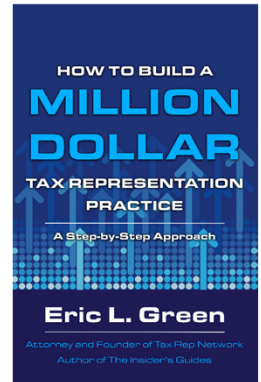
Eric Green, Esq.

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IRS REPRESENTATION

Conference



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Dawn W. Brolin, CPA, CFE

- ▶ Dawn is a Certified Public Accountant, an Advanced Certified QuickBooks ProAdvisor and Managing Member of Powerful Accounting, LLC – a nationally recognized accounting, tax and QuickBooks Consulting firm.
- ▶ She is a recognized business advisor, forensic accountant, thought leader, speaker, author, and designated motivator! Team Brolin is here to help accounting professionals and small businesses optimize their operations and reduce their financial fraud risks.
- ▶ Dawn works with, but not limited to, small to medium sized businesses including, contractors, non-profits, retailers and service providers, Dawn provides accounting, write-up, reporting, offsite CFO resources, tax return preparation and audit support services.



10th Annual NE IRS Rep Conference



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



3rd 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>



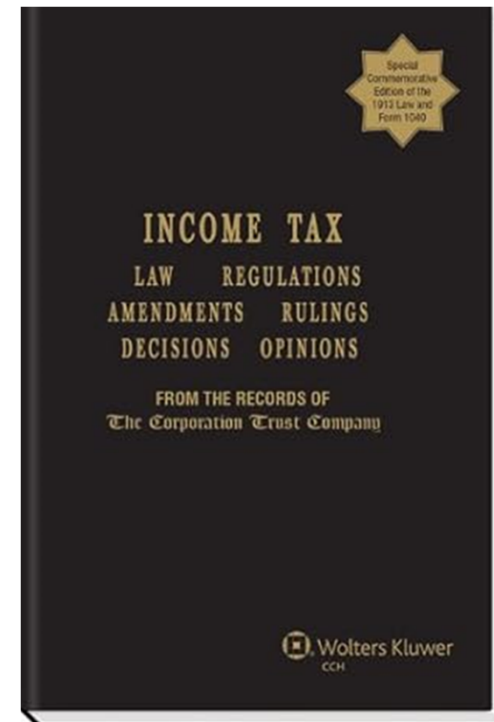
Go Give us a 5-Star Google Review

We will send you the 1913 Original Income Tax Return and Income Tax Code for Free as our gift!

To do the review please use this link from google:

<https://g.page/r/CWKZdCS1yLvqEAI/review>

Email us at hello@taxrepllc.com with your address.



Housekeeping

- ▶ There is 1 ce/cpe for this webinar
- ▶ 4 polls – you must do at least 6 of them
- ▶ A link will be emailed to you later to claim your certificate
- ▶ EAs - Put your PTIN number in when you claim the certificate
- ▶ Issues? Email us at **team@taxrepllc.com**



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out of the box
TECHNOLOGY

Issues of documents come up when

- ▶ Filed returns but cannot sleep at night
- ▶ Filed and selected for an Audit
- ▶ Non-Filer

Department of the Treasury
Internal Revenue Service
Small Business and Self-Employed

Street Address
Group-XXXX
City, State Zip

Taxpayer Name
Street Address
City, State Zip

Date: April 5, 20__
Taxpayer Identification Number: xx-xxxxxx
Form: 1120
Tax period(s): December 31, 20__
Response date: April 15, 20__
Person to contact: Auditor Names
Contact hours: 8:00am to 2:30 pm
Contact telephone number: xxx-xxx-xxxx
Contact fax number: (877) xxx-xxxx
Employee identification number: 00000000

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 • Cross receipts or sales

Letter 2205-A (Rev. 8-2012)
Catalog Number 37495C

Requirement to Maintain Records

- Taxpayers are required to maintain books and records
- When a taxpayer is audited by the IRS, the burden of proof falls on the taxpayer to support the information on his or her return.
- The United States Tax Court has ruled that the taxpayer must keep “contemporaneous” records, per Reg. § 1.6001-1.

Voluntary Disclosure?

- IRS Memo: November 20, 2018
- Voluntary disclosure is for taxpayers who believe they have criminal exposure
- Form 14457
- Part I - pre-clearance, Part II - full-disclosure
- **MUST BE TIMELY!**
- Why do VD? Unable to file accurate returns, or already filed fraudulent returns

Form 14457

Form 14457 (February 2022)	Department of the Treasury—Internal Revenue Service Voluntary Disclosure Practice Preclearance Request and Application	OMB Number 1545-2241
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Note: Use Part I of this form to make a preclearance request to determine whether you are eligible to use the Voluntary Disclosure Practice. Only submit Part I of this form for preclearance. If you receive preclearance, proceed with submitting Part II to request preliminary acceptance. Submitting the information requested in Part I of this form does not guarantee acceptance. **All answers and attachments must be in English.**

Mailing Address: Internal Revenue Service
Attn.: Voluntary Disclosure Coordinator
2970 Market Street
1-D04-100
Philadelphia, PA 19104

Fax Number: 844-253-5613

Part I - Preclearance Request (Mail or FAX Part I Only to Above)

		1. Person submitting disclosure (check box that applies)	
		<input type="checkbox"/> Individual(s)	<input type="checkbox"/> Partnership
		<input type="checkbox"/> Trust	<input type="checkbox"/> Executor
		2. Disclosure special features (check all that apply)	
<input type="checkbox"/> Domestic Issues		<input type="checkbox"/> Estate & Gift Issues	
<input type="checkbox"/> Offshore Issues		<input type="checkbox"/> Employment Tax Issues	
<input type="checkbox"/> Other Issues (briefly describe)			
3. Tentative disclosure period (years)			
4a. Taxpayer name		b. Identification number (SSN/ITIN/EIN)	c. Date of birth
d. Alias (if applicable, include all aliases used)		e. Occupation	
f. Telephone number	g. Number, street, and room or suite number		
h. City or town	i. State or province	j. ZIP/Foreign postal code	k. Country
l. Citizenship (include all if more than one)		m. Passport information (list all passport numbers and countries)	
5a. Spouse name (if joint disclosure)		b. Identification number (SSN/ITIN)	c. Date of birth
d. Alias (if applicable, include all aliases used)		e. Occupation	
f. Telephone number	g. Number, street, and room or suite number		

Preliminary Acceptance



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

December 2, 2022

Eric L. Green
1 Audubon Street, 3rd Floor
New Haven, CT 06511
Fax Number: 203-286-1311

In Re: Taxpayer's Name

Dear Eric L. Green:

This letter is to inform you that your client's voluntary disclosure has been received and has been preliminarily accepted as meeting the timeliness requirements of Internal Revenue Manual section 9.5.11.9(4). A voluntary disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended.

Acceptance of your client's voluntary disclosure will also depend upon whether it is truthful and complete and whether your client cooperates with the IRS in determining the correct tax liability and makes good faith arrangements with the IRS to pay in full the tax, interest, and penalties determined by the IRS to be applicable. The required cooperation includes the production of all requested documents and the taxpayer submitting to an interview, if requested by an IRS agent.

Your client's voluntary disclosure submission (Form 14457 Part I and II) will be forwarded for necessary civil action and the determination of the correct tax liability. Please wait until you are contacted by a Revenue Agent to submit any remaining information.

Your client's disclosure will be processed using the Updated Voluntary Disclosure Practice procedures as described within the November 20, 2018 Memorandum for Division Commissioners, Chief, Criminal Investigation (Control Number: LB&I-09-1118-014).

Please be aware that your client's voluntary disclosure will not be completed until a Revenue Agent has completed an examination of the disclosure and your client has cooperated in the processing of the exam, including providing requested documents and submitting to any requested interview(s). Your client's voluntary disclosure will be deemed to be complete when final civil resolution is reached between you and the IRS.

Form 14457, Part II

Part II - Voluntary Disclosure (Mail to Address on Page 1 or Fax to 844-253-5613)

1. Case control number (required from preclearance approval) Inability to pay in full (Note: The burden is on the taxpayer to establish inability to pay)

Taxpayer name	Identification number	Telephone number
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Spouse name (if joint disclosure)	Identification number	Telephone number
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Representative's name (attach Form 2848, if applicable)	<input type="checkbox"/> Check if no representative	Telephone number
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2. Identify the source of funds (check all that apply and explain below)

U.S. source Foreign source Gift/Inheritance Virtual Currency Other

3. During the disclosure period, have you taken a position that you were a bona fide resident of a U.S. territory (e.g., American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands) or did you file an income tax return with a U.S. territory Yes No

If "Yes," list the territory and tax years. Also, specify whether you have made, are making, or will make a voluntary disclosure to the U.S. territory

4. Provide estimated total annual unreported income during the disclosure period (for fields 4 and 5, input all amounts in U.S. Dollars using year-end exchange rates AND provide the most recent 6 years unless the noncompliance was for a shorter period)

Tax year	Unreported income	Tax year	Unreported income	Tax year	Unreported income
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

5. Provide estimated annual range of the highest aggregate value of your offshore holdings (Offshore Issues Only)

Tax year	Highest aggregate account/Asset value	Tax year	Highest aggregate account/Asset value
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

6. Offshore issues only (check appropriate boxes)

Acceptance – Exam Time



Department of the Treasury
Internal Revenue Service
Small Business and Self-Employed
150 Court Street
Fifth Floor
New Haven CT 06510

TAXPAYER'S NAME
STREET
CITY CT 06XXX

Date:
May 5, 2023
Taxpayer ID number (last 4 digits):
XXXX
Form:
1040
Tax period(s):
2017 ~ 2018 ~ 2019 ~ 2020
Response due date:
May 19, 2023
Person to contact:
Auditor
Contact hours:
8:30 am - 4 p.m.
Contact telephone number:
203-xxx-xxxx
Contact fax number:
877-xxx-xxxx
Employee ID number:
1000xxxxxx

Dear TAXPAYER'S 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.

- Medical and Dental •
- Voluntary Disclosure Practice •

Acceptance – Exam Time

Form 4564	Department of the Treasury Internal Revenue Service Information Document Request	Request Number 1
To:	Subject: 2015/2016 Form 1040 Examination	
TAXPAYER'S NAME	Submitted to: TAXPAYER'S NAME Eric Green	
	Dates of Previous Requests:	

Description of Documents Requested:

Domestic Voluntary Disclosure

- Please provide all information associated with the Domestic Voluntary Disclosure submitted on June 22, 2022 for TAXPAYER to support the letters/statements submitted and to make the necessary changes to the account for this taxpayer. This includes but is not limited to:
 - Original, amended and/or delinquent returns
 - All records substantiating the changes disclosed as part of the Domestic Voluntary Disclosure Program
 - NOTE – the disclosure period includes tax years 2015, 2016, 2017, 2018, 2019 and 2020 (as revised on the Form 14457 – Part II submission submitted on September 23, 2022)
- Please provide documentation to support that NAME is the executor/co-executor of the estate of TAXPAYER – will, codicils, letters testamentary, etc. and documentation to support any executor/co-executor for TAXPAYER'S HUSBAND

Unreported Income Items – see attached transcripts of income items reported to you during the Disclosure Period that are not reflected on your returns:

- Income/Loss – Partnerships – K-1 –
 - PARTNERSHIP NAME (2016)
- Form 1099R – IRA distributions – NAME OF FINANCIAL INSTITUTIONS

Records Less than Stellar?

- Use what they have (Bank Statements, Credit Card Stmts, receipts)
- If they don't have, recreate what you can
- Remember the Cohan Rule
 - Case: Cohan v. Commissioner of Internal Revenue, 39 F.2d 540 (1930)
- 433-A analysis?

Income Reconstruction

- Generally necessary when records either no-longer exist or cannot be easily located
- Books and records are not maintained
- Books and records were destroyed by flood, fire, etc.
- Books and records are incomplete
- Generally relies on one or more of the formal indirect methods

The Cohan Rule

- In 1918, George M. Cohan was a theatrical manager and producer doing business in partnership with a gentleman by the name of Harris.
- Cohan had originally been an actor, like his parents.
- 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.



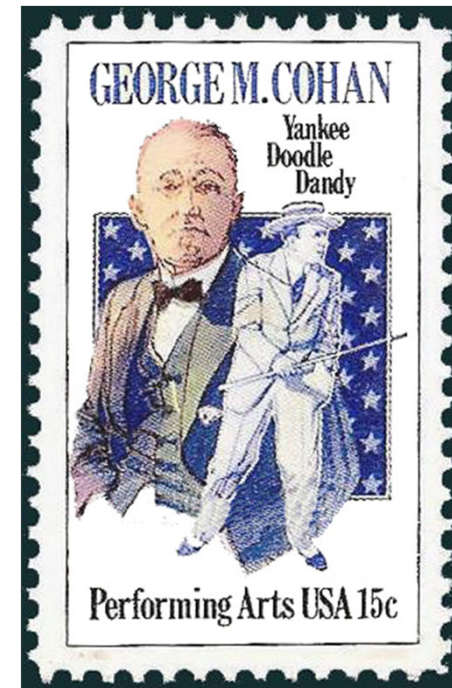
The Cohan Rule

- When audited by the IRS, The IRS fixed Cohan's income as the whole of what he received from the firm of Cohan & Harris, while it lasted, and later as the whole of his own profits.
- At the trial, in 1930, Cohan estimated the amounts spent on putting on the shows.
- The IRS had refused to allow him to claim any part of this based on the grounds that it was impossible to tell how much he had spent, in the absence of any accounting records.



The Cohan Rule

- The 2nd Circuit held that because it was obvious that Mr. Cohan had spent substantial sums on the shows, those expenses could be approximated and allowed (hence THE COHAN RULE!)
- This rule does NOT apply to those expenses that require specific documentation, such as travel, entertainment, business gifts, EITC, R&D Credits, etc.



Methods of reconstruction

- Specific Item Method - IRM 4.10.4.2.7 (08-09-2011), Easier for a jury to understand
- Indirect Method - IRM 4.10.4.2.8 (08-09-2011), Difficult to match reported income with specific items/sources

Formal Indirect Methods

- Used when direct comparisons of income, expenses, assets, liabilities and equity cannot be made; infers taxable income
- The formal indirect methods are audit techniques used to determine the tax liability based on the amount of unreported income.
 - *IRM 4.10.4.6.3, Source and Application of Funds Method*
 - *IRM 4.10.4.6.4, Bank Deposit and Cash Expenditures Method*
 - *IRM 4.10.4.6.5, Markup Method*
 - *IRM 4.10.4.6.6, Unit and Volume Method*
 - *IRM 4.10.4.6.7, Net Worth Method*

433-A CIS Approach

- 433-A is for collection
- Has IRS guidelines (IRS cannot really argue with that)
- Back into the income (expense analysis, really)

Approach

1. Get everything you can
 - a. Bank statements
 - b. Credit card statements
 - c. IRS Wage & Income Reports
 - d. Automobile repair/oil/change/tire change reports (mileage)
 - e. calendar and EZ pass (toll reader) records
2. Look at the type of expenses they MUST have incurred and Estimate what you cannot

The Clients



- ▶ The Criminal Case
- ▶ The house flipper who paid cash
- ▶ The Daycare that did not respond

The destroyed records

- ▶ Dawn has them pull their records together
- ▶ OOTB can scale up staff to get the input done
- ▶ Dawn helped them estimated the expenses that could not be recreated



The House Flipper Who Paid Cash

- ▶ Exactly what the title says
- ▶ Received audit notice
- ▶ Reconstructed costs by before and after photos and searching Lowes and Home Depot online for prices
- ▶ Save as much of the expenses as possible
- ▶ IRS cannot give you zero when it is obvious you spent money (except or those expenses where documentation is required)

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)
- ▶ Took 1099-K, assumed it was 30% and came up with \$2 million in unreported cash
- ▶ 75% civil fraud penalty and interest

The Daycare that Did Not Respond

- ▶ Daycares are licensed by the state – certain number of children
- ▶ 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
- ▶ Appeals agreed to a no-change

Want to make money and offload the bookkeeping?

- ▶ Offload the bookkeeping and get paid, or
- ▶ Leverage OOTB to get way more done and mark up the services

<https://outoftheboxtechnology.com/bookkeeping-for-cpas/>

Transitioning From Compliance to Relationship Pricing

- ▶ Wednesday December 20th, 1:00 pm EST – 4:00 pm EST, 3 cpe credits for CPAs
- ▶ Double your income with only half your clients!
- ▶ ~~\$399~~ – use **DAWN50** and sign up today for 50% off (**\$199!**)

<https://taxrepllc.com/20231220-transition>



Questions?

- ▶ Eric: egreen@gs-lawfirm.com
- ▶ Dawn: dawn@powerfulaccounting.com

