

IRS Audit Mastery

A Step-by-Step Approach to a No-Change Audit

Eric L. Green, Esq.

TRN
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.
- ▶ Has served as a columnist for CCH's Journal of Practice & Procedure.
- ▶ Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- ▶ Eric is a Fellow of the American College of Tax Counsel ("ACTC").
- ▶ Founder of Tax Net Network

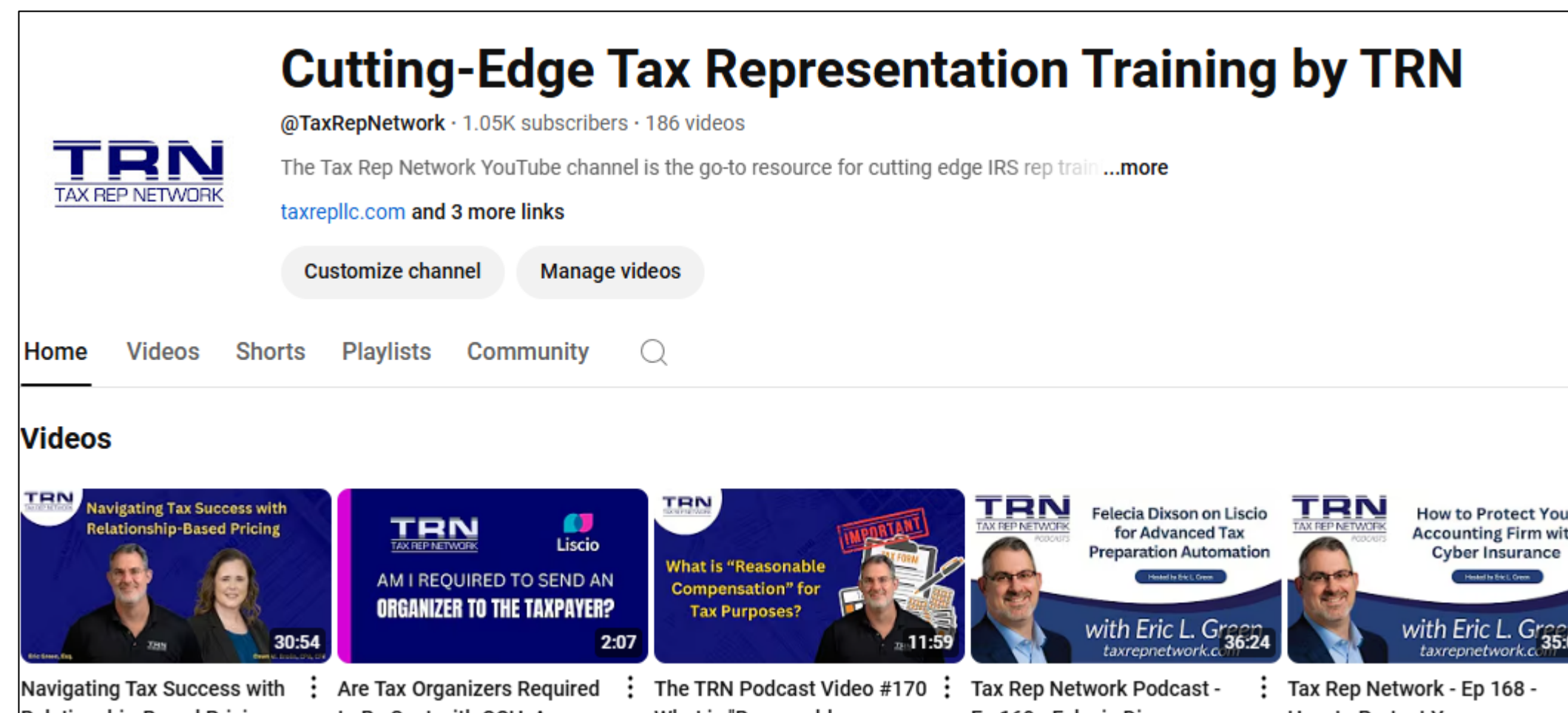


Housekeeping

- ▶ 8 Attendance Checks
- ▶ Must do at least 6 for full credit
- ▶ Look for an email later to claim your certificate
- ▶ Issues? Email us at team@taxrepllc.com

YouTube Channel

- ▶ Catch the podcast there
- ▶ Watch the hints and tips we post there
- ▶ If you can, hit like and subscribe, it helps spread the Tax Rep gospel!
- ▶ <https://www.youtube.com/@TaxRepNetwork>



Save the Date

- ▶ 6/5/25 – Mastering IRS Representation: Part 1 (8 hrs)
- ▶ 6/19/25 – Mastering IRS Representation: Part 2 (8 hrs)
- ▶ 11/12 & 11/13/25 – 12th Annual IRS Representation Conference, Washington DC
- ▶ 12/16 – 12/19/25 – 5th Annual Tax Rep Summit, Orlando, FL

So I get a Call One Day



Few Taxpayers are Cheered Upon Receipt of an Exam Notice

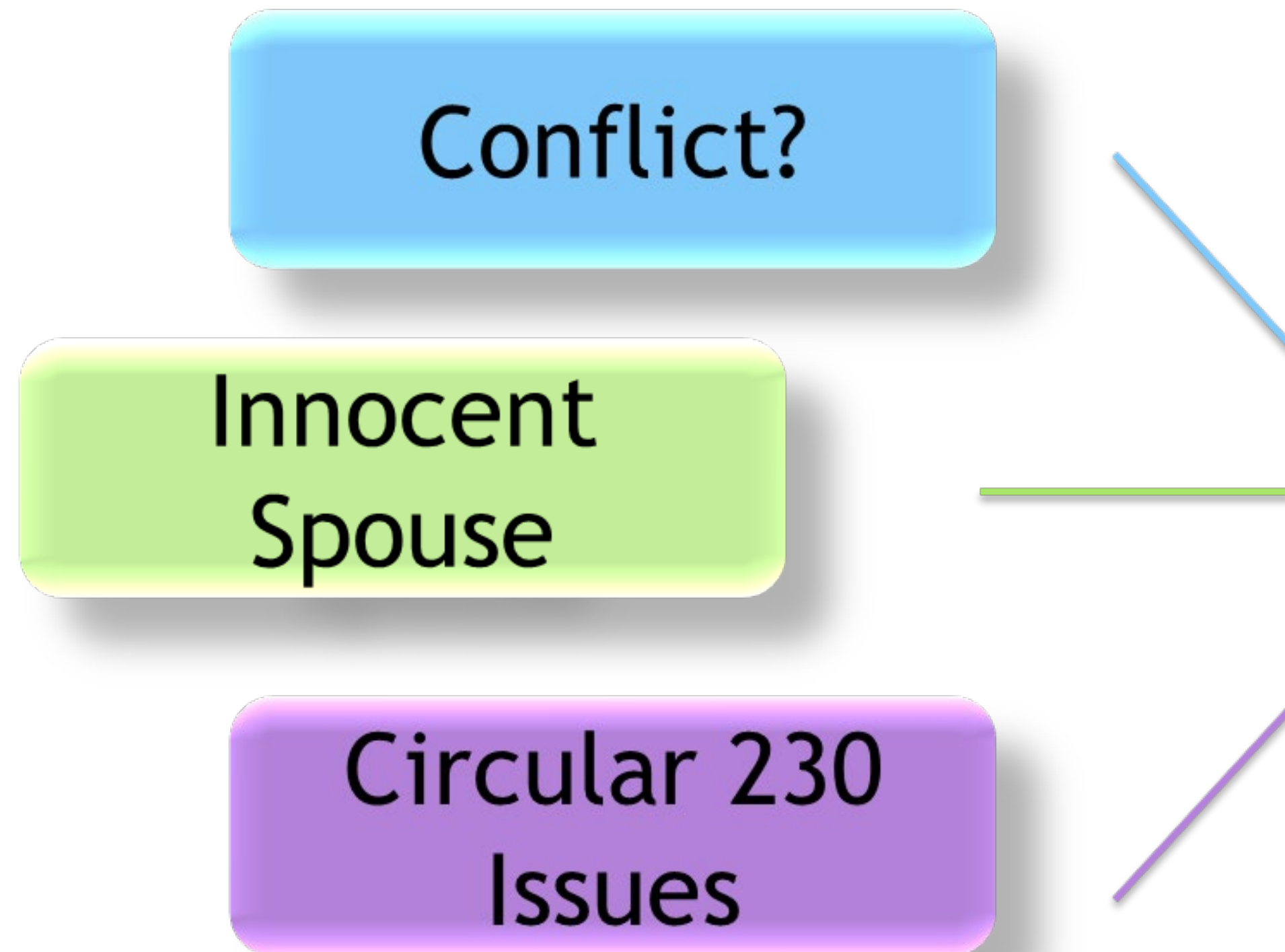
- ▶ Try to "humanize" the audit process
- ▶ Try to establish a friendly, non-hostile environment when working with IRS examiners
- ▶ Should help accelerate the exam to a reasonable conclusion

Three Types of Exams

- ▶ Field
- ▶ Desk
- ▶ Correspondence



Ethical Concerns



Conflict of Interest?

- ▶ If it is a couple, is there the possibility of a conflict of interest?
- ▶ Does only 1 spouse have a business that is being audited?
- ▶ Are there reasons to be concerned about the exam?
- ▶ Will one want to possibly seek innocent spouse treatment?



Circular 230 Sec. 10.29 Conflicting Interests



- ▶ A practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest
- ▶ A conflict of interest exists if —
 1. The representation of one client will be directly adverse to another client; or
 2. There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner

Conflict of Interest Language

By signing this engagement letter, you are acknowledging we have discussed the potential conflict of interest and that you are each waiving this potential conflict. You are also agreeing that if, in our opinion, there is a conflict that would prevent us from representing each of your fully, that it is reasonable for us to withdraw and that you will each seek independent representation.

{Get All Parties to Sign}

Circular 230 Sec. 10.23 Prompt Disposition of Pending Matters

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service



Circular 230 Sec. 10.20 Information to be Furnished

- ▶ A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the IRS, promptly submit records or information in any matter before the IRS unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged
- ▶ A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the IRS, ... to obtain any record or information ...

Or Worse

IRC § 7206 - False Statement
or Document

IRC § 7212 - Interfering with
the IRS person doing IRS
business

Preparing for the Exam

Preparation

- ▶ IDR Items v. Everything
- ▶ Preparation is key
- ▶ Meeting the client
- ▶ Office audits



Preparing for the Audit



- ▶ Retained
- ▶ POA
- ▶ Discussion with the taxpayer's on intent (hobby loss concerns)
- ▶ Records

Preparing for the Audit

- ▶ Instructions to the taxpayer
- ▶ Do not speak to the examiner
- ▶ Do not Tweet, Facebook, or Myspace anything about the exam!
- ▶ Respond to all requests quickly



Preparing for the Audit



- ▶ Walk through
- ▶ Look for things that should not be there
- ▶ Explain what is there

Home Office Concerns

- ▶ Primary office?
- ▶ Look at it – is it solely for office use or mixed
- ▶ Measure it!
- ▶ If denied make sure the Schedule A items get back to Schedule A!



What About the Quickbooks File?

- ▶ IRS will seek a back-up of the Quickbooks file
- ▶ IRC Section 6001
- ▶ Regulation 1.6001-1(a) and -1(e)
- ▶ Revenue Ruling 71-20
- ▶ Revenue Procedure 98-25

Quickbooks - Concerns?

- ▶ More years than the exam covers
- ▶ Adjusting entries that give rise to questionable practices
- ▶ Fishing expedition?

Quickbooks

- ▶ Exam will want a back-up of the Quickbooks file
- ▶ They will look at adjusting entries
- ▶ Condense and make a “Period Copy” for the IRS to limit the IRS scope

Taxpayer Interview



- ▶ Examiner will want to interview the taxpayer
- ▶ Almost NEVER a good reason to allow the taxpayer to be interviewed!
- ▶ IRC § 7521
- ▶ Right of Consultation

Taxpayer Interview

- ▶ POA
- ▶ Cover all potential years, including the current
- ▶ Wage and Earning reports?



Documentation



- ▶ We want to be prepared for the examiner to expand the scope
- ▶ If possible, prepare for all items on the return (if an office or field exam)
- ▶ Have the client begin gathering all of the back-up from the start
- ▶ Nothing shuts down an exam faster than being prepared

Examiner Requests



- ▶ Respond quickly
- ▶ Review what is being turned over to the examiner
- ▶ Add explanation or obtain additional information if necessary

IRS Exam Process

Opening Letter: 2205-A



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-XXXXXXX
Form:
1120
Tax period(s):
December 31, 20__
Response date:
April 15, 20__
Person to contact:
Auditor Names
Contact hours:
8:00am to 2:30pm
Contact telephone number:
XXX-XXX-XXXX
Contact fax number:
(877) XXX-XXXX
Employee identification number:
OXXXXXX

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
-
-
-

Information Document Request

- ▶ Requests several items
- ▶ Audit will NOT be limited to these
- ▶ Prepare for everything!
- ▶ Not uncommon for several rounds of IDRs

Form 4564 (Rev. September 2006)	Department of the Treasury – Internal Revenue Service Information Document Request	Request Number 0001
To: (Name of Taxpayer and Company Division or Branch) Taxpayer Name		Subject Initial IDR
Please return Part 2 with listed documents to requester identified below		SAIN number Submitted to: Taxpayer Name
		Dates of Previous Requests (mmddyyyy)

Description of documents requested
Tax Period(s): 20__12

Provide names, addresses of shareholders and corporate officers

Provide a listing of employees and corporate officers and what their roles and responsibilities include

History of business and brief summary of business operations

Books of Original Entry

Electronic Books and Records

If your company uses QuickBooks please provide the following:

Year-end work papers and reports:

Worksheet (Tax Grouping Statement) reconciling the QuickBooks electronic books and records to the tax return for the tax year ending 12/31/20__.

Adjusting journal entries and closing entries for the tax year ending 12/31/20__.

A copy of the original electronic backup file of the QuickBooks books and records that includes the period from 1/1/20__ through 12/31/20__. This copy should not be an altered version of the QuickBooks data but rather a copy of the original electronic backup file.

The QuickBooks backup file should include any changes to the data entered after year end and should have a file extension of QBB. The backup file can be provided on a CD, DVD, or thumb/jump drive.

The QuickBooks administrator's user name and password for the backup file requested in item 2 above. Please note that you may temporarily change the administrator's password before copying the electronic backup file for the IRS in response to this IDR; then you may change the password back to the original "standard" one within your main QuickBooks working file.

The Version (i.e., year) and the Edition (e.g., Pro, Premier, Enterprise Solutions) of QuickBooks used to create the backup file.

Information due by _____ At next appointment Mail in

Proposed Changes

- ▶ Proposed Changes
- ▶ Tax adjustments
- ▶ Client can sign (agree) or Appeal

Page 1 of 2

Form **4549**
(January 2019) Department of the Treasury-Internal Revenue Service
Report of Income Tax Examination Changes

Name and address of taxpayer Taxpayer		Taxpayer identification number XXX-XX-XXXX	Return form number 1040
STREET ADDRESS CITY CT ZIP CODE		Person with whom examination changes were discussed.	Name and title Taxpayer Name
1. Adjustments to income	Period Ended 12/31/2013	Period Ended 12/31/2014	Period Ended 12/31/2015
a. Taxable Interest	481.00	1,360.00	
b. Sch E-Inc/Loss-Partnership/S Corps-Passive/Non-Passive	12,272.00	17,811.00	(1,136.00)
c. Pensions and Annuities	22,410.00	13,290.00	
d. Sch C1 - Gross Receipts or Sales	116,392.00	81,251.00	78,863.00
e. SE AGI Adjustment	(8,223.00)	(5,740.00)	(5,572.00)
f. Standard Deduction	(6,100.00)	(6,200.00)	(6,300.00)
g.			
h.			
i.			
j.			
k.			
l.			
m.			
n.			
o.			
p.			
2. Total adjustments	137,232.00	101,772.00	65,855.00
3. Taxable income per return or as previously adjusted	0.00	0.00	0.00
4. Corrected taxable income	137,232.00	101,772.00	65,855.00
Tax method	TAX RATE	TAX RATE	TAX TABLE
Filing status	Married Separate	Married Separate	Married Separate
5. Tax	33,443.00	22,120.00	12,263.00
6. Additional taxes/Alternative minimum tax			
7. Corrected tax liability	33,443.00	22,120.00	12,263.00
8. Less			
a. credits			
b.			
c.			
d.			
9. Balance (line 7 less lines 8a through 8d)	33,443.00	22,120.00	12,263.00
10. Plus			
a. Self Employment Tax	16,446.00	11,480.00	11,143.00
b. Net Investment Income Tax	18.00		
c.			
d.			
11. Total corrected tax liability (line 9 plus lines 10a through 10d)	49,907.00	33,600.00	23,406.00
12. Total tax shown on return or as previously adjusted	0.00	0.00	0.00
13. Adjustments to:			
a.			
b.			
c.			
14. Deficiency-Increase in tax or (overassessment-decrease in tax) (line 11 less line 12 adjusted by lines 13a through 13c)	49,907.00	33,600.00	23,406.00
15. Adjustments to prepayment credits - increase (decrease) See Attached	2,181.00	555.00	
16. Balance due or (overpayment) - (line 14 adjusted by line 15) (excluding interest and penalties)	47,726.00	33,045.00	23,406.00

Right to Appeal

- ▶ Letter informs taxpayer
- ▶ 30-days to file an appeal
- ▶ If Appeal, **STATE ITS AN APPEAL**, and **BE SPECIFIC**

Internal Revenue Service
150 Court Street 5th Floor
New Haven, Connecticut 06510
Date: May 1, 2018

Department of the Treasury

Taxpayer Identification Number:
XX-XXXXXXX
Form:
1040
Tax Period(s) Ended and Deficiency Amount(s):
2013 \$116,060.59
2014 \$78,247.80
2015 \$53,248.37

TAXPAYER'S NAME
TAXPAYER'S ADDRESS
CITY, STATE ZIP

Person to Contact:
Auditor's Name

Contact Telephone Number:
203-492-XXXX

Employee Identification Number:
1000XXXXXX

Last Date to Respond to this Letter:
June 1, 2018

Dear Mr. TAXPAYER,

We have enclosed an examination report showing proposed changes to your tax for the period(s) shown above. Please read the report, and tell us whether you agree or disagree with the changes by the date shown above.

If you agree with the proposed changes...

1. Sign and date the enclosed agreement form.
2. Return the signed agreement form to us.
3. Enclose payment for tax, interest and any penalties due. Make your check or money order payable to the **United States Treasury**. You can call the person identified above to determine the total amount due as of the date you intend to make payment.
4. After we receive your signed agreement form, we will close your case.

If you pay the full amount due now, you will limit the amount of interest and penalties charged to your account. If you agree with our findings, but can only pay part of the bill, please call the person identified above to discuss different payment options. We may ask you to complete a collection information statement to determine your payment options, such as paying in installments. You can also write to us or visit your nearest IRS office to explain your circumstances. If you don't enclose payment for the additional tax, interest, and any penalties, we will bill you for the unpaid amounts.

If you don't agree with the proposed changes...

1. You may request a meeting or telephone conference with the supervisor of the person identified in the heading of this letter. If you still don't agree after the meeting or telephone conference, you can:

Letter 950-E(DO) (6-2005)
Catalog Number 39911Q

Notice of Deficiency

- ▶ If fail to appeal
- ▶ If < 1 year on ASED
- ▶ 90-Days to File in US Tax Court

Department of the Treasury
Internal Revenue Service
310 LOWELL ST
ANDOVER MA 01810-4544

0000 0000 0000 0000 0000 XX

000470.836151.516524.21233 2 AB 0.408 1272

TAXPAYER'S NAME
TAXPAYER'S ADDRESS
CITY, STATE ZIP

Notice CP3219A
Tax year 2015
Notice date March 19, 2018
Social security number [REDACTED]
AUR control number 70055-0016
To contact us Phone 1-800-829-XXXX
Fax 1-877-XXXX-XXXX
Last date to petition June 18, 2018
Tax Court
Page 1 of 10

Notice of Deficiency

Proposed increase in tax and notice of your right to challenge

We have determined there is a deficiency (increase) in your 2015 income tax based on information we received from third parties (such as employers or financial institutions) that doesn't match the information you reported on your tax return. See below for an explanation of how this increase was calculated. This letter is your NOTICE OF DEFICIENCY, as required by law.

Summary of proposed changes	
Increase in tax (deficiency)	\$185,410
Substantial tax understatement penalty	\$37,082

If you disagree
You have the right to challenge this determination in U.S. Tax Court. If you choose to do so, you must file your petition with the Tax Court by June 18, 2018. This date can't be extended. See below for details about how and where to file a petition.

If you agree
You can pay now or receive a bill. See the section below titled "If you agree with the proposed changes, you can pay now or receive a bill."

If you want to resolve this matter with the IRS
You may be able to resolve this matter without going to the U.S. Tax Court if you contact us directly. See the "You may be able to resolve your dispute with the IRS" section below.

If you want assistance
You may be able to receive assistance from a Low Income Taxpayer Clinic or from the Taxpayer Advocate Service. See the "Additional information" section below.

You have the right to petition the Tax Court
You have the right to challenge our deficiency determination, including penalties, before making any payment by filing a petition with the U.S. Tax Court. You must file your petition within 90 days (or 150 days if the notice is addressed to a person outside of the United States) from the date of this letter, which is June 18, 2018. The Tax Court can't consider your case if the petition is filed late. If you decide to file a petition, send that petition to the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

File in United States Tax Court

UNITED STATES TAX COURT
www.ustaxcourt.gov

(FIRST) (MIDDLE) (LAST)

(PLEASE TYPE OR PRINT) Petitioner(s)

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

} Docket No.

PETITION

1. Please check the appropriate box(es) to show which IRS ACTION(S) you dispute:

<input type="checkbox"/> Notice of Deficiency	<input type="checkbox"/> Notice of Determination Concerning Relief From Joint and Several Liability Under Section 6015 (or Failure of IRS to Make Determination Within 6 Months After Election or Request for Relief)*
<input type="checkbox"/> Notice of Determination Concerning Collection Action	<input type="checkbox"/> Notice of Certification of Your Seriously Delinquent Federal Tax Debt to the Department of State
<input type="checkbox"/> Notice of Final Determination for [Full/Partial] Disallowance of Interest Abatement Claim (or Failure of IRS to Make Final Determination Within 180 Days After Claim for Abatement)*	<input type="checkbox"/> Notice of Determination Under Section 7623 Concerning Whistleblower Action*
<input type="checkbox"/> Notice of Determination of Worker Classification*	

*For additional information, please see "Taxpayer Information: Starting a Case" at www.ustaxcourt.gov (accessible by hyperlink from asterisks above, or in the Court's information booklet).

2. If applicable, provide the date(s) the IRS issued the NOTICE(S) checked above and the city and State of the IRS office(s) issuing the NOTICE(S): _____

3. Provide the year(s) or period(s) for which the NOTICE(S) was/were issued: _____

4. SELECT ONE OF THE FOLLOWING (unless your case is a whistleblower or a certification action):
If you want your case conducted under small tax case procedures, check here: (CHECK
If you want your case conducted under regular tax case procedures, check here: ONE BOX)

NOTE: A decision in a "small tax case" cannot be appealed to a Court of Appeals by the taxpayer or the IRS. If you do not check either box, the Court will file your case as a regular tax case.

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

UNITED STATES TAX COURT
www.ustaxcourt.gov

Petitioner(s)

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

} Docket No.

STATEMENT OF TAXPAYER IDENTIFICATION NUMBER
(E.g., Social Security number(s), employer identification number(s))

Name of Petitioner _____
Petitioner's Taxpayer Identification Number _____
Name of Additional Petitioner _____
Additional Petitioner's Taxpayer Identification Number _____

If either petitioner is seeking relief from joint and several liability on a joint return pursuant to Section 6015, I.R.C. 1986, and Rules 320 through 325, name of the other individual with whom petitioner filed a joint return:

Taxpayer Identification Number of the other individual, if available:

SIGNATURE OF PETITIONER OR COUNSEL

DATE

SIGNATURE OF ADDITIONAL PETITIONER

DATE

UNITED STATES TAX COURT
www.ustaxcourt.gov

Petitioner(s)

v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

} Docket No.

REQUEST FOR PLACE OF TRIAL

PLACE AN "X" IN ONLY ONE BOX TO REQUEST THE PLACE OF TRIAL. IF PETITIONER(S) ELECTED TO HAVE THE CASE CONDUCTED AS A SMALL TAX CASE, REQUEST ANY CITY LISTED BELOW; OTHERWISE, REQUEST ANY CITY NOT MARKED WITH AN ASTERISK (*).

ALABAMA <input type="checkbox"/> Birmingham <input type="checkbox"/> Mobile	KANSAS <input type="checkbox"/> Wichita* KENTUCKY <input type="checkbox"/> Louisville	OHIO <input type="checkbox"/> Cincinnati <input type="checkbox"/> Cleveland <input type="checkbox"/> Columbus
ALASKA <input type="checkbox"/> Anchorage	LOUISIANA <input type="checkbox"/> New Orleans <input type="checkbox"/> Shreveport*	OKLAHOMA <input type="checkbox"/> Oklahoma City
ARIZONA <input type="checkbox"/> Phoenix	MADISE <input type="checkbox"/> Portland*	OREGON <input type="checkbox"/> Portland
ARKANSAS <input type="checkbox"/> Little Rock	MARYLAND <input type="checkbox"/> Baltimore	PENNSYLVANIA <input type="checkbox"/> Philadelphia <input type="checkbox"/> Pittsburgh
CALIFORNIA <input type="checkbox"/> Fresno* <input type="checkbox"/> Los Angeles <input type="checkbox"/> San Diego <input type="checkbox"/> San Francisco	MASSACHUSETTS <input type="checkbox"/> Boston	SOUTH CAROLINA <input type="checkbox"/> Columbia
COLORADO <input type="checkbox"/> Denver	MICHIGAN <input type="checkbox"/> Detroit	SOUTH DAKOTA <input type="checkbox"/> Aberdeen*
CONNECTICUT <input type="checkbox"/> Hartford	MINNESOTA <input type="checkbox"/> St. Paul	TENNESSEE <input type="checkbox"/> Knoxville <input type="checkbox"/> Memphis <input type="checkbox"/> Nashville
DISTRICT OF COLUMBIA <input type="checkbox"/> Washington	MISSISSIPPI <input type="checkbox"/> Jackson	TEXAS <input type="checkbox"/> Dallas <input type="checkbox"/> El Paso <input type="checkbox"/> Houston <input type="checkbox"/> Lubbock <input type="checkbox"/> San Antonio
FLORIDA <input type="checkbox"/> Jacksonville <input type="checkbox"/> Miami <input type="checkbox"/> Tallahassee* <input type="checkbox"/> Tampa	MISSOURI <input type="checkbox"/> Kansas City <input type="checkbox"/> St. Louis	UTAH <input type="checkbox"/> Salt Lake City
GEORGIA <input type="checkbox"/> Atlanta	MONTANA <input type="checkbox"/> Billings*	VERMONT <input type="checkbox"/> Burlington*
HAWAII <input type="checkbox"/> Honolulu	NEBRASKA <input type="checkbox"/> Omaha	VIRGINIA <input type="checkbox"/> Richmond <input type="checkbox"/> Roanoke*
IDAHO <input type="checkbox"/> Boise <input type="checkbox"/> Pocatello*	NEVADA <input type="checkbox"/> Las Vegas <input type="checkbox"/> Reno	WASHINGTON <input type="checkbox"/> Seattle <input type="checkbox"/> Spokane
ILLINOIS <input type="checkbox"/> Chicago <input type="checkbox"/> Peoria*	NEW MEXICO <input type="checkbox"/> Albuquerque	WEST VIRGINIA <input type="checkbox"/> Charleston
INDIANA <input type="checkbox"/> Indianapolis	NEW YORK <input type="checkbox"/> Albany* <input type="checkbox"/> Buffalo <input type="checkbox"/> New York City	WISCONSIN <input type="checkbox"/> Milwaukee
IOWA <input type="checkbox"/> Des Moines	NORTH CAROLINA <input type="checkbox"/> Winston-Salem	WYOMING <input type="checkbox"/> Cheyenne*
	NORTH DAKOTA <input type="checkbox"/> Bismarck*	

If Notice of Deficiency is Missed?

- ▶ Game is not over
- ▶ Can reopen:
 - a. Pay and refund (if the client can pay in full)
 - b. Audit Reconsideration (if need a refund)
 - c. Doubt-as-to-Liability OIC (stops all enforcement, no refund)

Appeals & US Tax Court

Why Wait for the 90-day Letter?

May be reasons to ignore the 30-day letter and wait for the Notice of Deficiency (“90-day letter”)

- Speeds up the process
- There are issues present we don't want raised

The Appeals Conference

- ▶ Preparation is key
- ▶ Documentation is key
- ▶ By phone, though may request a face-to-face
- ▶ Present you arguments and your support
- ▶ Raise penalty abatement issues and prepare to trade for other issues

An Offer They Can't Refuse

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

Qualified Offer

Dear Mr. _____:

This is a Qualified Offer made pursuant to I.R.C. Sec. 7430(g). The taxpayer offers to settle for \$_____.00 the proposed responsibility for her 2009 federal income tax return. This Offer shall remain open until the earliest of the date such offer is rejected, the date trial begins, or the 90th day hereafter in accordance with Treas. Reg. Sec. 301.7430-7.

United States Tax Court

- ▶ File in United States Tax Court
- ▶ \$60 Fee
- ▶ Sent to IRS Counsel
- ▶ Response
- ▶ Forwarded to Appeals IRM 8.4.1.4, Revenue Procedure 2016-22

Appeals

Internal Revenue Service
 Appeals Office
 CT-RI Appeals Office
 333 East River Dr., Suite 200
 East Hartford, CT 06108

Date: July 1, 2019

ERIC L. GREEN
 GREEN & SKLARZ, LLC
 700 STATE STREET, SUITE 100
 NEW HAVEN, CT 06511

Department of the Treasury

Person to Contact:
 APPEALS OFFICER NAME
 Employee ID Number: 100100xxx
 Tel: 860-290-4xxx
 Fax: 860-290-4xxx
 Contact Hours: 8am to 4pm, EST

Refer Reply to:
 AP:EX:CT-RI:XXX

In Re:
 TAXPAYER NAMES
 SSN/EIN Number:
 XXX-XX-XXXX

Tax Periods Ended:
 12/2010, 12/2011, 12/2012, 12/2013
 12/2014 and 12/2015

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 2010, 2011, 2012, 2013, 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 1, 2019. I contacted your office and we are now scheduled to have a conference on this matter via phone on Tuesday, August 13, 2019 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.



Department of the Treasury
 Internal Revenue Service
 Independent Office of Appeals

Date: 06/09/2021
 Person to contact:
 Name:
 Employee ID number:
 Telephone:
 Fax:
 Hours:
 Re:
 Income Tax Liability
 Tax periods ended:
 Docket number:
 Petitioner:

Dear [enter Name]:

I prepared a proposed decision document based on our tentative agreement to settle your Tax Court case for the tax periods shown above. Enclosed are an original and two copies of the proposed decision document. If you agree that the proposed decision document reflects our tentative agreement to settle your case, **please sign and date the original and one copy of the document and return both to Area Counsel in the enclosed envelope as soon as possible.** If this letter is addressed to more than one person, each of you should sign and date the document exactly as his or her name appears on the signature lines. Please sign the documents using blue, not black ink. Using blue ink will help the Tax Court confirm that the decision document is an original and not a copy. If the court clerk rejects the decision document, it will delay closing your case and you may need to appear at the Tax Court Trial Calendar Session. The third copy of the decision document and the Form 5278, Statement – Income Tax Changes, (if enclosed) are for your records.

The proposed decision document is subject to review, signature, and filing with the Tax Court by the Area Counsel. You should not consider your case settled until the Area Counsel attorney assigned to your case countersigns the decision document and forwards it to the Tax Court for entry. The Tax Court will send you a copy of the decision once a judge signs it and enters it with the court.

The decision document doesn't include interest. By law, interest on the liability runs from the date the tax return is due to the date the IRS receives your remittance paying the entire liability which includes tax, penalties, and interest. **If you want to stop or reduce interest on part or all of the taxes, you can submit an advance payment, payable to the United States Treasury, along with a copy of your decision document, to the address listed above. The total amount you owe as of [date], including tax, penalties, and interest will be approximately**

Years	Tax	Penalties	Interest	Total	
[YYYY]					+ x

Stipulated Decision

- Appeals will draft and send to the Taxpayer's Rep 4 originals
- Sign three copies and send back
- Filed with the Tax Court, where Judge stamps it (signs)

UNITED STATES TAX COURT

Anthony Antonetti &)	
Marie Antonetti,)	
)	
Petitioners,)	Docket No. 12XXX-19
)	
v.)	
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	
)	

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 2010, 2011, 2012, 2013, 2014, and 2015 in the amounts of \$30,400 for each of the six years; and

That there are penalties due from the petitioners for the taxable years of \$22,800 for each of the six years respectively.

Judge.

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?

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.

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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.
- ▶ 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.

The Cohan Rule

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

Bipartisan Budget Act of 2015

- ▶ Passed in 2015
- ▶ Amended by the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div Q (PATH Act), and sections 201 through 207 of the Tax Technical Corrections Act of 2018
- ▶ The law replaced the auditing and tax collection procedures for partnerships under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the electing large partnership rules with the centralized partnership audit regime
- ▶ The centralized partnership audit regime, also referred to as BBA or PBBA, is generally effective for tax years beginning January 2018

Filing Requirements

- ▶ Partnerships under the BBA centralized partnership audit regime must take certain actions when filing or making changes to a return. These include:
 - Designating a Partnership Representative (PR)
 - Option to elect out of the centralized partnership audit regime, if eligible
 - Filing an Administrative Adjustment Request to change a prior return

Opting Out

- ▶ A partnership can elect out of the centralized partnership audit regime for a tax year if it is an eligible partnership that year.
- ▶ To make a valid election out, complete:
 1. Form 1065, U.S. Return of Partnership Income, Schedule B, answer yes to question “Is the partnership electing out of the centralized partnership audit regime under section 6221(b)?” [question 29, 2021 version], or Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return, check the box to question G in ‘Additional Information’ section, and
 2. Schedule B-2, Form 1065, Election Out of the Centralized Partnership Audit Regime, list each eligible partner’s name, U.S. Taxpayer Identification Number and type of eligible partner. Include all shareholders for any partner that is an S corporation.

Schedule B, Line 31

Form 1065 (2023)

Page **4**

Schedule B Other Information (continued)		Yes	No
b	Under the covered surrogate foreign corporation rules? If "Yes" to either (a) or (b), complete Form 7208, Excise Tax on Repurchase of Corporate Stock. See the Instructions for Form 7208.	<input type="checkbox"/>	<input type="checkbox"/>
30	At any time during this tax year, did the partnership (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or financial interest in a digital asset)? See instructions	<input type="checkbox"/>	<input type="checkbox"/>
31	Is the partnership electing out of the centralized partnership audit regime under section 6221(b)? See instructions If "Yes," the partnership must complete Schedule B-2 (Form 1065). Enter the total from Schedule B-2, Part III, line 3 If "No," complete Designation of Partnership Representative below.	<input type="checkbox"/>	<input type="checkbox"/>

Designation of Partnership Representative (see instructions)

Enter below the information for the partnership representative (PR) for the tax year covered by this return.

Name of PR		<input type="text"/>	
U.S. address of PR	<input type="text"/>	U.S. phone number of PR	<input type="text"/>
If the PR is an entity, name of the designated individual for the PR			
U.S. address of designated individual	<input type="text"/>	U.S. phone number of designated individual	<input type="text"/>

Form **1065** (2023)

Schedule B-2

**SCHEDULE B-2
(Form 1065)**

(December 2018)
Department of the Treasury
Internal Revenue Service

**Election Out of the Centralized
Partnership Audit Regime**

▶ Attach to Form 1065 or Form 1066.
▶ Go to www.irs.gov/Form1065 for instructions and the latest information.

OMB No. 1545-0123

Name of Partnership	Employer Identification Number (EIN)

Certain partnerships with 100 or fewer partners can elect out of the centralized partnership audit regime if each partner is an individual, a C corporation, a foreign entity that would be treated as a C corporation were it domestic, an S corporation, or an estate of a deceased partner. For purposes of determining whether the partnership has 100 or fewer partners, the partnership must include all shareholders of any S corporation that is a partner. By completing Part I, you are making an affirmative statement that all of the partners in the partnership are eligible partners under section 6221(b)(1)(C) and you have provided all of the information on this schedule. See the instructions, including the instructions for the treatment of real estate mortgage investment conduits (REMICs), for more details.

Part I List of Eligible Partners

Use the following codes under Type of Eligible Partner:

I – Individual C – Corporation E – Estate of Deceased Partner F – Eligible Foreign Entity S – S corporation

	Name of Partner	Taxpayer Identification Number (TIN)	Type of Eligible Partner (Code)
1			
2			
3			
4			
5			

Eligible Partnerships

Partnerships are all eligible **UNLESS** they are required to issue a Schedule K-1 to partners that are:

- ▶ Partnerships
- ▶ Trusts
- ▶ Foreign entities that would not be treated as a C corporation were it a domestic entity
- ▶ Disregarded entities
- ▶ Estates of individuals other than deceased partners
- ▶ People who hold an interest in the partnership on behalf of another person

Tax Assessment

- ▶ CPAR and its predecessor, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), both tax partnerships at the individual partner level.
- ▶ All income, deductions, gains, losses, and credit of the partnership “flow through” to the partners’ income tax returns.
- ▶ However, there are differences in the way these regulations:
 - Audit partnerships.
 - Assess taxes due.
 - Interact with partnerships

Liability for the Tax Assessment

- ▶ Under TEFRA, the IRS audits each partner separately.
- ▶ Any deficiencies found during an audit are collected from the responsible partner(s).
- ▶ Under the CPAR however, any underpayments that are found during an IRS audit become the responsibility of the partnership as a whole and not the individual partners.
- ▶ **This is true even if the partners liable for the underpayment have left the partnership.**

When Taxes Are Assessed

- ▶ Tax underpayments found by IRS are assessed for the same taxable year being audited under TEFRA.
- ▶ Conversely, with CPAR tax underpayments are assessed and due during the year that the adjustment is finally determined.
- ▶ This drives home why some partnerships might want to opt out of the CPAR

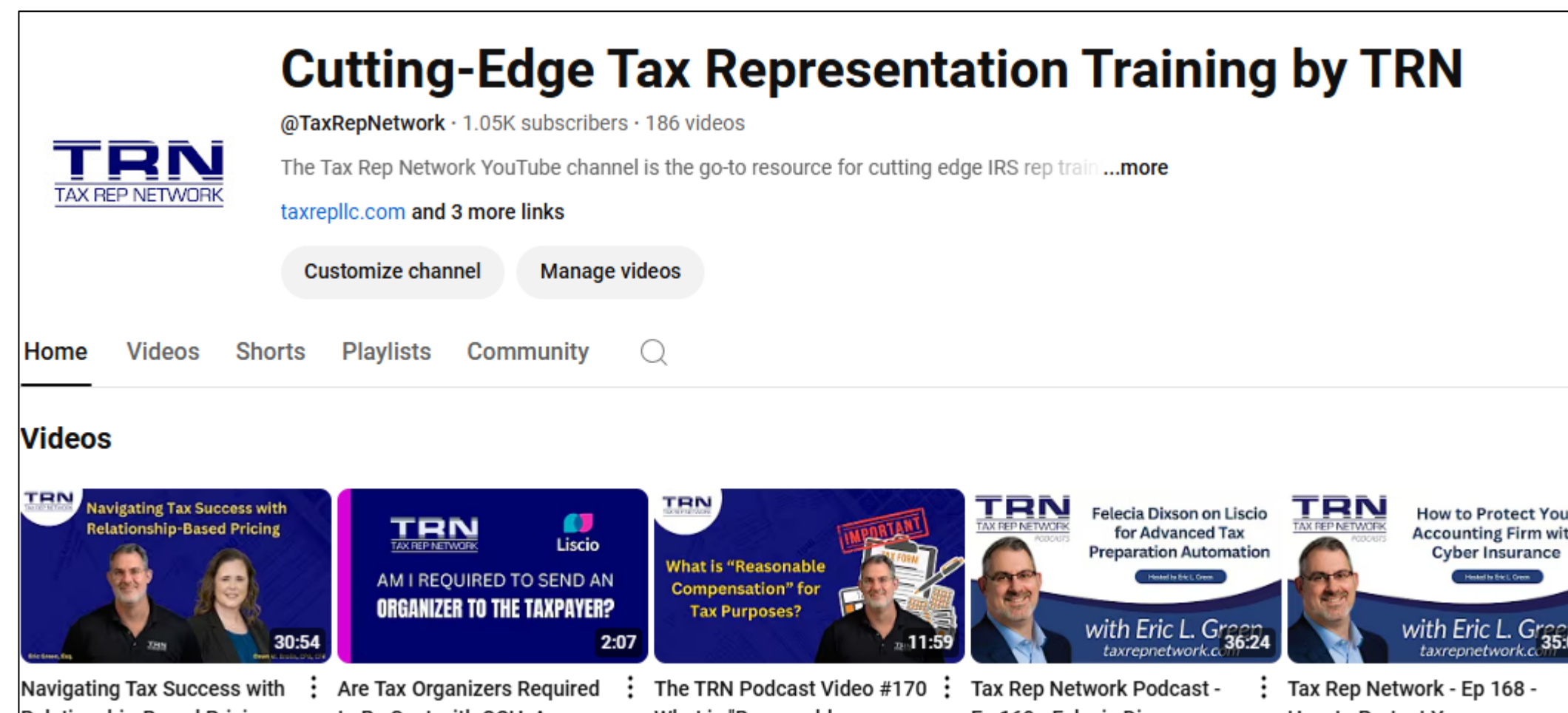
Why Opt Out?

Some partnerships may want to opt of the centralized partnership audit regime because it:

- ▶ Replaces the ability of individual partners to have an input on audit management with a sole partnership representative. Partners lose control, relying on their representative to be the sole voice.
- ▶ Reflects audit adjustments in the year an audit is concluded rather than in the year being audited. This could leave current partners paying for the liability of prior partners.
- ▶ Makes the partnership liable for underpayment instead of individual partners, creating potential unfair treatment between the partners and who picks up the tax burden.

YouTube Channel

- ▶ Catch the podcast there
- ▶ Watch the hints and tips we post there
- ▶ If you can, hit like and subscribe, it helps spread the Tax Rep gospel!
- ▶ <https://www.youtube.com/@TaxRepNetwork>



Questions?

