



# Not All 433s Are The Same!

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# Eric Green, Esq.

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# The 433 is the cornerstone of IRS Collection

- ▶ It is the financial statement the IRS requires
- ▶ It creates the roadmap for collection
- ▶ It is what we use to sort out the collection possibilities
- ▶ But Which Form to use?



# Which 433 do you need?

- ▶ 433-A Complex for Individuals, Field Collections
- ▶ 433-F Simple for Individuals seeking CNC Status (ACS)
- ▶ 433-H Simple for Individuals seeking Regular IA or PPIA (ACS)
- ▶ 433-B For Business Entities
- ▶ 433-D Payment agreement (can also use a Form 9465)
- ▶ 433-A (OIC) Individuals for Offers-in-Compromise
- ▶ 433-B (OIC) Businesses for Offers-in-Compromise



# We will focus on the 433-A

- ▶ The 433-A is the most common form
- ▶ It is the most detailed
- ▶ If you get this the others are easy



# So lets complete this thing!

- ▶ Cash
- ▶ Investments
- ▶ Virtual Currency
- ▶ Available Credit
- ▶ Life Insurance
- ▶ Real Estate
- ▶ Personal Vehicles
- ▶ Personal Assets
- ▶ Future Income
- ▶ Business assets
- ▶ Business Profit and Loss



# Basics – Numbers Need to be Backed-Up

- ▶ IRM 5.15.1.7 requires three months of bank statements, and ROs often may ask for 6 months or even a year
- ▶ How much to provide depends upon the situation
- ▶ Example: Wage earner (3 months)
- ▶ Example 2: Seasonal Landscaper (maybe 12 months)



# Basics- Dependents



- ▶ IRM 5.15.1.8 (7) – Dependents are those claimed on the 1040
- ▶ Exception – IRM 5.15.1.11 – does allow for dependent care if there is no reasonable alternative to the taxpayer paying for the care (elder care, handicapped family members, etc)



# Practice Tip!!!

- ▶ Clean up the client before presenting them
- ▶ Examples:
  - a. Extra LLCs
  - b. Vehicles and other personal stuff



# Cash

- ▶ Cash includes cash in the bank and on-hand. List the cash that ties to the bank balance at the end of the last bank statement
- ▶ IRM 5.8.5.7 – allows cash to be treated as not available if it is needed to pay current expenses, usually 1 month
- ▶ Argue for an amount equal to one month of allowable expenses to be treated as not available for collection
- ▶ Example, TP has \$10,000 in the bank and allowable monthly expenses of \$7,200. We explain that per IRM 5.8.5.7 that \$7,200 is needed by the TP and only \$2,800 should be required to be paid in to the IRS



# Investments

- ▶ Investments are valued at their current market value available per public listing
- ▶ Consider if the investment is something that either (a) has no value or (b) is not marketable (like a SMLLC without assets)
- ▶ IRM 5.15.1.28 (2) – Contributions to retirement plans are not an allowable expense



# Investments

- ▶ For qualified investments, the IRS steps into the shoes of the TP: if client can liquidate and get it so can the IRS
- ▶ Allow for current taxes on gains/income and any 10% early withdrawal penalty
- ▶ IRS will want loans taken if allowed and needs to allow for the future expense repaying the loan



# Virtual Currency



- ▶ Considered an asset
- ▶ IRS is utilizing AI to compare to 433s submitted by taxpayers in the last few years
- ▶ Fraud referrals from IRS Collections in 2021 went up 42%

# Available Credit

- ▶ IRS does not ask TP to take loans against credit card
- ▶ Home equity loans they will
- ▶ I generally list to show if taxpayers are in bad shape
- ▶ Credit card payments and minimums are already included in allowable expenses (Misc expense)



# Life Insurance

- ▶ Cash value life insurance is considered an asset
- ▶ Cash value will be considered available
- ▶ Find out limit on borrowing to avoid collapsing the policy
- ▶ **If used to pay taxes loan repayment should be allowed**
- ▶ Term is allowed as an expense
- ▶ **Negotiate for a portion of permanent policies to be allowed as an expense!**



# Real Estate – the Asset



- ▶ 80% quicksale value
- ▶ IRS uses Zillow as a default check, so check
- ▶ If like Zillow, use it
- ▶ If not, then consider an appraisal plus a separate statement of value plus town valuation
- ▶ IRM 5.15.1.31 –Exception: Taxpayers will not be required to pursue the equity in real property if doing so would cause an economic hardship





# Real Estate - Expense

- ▶ The housing and utilities standards are derived from U.S. Census Bureau, American Community Survey and BLS data, and are provided by state down to the county level. The standard for a particular county and family size includes both housing and utilities allowed for a taxpayer's primary place of residence. Housing and utilities standards are also provided for Puerto Rico.
- ▶ Housing and Utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, residential telephone service, cell phone service, cable television, and Internet service. The tables include five categories for one, two, three, four, and five or more persons in a household.



# Real Estate - Expense

- ▶ TP gets lesser of the standard or their actual
- ▶ Does NOT include HELOC/Home Equity Line - this expense goes on the secured debts line
- ▶ Benefits the taxpayer because otherwise usually just ignored because of the limitation
- ▶ IRM 5.15.1.31 – establishing FMV, reduced by loans. Make three attempts online to tap equity (online because of the rejections)



# Personal Vehicles

- ▶ Each spouse is entitled to 1 vehicle
- ▶ IRS will not allow a payment if the person has another vehicle (Pick-up truck with payment, and a motorcycle with none)
- ▶ This is an area where we often have to do clean-up before submitting



# Personal Assets



- ▶ In 2024 \$11,390 is exempt under Rev Proc 2023-034
- ▶ IRS is looking for assets that can be sold – jewelry, artwork, collectibles
- ▶ Check the Homeowner’s insurance riders!
- ▶ Tools of the trade are exempted for 2024 up to \$5,700



# Future Income

- ▶ Again, note the analysis is for cash-flow, not taxable income
- ▶ Income sources will therefore include all cash flow into the household
  - a. wages and earned income
  - b. social security
  - c. disability income
  - d. alimony and child support



# Cash Flow – IRM 5.15.1.16

- ▶ Depreciation on P&Ls is removed as not a cash expense
- ▶ Actual payments though are added back (car payments for instance)
- ▶ Bad debts are Never an Expense



# Three Types of Expenses

- ▶ Actual – what the taxpayer is actually spending
- ▶ National – is a standard that all taxpayers get regardless of whether they spend it or not
- ▶ Local – the taxpayer is allowed the lesser of what they spend or the standard



# Expenses: Actual vs Allowable

<b>Expense</b>	<b>Actual/Allowable</b>
Food, Clothing and Misc	National Standard
Housing & 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	Greater of National Standard or Actual
Court Ordered Payments	Actual
Child/Dependent Care Expenses	Actual and Necessary
Life Insurance	Actual (and Term Insurance)
Current Year Income Taxes	FIT, FICA or SE, SIT, Local
Secured Debts	Actual
Student Loans	Actual and Federally Guaranteed
Delinquent State Taxes	Percentage of State Debt vs IRS debt





# Other Expenses – IRM 5.15.1.11

- ▶ Accounting & Legal Fees – we are an allowed expense (future income, so retainer is an issue but consider the note or credit card)
- ▶ Charitable contributions – disallowed unless required for your job
- ▶ Child/dependent care – must be no other option
- ▶ Court ordered payments (alimony and child support) – must be required and actually being paid
- ▶ Education – allowed if for physically or mentally handicapped child, or as a condition of employment



# Other Expenses – IRM 5.15.1.11

- ▶ Secured or legally perfected debts – must be required, secured (lien) and being paid
- ▶ Current year taxes – all taxes (FIT, SIT, SE, FICA, Local Income, etc) Current taxes are allowed regardless of whether the taxpayer made them in the past or not.
- ▶ Delinquent state & local taxes – allowed in full if state is ahead of the IRS in priority, otherwise available income apportioned based upon percentage of total tax debt
- ▶ Student Loans – Federally guaranteed, for the TP, and being paid
- ▶ Personal loan repayment if proceeds went to pay taxes



# Business P&L

- ▶ The P&L needs to be scrutinized for the following:
- ▶ Depreciation needs to be added back but actual costs removed (buildings, cars, etc). The depreciation is a non-cash expense so its added back, but the actual payments have to be removed because it's a cash flow analysis - IRM 5.15.1.16
- ▶ No double-dipping: if the vehicles are being written off for business cannot claim it on the 433-A, same with health insurance, home office, etc



# Business Assets - IRM 5.15.1.23

- ▶ If the asset is necessary for the production of income, can it be used to secure a loan
- ▶ Account for the loss of income stream if the asset were either liquidated or used as collateral to secure a loan
- ▶ If a loan cannot be secured and the assets are necessary to produce income for the taxpayer than TP is allowed to retain the asset without requiring him to borrow
- ▶ Go online and apply for loans and get rejections



# Strategies

- ▶ Start paying expenses that were behind (student loans, child support and alimony)
- ▶ Look at expenses not being taken that could (term life, disability insurance, health insurance, car loan/lease)
- ▶ We are an allowable expense, but only if a future expense, so taxpayer needs to repay it in the future (loan or credit card)
- ▶ Our fees do NOT reduce the equity in assets unless secured by a lien ahead of the IRS



# Quirky Things to Remember....

- ▶ International Taxpayers – identify a city for similar cost of living in US and use it (Tel Aviv = Singapore = NYC, so use NYC)
- ▶ Allowable expense guidelines are just that, guidelines, and you can deviate where it is not sufficient – IRM 5.15.1.8(6). Deviation must be because its necessary and not convenience – IRM 5.15.1.8(8).
- ▶ National Standards are allowed without question (Melissa’s client and restaurants): IRM 5.15.1.9(2)



# So the phone rings...

- ▶ Intake
- ▶ Retainer
- ▶ 2848 (POA) and call to IRS (ENQ)
- ▶ Transcripts
- ▶ Checklist of documents
- ▶ Sort out the RCP
- ▶ Propose a resolution



# Questions?

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